

## COMMITTEE OF ADJUSTMENT

Minutes of a Meeting of the Committee of Adjustment for the City of Peterborough held **Tuesday, December 15, 2009** at 7:00 p.m., in the General Committee Room, City Hall.

**PRESENT:** Mr. Paul Dorris, Chairperson  
Mr. Keith Riel  
Mr. Alan Porteous  
Mr. Claude Dufresne  
Ms. Margaret Wood

**ALSO PRESENT:** Mr. Richard Straka, Planner, Policy and Research  
Mrs. Carolyn Jobbitt, Secretary Treasurer

**REGRETS:** Mr. Bob Waldron, Manager, Building Division

1. **FILE NO.** A42/09  
**ADDRESS:** 2350 Woodglade Blvd.  
**APPLICANT:** MHBC Planning

This matter relates to a minor variance application submitted by MHBC Planning Limited, 7050 Weston Road, Suite 230, Woodbridge, Ontario, L4L 8G7, on behalf of Sherwood Centre Inc., 151 Spinnaker Way, Unit 5, Concord, Ontario, L4K 4C3, being the owner of the property which is subject to this application.

The owner of the subject property wishes to establish a building and parking area on the property to function as temporary sales establishment. In that the building will not be connected to municipal water and sewer services, a variance is requested to Section 6.4 of the zoning by-law to permit the exemption temporarily.

This application was adjourned to this meeting at the October 20, 2009 Committee of Adjustment meeting in order to permit the applicant an opportunity to perfect the application. Staff advised that the applicant has requested a further deferral to the first Committee of Adjustment meeting to be held in January, 2010.

No one spoke in objection to the application and no written objections were received.

### **DECISION**

The Committee agreed to deferred this application to an undetermined meeting date until such time as the proponent is in a position to proceed with the application. At that time it will be necessary to re-circulate the application in accordance with the provisions of the *Planning Act*, at the applicant's expense.

2. **FILE NO.** A48/09  
**ADDRESS:** 594 Park Street South  
**APPLICANT:** Linda Willcox Whetung

This matter relates to a minor variance application submitted by Linda Willcox Whetung Professional Corporation, 521 George Street North, Peterborough, Ontario, K9J 6V5, on behalf of the Estate of John Pruner, c/o Mr. Bernie Morin, Estate Trustee, Box 684, Twillingate, Newfoundland, A0G 4M0, being the owner of the property which is subject to this application.

Ms. Willcox Whetung attended the meeting and addressed the Committee as follows:

- The owner is requesting the following minor variances to the regulations of the by-law to recognize the location of the dwelling and attached garage as established on the property:
  - i) Reduce the minimum building setback from the north side lot line from 1.2 metres (3.9 ft) to 1.14 metres (3.74 ft) regarding the location of the attached garage;
  - ii) Reduce the minimum building setback from the south side lot line from 1.2 metres (3.9 ft) to zero to recognize the location of the south east corner of the 73 sq metre (240 sq ft) frame addition attached to the south side of the dwelling; and
  - iii) Reduce the minimum building setback from the rear lot line from 7.6 metres (24.9 ft) to 4.5 metres (15 ft).
- The dwelling and garage was constructed in 1947. The garage was reconstructed in the original footprint in approximately 1968.
- Title to the property is subject to a Government Reserve. At this time, it is unknown as to the ownership of this reserve.
- The owner is in agreement with the comments set out in the staff report.

Mr. Richard Straka, Planner, Policy & Research, presented staff comments with respect to the application on behalf of the Building and Planning Division of the Planning & Development Services Department, City of Peterborough.

In response to questions from the Committee, Staff advised as follows:

- Municipal records indicate that the dwelling was constructed in 1947 without a garage. There is no record of a permit being issued for construction of the attached garage.
- The property is located wholly within the floodplain. A permit from ORCA would be required for any alteration or to reconstruct the dwelling and garage on the property.

In response to questions from the Committee, Ms. Whetung advised that:

- She has advised the purchaser's solicitor of ORCA's position regarding future development or alteration to the existing structures.
- On a follow-up conversation with representatives from ORCA she was advised that ORCA would resist providing a permit for any construction, including re-constructing in the original footprint.
- Ms. Whetung further confirmed that she has no objections to registration of an agreement on title acknowledging that the property is located in the flood plain and no addition or alteration of the building is to occur.

No one spoke in objection to the application and no written objections were received.

## **DECISION**

The Committee reviewed the application and determined that the location of the dwelling and garage have been established for an extensive period of time and is compatible with the standard of development of other properties in the neighbourhood. However, the Committee noted the comments provided by ORCA and feel that future purchasers need to be aware of the property being in the flood plain and ORCA's position regarding the alteration or reconstruction of the existing dwelling and garage.

Accordingly, the Committee determined that:

1. the variances are minor;
2. the proposal is desirable for the appropriate development or use of the land;
3. the general intent and purpose of the Zoning By-law is maintained; and,
4. the general intent and purpose of the Official Plan is maintained.

Therefore, minor variances are granted to

- i) **reduce the minimum building setback from the north side lot line to 1.14 metres regarding the location of the attached garage;**
- ii) **reduce the minimum building setback from the south side lot line to zero to recognize the location of the south east corner of the 73 sq metre frame addition attached to the south side of the dwelling; and**
- iii) **Reduce the minimum building setback from the rear lot line to 4.5 metres.**

**CONDITIONAL upon the owner of the property entering into an agreement with the City that would acknowledge that the property is located within the flood plain and that no expansion, addition or alteration of the buildings on the property will be permitted notwithstanding the current zoning of the property. This agreement is to be registered on the title of the property at the expense of the owner.**

3. **FILE NO. A49/09**  
**ADDRESS: 731 River Road South**  
**APPLICANT: C. Ian Key**

4. **FILE NO. B10/09**  
**ADDRESS: 731 River Road South**  
**APPLICANT: C. Ian Key**

This matter relates to a minor variance and consent application submitted by Mr. C. Ian Key, Barrister & Solicitor, 243 Hunter Street West, Peterborough, Ontario, K9H 2L4, on behalf of Mr. Richard Staples, 731 River Road South, Peterborough, Ontario, K9J 1E6, being the owner of the subject property.

Mr. Key attended the meeting and addressed the Committee as follows:

- Consent is requested to convey the south portion of the property subject to a variance to reduce the minimum lot width from 15 metres (50 ft) to 7.9 metres (26 ft).
- The purpose of the severance and variance is to create a new building lot for a single unit dwelling with a reduced lot width measured 6 metres back from the street line.

- He and his client are in agreement with the conditions set out in the staff report.

Mr. Richard Straka, Planner, Policy & Research, presented staff comments with respect to the application on behalf of the Building and Planning Division of the Planning & Development Services Department, City of Peterborough.

In response to questions from the Committee, staff advised as follows:

- For the purposes of reviewing the application, ORCA view the proposed severance as a "development application" under the *Planning Act*.
- The westerly portion of the property located within 30 meters of the Otonabee River is recognized as a Natural Area by the City's Official Plan. Development or alteration of grades within this part of the property is regulated by Otonabee Conservation Authority and could potentially affect fish habitat.
- A sewer easement is located across the westerly portion of the property (within 30 metres of the Otonabee River).
- Staff have no concerns regarding the current location of the garage next to the dwelling. Currently, it conforms to the zoning regulations including the proposed line of severance. A dwelling could be constructed behind the garage on the proposed lot to be created.
- Staff recommend that a driveway be constructed on both the severed and retained properties designed to permit a motor vehicle to turn around and drive forward out onto River Road South because it is an arterial road.
- A house could be constructed that is designed to face toward either the road or the river. However, staff recommend that any proposed house design be subject to the approval of the Planner of Urban Design to ensure compatibility with other dwellings in the neighbourhood.

In response to questions from the Committee, Mr. Keay responded as follows:

- At this time, the owner is uncertain whether the garage will be removed or relocated to the property to be retained. If the garage is relocated to the retained portion of the property, his client will ensure that the new location of the garage will conform to the zoning regulations and a driveway will accommodate the ability for a motor vehicle to turn around and drive out forward onto River Road.

No one spoke in objection to the application and no written objections were received.

#### **DECISION – A49/09**

The Committee reviewed the application and considered the zoning of the properties along River road, the size of lots and frequency of driveways. The Committee noted that the standard lot width is generally 15 metres with a driveway from each 15 metre property. Considering this standard of development along River Road in comparison to the development potential of the land base between the two lots known municipally as 731 and 721 River Road, there would typically be four driveways over a distance of 60 metres rather than the two that exist. Accordingly, the committee determined that the creation of one more driveway over the distance of 60 metres is not considered unreasonable.

The Committee also determined that the lot grading in relation to the developable portion of the property would permit adequate space on the property to establish a new dwelling.

The Committee noted the overall size and nature of the property being more of a waterfront oriented property with less of an identity to the street that is typical for an urban residential lot. Provided that the property is developed in a manner that would create a driveway access to each lot that could accommodate the ability for a motor vehicle to turn around and drive out forward onto River Road, the Committee determined that the variance and severance would be reasonable and would result in a functional and desirable building lot.

Accordingly, the Committee determined that:

1. the variance is minor;
2. the proposal is desirable for the appropriate development or use of the land;
3. the general intent and purpose of the Zoning By-law is maintained; and,
4. the general intent and purpose of the Official Plan is maintained.

Therefore, a minor variance is granted to reduce the minimum lot width to 7.9 metres.

#### **DECISION – B10/09**

**Consent is granted to convey the southerly 0.19 hectares of the subject property to create a new building lot for a single unit dwelling, CONDITIONAL UPON THE FOLLOWING:**

- i) That the owner enter into a Development Agreement with the City to require that building plans be provided for approval by the Planner of Urban Design to ensure compatibility of building design with other buildings in the neighbourhood prior to issuance of a building permit. The agreement will pertain to both the severed and retained property and will require the owner to develop a driveway on each parcel designed to allow motor vehicles to turn around and drive out forward onto River Road South. The agreement will acknowledge that a portion of the property is located in the flood plain and that no development will be permitted within 30 metres of the high water mark of the Otonabee River unless the owner prepares an Environmental Study in accordance with the requirements of the City's Official Plan. The Environmental Study would be required to demonstrate how the impact of the development would be mitigated to have no impact on the fish habitat to the satisfaction of the Otonabee Conservation.
- ii) Production of a reference plan describing the properties to the satisfaction of the Planner of Policy & Research.
- iii) Payment of a parks levy in an amount to be determined by the City's Parks Levy Review Committee.
- iv) Payment of a tree levy in the amount of \$141.00.
- v) Conveyance to the City, free of encumbrances and without cost to the City, of a 3 metre wide road widening strip along the entire River Road South street line of the severed and retained parcels.
- vi) Approval of the minor variance application file numbered A49/09.

5.     **FILE NO.**             **A50/09**  
       **ADDRESS:**         **2566 Bensfort Road**  
       **APPLICANT:**      **Gordon Usher**

This matter relates to a minor variance application submitted by Mr. Gordon U. Usher, Barrister & Solicitor, 359 Aylmer Street North, Peterborough, Ontario, K9H 3V7, on behalf of Andrea Elizabeth Morton, 2566 Bensfort Road, Peterborough, Ontario, K9J 1C9, being the owner of the property which is subject to this application.

Mr. Usher attended the meeting and addressed the Committee as follows:

- A variance is requested to reduce the minimum building setback from the north side lot line from 1.21 metres (3.9 ft) to 0.1 metres (0.33 ft) to recognize the location of an attached carport constructed along the north side of the dwelling.
- The carport was built in 1978 after applying for a building permit. At that time, it was the then owners' opinion that final inspection by the City's Building Division had been completed.
- At the time the previous owners purchased the property in 1986, a building location survey was completed, which revealed the location of the carport too close to the lot line.
- At that time a minor variance was applied for and obtained (Committee of Adjustment file number A111/86). However, the Decision lapsed one year from the date of the Decision because the condition to obtain an easement from the neighbour to the north for the purpose of maintaining the northerly wall and eaves of the carport was not fulfilled.
- It is his opinion that because 20 years has now past, without any change to the location of the carport, as constructed in 1978, the current owner has acquired a "prescriptive" easement to maintain the northerly wall and eaves of the carport.
- It is also his opinion that the carport may have been constructed in accordance with the fire code in 1978.

Mr. Richard Straka, Planner, Policy & Research, presented staff comments with respect to the application on behalf of the Building and Planning Division of the Planning & Development Services Department, City of Peterborough.

In response to questions from the Committee, staff advised as follows:

- City records indicate that a building permit was issued for a "carport" however there is no record of any inspections.
- Staff is of the opinion that because the variance is sought today, Building Code requirements, including Fire Code issues, must comply with current standards.
- The Building Code prohibits combustible surfaces to be constructed on the lot line.
- It is not known if the carport wall is fire rated or not. Window openings are regulated within 1.2 metres from a lot line. The "shed" internal to the carport has a window within the setback from the north lot line which would not have been permitted.

In response to questions from the Committee, Mr. Usher advised as follows:

- Notwithstanding the letter of objection filed by the neighbour to the north, the current property owner was advised by Mr. Hetherton that he "liked the privacy the wall provided and had no objection to it remaining in its current location".
- It is his understanding that the property was inspected by Bob Whitehill in 1978.
- The completion of the location survey did result in a cloud on title, however, it was agreed in 1986 to obtain a minor variance to address that issue.
- The recent purchase of the property by Ms. Morton resulted in the discovery that the variance granted in 1986 was void and required that the issue be re-addressed by the Title Insurance Company, who requested that the minor variance be applied for again.

A letter of objection was received from the adjacent property owner, Gail and Jim Hetherton, 2572 Bensfort Road, Peterborough, Ontario, K9J 1C9.

#### **DECISION**

The Committee reviewed the application and advised that they would like clarification from Staff regarding the following matters:

1. What would be required to bring the structure into compliance with the fire regulations under the Building Code.
2. Comments from the City's Legal Services Department with respect to regulations regarding prescriptive easements between property owners.
3. Confirmation that both Jim Hetherton and Gail Hetherton are not in support of the minor variance application as applied for.

**Accordingly, the Committee decided to adjourn this application to the next Committee of Adjustment meeting, tentatively scheduled for January 26, 2010, to permit Staff an opportunity to provide a further report with respect to the above-noted issues.**

6. **FILE NO.           A51/09**  
**ADDRESS:           702 Ross Street**  
**APPLICANT:       Ken Yates**

This matter relates to a minor variance application submitted by Ken Yates, 602 Rubidge Street, Peterborough, Ontario, K9H 4G1, on behalf of James and Elizabeth Struthers, 702 Ross Street, Peterborough, Ontario, K9H 2C9, being the owner of the property which is subject to this application.

Mrs. Struthers, one of the owners of the subject property, attended the meeting and addressed the Committee as follows:

- A variance is requested to reduce the minimum building setback from the Dufferin Street street line from 6 metres to 1 metre to permit the reconstruction of the vestibule established to the rear of the dwelling on the property.

- The proposed reconstructed vestibule would be 0.9 metres (2.9 ft) wider but no closer to the street line than the existing structure and set back further than the dwelling as it exists.
- The existing porch will be removed and a new structure will be built in its place.
- There will be no plumbing in the proposed porch.

Mr. Richard Straka, Planner, Policy & Research, presented staff comments with respect to the application on behalf of the Building and Planning Division of the Planning & Development Services Department, City of Peterborough.

No one spoke in objection to the application and no written objections were received.

### DECISION

The Committee reviewed the application and determined that because the proposed porch would be reconstructed wider, but no closer to the street line than the existing porch, there would be no impact on the neighbouring properties.

Accordingly, the Committee determined that:

1. the variance is minor;
2. the proposal is desirable for the appropriate development or use of the land;
3. the general intent and purpose of the Zoning By-law is maintained; and,
4. the general intent and purpose of the Official Plan is maintained.

**Therefore, a minor variance is granted to reduce the minimum building setback from the Dufferin Street street line to 1 metre to permit the reconstruction of the 8 square metre vestibule attached to the rear of the dwelling on the property.**


### NEXT MEETING:

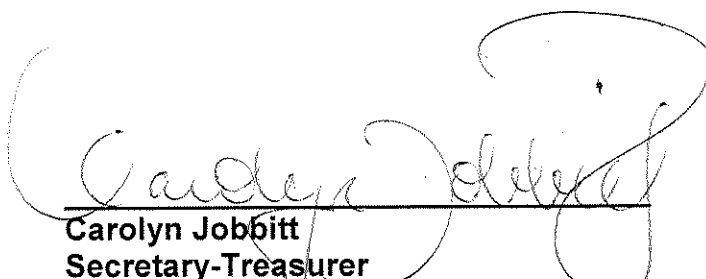
The next meeting of the Committee of Adjustment is scheduled for January 26, 2010.

### ADJOURNMENT:

Meeting adjourned at 9:10 p.m.

Dated the 21<sup>st</sup> day December of, 2009.

  
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Paul Dorris  
Chairman

  
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Carolyn Jobbitt  
Secretary-Treasurer