



Report Committee of Adjustment

Filing Date: February 7, 2023

Hearing Date: March 7, 2023

File: A-2023-0041

**Owner/
Applicant:** ANDREW ENOFE / ISREAL UFOMADU

Address: 5 William Street

Ward: WARD 1

Contact: Megan Fernandes, Planning Technician

Recommendations:

That application A-2023-0041 is supportable, subject to the following conditions being imposed:

1. That the extent of the variances be limited to that shown on the sketch attached to the Notice of Decision;
 2. That the height of the existing fence along the rear yard shall not exceed 2.26m (7.41 ft.);
 3. That the proposed building addition shall not be used to access an unregistered second unit;
 4. That failure to comply with and maintain the conditions of the Committee shall render the approval null and void.
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Background:

Existing Zoning:

The property is zoned 'Residential Single Detached B (R1B)', according to By-law 270-2004, as amended.

Requested Permission:

The applicant is requesting the following:

1. To permit an expansion of the legal non-conforming semi-detached dwelling whereas the by-law does not permit the existing use.

Requested Variances:

The applicant is requesting the following variances:

2. To permit a fence in the rear yard with a height of 2.26m (7.41 ft.) whereas the by-law permits a maximum fence height of 2.0m (6.56 ft.);
3. To permit a side yard setback of 0.0m to the second storey whereas the by-law requires a side yard setback of 1.8m (5.90 ft.) to the second storey.

Current Situation:

Official Plan

The property is designated 'Central Area' in the Official Plan and 'Low Density' in the Downton Secondary Plan (Area 7).

Existing Zoning:

The property is zoned 'Residential Single Detached B (R1B)', according to By-law 270-2004, as amended. This zone permits a single detached dwelling, supportive housing residence type 1, place of worship, and purposes accessory to the other permitted purposes.

Legal Non-Conforming Semi-Detached Dwelling:

A determination has been made that an expansion is a Legal Non-Conforming use on the property.

Discussion and Evaluation – Expansion of the Legal Non-Conforming Use

Request to permit a Similar Use:

The Committee of Adjustment's authority in making a determination on a similar use is set out in the Other Powers or Special Permission section of the Committee of Adjustment in the Planning Act (Section 45 (2)(a)(ii)). When a use of land is determined to be legal non-conforming (in this case, an expansion), the committee has the authority to permit an expansion of that use.

Within the City's Official Plan, Section 5.18 provides policies under which an expansion to a legal non-confirming use may be permitted in specific situations to avoid undue hardship. These matters may be considered by the Committee of Adjustment. Section 5.18.4 of the Official Plan provides the criteria to be considered for an expansion of legal non-conforming use. The application is considered to meet the criteria as outlined in the table in Schedule A.

Conclusion

Staff have reviewed the proposal in accordance with the criteria set out in Section 5.18.4 of the Official Plan (Schedule "A" attached to this report) and determine to be appropriate from a land use perspective.

Minor Variance – Fence in Rear Yard and Side Yard Setback

1. Maintains the General Intent and Purpose of the Official Plan

The property is designated 'Central Area' in the Official Plan and 'Low Density' in the Downton Secondary Plan (Area 7). The requested variances are not considered to have significant impacts within the context of the Official Plan policies. Subject to the recommended conditions of approval, the requested variance is considered to maintain the general intent and purpose of the Official Plan.

2. Maintains the General Intent and Purpose of the Zoning By-law

Variance 2 is requested to permit a fence in the rear yard with a height of 2.26m (7.41 ft.) whereas the by-law permits a maximum fence height of 2.0m (6.56 ft.). The intent of the by-law in regulating maximum fence height is to avoid creating a fortress-like feel on residential properties.

The location of the increased fence height is limited to the north east side of the rear yard and is shared with the adjacent property. The portion of the fence that the variance is requested for has a height of 2.26m (7.41 ft.) is along the rear lot line of the property. The variance represents a 0.85m (2.78 ft.) increase than what the by-law permits and does not create a fortress like appearance for the property. A condition of approval is recommended that the height of the existing fence along the perimeter of the rear yard amenity area shall not exceed 2.26m (7.41 ft.) and that the remaining portions of the fence are to be in compliance with the Zoning By-law. Subject to the recommended conditions of approval, Variance 2 is considered to maintain the general intent of the Zoning By-law.

Variance 3 is requested to permit a side yard setback of 0.0m whereas the by-law requires a side yard setback of 1.8m (5.90 ft.) to the second storey. The intent of the by-law in regulating the required side yard setback to a second storey is to ensure that sufficient space is maintained between dwellings, and that the massing of the second storey does not impose upon the adjacent property.

In the case of the subject property, the requested 0.0m setback only applies to a portion of the northern wall of the property which is shared with the existing adjacent semi-detached dwelling municipally known as 7 William Street. Further, the proposed second storey will be consistent with the existing first storey and the existing second half on the front of the dwelling of the adjacent property located at 7 William Street. The variance is not anticipated to have negative impacts relating to the visual massing or shadowing on the adjacent properties as the height of the addition maintains all zoning provisions as required within Zoning By-law 270-2004, as amended, section 10.27. Subject to the recommended conditions of approval, the requested variance is considered to maintain the general intent and purpose of the Zoning By-law.

3. Desirable for the Appropriate Development of the Land

Variance 2 is requested to permit to an existing fence along the rear yard of the property. The requested variance to permit the fence height is 0.85m (2.78 ft.) larger than what the by-law permits. Only a portion of the fence is constructed to the requested 2.26m (7.41 ft.) height, located at the north east side of the property adjacent to the semi-detached home. The remainder of the fence in the rear yard being in compliance with the performance standards of the Zoning By-law. The fence does not have any

significant impacts on surrounding properties as it was constructed to screen the abutting rear yards from one another (feel free to change this). Subject to the recommended conditions of approval, the variance is considered desirable for the appropriate development of the land.

Variance 3 is requested to permit a reduced side yard setback to a proposed second storey addition. The requested setback is for a portion of the northern wall of the property which is shared with the existing adjacent semi-detached dwelling (7 William Street). The variance is not anticipated to generate negative massing impacts on the adjacent properties, as the proposed built form will be similar to the existing two-storey dwelling located at 7 William Street. The floor plan provided by the applicant depicts two additional bedrooms in the basement, a condition is recommended that the proposed addition not be used to access an unregistered second dwelling. Subject to the recommended conditions of approval, variance 1 is considered to be desirable for the appropriate development of the land.

4. Minor in Nature

Variance 2 is to permit a fence height of 2.26m (7.41 ft.) along the rear yard. The increased fence height applies to only a limited portion of the rear yard and is not anticipated to create adverse visual impacts to adjacent properties. A condition of approval is recommended to limit the height and location of the existing fence. Subject to the recommended conditions of approval, variance 1 is considered minor in nature.

Variance 3 is requested to permit a reduced side yard setback to a second storey addition. The proposed eliminated setback is not anticipated to negatively impact the ability of the property to contain its own roof drainage, and the design of the proposed second storey does not present any concerns with regard to privacy for adjacent properties. As noted in the elevations provided by the applicant, the proposed addition will have a similar roof line as the existing adjacent property at 7 William Street, and will have new cladding to match the existing colour. The proposed addition will be consistent with the character of the area and is minor in nature. Subject to the recommended conditions of approval, variance 2 is considered to be minor in nature.

Respectfully Submitted,

Megan Fernandes

Megan Fernandes, Planning Technician

SCHEDULE "A"

CRITERIA TO BE CONSIDERED UNDER SECTION 5.18.14 OF THE OFFICIAL PLAN

CRITERIA TO BE CONSIDERED	ANALYSIS
a) The proposed extension or enlargement will not unduly aggravate the situation created by the existence of the use;	The proposed expansion to a semi-detached will not unduly aggravate the existing situation.
b) The proposed extension or enlargement represents a reasonable increase in the size of the legal non-conforming use;	The proposed physical expansion represents a reasonable increase in the size of the existing structure. The proposed building expansion will not extend beyond the limits of the land owned and used for the legal non-complying use.
c) The characteristics of the existing non-conforming use and the proposed extension or enlargement will be examined with regard to impacts from noise, vibration, fumes, smoke, dust, odour, lighting, and traffic generation;	The characteristics of the proposed expansion presents no concerns with regards to possible negative impacts.
d) The host neighbourhood and adjacent uses will be afforded reasonable protection by the provision of landscaping, buffering or screening; appropriate setbacks for buildings and structures; and devices and measures for reducing nuisances;	The proposed expansion is not anticipated to have any impacts on adjacent uses or the host neighbourhood.
e) Adequate provisions will be made for off-street parking and loading facilities;	Sufficient area is provided for parking on the property.
f) All municipal services such as water, sewage and roads are and will continue to be adequate, and;	Sufficient services continue to be provided for the proposed use and no changes are required.
g) The application is referred to municipal departments and other appropriate agencies which may be concerned or affected for information reports on relevant considerations before making a decision.	The application has been reviewed by all relevant departments and agencies through the course of this review.

Appendix A – Site Visit Photos





