

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



ISSUE DATE: April 23, 2021

CASE NO(S): PL200553

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:	John Staley
Applicant:	Ruben Furtado
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	110 Clifton Downs Road
Municipality:	City of Hamilton
Municipal File No.:	HM/A-20:141
LPAT Case No.:	PL200553
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LPAT Case Name:	Staley v. Hamilton (City)

Heard: April 9, 2021 by Video Hearing

APPEARANCES:

<u>Parties</u>	<u>Representative</u>
John Staley	Self-represented
Ruben Furtado	Self-represented

DECISION DELIVERED BY M. ARPINO AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This proceeding is a hearing of the merits of an appeal by John Staley (the “Appellant”) of a decision of the City of Hamilton (the “City”) Committee of Adjustment (the “Committee”).

[2] Ruben Furtado (the “Applicant”) owns lands municipally known as 110 Clifton Downs Road (the “Property”), in the City. The prior owner of the Property created a second unit within the single-family dwelling located on the Property.

[3] The Property is zoned Urban Protected Residential pursuant to By-law No. 6593 as amended (the “By-law”).

[4] By-law No. 19-307 was an amendment to the By-law to facilitate a pilot project to allow for the creation of second dwelling units. The By-law includes side-yard and height regulations.

[5] The Applicant wishes to legalize existing conditions at the Property, which do not accord with the By-law regulations.

[6] The Applicant applied to the Committee for three minor variances to the By-Law (the “Variances”), which are as follows:

- a. The By-law stipulates the minimum easterly side yard shall be 1.2 metres (“m”). The Applicant sought to reduce the minimum east side-yard setback to 1.1 m.
- b. The By-law stipulates the maximum height of a rear yard terrace, which extends into the easterly side-yard shall be 1.0 m. The Applicant sought to increase the maximum permitted height to 1.2 m.

- c. The By-law stipulates the minimum floor area of a dwelling unit for a converted dwelling shall be 65 square metres (“sq m”). The Applicant sought to reduce the minimum floor area to 49 sq m.

[7] The Committee granted the Variances. The Appellant, who resides in the vicinity of the Property, appealed the decision.

LEGISLATIVE TESTS

[8] In making a decision under the [Planning Act](#) (the “Act”) with respect to a minor variance, the Tribunal must have regard to matters of provincial interest as set out in s. 2, and to the decision of the approval authority under s. 2.1. The decision must be consistent with the applicable Provincial Policy Statements and conform to Provincial Plans including the Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”) pursuant to s. 3(5) of the Act.

[9] In considering an appeal of an Application for a minor variance, the Tribunal must be satisfied that the variance meets the four tests set out in s. 45(1):

1. Does the variance maintain the general intent and purpose of the Official Plan?
2. Does the request variance maintain the general intent and purpose of the Zoning By-law?
3. Is the request desirable for the appropriate development or use of the subject lands? and;
4. Is the requested variance minor?

EVIDENCE AND FINDINGS

[10] Prior to the commencement of the hearing, the Tribunal was informed that the City would not be in attendance.

[11] The Tribunal noted that the City Planning Department recommended approval of the Variances.

[12] The Tribunal also noted that the Municipal Record includes a petition and correspondence from property owners in the vicinity of the Property, which has evidence in opposition to the Proposal. The meeting minutes reflect that some of the neighbours attended the Committee meeting and expressed opposition to the Variances.

[13] The Appellant attended the hearing and stated that the Committee had not been given adequate regard to the issues that he and other neighbours raised about the second residential unit.

[14] Mr. Staley also told the Tribunal that he asked the City for information about the Property and the Variances. He said that the City did not respond to the request.

[15] He also said that there was a full agenda for the meeting at which the Committee dealt with the requested Variances. He said the Committee did not allow neighbours sufficient time to inform the Committee about their concerns.

[16] The Appellant submitted that there was no adequate parking at the Property to support the Proposal. He stated that even if the number of parking spaces satisfied the parking regulations in the By-law, they were not functional parking spaces.

[17] He was concerned that if it were difficult to access the vehicles in the parking spaces, people who reside at the Property would likely park on the street. He informed the Tribunal that over-night street parking is not permitted on Clifton Downs Road. He

also stated that there has been an increase in on-street parking in the vicinity of the Property in the last few years.

[18] The report from the City planner stated that the existing parking condition at the Property conforms to the requirements of the By-law. The Tribunal noted that the Applicant did not request a variance from any regulations regarding the number or size of parking spaces.

[19] Mr. Staley, the Appellant, stated his concern that if the second unit was legitimized, it would open the door for other single dwellings to be converted to multiple unit buildings.

[20] Mr. Staley asserted that the Variances do not satisfy the legislative tests of a minor variance. Mr. Staley is not a land use planner, nor did he provide land use planning evidence to support his assertions.

[21] The Tribunal reviewed the written material, which Mr. Staley had provided to the Committee. The Tribunal also considered Mr. Staley's verbal submissions together with the material and photographs that he submitted directly to the Tribunal.

[22] The Applicant stated that he had recently purchased the Property and that he did not intend to make any physical changes to the structure. He stated that he only wanted to legalize the existing conditions.

[23] The Tribunal considered the planning report prepared by the City planning department and the reasons they recommended that the Variances be granted.

[24] The Urban Hamilton Official Plan (the "UHOP") encourages the broadening of a range of dwelling types in the City. The UHOP also promotes residential Intensification.

[25] The municipal planning report provides that the Variances conform to the general intent and purpose of the UHOP, which is the implementing document for the policies in

the Provincial Policy Statement (the “PPS”). The Tribunal is satisfied that the Variances maintain the general intent and purpose of the UHOP and are consistent with the PPS.

[26] The By-law was amended to facilitate the conversion of single dwellings into multiple dwelling units, the Tribunal determined that the Variances maintain the general intent and purpose of the By-law. It was also noted that there are no proposed changes to the exterior of the structure.

[27] Mr. Staley asserted that the Variances were not minor, however his comments regarding the minor nature of the Variances were directed at the impact of the second residential dwelling and not to the nature or impact of the Variances.

[28] Similarly, when Mr. Staley addressed the test regarding the desirability of the Variances, his comments was directed to the creation of the second residential dwelling, not the Variances.

[29] The Tribunal has considered all the documentary evidence and the submissions from the Appellant and the clearly stated opposition to the creation of a second residential unit on the Property. The Tribunal did not hear evidence that the Variances did not meet the Legislative tests.

[30] The Tribunal finds that the Variances maintain the general intent and purpose of the UHOP and of the By-law. The Tribunal has also determined that the Variances are appropriate development of the Property and are minor.

[31] The Tribunal after having considered the evidence, has determined that the Variances raise no concerns relating to the PPS and accordingly are consistent with the PPS and conform to the Growth Plan.

ORDER

[32] The Tribunal Orders that the appeal is dismissed and the Variances to By-law No. 6593 as amended by By-law No. 19-307, as set out in paragraph 6 of this Decision, are authorized.

"M. Arpino"

M. ARPINO
MEMBER

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Local Planning Appeal Tribunal

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