

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



ISSUE DATE: April 29, 2021

CASE NO(S): PL200504

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

Applicant and Appellant:	Naveen Nagarajan
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	469 Scenic Drive
Municipality:	City of Hamilton
Municipal File No.:	A-359/19
LPAT Case No.:	PL200504
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LPAT Case Name:	Nagarajan v. Hamilton (City)

Heard: March 31, 2021 by video hearing

APPEARANCES:

Parties

Representative

Naveen Nagarajan

Self-represented

City of Hamilton

No one appeared

DECISION DELIVERED BY T.F. NG AND ORDER OF THE TRIBUNAL

[1] Naveen Nagarajan (“Applicant”), of 469 Scenic Drive (“subject property”) in the City of Hamilton (“City”) applied for relief from the provisions of Zoning By-law No. 6593 (“ZBL”) as amended, so as to permit the conversion of the second storey of the

accessory building into habitable space.

[2] The minor variance sought: to permit the conversion of the second storey of the accessory building into habitable space for the existing single detached dwelling, notwithstanding that the accessory building being converted for habitable space is for residential purposes on a lot in which a residential building has already been erected.

[3] The City's Planning Staff's first report dated November 7, 2019 did not support the application as the original proposal contained a kitchen, which would mean two dwellings on one lot, that was not permitted under the ZBL. However, staff in their second report of June 25, 2020 recommended approval of the minor variance application as the kitchen has been removed from the proposal. Nevertheless, the Committee of Adjustment ("COA") denied the variance application on June 25, 2020 ("rejection").

[4] The Applicant appealed the COA's rejection.

[5] The subject property is located on Scenic Drive. To the north, south and east are open spaces and to the northwest and west are single detached dwellings. The subject property has an existing two storey single detached residential dwelling and detached accessory two storey garage located toward the north west corner of the site and surrounded by a mix of single detached dwellings.

[6] The City has corresponded that they were not taking any position in this appeal. The Applicant called Michael Barton as his witness. Mr. Barton who is a registered land use planner was qualified to give expert opinion evidence on land use planning.

[7] The Applicant submitted that the City should have approved the application as it fulfilled the requirements of the statutory tests. The planning evidence was methodically presented by Mr. Barton who gave a concise overview of the relevant provincial and municipal policies that apply to the variance application.

[8] Mr. Barton explained that the existing two storey garage has a finished floor on

the second storey and three parking spaces within the garage and three spaces in front of the garage. There are additional parking spaces for multiple vehicles on the north and east side of the dwelling. Parking was not an identified issue with City staff.

[9] He stated that the proposal is to continue to use the second storey of the detached accessory garage as habitable space, accessory to the detached dwelling. There are only interior renovations (subject to building permit) to the space, no kitchen or culinary space will be provided and no changes will be made to the exterior of the building. As such the habitable space will not fall under the definition of a “Dwelling Unit” of section 2(2) of the ZBL:

(ix) “Dwelling Unit” shall mean a Class A dwelling unit or a housekeeping dwelling unit, and shall include a single family dwelling or any other separate living quarters for one family within a building, whether detached, semi-detached or attached; but shall not include a tent, or a cabin or trailer in a tourist camp or trailer camp, or a room or suite in an apartment hotel, tourist home, lodging house or other such premises;

(a) “Class A Dwelling Unit” shall mean a dwelling unit having a kitchen, as well as such sanitary and sleeping accommodation as is required by law; and

(b) “Housekeeping Dwelling Unit” shall mean a dwelling unit without a kitchen, but with an alcove or space not enclosed on all sides by walls, intended or used for culinary purposes.

[10] After consultation with City staff, the proposal was revised to remove the “kitchenette” or kitchen. Thereafter, staff confirmed that the modifications would change the definition of the second floor from Dwelling Unit to Habitable Space.

[11] There were three letters of support from immediate neighbours at 48 Price Avenue; 471 Scenic Drive; and 477 Scenic Drive. The Niagara Escarpment Commission planning staff interpreted the purpose of the application is for “habitable” space accessory to the existing single dwelling on the property and not as a separate dwelling unit, thus they had no concerns.

[12] Mr. Barton stressed that the variance application came about in response to a request for building permit for the proposed renovations. The objective was to ensure the floor area is legally recognized as accessory habitable space. Had the garage been

attached to the dwelling, there would not have been an issue for the accessory use. In his land use analysis, he opined that the variance application satisfies the four tests set out in section 45(1) of the *Planning Act* (“Act”).

[13] He gave an overall view of the vision of land use as outlined in Part IV of the Provincial Policy Statement 2020 (“PPS”) including key points that land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs to achieve efficient development patterns which optimize use of land, resources, public investment in infrastructure and public service facilities. He referred to section 1.0 of Part V PPS policies for building strong, healthy communities and section 1.1 principles that sustain healthy, liveable and safe communities and section 1.1.3.6 that indicates that new development taking place in the existing built-up area shall have a compact form, mix of uses and densities that allow for efficient use of land, infrastructure and public service facilities. His opinion is that the minor variance is consistent with the PPS as it allows for efficient use of the subject property and existing structures in a manner that is compatible with the property and surrounding area. The minor variance will enhance the quality of use and enjoyment of the single detached dwelling on the subject property by providing habitable space which is accessory to the dwelling.

[14] On the Growth Plan for the Greater Golden Horseshoe 2020 (“GP”), the guiding principles, he said in section 1.2.1 include, supporting the achievement of complete communities designed to support healthy and active living; prioritizing intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure; supporting a range and mix of housing options, including additional residential units and affordable housing, to serve all sizes, incomes, and ages of households. His view is that the variance application conforms to the GP and will support and enhance the existing single detached residential use in a manner that is compatible with the surrounding area.

[15] Mr. Barton noted that section A2.0 of the Introduction to the Urban Hamilton Official Plan (“OP”) includes nine strategic directions to guide development including:

Direction #1

Encourage a compatible mix of uses in neighbourhoods that provide opportunities to live, work, and play

...

Direction #7

Maximize the use of existing buildings, infrastructure and vacant or abandoned land;

Direction #8

Protect ecological systems and improve air, land and water quality; and

Direction #9

Maintain and create attractive public and private spaces and respect the unique character of existing buildings, neighbourhoods and settlements.

[16] Section 2.4 of the OP, in particular section 2.4.1.4 and section 2.4.2.2 establish criteria for evaluating proposed residential intensification projects, such as the relationship of the proposal to existing neighbourhood character and the maintenance or enhancement of desirable established patterns and built form; the development's contribution to maintaining and achieving a range of dwelling types and tenures; and the compatible integration of the development with the surrounding area in terms of use, scale, form and character (where in this regard, the City encourages innovative and creative urban design techniques).

[17] The subject property is identified as "Neighbourhoods" on Schedule E Urban Structure and designated Neighbourhoods on Schedule E-1 Urban Land Use Designations in the OP. Policy E.3.4.3 applies and permits a single detached dwelling. The general intent of the Neighbourhoods designation is to maintain the existing character of established neighbourhoods. The second storey of an existing garage is proposed to be used for residential purposes accessory to the existing single detached dwelling on the same lot. As the detached garage is an existing building, there is no perceived negative impacts on the neighbourhood character. There is also a hedge row along the westerley property line that provides some screening for privacy concerns and vegetation at the back of the garage on the north western side that provides screening from the adjacent property. Mr. Barton opined that the application maintains the intent and purpose of the OP.

[18] The subject property is zoned “B” and “B-1” Districts (Suburban Agriculture and Residential, etc.). A single detached dwelling is permitted within the zone. The ZBL permits structures that are accessory to a residential use but prohibits the conversion or residential use of a building on a lot where a residential building has already been erected. In this instance, the proposed conversion that does not contain a kitchen, is not considered a dwelling unit under the ZBL and will remain an accessory use to the single detached dwelling on the property. As such, Mr. Barton’s opinion is that the design of the structure including windows and proximity to adjacent land uses, will not result in negative impacts and the intent and purpose of the ZBL is maintained. He concluded that the development is good land use planning; the variance is appropriate and desirable for the use of the subject property, and minor in nature.

[19] The Tribunal is satisfied based on the documentary record and uncontradicted evidence of the expert witness before it that the variance should be allowed and authorized for the reasons that follow.

[20] The issue for the Tribunal is whether the proposed development will be consistent with the PPS, has regard to provincial interests, and whether the variances requested meet the statutory tests set out in section 45(1) of the Act.

[21] The Tribunal is satisfied that the proposed variance at the subject property has regard for the matters of provincial interest as set out in section 2 of the Act in particular section 2(j) on the provision of a range of housing and section 2(r) on the promotion of built form that is well-designed.

[22] An Applicant must satisfy the Tribunal that the four tests in section 45(1) of the Act are met with: i.e. that the variance maintains the general intent and purpose of the Official Plan and the Zoning By-law, is desirable for the appropriate development or use of the land building or structure and is minor in nature.

[23] The proposal is an efficient use of land. Policy 1.1.1(a) and (b) of the PPS relating to urban areas in municipalities applies to the subject property: Managing and

directing land use in healthy, liveable urban areas to achieve efficient development and land use patterns and accommodating an appropriate affordable and market based range and mix of residential types including additional residential units, multi-unit housing and affordable housing are met in this instance. The Tribunal is satisfied that the variance application is consistent with the PPS.

[24] The subject property is designated Neighbourhoods on Schedule E-1 Urban Land Use Designations in the City's OP and in accordance with s. E.1.0 of the OP, goals are set out for urban systems and land use designations including (e) Plan and designate lands for a range of housing types and densities, taking into account affordable housing needs; (f) Promote and support design which enhances and respects the character of existing neighbourhoods and creates vibrant, dynamic, and liveable urban places; and (g) Promote and support appropriate residential intensification throughout the urban area and focused in Urban Nodes and Urban Corridors. Residential intensification is encouraged where the scale and physical character are considered to be compatible with the surrounding neighbourhood and where infrastructure and public transit are available.

[25] From the site plan and photographs of the accessory garage, the Tribunal finds that the two storey existing garage structure, size, and built form are compatible with the neighbourhood. The area is characterised by single detached dwellings. The proposed accessory use of the accessory building as a habitable space is considered compatible and permitted on lands designated E-1 Urban Land and the proposed development would constitute residential intensification in an existing built up and developed area where infrastructure and transit are available. Increasing the residential and affordable housing stock for varied households in the City is a policy of the OP and this development will maintain the character of the neighbourhood. The Tribunal is satisfied that the variance sought maintains the general intent and purpose of the OP.

[26] The subject property is zoned B and B-1 Districts, Suburban Agriculture and Residential in accordance with the ZBL. This zone permits a single detached dwelling and miscellaneous incidental uses including a private garage, parking spaces in such

numbers as necessary for a permitted use and a storage garage of such capacity as necessary for a permitted use. Accessory structures serving the primary dwelling is permitted. For the subject property, the principal dwelling is the primary and the existing detached accessory garage is secondary.

[27] City Planning staff noted in the report that the existing garage structure is accessory to the primary use of the dwelling. As the proposal of using the second storey of the garage as a habitable accessory space without any kitchen does not constitute a dwelling unit, City staff has indicated support for the proposal. Mr. Barton concurred with that view as, in his opinion the second storey of the garage will serve as an accessory use to the Primary Dwelling. In this instance, with changes in the original proposal that had a kitchenette (which has been removed); and the proposal being a permitted accessory building unit that in other respects is, compliant with the zoning standards, the Tribunal is satisfied that the variance maintains the general intent and purpose of the ZBL.

[28] The proposed variance is appropriate development of the subject property as it will result in a detached accessory unit with a permitted accessory use within the zone. The accessory garage structure is an existing structure where the exteriors are not altered and the built form remains the same and is compatible with the neighbourhood. The proposed accessory structure is located in the northwest corner area of the subject property and mature vegetation on the subject property has provided screening of the accessory structure. This is in keeping with the existing character of the area and the proposed development will represent appropriate residential intensification for the subject property in accordance with provincial and municipal policies. The additional habitable space on the subject property will increase the housing options where the proposed land use of such accessory buildings is permitted. The proposed development is appropriate for the subject property and represents good planning. The Tribunal is satisfied that the proposed variance is desirable for the appropriate use and development of the subject property.

[29] The proposed use of the detached accessory building will not result in

unacceptable adverse impact on the adjacent properties. This structure has always been located at that particular corner of the subject property, screened by mature vegetation. In fact the three adjacent property owners had filed letters in support of the Applicant's application for this variance. The built form is the existing form which will not be altered and it is compatible with the neighbourhood character. The existing built form character of the surrounding area is maintained. There are adequate parking spaces and ample amenity area on the subject property. There is no evidence of any unacceptable adverse impact on the occupants or owners of surrounding properties. The Tribunal is satisfied that the variance is minor in nature.

ORDER

[30] **The Tribunal Orders** that the appeal is allowed and the variance to Zoning By-law No. 6593 is authorized.

"T.F. Ng"

T.F. NG
MEMBER

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Local Planning Appeal Tribunal

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