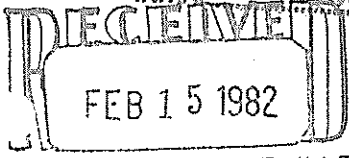


CIRCULATED TO ALL MEMBERS OF COUNCIL

DATE Feb 25/82

INITIAL [Signature]



TOWN OF ORANGEVILLE

TIME

Copy sent to: Mr. W. S. Lamberton, P.O. Windsor NB 61 135



Ontario

A81903

Ontario Municipal Board

IN THE MATTER OF Section 49 of The Planning Act (R.S.O. 1980, c. 379) as amended,

- and -

IN THE MATTER OF an appeal by George Lindsay from a decision of the Committee of Adjustment of the Town of Orangeville

DECISION OF THE BOARD delivered by K.D.BINDHARDT

Mr. George Lindsay is appealing from a decision of the Committee of Adjustment of the Town of Orangeville whereby the Committee dismissed his application for a variance from the provisions of By-law 60-77 of the Town of Orangeville for permission to build an extension to a garage on his property municipally known as 62 Elizabeth Street.

Mr. Lindsay testified on his own behalf and informed the Board that he had purchased his property in 1958. At that time he constructed a residence and used part of his basement for the repair of television sets and radios, an overflow of his T.V. and radio retail and service business located in downtown Orangeville. In the mid sixties Mr. Lindsay constructed a garage on his property and, on the advice of his doctors, terminated his business in downtown Orangeville. He installed the necessary equipment in his garage and continued a reduced business of T.V. and radio service from that location. At this time Mr. Lindsay finds it inconvenient not to have a garage and would like to extend the existing garage structure so that the new part can accommodate the repair service while the existing part of the garage can accommodate one of his cars.

Mr. Lindsay stated that he was unaware of the adoption by Council of an Official Plan and the enactment of a zoning by-law creating restrictions on the use of his property. He has never had any complaints about the conduct of his business and does not believe that the extension of his garage structure, which is not necessarily an extension of his business, could have any detrimental effect on the neighbourhood.

Mr. John Curry and Mr. John H. Graham are immediate neighbours of Mr. Lindsay who testified that Mr. Lindsay is a good neighbour and has never created any nuisance as a result of his business operations from his property. Both feel that the proposed extension of the existing garage cannot have any detrimental effect on the neighbourhood.

Mr. Wilfred G. Sawyer, the caretaker of the public school on Elizabeth Street immediately opposite from Mr. Lindsay's property, testified that in the 20 years of his employment with the school he has not been aware of any traffic problem caused by Mr. Lindsay's operation. He believes that Mr. Lindsay's T.V. and radio service does not have any detrimental effects on the neighbourhood.

Mrs. Ivadella Hazel Stafford has lived at 77 Zina Street for the last 3 years. She testified that Mr. Lindsay is a good neighbour and keeps his property in conditions similar to other properties in the neighbourhood. She feels that Mr. Lindsay is an asset to the community and should be allowed to carry on his business which has no adverse impact on the neighbourhood.

Mr. Vincent George Gendron, whose property at 75 Zina Street is immediately south of Mr. Lindsay's property, is opposed to Mr. Lindsay's application. He feels that the continued and expanded business on Mr. Lindsay's property is a potential traffic hazard opposite the school, that a sale of Mr. Lindsay's property to a new owner could lead to other commercial or industrial uses which would be more objectionable, that the view from his property would be impaired by the creation of a new structure, that the new structure could not be in conformity with other requirements of the zoning by-law such as setbacks and coverage and that the extension of Mr. Lindsay's garage would have a detrimental effect on the value of his own property. Mr. Gendron testified that he has owned his property since 1951 and has not previously complained about the existence of Mr. Lindsay's business.

Mr. James Vincent Madden who owns the property at 73 Zina Street also objected to Mr. Lindsay's application. His objection, however, was limited

to his concern that Mr. Lindsay's backyard, at times, is an eye sore because of the camper trailer Mr. Lindsay parks behind his garage and that he would not have purchased his property if he had known that Mr. Lindsay operated a T.V. and radio repair service from his property.

The Board has reviewed the evidence and material supplied by the Committee of Adjustment. From the evidence it is clear that Mr. Lindsay's T.V. and radio service is a legal non-conforming use which could be extended under the provisions of Section 49(2) of The Planning Act. Most of the objections raised by Mr. Gendron were not substantiated by evidence. Mr. Lindsay, in reply, testified that he is satisfied that the proposed extension to his garage can meet all requirements of the zoning by-law, other than that of the permitted uses. Mr. Sawyer testified that Mr. Lindsay's business has no impact on the traffic on Elizabeth Street and no evidence was adduced by Mr. Gendron to substantiate the assumed devaluation of his property. The objections giving the Board concern are those of Mr. Gendron and Mr. Madden with regard to the perceived impairment of their view from their backyards into Mr. Lindsay's backyard. The Board notes from Mr. Lindsay's testimony that, according to the Building Inspector of the Town of Orangeville, he could construct a garage up to the minimum setback from the rear property line without requiring a variance from the zoning by-law or an extension for the legal non-conforming use. The Board accepts the argument that the minimum setback of structures from the rear property lines has the purpose of creating visual separation and privacy and differ within different zoning categories. As long as Mr. Lindsay does not intend to construct the extension of his garage beyond this minimum setback and within the limits of the permissible coverage of the site, the intent and spirit of the zoning by-law is maintained. The Board also notes that the Official Plan provides for extensions or enlargements of non-conforming uses in special instances to prevent unnecessary hardship. The Board is satisfied that Mr. Lindsay's proposal complies with the intent and spirit of the zoning by-law and the special provision of the Official Plan as Mr. Lindsay has no alternative for the location of his business which he confined to the limited space in close proximity to his residence for health reasons.

For the above reasons the appeal is allowed, the decision of the Committee of Adjustment is set aside and the application for an extension of a legal non-conforming use dated the 3rd day of September, 1981, is approved with the condition that the proposed extension of the existing garage structure does meet all requirements of the zoning by-law other than that of the permitted uses. The order will issue when the Board has been so advised by the Building Inspector of the Town of Orangeville.

DATED at TORONTO this 10th day of February, 1982.

K.D. BINDHARDT
MEMBER



THE CORPORATION OF THE TOWN OF ORANGEVILLE

MUNICIPAL BUILDING
87 BROADWAY
PHONE 519-941-0440
L9W 1K1

DEPT. ... COMMITTEE OF ADJUSTMENT,
REPLY TO: 87 Broadway, Orangeville.

Submission No. A-7-81

THE
COMMITTEE OF ADJUSTMENT
OF THE
TOWN OF ORANGEVILLE.

and

IN THE MATTER of an application by George Lindsay, 62 Elizabeth Street, Orangeville, for a Minor Variance to By-law 60-77, section 2, (2.36) (d), of the Town of Orangeville, and amendments thereto, for Part of Lot 13, Block 8, Plan 212, under the provisions of Section 42 of the Planning Act, R.S.O. 1970, and amendments thereto.

APPOINTMENT FOR HEARING

THE COMMITTEE OF ADJUSTMENT of the Town of Orangeville hereby appoints the 14th day of September, 1981, at the hour of 8.00 o'clock in the afternoon (local time) in the Board Room, Municipal Buildings, 87 Broadway, Orangeville, Ontario, for the hearing of all parties interested in supporting or opposing this application.

Ann E. Armstrong
Ann E. Armstrong,
Secretary-Treasurer,
Committee of Adjustment.

DATED AT ORANGEVILLE this 2nd, day of September, 1981.

Explanatory note:

The applicant proposes to build an extension to the garage on the property at 62 Elizabeth Street, the extension would be 5.79 metres (19 feet) x 7.31 metres (23.98 feet).

*The name no objections to this application
* Barbara H. Stinson*

Committee of Adjustment / Land Division Committee
DECISION OF COMMITTEE WITH REASONS

[The Planning Act, R.S.O. 1970, chapter 349, section 42 (9) and (11)]

IN THE MATTER OF AN APPLICATION FOR

(a) Indicate which decision is applicable by checking the appropriate box.

- CONSENT - In making its decision upon this application for consent the Committee in addition to other matters has had regard to the matters that are to be had regard to under subsection 4 of section 33 of *The Planning Act, R.S.O. 1970, chapter 349* and considered whether a plan of subdivision under section 33 of the land described in the application is necessary for the proper and orderly development of the municipality.
- MINOR VARIANCE - In making its decision upon this application for a variance the Committee in addition to other matters has considered whether or not the variance was minor and desirable for the appropriate development for use of the land and that the general intent and purpose of the zoning by-law and the official plan be maintained.
- NON-CONFORMING USE - In making its decision the Committee in addition to other matters has had regard to whether or not this application met the requirements of section 42 (2) of *The Planning Act*.

(b) Description of property in respect of (b) 62 Elizabeth Street Orangeville
Part Lot 13 Block No. 8 or Reg'd Plan No. 212
which is located on Lot No. _____

(c) City, town, village, township. in the (c) Town of Orangeville

(d) Delete where not applicable. We the undersigned concur in the following decision and reasons for decision of the (d) Committee of Adjustment/~~Land Division Committee~~ for the (e) Town of Orangeville

(e) Name of municipality. made on the (f) 14th of September, 1981
(f) Date of decision

DECISION: Permission to build an extension to the garage on the above mentioned property.

DENIED.

This decision has been made subject to the following conditions.

(g) State conditions to be satisfied before actual granting of consent.

CONDITIONS (g):

REASONS FOR DECISION (h):

(h) State reasons for decision.

The addition would be an extension of non-conforming use and would be detrimental to the neighbourhood.

Signature of Member of committee.

Signature of member of committee.

Signature of member of committee.

Signature of member of committee.

Signature of member of committee.

Signature of member of committee.

CERTIFICATION

[The Planning Act, R.S.O. 1970, chapter 349, section 42 (11)]

I Ann E. Armstrong

(i) Delete where not applicable.

Secretary-Treasurer of the (i) Committee of Adjustment/~~Land Division Committee~~ for the Town of Orangeville in the County of Dufferin
Name of Municipality

Hereby certify that the above is a true copy of the decision of the Committee with respect to the application recorded therein.

Dated this 23rd day of September 19 81

Last date of appeal - October 14th, 1981.

Ann E. Armstrong
Secretary-Treasurer of the Committee of Adjustment
for the Municipality of the
Corporation of the Town of Orangeville