

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 19, 2023

CASE NO(S): OLT-23-000396

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Sue Pillon
Subject:	Minor Variance
Description:	To permit the construction of a single detached dwelling with attached garage
Reference Number:	A-07/23
Property Address:	490 Dalhousie Street
Municipality/UT:	Amherstburg/Essex
OLT Case No.:	OLT-23-000396
OLT Lead Case No.:	OLT-23-000396
OLT Case Name:	Pillon v. Amherstburg (Town)

Heard: August 15, 2023 by Video Hearing

APPEARANCES:

Parties

Counsel*/Representative

Sue Pillon

Self-Represented

Town of Amherstburg

Thomas Porter*

MEMORANDUM OF ORAL DECISION DELIVERED BY S.L. DIONNE AND DAVID BROWN ON AUGUST 15, 2023 AND ORDER OF THE TRIBUNAL

[Link to the Order](#)

INTRODUCTION AND BACKGROUND

[1] The matter before the Tribunal is an appeal filed by Sue Pillon (the “Appellant”) under s. 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the “Act”), against a decision of the Town of Amherstburg (“Town”) Committee of Adjustment (the “COA”), which authorized a minor variance for relief from building height and denied a minor variance seeking relief for front yard depth. The Application affects the lands municipally known as 490 Dalhousie Street (the “Subject Property”).

[2] The Appellant proposes to construct a one-storey detached residential dwelling with an attached garage on the Subject Property. The proposed dwelling will have a footprint of approximately 118 square metres (“m²”), including the attached garage and covered porches and a lot coverage of 29.9% of the lot area. The Subject Property has 15 metres (“m”) of frontage on Dalhousie Street and abuts the Detroit River at the rear.

[3] To facilitate the new construction, the Appellant filed an Application for Minor Variance (“Application”) with the COA requesting two variances as follows:

- a. Relief from s. 9(3)(c) of the Town Zoning By-law No. 1999-52, as amended (the “ZBL”), which requires a minimum front yard depth of 6 m, whereas a minimum front yard depth of 5.6 m is proposed (a relief of 0.4 m); and,
- b. Relief from s. 9(4)(a)(3) of the ZBL, which restricts the maximum height of a building to no more than 5.0 m above 178 m Canadian Geodetic Datum (“CGD”), whereas the height of the proposed dwelling is 184.992 m being 6.992 m above the 178 m CGD (a relief of 1.992 m).

[4] The Subject Property is designated Low-Density Residential under the Town Official Plan (“TOP”) and is zoned Special Provision Residential - Third Density (R3-1) Zone in the ZBL. A single-detached dwelling is a permitted use in the R3-1 zone. The Subject Property is within the Essex Region Conservation Authority regulated area.

[5] The COA, at its Hearing on April 5, 2023, granted the variance for building height and denied the variance for the reduction in the front yard depth. The COA received a report from Town Staff dated March 31, 2023, supporting the requested variances (“Staff Report”) and written correspondence from seven area residents raising concerns with the reduction to the front yard depth as it would not be in keeping with the neighbourhood and would provide safety concerns regarding parking. The COAs decision cited that the reasons for the refusal of front yard depth variance is that the request is not in keeping with the neighbourhood and will provide safety concerns with regard to parking.

[6] Subsequent to the Appeal of the COA decision by Ms. Pillon, the Town initiated discussions in respect to a potential settlement of the Appeal. Prior to the commencement of the Hearing, the Tribunal was advised that the Parties have reached a Settlement.

[7] The Settlement required that Ms. Pillon amend the Application to reflect that the relief in respect to the front yard depth of 5.6 m is only to the residential portion of the proposed dwelling and that the setback to the attached garage will be maintained at 6.0 m (“Settlement Proposal”).

LEGISLATIVE CONTEXT

[8] When making a decision, the Tribunal must have regard to the matters of provincial interest as set out in s. 2 of the Act. Section 2.1(1) of the Act requires that the Tribunal shall have regard to any decision made by an approval authority that relates to the same planning matter and any information and material that the approval authority considered in making its decision. Section 3(5) of the Act requires that the decision of the Tribunal shall be consistent with the Provincial Policy Statement, 2020 (“PPS”).

[9] The Tribunal when considering an appeal of an Application for Minor Variance must be satisfied that the requested variance meets the four tests as set out in s. 45(1) of the Act, namely:

1. Does the request maintain the general intent and purpose of the Official Plan?
2. Does the request maintain the general intent and purpose of the Zoning By-law?
3. Is the request desirable for the appropriate development or use of the land, building or structure? and,
4. Is the requested variance minor in nature?

SUBMISSIONS AND EVIDENCE

[10] The Tribunal qualified Tom Storey, a Registered Professional Planner, to provide expert opinion evidence in the area of Land Use Planning. Mr. Storey prepared an Affidavit in support of the Settlement reached between the Appellant and the Town. The Affidavit was filed as Exhibit 1.

[11] Mr. Storey advised the Tribunal that he was retained by the Town to review the Application and the COA decision in connection with the Appeal. During his review, he proposed a settlement of the Appeal. The Parties have consented to a revision to the application that would provide a 6 m setback to the garage face and a front yard depth of 5.6 m.

[12] Mr. Storey advised that the requested relief in respect to the proposed dwelling height remains unchanged and he supports the decision of the COA and opinions proffered in the Staff Report.

[13] Mr. Storey directed the Tribunal to the Staff Report included in Exhibit 1, which includes a review of the Application in the context of the Act, the Town Official Plan ("TOP"), and addresses the four tests of a minor variance.

[14] In consideration of the concerns raised by the area residents and the COA, in its decision with respect to parking and traffic safety concerns, Mr. Storey proffered that the Settlement Proposal addresses the concerns as there is a sufficient depth of front yard in front of the garage to accommodate a parking space without impacting the travelled portion of Dalhousie Road.

[15] Mr. Storey advised that he accepts the opinions proffered by the Town in the Staff Report as applicable to the relief being sought and subject to the amended variance. He opined that the Settlement Proposal is consistent with the PPS and conforms to the County of Essex Official Plan ("COP") and the TOP. Mr. Storey opined that the Settlement Proposal represents good planning and is in the public interest having addressed the concerns raised by the area residents. The Appellant can proceed with a building design that is very close to that which was originally proposed, thus addressing the Appellant's private interest.

[16] Ms. Pillon requested that the Tribunal amend the Application to reflect the Settlement Proposal to provide a 5.6 m front yard depth to the residential portion of the dwelling and a 6.0 m front yard depth to the attached garage face.

[17] With respect to the variance for reduction in front yard depth, Ms. Pillon advised the Tribunal that during the preparation of the drawings for the proposed dwelling, her Architect advised that there was an issue with the interior stairwell and recommended that she apply for a Minor Variance to reduce the front yard setback to address the internal constraint.

[18] The Staff Report, in consideration of the relief sought to the maximum building height, outlines the interpretation of the ZBL used in calculating building height. Given the style of roof on the proposed dwelling (i.e., a fifteen-degree sloped roof), the height of the roof must be measured to the highest point in the roof assembly. In contrast, if the roof type was a gable roof, the height would be measured at the mid-span and would provide for a higher roof than that proposed.

[19] The Staff Report addressed matters of provincial interest as set out in s. 2 of the Act, and in particular, the appropriate location of growth and development and the promotion of a built form that is well-designed. The Staff Report concluded that the proposed building is well-designed and attractive, providing a building that will be compatible with the existing buildings located on the street.

[20] Mr. Storey opined that the variance in height and variance in front yard depth as amended maintains the general intent and purpose of the Official Plan and ZBL. He further opined that a 6 m setback maintained to the garage portion of the proposed dwelling is desirable for the appropriate development of the land and in keeping with the context of the existing neighbourhood. Mr. Storey concluded that the 0.4 m reduction in the front yard depth for the residential portion of the dwelling is minor in nature.

[21] The Town was in attendance and confirmed that it is not opposing the Appeal of the revised Application.

ANALYSIS AND FINDINGS

[22] The Tribunal accepts the uncontroverted planning evidence of Mr. Storey in support of the Settlement Proposal and the revised Application.

[23] Pursuant to s. 45(18.1) of the Act, the Tribunal amends the request as set out in this Order and, pursuant to s. 45(18.1.1), the Tribunal is of the opinion that the amendment is minor and, as such, no further notice in respect to the amendment is required.

[24] The Tribunal notes that the Appeal specifically addresses the variance in respect to front yard depth, however, the Appellant, in appealing the decision to the Tribunal has appealed both variances. In consideration of s. 45(18) of the Act, the Tribunal notes that the Act authorizes the Tribunal to make any decision that the COA could have made on the *original application* (emphasis added). Therefore, the Tribunal shall consider all the variances that were before the COA on the original application.

[25] The Tribunal finds that the Settlement Proposal has appropriate regard for matters of provincial interest as set out in s. 2 of the Act as the Settlement Proposal represents the efficient use of sewage and water services and waste management systems, the orderly development of safe and healthy communities, the appropriate location of growth and development, and the promotion of built form that is well-designed and encourages a sense of place.

[26] In consideration of s. 2.1(1), the Tribunal reviewed the decision of the COA, the written submissions considered by the COA, and the Staff Report, and finds that the Settlement Proposal, specifically the 6 m front yard depth to the garage face, addresses and, in the opinion of the Tribunal, responds to the concerns raised by the COA in its denial of the front yard depth request.

[27] The Tribunal finds that the Settlement Proposal is consistent with the PPS as it represents intensification that is cost effective, maximizes existing infrastructure, and promotes efficient land use.

[28] In consideration of the four tests, the Tribunal finds that the single-detached dwelling use is permitted by the TOP and the proposed dwelling is in keeping with the character of the neighbourhood. The Tribunal is satisfied that the Settlement Proposal meets the general intent and purpose of the TOP.

[29] The Tribunal finds that the relief sought in respect to height is a factor of the design of the roof line and a more conventional style of roof could be constructed with an overall greater height than that of the proposed dwelling. The front yard depth variance, as revised, ensures a front yard depth of 5.6 m will provide an appropriate front yard while maintaining a 6 m setback to the garage that will provide for parking on the property between the garage and the property line. The Tribunal is satisfied that the general intent and purpose of the Zoning By-law is maintained.

[30] The Tribunal, having reviewed the proposed development and the context of the Subject Property, is satisfied that the Settlement Proposal is desirable for the appropriate development and use of the Subject Property.

[31] The Tribunal is satisfied that the Settlement Proposal and the revision included therein to the front yard depth provision, as it relates to the attached garage face, is minor in nature. The proposed dwelling and the variances being sought to facilitate the construction of the proposed dwelling are in keeping with the character of the area.

[32] In consideration of the above, the Tribunal allows the Appeal and authorizes the variances as amended, in accordance with the Settlement Proposal.

ORDER

[33] **THE TRIBUNAL** has been requested to amend the application from the original application, and the Tribunal has determined, as provided for in subsection 45(18.1.1) of the *Planning Act*, that the requested amendment is minor and that no further notice is required.

[34] **THE TRIBUNAL ORDERS** that the appeal is allowed in part and the variances to By-law No. 1999-52, are authorized as follows:

- a. To permit a building height of 184.992 metres above the Canadian Geodetic Datum (being a requested relief of 1.992 metres), whereas Section 9(4)(a)(3) of Zoning By-law No. 1999-52 as amended, restricts the maximum height of a building to not more than 5.0 metres above 178 metres Canadian Geodetic Datum.
- b. To permit a minimum front yard depth of 5.6 metres to the residential portion of the house (being a requested relief of 0.4 m) and a minimum front yard depth of 6.0 m to the attached garage (no requested relief), whereas Section 9(3)(c)

of Zoning By-law No. 1999-52, as amended, requires a minimum front yard depth of 6.0 m.

"Sharon L. Dionne"

SHARON L. DIONNE
MEMBER

"David Brown"

DAVID BROWN
MEMBER

Ontario Land Tribunal

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