

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: George Kotsifas, P. Eng
Managing Director, Development & Compliance Services &
Chief Building Official
Subject: Appeal of Committee of Adjustment Decision on Minor
Variance Application A.040/19
585 Colborne Street
Meeting on: July 22, 2019

Recommendation

That, on the recommendation of the Director, Development Services, in response to the letter of appeal to the Local Planning Appeal Tribunal, dated May 27, 2019, and submitted by Elliott Pityn relating to the minor variance application concerning 585 Colborne Street, the Local Planning Appeal Tribunal **BE ADVISED** that:

- a) The Municipal Council supports the decision of the Committee of Adjustment to refuse the minor variance; and
- b) The City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official **BE DIRECTED** to provide legal and planning representation at the Local Planning Appeal Tribunal Hearing to support the decision of the Committee of Adjustment.

Background

The Secretary of the Committee of Adjustment circulated notice of application on April 12, 2019 for permission to:

Add a fourth unit to a converted dwelling with the following variances:

1. To permit a lot area of 240m² (2583.3ft²), whereas 720m² (7750.0ft²) is the minimum required.
2. To maintain two parking spaces, whereas three parking spaces are required.

Development Services Staff provided comment on this request at the May 6, 2019 meeting of the Committee of Adjustment. Development Services did not support the requested minor variances to add a fourth unit to a converted dwelling (attached Appendix A). The Committee of Adjustment refused the requested variances.

On May 27, 2019, Elliott Pityn, acting on behalf of Kimberly Pityn, the owner of 585 Colborne Street, submitted a letter of appeal to the Local Planning Appeal Tribunal opposing the Committee of Adjustment's decision refusing the variances (attached Appendix B).

The appellant did not outline the reason for the appeal in the letter of appeal.

One member of the public attended the Committee of Adjustment meeting and made a statement raising concerns with respect to the scope and nature of work proposed.

The hearing date for this appeal has not yet been scheduled (PL190234). Development Services maintains its position that the application does not meet the four (4) tests under the Planning Act. Staff is requesting direction from the Planning and Environment Committee and Council to provide legal and planning representation to support the decision of the Committee of Adjustment.

Prepared by:	Meg Sundercock, BURPL Site Development Planner, Development Services
Concurred by:	Michael Tomazincic, MCIP, RPP Manager, Current Planning, Development Services
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
Submitted by:	George Kotsifas, P.ENG Managing Director, Development and Compliance Services and Chief Building Official
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

July 15, 2019
MS/ms

CC: Aynsley Anderson, Solicitor II, City Solicitor’s Office

Appendix A:
Development Services Recommendation

A.040/19
M.Sundercock

FROM:	DEVELOPMENT SERVICES
SUBJECT:	APPLICATION BY: KIMBERLY PITYN 585 COLBORNE STREET PUBLIC PARTICIPATION MEETING ON MAY 6, 2019 @ 3:20 PM

PURPOSE OF APPLICATION

To add a fourth unit to a converted dwelling.

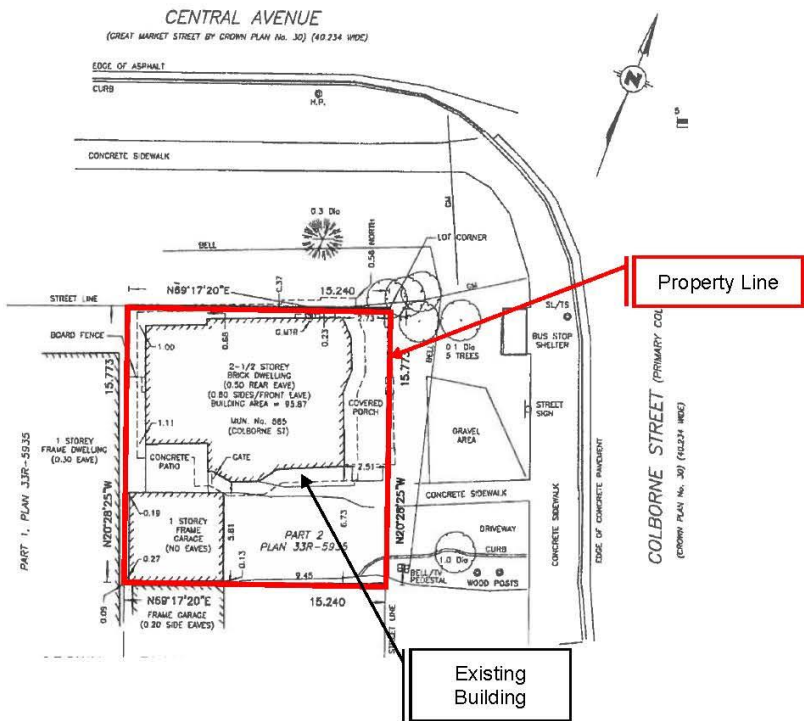
VARIANCES REQUESTED:

- 1. To permit a lot area of 240m² (2583.3ft²), whereas 720m² (7750.0ft²) is the minimum required.
- 2. To maintain two parking spaces, whereas three parking spaces are required.



INTRODUCTION

The applicant is proposing to convert an existing three-unit converted dwelling to a four-unit dwelling without expanding the footprint, and is requesting two variances to facilitate the change in use. They are requesting variances for reduced lot area and reduced parking.



EVALUATIVE FRAMEWORK

In order for this application to be acceptable as a minor variance under the provisions of Section 45(1) of the Planning Act, the following requirements must be met:

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

ANALYSIS

The subject lands are located at the intersection of two Neighbourhood Connector streets (Colborne Street and Central Avenue) within the Neighbourhoods Place Type in The London Plan, and are designated Low Density Residential in the 1989 Official Plan and are within the Near-Campus Neighbourhood as well as the West Woodfield Heritage Conservation District.

Residential Intensification policies are located in Section 3.2.3 of the 1989 Official Plan and are also in The London Plan (though are still under appeal). The proposed residential units are defined as Residential Intensification in that it is *"the conversion or expansion of existing residential buildings to create new residential units or accommodation."* Development which is considered to be residential intensification is subject to a site plan process to address matters such as parking, landscaping, and other matters which may impact the use and privacy of abutting properties.

The lands are also located within a Near-Campus Neighbourhood and as such are subject to additional policies regarding residential intensification. Policy 3.5.19.12 provides a series of criteria when evaluating minor variance applications in Near Campus Neighbourhoods, in determining the appropriateness of the variance and in the consideration of the intent and purpose

of the Official Plan. The following criteria will be considered for minor variance applications in Near Campus Neighbourhoods:

- i) the requested variance(s) shall not undermine the intent of the Zoning Bylaw where Council has applied a zone that established additional regulations in the neighbourhood; *Additional regulations have not been established through a special provision zone in this area, however, the regulations of the R3-2 Zone regarding lot area are intended to prevent the inappropriate intensification of properties in existing neighbourhoods. The requested variances for reduced lot area and parking are indicative of a proposal which is too intense for the subject lands and undermines the intent of the Zoning By-law.*
- ii) the requested variance(s) shall not lead to inappropriate forms of intensification, as characterized in Policy 3.5.19.5 of this Plan; *The subject lands are located in both the Low Density Residential Designation and the Neighbourhoods Place Type. The proposed development represents a residential intensity that is too great for the structure type proposed and on a lot which is inadequately sized that is unable to reasonably accommodate the density and intensity of the proposed use. The reduction in parking and lot area may continue an ad-hoc and incremental trend towards Residential Intensification in the neighbourhood.*
- iii) the requested variance(s) shall not be supported to approve an increase in Residential Intensity where the proposed new development, expanded development, or modified development can be accommodated through a reconfiguration of the development proposal; *There are no proposed exterior changes to the existing building, though the requested variance for reduced parking may be accommodated through a reconfiguration of the development proposal.*
- iv) where a street, block, or neighbourhood has already absorbed substantial Residential Intensification in the Low Density Residential designation, a minor variance to accommodate a proposed consent to sever shall not be supported; *There is no consent to sever associated with this minor variance application.*
- v) site-specific minor variance applications to accommodate an increase in Residential Intensity on lands that are not unique within their context and do not have any special attributes which would warrant a site-specific minor variance shall not be supported; *The requested variances are not unique in within their context and do not have any special attributes which would warrant a site-specific minor variance.*
- vi) minor variances to permit front yard parking shall not be supported where the proposed new development, expanded development, or modification to an existing development eliminates existing parking that is in a location which conforms to the Zoning By-law. *There is no request to permit front yard parking as part of this application.*

The London Plan also contains policies regarding cultural heritage, including facilitating intensification in urban neighbourhoods where it is deemed to be appropriate and in a form that fits well in the existing neighbourhood.

The Woodfield Neighbourhood Specific Area policies in the 1989 Official Plan state that this area is intended to remain predominantly low density in scale, and to retain existing buildings to maintain the character of the streetscape, and to conserve cultural heritage resources. The specific area policies for this neighbourhood limit residential development to a maximum density of 100 units per hectare. The applicant is proposing a density of 166 units per hectare.

Based on the foregoing, the proposed conversion of the existing building is inconsistent with the intent and purpose of The London Plan and the 1989 Official Plan.

The subject lands are zoned Residential R3-2, which provides for and regulates low density residential development in the form of single, semi, duplex, triplex, fourplex, and converted dwellings, subject to minimum requirements for lot area, lot frontage, setbacks, and landscaped open space etc.

The R3-2 Zone requires a minimum lot area of 180m² per unit, or a lot area as indicated by the zone, whichever is greater. The applicant is requesting a lot area of approximately 240m², whereas 720m² is the minimum required for four units. Additional lot area is required as the

intensity of the lands increases, and the intent of the regulation is to ensure that adequate areas for parking and landscaped open space are provided.

The applicant is also requesting a variance for reduced parking. While the City-wide parking standards require one space per residential unit, two parking spaces are existing and were previously recognized for the three-unit dwelling. The addition of a fourth unit therefore increases the requirement to three spaces. While the applicant may be able to accommodate the required parking spaces with a reconfiguration of the development, this could result in an excessive proportion of the site devoted to parking and loss of landscaped open space that may impact the character of the Colborne Street streetscape. It is noted that the subject site is located on a transit route and residents have access to transit services which may reduce the need for vehicular parking on the lands.

Based on the foregoing, Development Services is of the opinion that the variances do not conform to the policies or their intent in the 1989 Official Plan or The London Plan. The variances are also inconsistent with the intent and purpose of the Zoning By-law and are not minor in nature. Substantial impacts may result from the variances. While intensification of the lands along Richmond Street is desirable, the variances requested would facilitate a development which may continue an incremental trend towards Residential Intensification in the Woodfield Neighbourhood. Development Services also recognizes that the variances may be a matter of local consideration.

SUMMARY

In the opinion of Development Services the proposed minor variances are not minor in nature or desirable for the lands. The variances are not consistent with The London Plan, the 1989 Official Plan, or the Zoning By-law. Staff recognize that the variances may be a matter of local consideration.

NOTES

- A building permit is required for the conversion of the building.
- A maximum of three bedrooms per unit is permitted.
- Depending on the scope of work proposed, a Heritage Alteration Permit may be required if there are any visible exterior alterations to the building.
- Any new or relocation of the existing hydro service will be at the expense of the owner.
- The granting of minor variance(s) or permissions does not preclude the responsibility of the applicant or landowner from obtaining other approvals which may be required, by any level of government, and agencies thereof, including, but not limited to, the Tree Protection By-law.

REFERENCE DOCUMENTS

Ontario. Ministry of Municipal Affairs and Housing. Planning Act, R.S.O. 1990, as amended.

Ontario. Ministry of Municipal Affairs and Housing. Provincial Policy Statement, May 1, 2014.

City of London. Official Plan, June 19, 1989, as amended.

City of London. Zoning By-law No. Z.-1, July 1, 1993, as amended.

City of London. The London Plan – Council Adopted, June 2016.

Appendix B:
Committee of Adjustment Decision



300 Dufferin Avenue
P.O. Box 5035
London, ON
N6A 4L9

City of London

Note: The last day for appealing this decision is at **4:30 on** .

DECISION:

THE COMMITTEE OF ADJUSTMENT FOR THE CITY OF LONDON WITH REASONS
REGARDING APPLICATION FOR MINOR VARIANCE
THE PLANNING ACT R.S.O. 1990, Section 45(8) & (10)

REGARDING AN APPLICATION BY: Pityn Kimberley Ann - A.040/19

ADDRESS: 585 Colborne Street

PURPOSE OF APPLICATION: To add a fourth unit to a converted dwelling.

VARIANCE(S) REQUESTED:

1. To permit a lot area of 240m² (2583.3ft²), whereas 720m² (7750.0ft²) is the minimum required.
2. To maintain two parking spaces, whereas three parking spaces are required.

WE, the undersigned, in making the Decision regarding 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 Zoning By-Law Z-1 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(2) of *The Planning Act* R.S.O. 1990.

CONCUR in the following Decision and Reasons for the Decision made on Monday May 06, 2019.

DECISION:


GRANTED ☐

DENIED ☒

APPROVED WITH CONDITIONS ☐


For Reasons and Conditions see Schedule "A" on reverse.


John Fyfe-Millar, Chair


Steve Polhill, Vice Chair


Daniela Schmidt

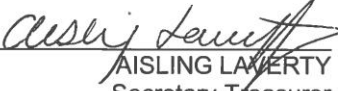

Denise Brown


Cheryl Miller

CERTIFICATION

THE PLANNING ACT, R.S.O 1990, SECTION 45(10)

I, **AIKLING LAVERTY**, Secretary-Treasurer of the Committee of Adjustment for the City of London, County of Middlesex, certify that the above is a true copy of the Decision of the Committee with respect to the Application recorded therein.



AIKLING LAVERTY
Secretary-Treasurer

City of London
Schedule 'A'

Minor Variance Application No. A.040/19

Reasons for Decision:

- The requested minor variance meets the general intent and purpose of the Zoning By-Law;
- The requested minor variance meets the general intent and purpose of the Official Plan;
- The requested minor variance is not minor in nature; and
- The requested minor variance is not desirable for the appropriate developments of use of the land, building or structure.

Subject to the following condition(s):

NOTES:

- A building permit is required for the conversion of the building.
 - A maximum of three bedrooms per unit is permitted.
 - Depending on the scope of work proposed, a Heritage Alteration Permit may be required if there are any visible exterior alterations to the building.
 - Any new or relocation of the existing hydro service will be at the expense of the owner.
 - The granting of minor variance(s) or permissions does not preclude the responsibility of the applicant or landowner from obtaining other approvals which may be required, by any level of government, and agencies thereof, including, but not limited to, the Tree Protection By-law.
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