

Matthew Hart

From: John Bain <jdbain@edpc.ca>
Sent: Friday, August 10, 2018 5:03 PM
To: Matthew Hart
Cc: Wanda Ryan; Andrew Jones; Paul Dec
Subject: PID 50130988 Variance Request

Good afternoon Mr. Hart,

I have had opportunity to review your application for a variance for the above referenced property to allow for the subdivision of this property to allow for the construction of a semi-detached building. I note the following: The *Municipal Government Act* only sets out the **three** items which can be varied automatically, that is without policy support in a Municipal Planning Strategy and Land Use Bylaw. They are:

1. Percentage of land that may be built upon;
2. Size or other requirements relating to yards;
3. Lot frontage or lot area, or both, if (i) the lot existed on the effective date of the bylaw, or (ii) a variance was granted for the lot at the time of subdivision approval.

The wording for 235(1)(c)(ii) is awkward as it appears to make the approval of a variance dependent on an earlier variance procedure effectively making the applicant go through a procedure twice. We therefore have taken this to refer to the actual variance in 235(1) which is to say "A development officer may grant a variance... of... lot frontage or lot area, or both, if... a variance [is] granted for the lot at the time of subdivision approval. That is to say we can allow a variance to create a lot as is the proposal in this instance.

Therefore, the first test of a variance is ***"Is there any provision for this requirement to be varied?"*** If the item can be varied then there are three further tests which need be met before we can approve the variance. A variance may not be granted (235(3)) where the:

1. Variance violates the intent of the development agreement or land-use by-law;
2. Difficulty experienced is general to properties in the area; or
3. Difficulty experienced results from an intentional disregard for the requirements of the development agreement or land-use by-law.

We agree with your observation that the granting of a variance would not violate the intent of the land-use by-law as expressed in the Municipal Planning Strategy. We also observe that there has been no intentional disregard of the land-use by-law. However we do note that the difficulty experienced is **general** to properties in the area. The property immediately adjacent this property (PID 50130970) as well as the next two (PID 50182864 and 50130962) as well as a property across MacKenzie Avenue (PID 50130822) are all below the 8,008 square feet required to subdivide the properties to allow for a semi-detached building.

I am therefore refusing to allow this variance. The *Municipal Government Act* states the following with respect to a refusal: ***"(4) Where a variance is refused, the applicant may appeal the refusal to council within seven days after receiving notice of the refusal, by giving written notice to the clerk who shall notify the development officer."***

If you have any questions or concerns related to the content of this email, please do not hesitate to get in touch.

Sincerely,
John Bain

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