

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: June 03, 2019

CASE NO(S): PL180127

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	Pegasus Development Corporation
Subject:	Minor Variance
Variance from By-law No.:	2008-250
Property Address/Description:	23 Boyce Avenue
Municipality:	City of Ottawa
Municipal File No.:	D08-02-17/A-00298
OMB Case No.:	PL180127
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OMB Case Name:	Pegasus Development Corporation v. Ottawa (City)

Heard: October 26, 2018 in Ottawa, Ontario

APPEARANCES:

Parties

Counsel

Pegasus Development Corporation

Michael Polowin

**MEMORANDUM OF ORAL DECISION DELIVERED BY MICHEL BELLEMARE ON
OCTOBER 26, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

A. OVERVIEW

[1] Wanting to convert a dwelling's storage loft area into living space, Pegasus Development Corporation ("Pegasus") applied for a minor variance from the total floor area allowed under the zoning by-law. The City of Ottawa's ("City") Committee of Adjustment refused the application, resulting in this appeal.

[2] For the reasons that follow, the Tribunal allows the appeal and authorizes the variance.

B. BACKGROUND

[3] Pegasus' property is at the north end of Boyce Avenue near the Ottawa River, and includes a single family dwelling, a permitted use under the applicable "R1-Residential First Density Zone, Subzone O". The property is subject to a flood plain hazard overlay under section 58 of Zoning By-law No. 2008-250. This section permits an addition to the dwelling if it "does not exceed an amount equal to 20 percent of the gross floor area of the building or 20 metres square whichever is less". The following is the requested variance:

Section 58(2)(a), By-law No. 2008-250

To permit an increase of 67 percent of the gross floor area of the existing dwelling to 122.4 square metres, whereas under the flood plain hazard overlay the By-law permits a maximum of 20 percent of the gross floor area of the building (or in this case 88.1 square metres) or 20 square metres, whichever is less.

[4] Tracy Zander, a professional planner, was qualified to provide evidence in land use planning, and testified in support of the variance.

[5] The City did not appear at the hearing, and no one came to oppose Pegasus' appeal.

C. ANALYSIS AND FINDINGS

1. Application Must Satisfy Statutory Fourfold Test for a Minor Variance

[6] The Tribunal has the power to authorize the variance from the provisions of the zoning by-law if, in its opinion, the application meets all four requirements under subsection 45(1) of the *Planning Act* (the Act). The variance must:

- a) maintain the general intent and purpose of the official plan;
- b) maintain the general intent and purpose of the zoning by-law;
- c) be desirable for the appropriate development or use of the land, building or structure; and
- d) be minor.

[7] As part of the municipal record, the City's planning report to the Committee of Adjustment raises concerns that "the incremental development of the subject property is inconsistent with strategic planning" and the City's Official Plan which "acknowledges flooding as a constraint and development in areas in flood plain should be avoided".

[8] During her testimony, Ms. Zander referred to her October 13, 2017 planning report¹ to the Committee of Adjustment. It was her evidence that the proposed development is consistent with the Provincial Policy Statement, 2014 and represents good planning, and that the variance meets the four tests under the Act.

[9] Ms. Zander's testimony also highlighted that, for proposed developments on or near the Ottawa River flood plain, the City shares jurisdiction with the Rideau Valley Conservation Authority (also referred to as the Conservation Authority).

[10] Ontario Regulation 174/06 ("Regulation") is issued pursuant to the Ontario *Conservation Authorities Act* under the title: *Rideau Valley Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses*. Section 3 of the Regulation provides that the Conservation Authority has the power to grant permission for development in areas within its

¹ Exhibit 1, Tab 8.

jurisdiction (including the subject property) “if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development”.

[11] The July 13, 2017 Conservation Authority staff report² highlights that the subject property and a portion of Boyce Avenue are within the 1:100 year flood plain of the Ottawa River. The latter’s flood elevation is 60.74 metres above sea level while the average grade on the subject property is 60 metres above sea level. Although the staff report did not recommend approval of the development application, it notably states that the proposal has “limited impacts relating to the control of flooding”, that it “will not increase the size to the extent that many more people will be able to live within the floodplain, the foundation is floodproofed and has been modified to a crawl space and the garage has been detached and without those measures in place the precedent for the overall increase in size would certainly have an impact on the [Conservation Authority]’s Regulatory Program relating to precedent and cumulative impacts”.

[12] The Conservation Authority’s executive committee held a hearing of the Pegasus application on July 13, 2017. The purpose of that hearing was to consider granting “an exception to the size requirement under the Minor Additions section of the policies [...] to allow for stair access to the already approved attic loft”. The Conservation Authority’s executive committee considered its staff report, and notably heard that “the house had not flooded in the spring of 2017”³. In its decision⁴ granting approval to Pegasus’ application, the Conservation Authority’s executive committee noted that it weighed “the impacts that the granting of permission will have on the [Conservation] Authority’s flood plain management program in the Rideau Valley watershed area, bearing in mind the objectives of the program, are: i) to prevent the loss of life; ii) to minimize property damages and social disruption attributable to flooding; iii) to encourage a coordinated approach to the use of land as it relates to water management”. Attached to the Conservation Authority’s decision is the following condition:

² Exhibit 1, Tab 24.

³ Minutes of the Conservation Authority, Exhibit 1, Tab 25, page 6.

⁴ Exhibit 1, Tab 26.

1. an Easement agreement is registered on title to the property indicating that no further increase in size either through attachment of the detached garage, modification to the crawlspace and/or further additions or roof adjustments will be permitted.

[13] Additional conditions attached to the Conservation Authority's decision include specific size measurements for the crawl space foundation, grade changes according to a grading and drainage plan prepared by Novatech Engineering, that "the garage will be detached at the roof, wall and foundation with the foundation cut below grade to ensure detachment", and compliance with the City's zoning requirements.

[14] As Ms. Zander noted, the Provincial Policy Statement "contemplates minor additions to structures in circumstances such as this, provided there is no impact on the floodway". According to Ms. Zander, because "the additional living space is in the upper storey of the existing house, it would not have any impact on the floodway and would not affect flood flows in any way".

[15] It was Ms. Zander's evidence that the original dwelling on the subject property was re-built in 2015 with a 20 percent increase in the gross floor area, as is permitted under the City's and the Conservation Authority's regulations. Converting the existing storage loft area into living space "will result in an additional 47% increase in the gross floor area over the original dwelling", requiring the requested variance.

[16] The subject property is designated General Urban Area in the City's Official Plan⁵. Relevant policies of that plan include subsection 3.6.1, which states that "the development of a full range and choice of housing types to meet the needs of all ages, incomes and life circumstances" is permitted. Regarding the review of development applications in flood plains, subsection 4.8.1 states that the "purpose of these policies is to reduce the potential for public cost or risk of injury, loss of life, property damage, and economic and social disruption, which may result directly or indirectly from development

⁵ Exhibit 1, Tab 4.

and other activities in flood plains”. Also, the “overall intent is to limit development within the flood plain”. Under subsection 4.8.1.5, development restrictions in the flood plain state that the City will not permit site alteration or development “except for: [...] b. Minor additions and/or renovations to existing structures which do not affect flooding, and which are approved by the appropriate Conservation Authority”.

[17] It was Ms. Zander’s evidence that “the addition of this living space would not have any impact on flooding”, and that the “modest house” is already in the flood plain “but appropriately flood proofed”.

2. Requested Variance Meets the Four Tests Under the Act

[18] Based on the evidence, I find that the variance meets all four requirements under subsection 45(1) of the Act.

[19] First, because the proposed development represents limited development of a permitted use as a minor addition and/or renovation to an existing space that does not affect flooding, and considering overlapping regulatory authority between the City and the Conservation Authority regarding development in the flood plain, and the Conservation Authority’s approval (with conditions) in this case, I am satisfied that the variance meets the general intent and purpose of the Official Plan.

[20] Second, because the proposal represents an addition and/or renovation that is contemplated under the zoning’s flood plain overlay, is subject to flood proofing standards and will have no impact on the flood plain, I find that the variance meets the general intent and purpose of the zoning by-law.

[21] Third, because the proposed development represents an addition and/or renovation within an existing space in a modest dwelling with no measurable impact on the flood plain, I am satisfied that the variance is, from a planning and public interest point of view, desirable for the appropriate development or use of the land, buildings or

structures on the property, and relative to the neighbouring lands.

[22] And fourth, I am satisfied that the variance is minor because it will not create any unacceptable adverse impact on nearby properties or the flood plain in general.

D. ORDER

[23] The Tribunal allows the appeal and authorizes the variance.

“Michel Bellemare”

MICHEL BELLEMARE
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

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