



Town of Newmarket
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679 Allan Avenue (Ward 2) – Appeal of Committee of Adjustment decision to the Local Planning Appeal Tribunal Information Report

Report Number: 2018-13

Department(s): Legal Services

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Date: November 21, 2018

In accordance with the Procedure By-law, any member of Council may make a request to the Town Clerk that this Report be placed on an upcoming Committee of the Whole agenda for discussion.

Purpose

The purpose of this Information Report is to provide Members of Council with notice of an appeal to the Local Planning Appeal Tribunal (“LPAT”) from the Committee of Adjustment decision regarding 679 Allan Avenue (“the Lands”). The appeal is scheduled to be heard on February 20, 2019. Given the circumstances of the appeal, Legal Services staff will advise the LPAT that the Town (a) will not take a position either in support or in opposition of the appeal and (b) will not appear at the LPAT hearing as either a party or participant.

Background

As shown on the attached overhead map at Schedule “A”, the Lands are located in Ward 2 on the north side of Allan Avenue, to the east of Sheridan Court and south of Gorham Street. The homes on Allan Avenue and Sheridan Court are residential single-detached homes.

The Owners of the Lands sought a Minor Variance application to obtain relief from Zoning By-Law 2010-40, as amended. The Owners wish to install stairs to the basement of the home on the westerly side yard with a setback of 1.0 m. The by-law does not permit any stairs to be located in an interior side yard.

Prior to seeking the Minor Variance, the Owners had already commenced excavation to install the stairs. After the receipt of a complaint, the construction was halted by the

Town's Building Department and the excavation filled in. A Building Permit can only be issued if the Minor Variance is granted.

Planning staff reviewed the application for Minor Variance and prepared a report dated September 14, 2018 in which staff recommended approval without any conditions. Planning staff believed that the variance conformed with the general intent of the Official Plan and the Zoning By-law, was desirable for the appropriate development of the Lands and was minor in nature.

Discussion

On September 19, 2018, the Committee of Adjustment reviewed the application but denied the request for the Minor Variance with a vote of 3-2.

The Owners of the Lands have appealed to the LPAT. A hearing date has been scheduled by the LPAT for February 20, 2019.

The Owners of the Lands have the burden of proving their case before the LPAT through evidence that the following Planning Act criteria for the Minor Variance application have been satisfied:

- (a) the application conforms to the Official Plan;
- (b) the general intent of Zoning By-Law 2010-40 as amended is maintained;
- (c) the proposed development is desirable and permitted by the Official Plan and the Zoning By-Law; and
- (d) the requested variance is minor in nature.

Given that the onus is on the Owners of the Lands to convince the LPAT to overturn the Committee of Adjustment decision rejecting the variance request, there is no need for Town staff to take a position at the hearing.

There is no negative effect if the Town does not respond to the appeal. If the appeal of the Owners fails, the LPAT will uphold the Committee of Adjustment decision. If the Owners convince the LPAT to overturn the earlier decision, then the original position of Town Planning staff in support of the variance request will be endorsed.

In accordance with the LPAT rules, Town staff will notify area residents of the LPAT appeal if they attended the Committee of Adjustment hearing or if they requested to be made aware of any LPAT appeal. As a result, these individuals will have the opportunity to attend at the LPAT appeal to speak to the minor variance request of the Owners.

Conclusion

If this Information Report is not placed before the next available Committee of the Whole meeting for discussion, Town Legal Services staff will advise the Owners and the LPAT that the Town (a) will not take a position either in support or in opposition of the appeal and (b) will not appear at the LPAT hearing as either a party or participant.

In the event that the LPAT grants the appeal of the Owners, the Town's letter to the LPAT will request that the LPAT include in its Order that:

- a. The variance pertains only to the requests as submitted with the application; and
- b. The applicant be advised that compliance will be required with the provisions of the Town's Tree Preservation, Protection, Replacement and Enhancement Policy.

Business Plan and Strategic Plan Linkages

The recommendations support the well-equipped and managed objectives of the strategic plan by providing for the efficient management of litigation involving the Town.

Consultation

The Planning department was consulted and assisted in the preparation of this Information Report.

Human Resource Considerations

There are no human resources considerations related to this report.

Budget Impact

There are no budget impacts related to this report.

Attachments

Schedule "A" – overhead map of 679 Allan Avenue.

Contact

For more information on this report, please contact Paul Voorn, Associate Solicitor, Legal Services at 905-953-5300, Ext. 2436.

Approval



Paul H. Voorn, Associate Solicitor, Legal Services



Karen Reynar, Director of Legal Services

Esther Armchuk, Commissioner of Corporate Services

SCHEDULE "A"

