

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



ISSUE DATE: May 12, 2021

CASE NO(S): PL200650

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:	Ed Valtenbergs
Applicant:	Allan & Laurie Hurman
Subject:	Minor Variance
Variance from By-law No.:	Former City of Hamilton Zoning By-law No. 6593
Property Address/Description:	988 Concession Street
Municipality:	City of Hamilton
Municipal File No.:	A-116/20
LPAT Case No.:	PL200650
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LPAT Case Name:	Valtenbergs v. Hamilton (City)

Heard: May 5, 2021 by Video Hearing

APPEARANCES:

Parties

Representative

Ed Valtenbergs	Self-represented
City of Hamilton	No one appearing
Alan Hurman (Laurie Hurman, not attending)	Self-represented

DECISION DELIVERED BY MARGOT BALLAGH AND ORDER OF THE TRIBUNAL

[1] This Decision and Order results from the hearing on the merits of the Appeal by the Appellant, Ed Valtenbergs, pursuant to section 45(12) of the *Planning Act* (the “Act”) from the decision of the City of Hamilton’s (“City”) Committee of Adjustment (the “COA”) to approve the Application by the Applicants, Allan and Laurie Huurman, for relief from the City’s Zoning By-law No. 6593, as amended (the “Zoning By-law”), in relation to the property municipally known as 988 Concession Street, in the City of Hamilton (the “subject property”).

[2] The Huurmans seek relief from the Zoning By-law to facilitate the construction of an accessory building (a proposed detached garage) on the subject property near the lot line separating the subject property and Mr. Valtenbergs’ property.

[3] The following variance from the Zoning By-law is requested by the Huurmans with respect to the accessory structure:

- to increase the maximum height to 5.4 metres (“m”), whereas the Zoning By-law requires no accessory building to exceed 4.0 m.

[4] The recommendation of the City’s planning staff was to refuse the Application for the variance in maximum height. However, the City’s COA allowed the Application and authorized the requested variance. Mr. Valtenbergs, as an adjacent property owner, appealed the decision to the Local Planning Appeal Tribunal (the “Tribunal”).

The Hearing

[5] Prior to the Hearing, the City informed the Tribunal that it did not intend to participate in the Appeal.

[6] At the Hearing, the Applicants and the Appellant were self-represented and did not call any expert witnesses. The Tribunal heard lay evidence from Mr. Huurman, in support

of the Application for the variance, and from Mr. Valtenbergs, in opposition to the Application. Both were duly affirmed before testifying.

[7] The Tribunal reviewed with the Parties the test for minor variances as set out in section 45(1) of the Act. An appeal to the Tribunal, pursuant to section 45 of the Act, is a hearing *de novo* and the onus remains on the applicant (in this case, the Huurmans) to satisfy the Tribunal for authorization of variances that the requested variances meet the four tests pursuant to section 45(1) of the Act, namely, that the variances would:

- 1) maintain the general intent and purpose of the Official Plan;
- 2) maintain the general intent and purpose of the By-law;
- 3) be desirable for the appropriate development or use of the land, building or structure; and
- 4) be minor in nature.

[8] Given the nature of the requested variance and the fact no Party raised any issue related to sections 2 or 3(5) of the Act, the Hearing focused mainly on the four-part test for minor variances required by section 45(1) of the Act.

[9] The Act requires the Tribunal, in carrying out its responsibilities under the Act, to have regard to, among other matters, matters of provincial interest, and the Tribunal is satisfied that there has been proper regard to the applicable matters of provincial interest for an application of this nature. The Tribunal was also satisfied that there was no issue related to consistency with the Provincial Policy Statement or conformity with any applicable Provincial Plan.

The Four Tests for Minor Variances

[10] All four tests as set out in section 45(1) of the Act must be met in order for the Appeal to be dismissed and the requested variance to be authorized.

Maintain General Intent and Purpose of the Zoning By-law

[11] The City's planning report confirms, and the Tribunal accepts, that according to the Zoning By-law, the subject property is zoned 'B (Suburban Agriculture and Residential) district'. The Zoning By-law permits accessory buildings/structures in this zone subject to the provisions stated in the By-law.

[12] The planning report indicates that the maximum height for buildings accessory to a residential use is intended to ensure that such buildings remain clearly subordinate and incidental to the principal use and reduce the potential for such buildings to have an adverse impact on the normal use and enjoyment of abutting properties. The Tribunal accepts that this is the intent and purpose of the Zoning By-law.

[13] The planning report raised concern that the proposed accessory structure was excessive in height and was not compatible with the surrounding neighbourhood. The City's planning staff did not support the Application for the requested variance and recommended that the COA deny the Application.

[14] Mr. Huurman confirmed that the proposed garage is 7.6 m deep by 9.1 m wide and 5.4 m in height. The only variance he needs to build the garage, as proposed, is in relation to the height. He pointed out that a garage will be built in the stated location in any event and the only issue is how tall it will be.

[15] Mr. Huurman told the Tribunal that the intent and purpose of the Zoning By-law, to ensure the garage would remain subordinate to the existing dwelling, will be maintained by the requested variance to increase the height. He noted that the existing dwelling is a registered heritage house with a very steep roof of approximately 30 feet (9.14 m) in height. He said the proposed garage would be much lower even with the requested increase to 5.4 m. According to Mr. Huurman, the garage would clearly be subordinate to the existing dwelling because the garage would be lower and smaller than the house. In

addition, Mr. Hurman told the Tribunal that the proposed garage would be about 80 feet (24 m) behind the house and further from the street.

[16] In Mr. Hurman's view, the increase in height of about four and a half feet (1.4 m) to the garage would not impact Mr. Valtenbergs' property any more than planting a row of tall cedar trees along the lot line. He told the Tribunal in the past, there was a large apple tree where the garage will be built that housed a treehouse. He said Mr. Valtenbergs had complained about the loss of privacy due to the treehouse and now, the proposed garage will provide more privacy.

[17] Mr. Valtenbergs took the position that the requested variance would not maintain the general intent and purpose of the Zoning By-law. He said that, from his property, the proposed garage would appear larger than from the street. Mr. Valtenbergs told the Tribunal that a garage without a variance would block his view from the ground level but not from the second storey level, whereas the requested extra 1.4 m height of the garage would block his view at both levels. Mr. Valtenbergs acknowledged that Mr. Hurman was a carpenter and would build an attractive garage of quality. His concern seemed to be the reduced view of Mr. Hurman's property, which he characterized as beautiful.

[18] The Tribunal finds that the requested variance will maintain the general intent and purpose of the Zoning By-law as the height of the accessory building would result in a building that is clearly incidental and subordinate to the primary use. The only impact raised by Mr. Valtenbergs was related to the view from his property at the second storey level. While the Tribunal can understand his genuine disappointment that a garage will be built that will obscure his view, the obstruction would not be of such a magnitude or kind as to cause an unacceptable adverse impact to the point where the intent and purpose of the Zoning By-law is not maintained.

[19] Based on the evidence provided, the Tribunal is satisfied that the requested variance will maintain the general intent and purpose of the Zoning By-law.

Maintain General Intent and Purpose of the Official Plan (“OP”)

[20] The City’s planning report confirms that the subject property is identified in the Urban Hamilton Official Plan as ‘Neighbourhoods’ designation on Schedule E – Urban Structure and is designated ‘Neighbourhoods’ on Schedule E-1 – Urban Land Use Designations. Policies E.3.2.3 and E.3.4.3 amongst others, are applicable and permit a single detached dwelling.

[21] Mr. Huurman said the construction of a detached garage, which is an accessory to a single detached dwelling, is in keeping with the intent and purpose of the OP policies pertaining to residential uses.

[22] Mr. Huurman told the Tribunal that the subject property is just under an acre in size and can easily accommodate the proposed garage.

[23] Mr. Huurman said that there were other detached garages in the neighbourhood.

[24] Mr. Valtenbergs told the Tribunal that he has lived on his property for 50 years and that the neighbourhood was developed in the early 1950s. He said the buildings in the neighbourhood are typically well-spaced. He said he is concerned that the proposed garage will stretch over half of the length of his rear lot line. In Mr. Valtenbergs’ view, a detached garage is not consistent with the neighbourhood.

[25] Based on the evidence provided, the Tribunal is satisfied that the requested variance will maintain the general intent and purpose of the OP.

Desirable for the Appropriate Use of the Land

[26] Mr. Huurman told the Tribunal that the variance was requested to permit the construction of a garage that matched the higher roofline and style of the existing heritage house. More specifically, Mr. Huurman said he wanted to integrate the heritage features

of the house into the proposed garage by maintaining the distinct roofline, and by matching the colour and architectural details such as the support brackets. He told the Tribunal there is a plaque in the park across the street giving the historical details of the heritage house and people often view the property. Mr. Hurman said he wants to build a garage that is in keeping with the historical context and looks appropriate with the heritage house.

[27] Mr. Valtenbergs told the Tribunal that a member of the Heritage Committee noted that carriage houses, and not garages, were historically built at the time of the existing dwelling house on the subject property. However, both parties agreed that the Heritage Committee had essentially “sat on the fence” on the issue as to whether the requested variance was recommended.

[28] Mr. Hurman told the Tribunal that he felt the City should not allow him to build a garage that does not complement and fit the character of the heritage house. According to Mr. Hurman, if the garage was limited to 4 m in height, it would appear very squat and unattractive and would not look right with the existing heritage house.

[29] Mr. Hurman also testified that the proposed garage will enhance the streetscape or character along Concession Street as the proposed detached garage has been designed to resemble the existing heritage dwelling and will be set back from the street.

[30] Mr. Hurman also noted that the location of the proposed garage was appropriate to accommodate the existing driveway.

[31] Mr. Valtenbergs took the different position that the requested variance was not desirable as it pertained to his property because the extra height would affect his view “onto and over” the proposed garage. However, he said that he expected whatever Mr. Hurman built would be attractive and of good quality.

[32] Based on the evidence provided, the Tribunal is satisfied that the proposed variance is desirable for the appropriate development or use of the land, building or structure.

Minor in Nature

[33] Mr. Huurman told the Tribunal that the only requested variance from the Zoning By-law was to increase the height of the proposed garage by 1.4 m, which he characterized as a small numerical amount.

[34] Mr. Huurman said the subject property is large enough to accommodate required setbacks and that the proposed garage will not interfere with the use and enjoyment of neighbouring properties, aside from a reduction of view from Mr. Valtenbergs' second storey. He noted that, in any event, there is no right to a view. Mr. Huurman further submitted that the proposed garage will provide privacy for Mr. Valtenbergs' property.

[35] According to Mr. Huurman, the requested variance will enhance the character of the neighbourhood by keeping the garage consistent with the style of the existing heritage house.

[36] Mr. Huurman argued that the proposed relief to increase the maximum height for the proposed accessory building can be considered minor.

[37] Mr. Valtenbergs opposed the variance on the basis that the extra 1.4 m in height of the proposed garage would reduce the use and enjoyment of his property as it relates to the view.

[38] The parties agree that the view from Mr. Valtenbergs' property will be obscured by the construction of a garage, with or without a variance to the Zoning By-law. The only issue is whether the requested 1.4 m in additional height will result in a further obstruction

of view of such a magnitude as to cause an unacceptable adverse impact. Based on the evidence provided, the Tribunal finds it would not.

[39] After careful consideration of the available evidence, the Tribunal is satisfied that the requested variance can be considered minor in nature.

Conclusion

[40] Based on the whole of the evidence inclusive of the oral lay testimony and the documentary record, the Tribunal finds that the Application meets the four tests for authorization of minor variances as set out in section 45(1) of the Act.

[41] Based on the evidence provided, the Tribunal is satisfied that the requested variance from the City's Zoning By-law will maintain the general intent and purpose of the Official Plan, will maintain the general intent and purpose of the By-law, is appropriate for the development or use of the land, and is minor in nature.

Order

[42] The Tribunal orders that the Appeal is dismissed and the variance to Zoning By-law No. 6593, as amended, is authorized.

"Margot Ballagh"

MARGOT BALLAGH
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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