



Town of Newmarket
395 Mulock Drive P.O. Box 328,
Newmarket, Ontario, L3Y 4X7

Email: info@newmarket.ca | Website: newmarket.ca | Phone: 905-895-5193

134 Avenue Road (Ward 5) – Appeal of Committee of Adjustment decision to the Local Planning Appeal Tribunal Information Report to Council

Report Number: INFO-2020-07

Department(s): Legal Services

Author(s): Paul H. Voorn, Associate Solicitor

Distribution Date: February 13, 2020

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 of November 20, 2019, regarding 134 Avenue Road (“the Lands”). The appeal will be heard by the LPAT on April 17, 2020. Given the circumstances of the appeal, Legal Services staff will advise the LPAT that the Town (a) supports the decisions of the Committee of Adjustment, (b) will not take a position either in support or in opposition of the appeal, and (c) will not appear at the LPAT hearing as a party and will not participate in the appeal. In advance of the hearing, the Town will request the LPAT to include in any order setting aside the Committee of Adjustment decision that the Owners comply with the Town’s Tree Preservation, Protection, Replacement and Enhancement Policy.

Background

As shown on the attached overhead map at Schedule “A”, the Lands are located in Ward 5 in the area of Yonge Street and Eagle Street. The Lands are on the south side of Avenue Road, to the west of Carol Avenue.

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 a second detached garage on the Lands in a location and of a size not permitted by the by-law. A Building Permit for the construction is necessary and could only be obtained if a Minor Variance is granted.

Planning staff reviewed the application for Minor Variance and prepared a report dated November 8, 2019 in which staff recommended denial of the Minor Variance request. While Planning staff agreed that the Minor Variance request conformed with the general intent of the Official Plan and was minor in nature, staff were of the opinion that the request was not in conformity with the general intent of the Zoning By-law and was not desirable for the appropriate development of the Lands.

Discussion

On November 20, 2019, the Committee of Adjustment reviewed the application and unanimously denied the request for the Minor Variance.

The Owners of the Lands have appealed to the LPAT. A one day hearing in Cane Room A & B has been scheduled by the LPAT for April 17, 2020.

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

- (a) the application conforms to the general intent of 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.

On that basis, it is not necessary for the Town to participate as a party. The Planning staff report submitted to the Committee of Adjustment provided detailed recommendations arguing against granting the requested variance. That report, along with all other materials that were originally before the Committee of Adjustment, will be considered by the LPAT together with any other evidence submitted by the Owners of the Lands.

As 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.

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, this would occur with the LPAT having considered the original Town Planning evidence that was before the Committee of Adjustment and which was relied upon by the Committee in denying the variance request.

In addition, the owner's request to allow a second garage on the property through a minor variance is site specific. Any decision of the LPAT in this matter, either in upholding or overturning the Committee of Adjustment's decision, will not set a precedent nor will it affect the Town's site control by-laws that are in place.

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) supports the decisions of the Committee of Adjustment, (b) will not take a position either in support or in opposition of the appeal, and (c) will not appear at the LPAT hearing as a party and will not participate in the appeal.

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 comply 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 134 Avenue Road.

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

Antonietta Mollicone, Acting Director of Legal Services

Esther Armchuk, Commissioner of Corporate Services

Schedule "A"



SCHEDULE 'A'
134 AVENUE RD

 Property of Interest  Property Line



Designed & produced by Information Technology - GIS. Sources: 2019 Colour Ortho Imagery - First Base Solutions Inc., 2019 Orthophotography, Land Parcel Boundaries - © Teravel Inc. and its suppliers. All rights reserved. NOT A PLAN OF SURVEY. 2020. Roads, Railway, Water Features, Municipal Boundary - Data, Analytics and Visualization Services Branch, Corporate Services © The Region's Municipality of York, 2020. All other data - © Town of Newmarket, 2020. DISCLAIMER: This mapping is based on the POLARIS parcel fabric product compiled using Land Registry System records and recent surveys and control points where available. This mapping is a representation of the earth's surface and provides estimates of area and distance. The information depicted on this map has been compiled from various sources. While every effort has been made to accurately depict the information, data-mapping errors may exist. This map has been produced for illustrative purposes only. It is not a substitute for a legal survey. Printed: January, 2020 Document Path: S:\Projects\10\Corporate Services\Legal\Map Documents\134 AvenueRD.mxd