

ISSUE DATE:
Jan 19, 2007
DECISION/ORDER NO:
0163



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PL060775

Ontario
Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Dean and Janice McPherson
Applicant: Joanne Stirton
Subject: Minor Variance
Property Address/Description: 18A York Street
Municipality: Town of Orangeville
OMB Case No.: PL060775
OMB File No.: V060391
Municipal File No.: A-16/06

APPEARANCES:

Parties

Dean and Janice McPherson

Joanne Stirton

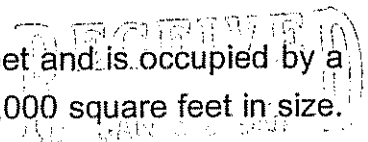
DECISION DELIVERED BY E. PENDERGRAST AND ORDER OF THE BOARD

The subject of this hearing was an appeal by Dean and Janice McPherson from a decision of the Committee of Adjustment of the Town of Orangeville approving variances for 18A York Street, the home of the applicant, Joanne Stirton. The variances are required in order to permit Ms Stirton to replace an existing garage and construct an addition to the rear of her home, and also to recognize certain aspects of her house and lot that do not comply with the existing zoning.

After hearing from the McPhersons, Ms Stirton and the Town Planner, Hiedi Murray, the Board gave an oral decision, which authorized the variances approved by the Committee, subject to a further reduction in the length of the proposed garage, and to conditions similar to those imposed by the Committee. This written version of the Board's decision provides background to the appeal and a fuller statement of the Board's reasons for its decision. It also includes the Board's written Order.

The Proposal

18A York Street is located on the north side of York Street and is occupied by a one-storey detached house constructed in 1955 and just over 1,000 square feet in size.



Attached to the house is a garage approximately 11.1 metres (36 feet) in length, according to information provided by Ms Murray. The garage is set back 0.0 metres from the east property line and 6.6 metres (21.7 feet) from the rear property line, whereas the existing zoning requires a side yard setback of 1.2 metres (3.9 feet) from the east property line and a setback of 7 metres (23 feet) from the rear property line.

In addition to replacing the garage, Ms Stirton proposes to demolish an unfinished and unsound back room at the rear of her home and to replace it with a larger one-storey 7.4 by 4.5 metre (24.4 by 15 foot) addition. The rear addition requires a variance to permit a side yard setback from the west property line of .85 metres (2.8 feet), whereas the existing zoning requires a setback of 1.2 metres (3.9 feet).

Variations Approved by the Committee

The variations approved by the Committee, subject to certain conditions, included all of those Ms Stirton applied for, except for a variance to reduce the minimum rear setback to accommodate the replacement garage, which was no longer required as the result of the Committee's decision that the length of the proposed garage should be reduced. The approved variations are as follows:

1. A reduction in the minimum front yard setback requirement from 6 metres to 5.63 metres;
2. A reduction in the minimum lot area requirement from 464 square metres to 353 square metres;
3. A reduction in the minimum lot frontage from 15 to 11.12 metres;
4. A reduction in the minimum side yard setback requirement from 1.2 to 0.85 metres for the west lot line;
5. A reduction in the minimum side yard setback requirement from 1.2 to 0 metres for the east lot line; and
6. An increase in the maximum permitted lot coverage from 40% to 41%.

The conditions imposed by the Committee are as follows:

1. That the length of the garage be reduced by 1.2 metres (4 feet) at its rear;
2. That the height of the garage be the same general height of the existing garage that is to be replaced;

3. That the applicants use construction methods that have the least impact on the abutting property;
4. That there are no encroachments of any structures on the abutting property;
5. That every effort be made during and after construction to protect the existing deciduous trees north of the existing garage, and that the spirea bush be replaced with a bush of Mr. and Mrs. McPherson's choosing; and
6. That the applicants restore any plantings that may be destroyed or damaged as a result of the construction process.

The Appeal

The appellants, Mr. and Mrs. McPherson, live at 18 York Street, next door and to the east of Ms Stirton's property. The only issues of concern to the appellants are the impacts of the demolition of the existing garage and the construction of the new garage, which is proposed to have four-foot footings on two ash trees 10 and 12 inches in diameter and a large 35-year old spirea bush and other landscaping located on their property immediately adjacent to the lot line. The two trees are located north of the end of the existing garage, and the spirea bush is located against the garage wall toward the rear of the structure. Their appeal raised no concerns with respect to the proposed rear addition or the variances required to bring the existing dwelling and lot into compliance with existing zoning requirements.

The existing garage serves as a privacy wall between the two properties, and the McPhersons do not object to the construction of a new garage along the lot line. However, they do object to the length of the replacement garage, because of anticipated damage to, and possible destruction of the two ash trees. The McPhersons have some leverage in the matter, since they must provide a letter to the Town indicating that they have given permission for encroachments on their property for such things as the construction of the required footings and foundation. Construction of the garage is not feasible without such encroachments.

Applicant's Evidence

Ms Stirton brought no graphic or other evidence to the hearing, but referred to a copy of a survey, hatched to indicate the location of the proposed construction, (Exhibit 1) provided by Ms Murray, who attended the hearing in order to be of assistance to the

Board. Ms Stirton explained that the garage and the frame addition at the rear of her house are dilapidated, and the frame addition is also infested with carpenter ants. She told the Board that the construction of the rear addition and the replacement of the garage represent important and necessary improvements to her property, which would increase its value, as well as the value of the McPhersons' property next door.

Ms Stirton described the requirements of the Building Code as she understood them, including the need for four-foot footings. She stated that the length of the garage was intended to provide inside storage as well as to accommodate a vehicle, and that the existing garage provided about 15 feet of storage at the rear.

Ms Stirton stated that she accepted the decision of the Committee and the conditions it had imposed, including the condition that the garage be shortened at the rear by 1.2 metres (4 feet). However, she does not wish to reduce the length further. Ms Stirton's opinion, based on her conversation with Flanagan Tree Service, is that the construction of the new garage, with a length of approximately 32 feet, would not endanger the two ash trees of concern to the McPhersons since the garage would not touch the tap roots. However, she had no letter or report to support that opinion. Ms Stirton does not think it is reasonable to restrict her ability to replace the existing garage, with a length approved by the Committee, in order to attempt to save a spirea bush that she is willing to replace, and noted in this regard that it is in the interests of the McPhersons to have a new garage.

Ms Stirton also noted that the Committee's condition regarding the height of the new garage (condition #2 above) could not reasonably be made any more specific since it was unclear how Building Code requirements would impact on the manner in which the garage would be constructed, and how it would be connected to the rear addition to her house.

Appellants' Evidence

The McPhersons stated that they were concerned that the proposed garage was too long. They were also unsure how to interpret the Committee's condition that height of the new garage should be the same general height of the existing garage that is to be replaced, given that the height of the rear 10 feet of the existing garage is lower than the rest of the structure. Their opinion was that the garage should have a length of 25 feet,

and noted that the existing garage appeared to have been constructed in two parts, with the rear 10-foot component having a lower height, and the main portion of the garage having a length of about 25 feet. They provided the Board with a photograph of the existing garage as seen from their yard, the spirea bush and the two ash trees (Exhibit 2).

The McPhersons' evidence was that the construction of the new garage as proposed would involve excavation for the footings within two feet of the closest tree. They said they had consulted informally with an arborist who told them that excavation this close to the trees would almost certainly result in severe damage to if not loss of the trees, and that compaction of soil after construction would also be a threat to the trees' survival. According to the McPhersons, the arborist's advice was that there should be no excavation within six feet of the trees. However, they had no written statement of the arborist's opinion.

Town Planner's Evidence

In the course of hearing factual evidence from Ms Murray regarding the applicable zoning standards for garages and the Town's policies and practices regarding tree preservation, it became apparent that Ms Murray had prepared a planning report, with recommendations, which had not been forwarded to the Board as part of the Committee's Minutes, or at least was not in the Board's file as part of the Minutes. The report recommended that the garage be shortened to a length of 25 feet in order to protect the ash trees at the rear of the McPhersons' property, and also set out conditions for the approval of the variances, most of which were imposed by the Committee in its decision.

Once it became aware of the planning report, the Board inquired as to Ms Murray's professional background, and on the basis of her experience and background qualified her to give opinion evidence regarding the variances. Ms Murray also submitted a copy of her report as Exhibit 3, and told the Board that she had visited the site. Her advice was that the Town's typical practice when reviewing site plan applications was to try to keep construction close to trees to be protected outside of the trees' drip-line.

The planning report recommended that the proposed garage not exceed 7.6 metres (25 feet) in length. According to the Concept Plan attached to the report as Schedule "C", the front of the proposed garage is to be set back 3 feet from the front wall of the existing garage. That would mean that a garage 25 feet in length would extend 28 feet from the front wall of the existing garage. Ms Murray indicated that a Board decision limiting the length of the proposed garage to 28 feet, measured from the front wall of the existing garage, would be consistent with her recommendation. The McPhersons also indicated that length was acceptable to them and they would be willing to provide the necessary encroachment permission for the construction of a new garage, provided that its rear wall was located no more than 28 feet from the front wall of the existing garage.

The Board notes that a reduction in the length of the proposed garage to 28 feet, measured from the front wall of the existing garage would likely make the variance to increase the maximum lot coverage from 40% to 41% unnecessary. However, it heard no evidence on this point, and no evidence on why the front wall of the proposed garage was shown as three feet to the rear of the front wall of the existing garage. In view of these considerations, the Board will not alter the 1% increase in lot coverage authorized by the Committee.

Conclusion

Having heard no evidence in opposition to the variances approved by the Committee, subject to the Committee's conditions, except with regard to the condition regarding the length of the proposed garage, and having considered the evidence it heard at the hearing from the applicant, the appellants and the Town planner, the Board accepts Ms Murray's professional opinion that the length of the proposed garage should be reduced so that the rear wall of the new garage is no further than 28 feet from the front wall of the existing garage.

Based on the evidence it heard, the Board finds that its revised condition to further decrease the length of the proposed garage will ensure that the variances can be considered minor in nature. None of the other four tests were addressed in the evidence it heard. Consequently, the Board finds that the variances, subject to conditions generally in accordance with conditions #2 through #6 above, plus a revised condition #2 imposing a further reduction in the length of the garage, meet the four tests

of the *Planning Act* and should be authorized. The Board will revise the wording of the condition related to the height of the new garage to take into account the possibility that Building Code requirements may affect the final height of the structure.

The Board understands, based on their evidence at the hearing, that the McPhersons will provide a letter authorizing encroachments on their property to permit the construction of a new garage that complies with the Board's decision as set out below.

Decision and Order

The Board orders that the appeal is allowed in part, and that the six variances respecting 18A York Street set out in the body of this decision are authorized, subject to the following conditions:

1. That the length of the garage is reduced at its rear so that its rear wall is located no further than 28 feet from the front wall of the existing garage that is to be replaced;
2. That the height of the garage be the same general height of the existing garage that is to be replaced, subject to any additional height required to comply with Building Code requirements;
3. That the applicants make best efforts to minimize the impact of the demolition of the existing garage and the construction of the proposed garage on the McPhersons' property at 18 York Street;
4. That there are no encroachments of any structures on the abutting property;
5. That every effort be made during and after demolition and construction to protect the existing deciduous trees north of the existing garage;
6. That every effort be made during and after demolition and construction to protect the existing spirea bush, or, if that is not possible, that the bush be replaced with a bush of the appellants' choosing;
7. That the applicants restore any plantings that may be destroyed or damaged as a result of the demolition and construction process.

"E. Pendergrast"

E. PENDERGRAST
MEMBER



COMMITTEE OF ADJUSTMENT

DECISION OF COMMITTEE WITH REASONS
RE APPLICATION FOR MINOR VARIANCE

Planning Act, R.S.O. 1990, c. P.13, ss. 45(8)

APPROVAL AUTHORITY: THE CORPORATION OF THE TOWN OF ORANGEVILLE

RE AN APPLICATION BY: Joanne Stirton and George Brand

LOCATION OF PROPERTY: Part of Lots 21 and 22, Block 8, Plan 138
18A York Street

PURPOSE OF APPLICATION: The applicants are requesting minor variances to reduce the minimum interior side yard set back requirement from 1.2 metres (3.94 feet) to 0 metres on the east side of the property and from 1.2 metres (3.94 feet) to 0.85 metres (2.79 feet) on the west side of the property, to reduce the minimum rear yard set back requirement from 7 metres (22.97 feet) to 6.6 metres (21.65 feet) and to increase the maximum permitted lot coverage from 40% to 41% to permit the existing garage to be replaced and to permit a proposed addition at the rear of the dwelling.

WE, the undersigned, in making the decision upon this application have considered whether or not the variance requested was minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the zoning by-law and the official plan will be maintained, or in the case of a change in a use of property which is lawfully non-conforming under the by-law as to whether or not this application has met the requirements of Section 45(1) of the Planning Act,

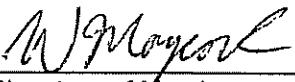
CONCUR in the following decisions and reasons for decisions made on the 2nd day of August, 2006.

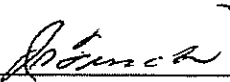
THE REQUEST IS HEREBY APPROVED IN PART WITH CONDITIONS


THIS DECISION:

IF APPROVED: IS SUBJECT TO THE CONDITIONS AND FOR THE REASONS SET OUT ON PAGE TWO OF THE NOTICE OF DECISION OF THE COMMITTEE OF ADJUSTMENT.

IF REFUSED: IS FOR THE REASONS SET OUT ON PAGE TWO OF THE NOTICE OF DECISION OF THE COMMITTEE OF ADJUSTMENT.


Signature of Member


Signature of Member



Signature of Member


Signature of Member


Signature of Member

CERTIFICATION
Planning Act, 1990, R.S.O. c. P.13, ss. 45(10)

I, Cheryl Johns, Acting Secretary-Treasurer of the Committee of Adjustment certify that this is a true copy of the decision of the committee given on August 2, 2006 with respect to the application recorded therein.


Cheryl Johns, Acting Secretary-Treasurer
Committee of Adjustment

THIS DECISION OR ANY CONDITION IS SUBJECT TO APPEAL TO THE ONTARIO MUNICIPAL BOARD BY FILING WITH THE SECRETARY-TREASURER OF THE COMMITTEE OF ADJUSTMENT A WRITTEN NOTIFICATION, GIVING REASONS FOR THE APPEAL, ACCOMPANIED BY A CHEQUE IN THE AMOUNT OF \$125.00 PAYABLE TO THE MINISTER OF FINANCE.

Only individuals, corporations and public bodies may appeal decisions in respect of applications for minor variance to the Ontario Municipal Board. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group on its behalf.

DATE DECISION MAILED: AUGUST 9, 2006

LAST DAY FOR APPEALING THIS DECISION: AUGUST 22, 2006

(Appeals must be received no later than 4:30 p.m. on the above date)

CONDITIONS:

The following variances are hereby approved as requested, subject to the conditions as listed:

- a reduction in the minimum front yard setback requirement from 6 metres to 5.63 metres;
- a reduction in the minimum lot area requirement from 464 square metres to 353 square metres;
- a reduction in the minimum lot frontage from 15 to 11.12 metres;
- a reduction in the minimum side yard setback requirement from 1.2 to 0.85 metres for the west lot line;
- a reduction in the minimum side yard setback requirement from 1.2 to 0 metres for the east lot line;
- an increase in the maximum permitted lot coverage from 40% to 41%.

1. That the length of the garage be reduced by 1.2 metres (4 feet) at its rear.
2. That the height of the garage be the same general height of the existing garage that is to be replaced.
3. That the applicants use construction methods that have the least impact on the abutting property.
4. That there are no encroachments of any structures on the abutting property.
5. That every effort be made during and after construction to protect the existing deciduous trees north of the existing garage, and that the spirea bush be replaced with a bush of Mr. and Mrs. McPherson's choosing.
6. That the applicants restore any plantings that may be destroyed or damaged as a result of the construction process.

REASONS FOR DECISION: The variances as approved are considered minor in nature. It is the opinion of the Committee of Adjustment that the general intent and purpose of the Official Plan and Zoning By-law are maintained and the proposal is desirable for the appropriate development or use of the land, building or structure.

The following variance is hereby denied:

- a reduction in the minimum rear yard set back requirement from 7 metres (22.97 feet) to 6.6 metres (21.65 feet)

REASONS FOR DECISION: The variance is denied as it is not required to reconstruct the garage with a reduction in size.