

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: May 26, 2020

CASE NO(S): PL190465

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Ross & Melanie Stroeder
Applicant:	Carel & Melven Grundlingh
Subject:	Minor Variance
Variance from By-law No.:	82-2008
Property Address/Description:	356 Summit Drive
Municipality:	Municipality of North Huron
Municipal File No.:	MV06-2019
LPAT Case No.:	PL190465
LPAT File No.:	PL190465
LPAT Case Name:	Stroeder v. North Huron (Municipality)

Heard: February 27, 2020 in Wingham, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Ross Stroeder

Self-represented

County of North Huron

Gregory F. Stewart*

**MEMORANDUM OF ORAL DECISION DELIVERED BY DOUGLAS A. JOYNER
ON FEBRUARY 27, 2020 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This was the hearing of an appeal by Ross and Melanie Stroeder (the “Appellants”) of a decision made by the Committee of Adjustment (the “Committee”) of the Township of North Huron (the “Town”) to grant a variance for a property located at 356 Summit Drive, Wingham (the “Subject Property”). The purpose of this application is to seek relief from Zoning by-law No. 82-2008 for the Town in order to permit the construction of a one-storey carport attached to the existing house on the South side of the property.

[2] The Appellants allege that the Committee’s decision to approve the variance in the Subject Property application for the proposed structure in question does not match the neighbourhood. They also allege that the new structure will visually detract from their house and street view thereby lowering the value of their own home.

[3] In preparing their application, the evidence showed that Melven and Carel Grundlingh (the “Applicants”) considered many different design options for adding a carport to the Subject Property. The Applicants are proposing to construct a one-storey carport attached to the existing house on the South side and are seeking relief from the minimum interior side yard setback distance (proposed interior side yard setback variance 0.75 metres) and the encroachment of the eaves in the side yard (permitted eaves setback variance 0.35 metres).

[4] The Subject Property is designated Residential in the North Huron Official Plan and zoned R1 – Residential Low Density in the North Huron Zoning by-law. The Committee recommended that minor variance application MV06-19 be approved with the following conditions:

1. The carport be as shown in the exterior elevation drawings that accompanied the application; and

2. The variance approval is valid for a period of 18 months from the date of the Committee's decision.

PHYSICAL CONTEXT

[5] The Applicants testified that they have looked at many potential options, but they are limited because the orientation of their house is not parallel to the lot lines and as a result, most of the room for a carport would be at the front of the lot. Moving the carport further to the back of the property would not be an option as it would approach the lot line which would trigger an easement agreement.

LEGISLATIVE TESTS

[6] The Tribunal's authority to grant variances is given under section 45(1) of the *Planning Act* (the "Act"), which sets out the four tests that must be satisfied by an applicant, when making an application for the authorization of variances. It must be noted that the hearing before the Tribunal is a *hearing de novo* and the onus of satisfying the Tribunal that the application meets these tests remains on the applicant notwithstanding that the committee authorized the variances. The tests are as follows:

- a. Maintain the general intent and purpose of the OP;
- b. Maintain the general intent and purpose of the Zoning By-law;
- c. Be desirable for the appropriate development or use of the land, building or structure; and
- d. Be minor in nature.

[7] The Tribunal must also consider whether the variances have sufficient regard to the Provincial interests listed in section 2 of the Act, whether they are consistent with the Provincial Policy Statement, 2014 (the "PPS").

ANALYSIS AND FINDINGS

[8] The Tribunal accepts and relies on the uncontested planning evidence and opinions of Laura Simpson, Planner for Huron County Planning and Development, to find that the criteria established in section 45(1) of the Act, is met. On the sum of the evidence, the Tribunal is satisfied the general intent and purpose of the OP and the ZBLA is being properly maintained. The variances will facilitate the development of the Subject Property for a use and in a manner that is appropriate and desirable and consistent with the principles of good land use planning. The proposed variances are minor in nature and do not result in the creation of a carport that has unacceptable adverse impacts to neighbouring properties or the broader neighbourhood, as opined by the Appellants.

[9] The Tribunal finds that this minor variance application meets the intent of the North Huron Official Plan. A carport is considered a normal permitted accessory use to a house in the R1 – Residential Low-Density designation in this Primary Settlement Area. The Tribunal finds that the proposed carport will continue to maintain the residential nature of the property and surrounding neighbourhood character (section 6.4.3.1.5).

[10] The Tribunal finds that this minor variance meets the intent of the Town zoning By-law. In the R1 Residential Low-Density zone, carports are considered a common part of the residential structure or accessory to a residence in this zone. In the North Huron Zoning By-law, a carport is defined as a parking space that is partially enclosed and has a roof and is for the purpose of storing one or more vehicles. Section 26.4 of the North Huron Zoning By-law requires a minimum interior side yard depth of 1.5 metres on both sides of the carport. This application seeks relief for 0.75 metres from the minimum interior side yard setback to build their new carport. Section 3.8 of the Zoning By-law permits an encroachment into a yard for eaves on a structure of 0.75 metres. The application seeks to permit an encroachment of the eaves of 1.15 metres, such that the eaves will be 0.35 metres setback from the lot line. The evidence of the

Applicants was that they will attach eaves troughs to take the stormwater from the roof to the rear of the carport and away from the abutting lot line. Furthermore, the addition of the carport to the house does not result in exceeding the maximum lot coverage for the Subject Property.

[11] The Tribunal finds that this minor variance is desirable for the appropriate development of the lands. The Subject Property is on a residential street with similar sized and shaped houses with at least two other houses in the immediate vicinity on Summit Drive that have open carports attached to the sides of the house. The proposed carport will not be an unusual addition to the neighbourhood house characteristics. The Tribunal finds that the concept drawings shown are an appropriate development for the Subject Property and are not anticipated to have a detrimental impact on the streetscape on this residential area.

[12] The Tribunal finds this minor variance to be minor in nature. The reduction for the proposed carport is half of the minimum interior side yard setback for an attached carport due to the existing width of the lot and house orientation on the Subject Lands. The Tribunal also finds the encroachment of the eaves for the proposed carport to be minor and necessary to allow water to be directed away from the shared lot line and abutting property. The Tribunal is satisfied that the requested variances are minor in nature and appropriate given the width proposed and limitation of the Subject Property. The design is open and does not create an oversized enclosed structure. Similarly, the addition does not impede on the remainder of the Subject lands from a compatibility perspective. And lastly, the Tribunal finds that the carport addition will not cause any undue adverse impacts on the neighbouring properties.

[13] Finally, the Tribunal accepts the evidence of Ms. Simpson that the variances in her view are consistent with the PPS and there is no evidence that the variances result in any lack of conformity with any Provincial Plan.

[14] In his closing argument counsel for the County, referred the Tribunal to the following decisions:

McNamara Corp. V. Colekin Investments Ltd., 1977 CarswellOnt 332 (paragraph #8) (Exhibit #9, Tab 2)

Para. 8 – The Legislature by s. 42(1) confided to committees of adjustment and ultimately to the Municipal Board the authority to allow “minor variances”. The statute does not define these words and their exact scope is likely incapable of being prescribed. The term is a relative one and should be flexibly applied:

Re: Perry and Taggart, [1971] 3 O.R. 666, 21 D.L.R. (3d) 402.

No hard and fast criteria can be laid down, the question whether a variance is minor must in each case be determined in the light of the particular facts and circumstances of the case. In certain situations, total exemption from a by-law will exclude a variance from falling within the category of “minor variances”. But, not necessarily so. In other situations, such a variance may be considered a minor one. It is for the committee and in the event of an appeal, the Board to determine the extent to which a by-law provision may be relaxed, and a variance still classed as “minor”.

[15] In conclusion, the Tribunal accordingly finds that the four tests under section 45(1) of the Act, have been satisfied and are consistent with the PPS. The variances represent good planning and should therefore be approved, subject to the matter of the conditions discussed in paragraph #4.

ORDER

[16] The Tribunal orders that the appeal is dismissed and the variances to Zoning By-law No. 82-2008 are hereby authorized subject to any conditions imposed by the committee in its decision.

“Douglas A. Joyner”

DOUGLAS A. JOYNER
MEMBER

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Local Planning Appeal Tribunal

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