

# COMMITTEE OF ADJUSTMENT

## MINOR VARIANCE REPORT

STATUTORY AUTHORITY: Section 45 of the Planning Act, 1990

APPLICATION: CAV A/157/2024

RELATED FILE: N/A

### DATE OF MEETING:

By videoconference and live-streaming video on the Town of Oakville's Live Stream webpage at [oakville.ca](http://oakville.ca) on November 13, 2024 at 7 p.m.

<u>Owner (s)</u>	<u>Agent</u>	<u>Location of Land</u>
O. ALUKO T. TEJUOSO	Ross Defina Ross Defina Consulting 9 Wolfe Crt Vaughan ON, CANADA L4J 6T9	PLAN 805 LOT 15 1238 Donlea Cres Town of Oakville

**OFFICIAL PLAN DESIGNATION: Low Density Residential – Special Policy Area**

**ZONING: RL1-0**

**WARD: 3**

**DISTRICT: East**

### APPLICATION:

Under Section 45(1) of the *Planning Act*, the applicant is requesting the Committee of Adjustment to authorize a minor variance to permit the construction of a two storey detached dwelling on the subject property proposing the following variances to Zoning By-law 2014-014:

No.	Current	Proposed
1	<i>Section 5.8.6 c)</i> For lots located within the Residential Low (RL1) Zone the maximum total floor area for a private garage shall be 56.0 square metres.	To increase the maximum total floor area for the private garage to 60.84 square metres.
2	<i>Table 6.3.1 (Row 6, Column RL1)</i> The minimum rear yard shall be 10.50 m.	To reduce the minimum rear yard to 9.70 m.
3	<i>Table 6.4.1</i> The maximum residential floor area ratio for a detached dwelling on a lot with a lot area 1301.00 m <sup>2</sup> or greater shall be 29%.	To increase the maximum residential floor area ratio to 32.60%.
4	<i>Section 6.4.3 (a)</i> The minimum front yard on all lots shall be the yard legally existing on the effective date of this By-law less 1.0 metre. In this instance, the minimum front yard shall be 11.21 metres.	To reduce the minimum front yard to 7.60 metres.

## CIRCULATED DEPARTMENTS AND AGENCIES COMMENTS RECEIVED

### Planning Services:

**(Note:** Planning Services includes a consolidated comment from the relevant district teams including, Current, Long Range and Heritage Planning, Urban Design and Development Engineering)

The applicant proposes to demolish the existing one-storey dwelling and construct a new two-storey dwelling subject to the variances listed above.

### Site Area and Context

The subject lands are irregularly shaped as they are located near the bend of a crescent within a neighbourhood that consists of one- and two-storey dwellings with many of the original homes on the street having been replaced with newer dwellings.



*Aerial Photo – 1238 Donlea Crescent*

The following images are of adjacent dwellings and recently constructed dwellings along Wood Place.



*Dwelling under construction at 1230 Donlea Crescent and rendering in accordance with Zoning By-law (no minor variance)*





*Adjacent lands to the west – 1234 Donlea Crescent*



*1237 Donlea Crescent*



*Adjacent lands to the east – 1242 Donlea Crescent*



*1252 & 1246 Donlea Crescent*

The existing dwelling and proposed dwelling for the subject lands may be viewed in the images below.



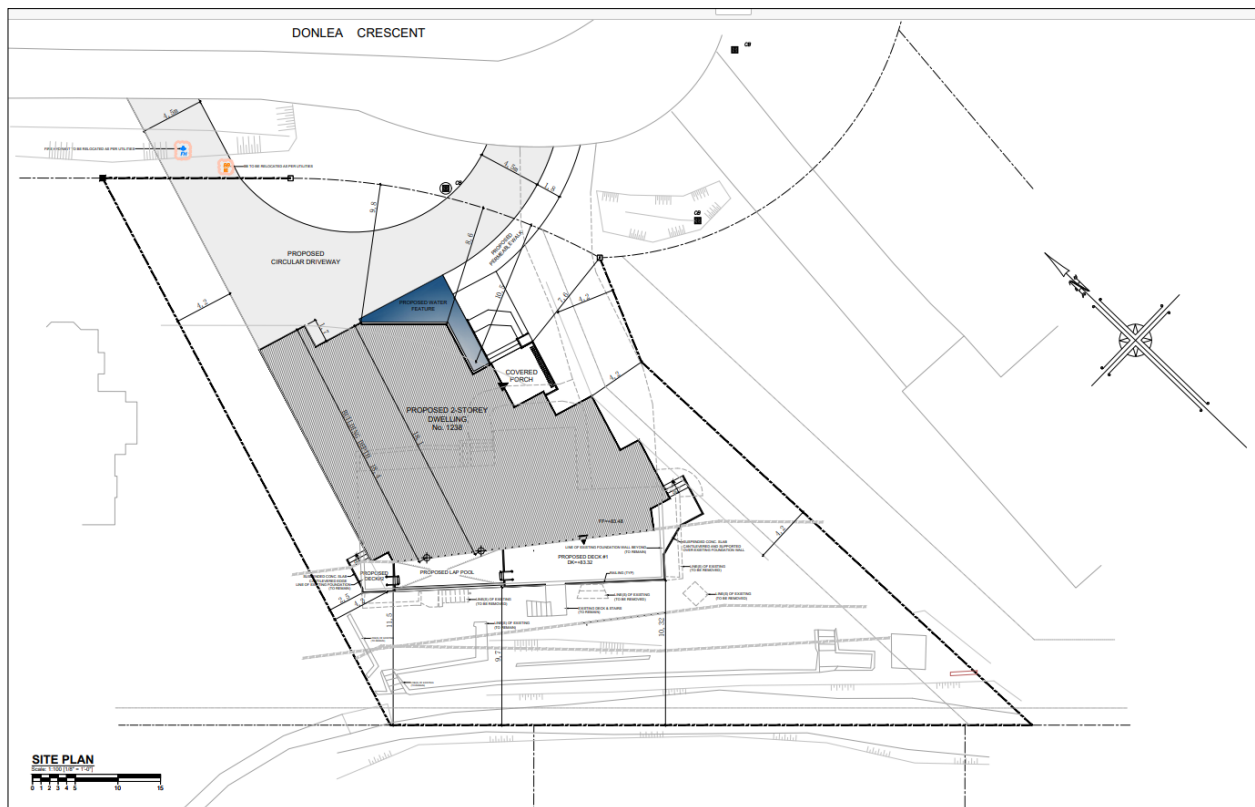


*Existing Dwelling – 1238 Donlea Crescent*



*Excerpt of Proposed Front (North) Elevation – 1238 Donlea Crescent*

Being located at the curve of a crescent, the subject lands are irregularly shaped, and the proposed site plan is shown below:



*Excerpt of Proposed Site Plan –1238 Donlea Crescent*

Section 45 of the *Planning Act* provides the Committee of Adjustment with the authority to authorize minor variances from provisions of the Zoning By-law provided the requirements set out under 45(1) in the *Planning Act* are met. Staff comments concerning the application of the four tests to this minor variance request are as follows:

**Does the proposal maintain the general intent and purpose of the Official Plan?**

The subject property is designated Low Density Residential in the Official Plan. Development within stable residential communities shall be evaluated against the criteria in Section 11.1.9 to ensure new development will maintain and protect the existing neighbourhood character. The proposal was evaluated against the criteria established under 11.1.9, and the following criteria apply:

Policies 11.1.9 a), b), c), and h) state:

- a) *The built form of development, including scale, height, massing, architectural character and materials, is to be compatible with the surrounding neighbourhood.*
- b) *Development should be compatible with the setbacks, orientation and separation distances within the surrounding neighbourhood.*
- c) *Where a development represents a transition between different land use designations or housing forms, a gradation in building height shall be used to achieve a transition in height from adjacent development.*
- h) *Impacts on the adjacent properties shall be minimized in relation to grading, drainage, location of service areas, access and circulation, privacy, and microclimatic conditions such as shadowing.”*

Section 6.1.2 c) of Livable Oakville provides that the urban design policies of Livable Oakville will be implemented through design documents, such as the Design Guidelines for Stable Residential Communities, and the Zoning By-law. The variances have been evaluated against the Design Guidelines for Stable Residential Communities, which are used to direct the design of the new development to ensure the maintenance and protection of the existing

neighbourhood character in accordance with Section 11.1.9 of Livable Oakville. Staff are of the opinion that the proposal does not implement the Design Guidelines for Stable Residential Communities, in particular, the following sections:

**3.2.1 Massing:** *New development, which is larger in overall massing than adjacent dwellings, should be designed to reduce the building massing through the thoughtful composition of smaller elements and forms that visually reflect the scale and character of the dwellings in the surrounding area.*

**3.2.2. Heights:** *New development should make every effort to incorporate a transition in building height when the proposed development is more than a storey higher than the adjacent dwelling by: ...stepping down the proposed dwelling height towards the adjacent shorter dwellings*

**3.2.3 Setbacks:** *New development should be oriented and positioned on the lot to be compatible with the existing pattern of dwelling placement, in terms of front, side, flankage and rear yard setbacks. New development should maintain the setback or average of setbacks from the street frontage as the existing dwellings in the immediate area.*

**Section 3.2.4 Primary Façade:** *New development is discouraged to project significant built form and elements toward the street which may create an overpowering effect on the streetscape.*

**Section 3.2.6 Garages and accessory structures:** *New development with an attached garage on the front façade should position the garage flush with or recessed behind the front façade of the dwelling.*

While the proposed dwelling incorporates design elements that incorporate step backs of various portions of the building, it does not maintain or preserve the scale and character of the surrounding neighbourhood, nor does the proposal sufficiently mitigate the impact of the massing and scale on abutting properties. The garage is not recessed behind the front façade of the dwelling design elements emphasize the attached garage, creating an overpowering effect on the streetscape. On the foregoing basis it is staff's opinion that the requested variances are not in keeping with the Official Plan.

### **Does the proposal maintain the general intent and purpose of the Zoning By-law?**

The applicant is seeking relief from Zoning By-law 2014-014, as amended, as follows:

#### **Variance #1 – Garage Floor Area (Objection) – 56m<sup>2</sup> increased to 60.84m<sup>2</sup>**

The intent of regulating garage floor area is to ensure that the garage is not a visually dominant feature of the dwelling. The proposed garage appears to project from the main wall and the architectural enhancements give the appearance of a larger garage from the public realm. Therefore, staff are of the opinion that the requested variance does not maintain the general intent and purpose of the Zoning By-law.

#### **Variance #2 – Rear Yard (Objection) – 10.5m reduced to 9.7m**

The intent of regulating the rear yard setback is to ensure adequate rear yard amenity space and to reduce potential overlook and privacy impacts. The proposed dwelling maintains the rear yard setback of the existing dwelling for the basement, as well as raised decks and lap pool. However, the existing rear yard setback encroaches into the 6m setback from the floodplain and stable top of bank associated with Morrison Creek, which is regulated by Conservation Halton (CH). In addition to potential impacts regarding slope stability with a larger dwelling, staff are concerned about the potential overlook and privacy impacts on the adjacent rear yard. On this basis, staff are of the opinion that the requested variance does not maintain the general intent and purpose of the Zoning By-law.

**Variance #3 – Residential Floor Area (Objection) – 29% increased to 32.6%**

The intent of regulating residential floor area is to prevent a dwelling from having a mass and scale that appears larger than the dwellings in the surrounding neighbourhood. The applicant is proposing an approximate increase in residential floor area of 51 m<sup>2</sup> (549 sq ft), representing a significant increase from what is existing within the neighbourhood context. There is an open-to-below above the front entrance, which has the potential of further increasing the floor area of the second storey beyond the current plans. Therefore, staff are of the opinion that the requested variance does not maintain the general intent and purpose of the Zoning By-law.

**Variance #4 – Minimum Front Yard (Objection) – 11.21m reduced to 7.6m**

The intent of regulating the front yard setback is to ensure a relatively uniform setback along the street. The proposed reduction in front yard setback is due to the corner of the covered porch, which is the portion of house closest to the street. Staff recognize other portions of the proposed dwelling are aligned with the angle of the street. However, significant two-storey massing being projected towards the street creates an overpowering effect on the streetscape and resulting in a dwelling that is not compatible with the surrounding neighbourhood. As such, staff are of the opinion that proposed minimum front yard setback does not meet the general intent and purpose of the Zoning By-law.

**Is the proposal minor in nature or desirable for the appropriate development of the subject lands?**

It is staff's opinion that the cumulative impacts of the requested variances result in a proposed dwelling that represents an overbuild of the site and is not in keeping with the surrounding neighbourhood. The requested variances are not minor in nature or appropriate for the development of the lands. The variances would facilitate a development that does not maintain the character of the existing neighbourhood.

It is noted that the lot encroaches into the meander belt and floodplain of Morrison Creek. Therefore, the rear portion of the lot is regulated by Conservation Halton and the proposed development will require both a permit from Conservation Halton and the approval of a 'minor site plan' application.

In consultation with Development Engineering staff, it is noted that the existing driveway and proposed circular driveway cross a Town sewer that should be subject to an easement. On that basis, redeveloping that portion of the existing driveway is not supportable. Additionally, Forestry staff advised that they would not support the proposed circular driveway if it would result in the removal of multiple healthy trees. Therefore, Planning staff recommend the proposal of a new driveway that is designed to avoid the existing underground storm sewer and minimizes the removal of healthy trees.





*Right-of-way in front 1238 Donlea Crescent*

**Recommendation:**

Given the foregoing, it is staff's opinion that the application does not maintain the general intent and purpose of the Official Plan, Zoning By-law, is not minor in nature, and is not desirable for the appropriate development of the subject lands. Accordingly, the application does not meet the four tests under the *Planning Act* and staff recommends that the application be denied.

**Bell Canada:** No comments received.

**Fire:** No concerns for fire. Passed

**Finance:** No comments received.

**Halton Conservation:**

November 7, 2024

Town of Oakville – Committee of Adjustment  
1225 Trafalgar Road  
Oakville, ON L6H 0H3

**BY E-MAIL ONLY ([coarequests@oakville.ca](mailto:coarequests@oakville.ca))**

To Committee of Adjustment:

**Re: Minor Variance Application**  
**File Number(s): [CAV A/157/2024 – 1st Submission]**  
**CH File Number(s): PMVG-2686**  
**1238 Donlea Cres, Town of Oakville**  
**Applicant: Ross Defina Owner: Olalekan Aluko**

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Conservation Halton (CH) staff has reviewed the above-noted application as per our regulatory responsibilities under the *Conservation Authorities Act* (CA Act) and Ontario Regulation 41/24 and our provincially delegated responsibilities under Ontario Regulation 686/21 (e.g., acting on behalf of the province to ensure decisions under the *Planning Act* are consistent with the natural

hazards policies of the Provincial Planning Statement [PPS, Sections 5.1.1-5.2.8] and/or provincial plans).

Documents reviewed as part of this submission, received on October 25, are listed in **Appendix A**.

### **Proposal**

Construction of a two-storey detached dwelling on the subject property.

Variances Sought:

- To increase the maximum total floor area for the private garage to 60.84 square metres.
- To reduce the minimum rear yard to 9.70 m.
- To increase the maximum residential floor area ratio to 32.60%.
- To reduce the minimum front yard to 7.60 metres.

### **Background**

CH staff have previously reviewed a geotechnical report and topographic survey associated with this property to delineate the flooding and erosion hazards associated with this property. CH provided technical comments on May 26, 2023 and stated that we agreed with the hazards as indicated on the survey and report.

### **Conservation Authorities Act and Ontario Regulation 41/24**

Under Part VI of the CA Act and Ontario Regulation 41/24, CH regulates all watercourses, valleylands, wetlands, Lake Ontario Shoreline and hazardous lands as well as lands adjacent to these features. The subject property is regulated by CH as it traversed by Lower Morrison Creek watershed, and it contains the flooding and erosion hazards. CH regulates 15 meters from the limit of the greatest associated with that watercourse.

Permits are required from CH prior to undertaking development activities within CH's regulated area and applications for development are reviewed under the *Conservation Authorities Act* (CA Act), Ontario Regulation 41/24, and CH's Board-approved policies and requirements (<https://conservationhalton.ca/policies-and-guidelines>).

Based on the site plan and topographic survey provided by the applicant (and the geotechnical report reviewed previously), the proposed development is located within the regulatory allowance of flood plain and erosion hazards (Long Term Stable Top of Bank (LTSTB)).

Conservation Halton has reviewed the application and confirm that the proposed new dwelling, deck, and pool do not encroach beyond the footprint of the previous house's rear side.

Additionally, the proposed dwelling maintains a setback of 6 meters from the greater of the floodplain or LTSTB, and is in compliance with Conservation Halton policies 2.27 and 2.28.

Should the Minor Variances be approved, the applicant will need to obtain a permit from CH prior to commencing development.

We also advise that given the extent of the natural hazards to the rear of the property, development is maxed-out in the rear portion of the property in terms of CH policies.

### **Provincial Policy Statement (PPS)**

The proposed development is consistent with Policy 5.2 of the Provincial Policy Statement (PPS), which emphasizes minimizing the risk to public safety and property from natural hazards. By adhering to setback requirements and avoiding encroachment into hazard-prone areas, the development aligns with provincial objectives for floodplain management and erosion control, ensuring sustainable land use while reducing potential impacts on the surrounding environment.

## **Recommendation**

CH has no objection to the approval of the variances for the subject property. Permits are required from CH prior to undertaking any development activities within CH's regulated area and applications for development are reviewed under the *Conservation Authorities Act (CA Act)*, Ontario Regulation 41/24, and CH's Board-approved policies and requirements.

**Please note that CH has not circulated these comments to the applicant, and we trust that you will provide them as part of your report.**

### **Appendix A – Documents Reviewed**

- **Site Plan**, prepared by LaCabin Developments, dated October 7, 2024
- **Survey**, prepared by Cunningham McConnell Ltd, dated May 15, 2023

### **Halton Region:**

- Due to recent Provincial legislation, as of July 1, 2024, the Region will no longer be responsible for the Regional Official Plan – as this will become the responsibility of Halton's four local municipalities. As a result of this change, a Memorandum of Understanding (MOU) between the Halton municipalities and Conservation Authorities is being prepared that identifies the local municipality as the primary authority on matters of land use planning and development. The MOU also defines a continued of interests for the Region and the Conservation Authorities in these matters. Going forward, comments offered through minor variance applications will be reflective of this changing role.
- Regional staff note that there is a Regional easement on the Subject Property. Buildings, structures, landscaping and other encumbrances are not to be constructed or placed on existing or proposed Regional easements. Regional easement rights must be maintained at all times and not be infringed upon. We note in this instance that the proposed structure does not interfere with the existing easement.
- Regional staff has no objection to the proposed minor variance application seeking relief under Section 45(1) of the Planning Act in order to permit an increase to the maximum total floor area for the private garage to 60.84 square metres, a decrease to the minimum rear yard to 9.70m, an increase to the maximum residential floor area ratio to 32.60% and a decrease to the minimum front yard to 7.60m, under the requirements of the Town of Oakville Zoning By-law for the purpose of constructing a two-storey residential dwelling on the Subject Property.
- **RNHS**  
Given the location of the proposed works in relation to the Regional Natural Heritage System (RNHS), the proposed development would trigger the Environmental Impact Assessment (EIA) requirements in accordance with Sections 118 (3) & (3.1)c) of the ROP. Staff would consider it appropriate to waive the Region's EIA requirements in this instance as the proposed development will not likely result in any impacts on the features or ecological functions of the Regional Natural Heritage System.
- **General ROP Policy**  
The Region's Official Plan provides goals, objectives and policies to direct physical development and change in Halton. All proposed Minor Variances are located on lands that are designated as 'Urban Area' in the 2009 Halton Region Official Plan (ROP). The policies of Urban Area designation support a range of uses and the development of vibrant and healthy mixed-use communities which afford maximum choices for residence, work and leisure. The Urban Area policies state that the range of permitted uses and the creation of new lots in the Urban Area will be per Local Official Plans and Zoning-By-laws. All development, however, will be subject to the policies of the ROP.



**Metrolinx:**

Thank you for circulating Metrolinx the November 13, 2024, Committee of Adjustments Agenda for Oakville. Please be advised there are no applicable Metrolinx comments for the applications/properties in this agenda as all properties were outside our designated review zones.

**Oakville Hydro:**

We do not have any comments to add for this group of minor variance applications.

**Transit:** No comments received.

**Union Gas:** No comments received.

**Letter(s) in support – None**

**Letter(s) in opposition – One (1)**

*J. Ulcar*

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Jennifer Ulcar  
Secretary-Treasurer  
Committee of Adjustment

**Attachments –  
Letter of Objection (1)**

**Daniel & Kathleen Ferguson  
[REDACTED] Donlea Crescent  
Oakville, Ontario  
L6J 1V8**

November 6, 2024

Ms Jennifer Ulcar  
Secretary-Treasurer of the Committee of Adjustment  
Town of Oakville  
1225 Trafalgar Road  
Oakville, Ontario  
L6H 0H3

Dear Ms Ulcar,

**Re: Committee of Adjustment (COA) November 13, 2024 Hearing  
File # CAV A/157/2024**

We are writing with regards to your referenced letter dated October 29, 2024 sub reference 1238 Donlea Crescent Plan 805 Lot 15. Our house is located across the street from the subject property. We bought our first Oakville home in 1983 and purchased [REDACTED] Donlea Crescent in 2014.

For the sake of good order, we confirm that we have not been contacted in any way by the subject property's applicants/owners nor their representatives or agents with respect to this matter. We also confirm that we have viewed the details of this minor variance application as tabled on the Agendas & Meetings section of the Town of Oakville's web site.

We do not believe that the sub referenced minor variance application should be approved as currently submitted due to the cumulative impact of the four requested variances not proving to be minor on either a quantitative or qualitative basis. We confirm that we have not previously objected to any of the previous Donlea Crescent redevelopments.

Quantitatively, variance # 1 amounts to a 4.84% overage with respect to the governing zoning by-law while variance # 2 amounts to a 7.62% shortfall and variance # 3 amounts to a 12.41% overage with respect to the governing zoning by-laws.

Most significantly, variance # 4 amounts to a 32.20% shortfall applicable to the required size of the lot's front yard with the shortfall recorded as 3.61 metres as defined in the zoning by-law and 4.61 metres in point of fact.

The cumulative effect of the proposed overages and shortfalls is clearly not a minor matter as can be deduced from the submitted new build drawings whereby it is proposed to construct a house which is almost completely contrary to the esthetic principles exhibited by the existing properties situated everywhere else on Donlea Crescent.

There are a total of 16 houses located on Donlea Crescent of which 9 are within the sixty metres minor variance request referral area. Starting approximately fifteen years ago, a number of Donlea Crescent's original houses have been redeveloped and as of today 9 of the street's houses are newer homes (including 1 currently under construction) while the other 7 are much older. Using recent history as a guide, the older homes will probably be themselves redeveloped over the next twenty years.

Despite the significant redevelopment that has taken place, the size of the lots and particularly the front yard minimum requirements have allowed Donlea Crescent to continue to be a beautiful and welcoming street which many neighborhood residents include on their daily or weekend ambles despite the absence of sidewalks and curbs and the front yard municipal ditches that handle property water run-off.

We believe that the current positive street environment reflects well on the Donlea Crescent homeowners as well as their builders, architects and Town of Oakville staff who have co-operated amongst themselves to construct new houses which respect the history and style of the street including maintaining large front yards thereby ensuring that the older houses are not disrespected as to size and appearance. In addition, the house styles, building materials and colours prevalent in the newer homes have melded well with those evident in the older houses.

In our opinion the proposed new build at 1238 Donlea Crescent does not respect the existing houses on the street and would have a major negative effect upon same particularly in light of the materially reduced front yard which would result in the house having a place of prominence on the street despite its radically different appearance. We also note that while not part of the minor variance application, the new build plans indicate that the mature trees which presently dominate the front yard of the current 1238 house would not survive the redevelopment given the proposed new location of the residence's garage.

Thank you for your solicitation of our input and we look forward to the COA's consideration of the matter. In case of need, we can be reached @ [REDACTED] or via e mail at [REDACTED]

Kind Regards,

Daniel Ferguson

Kathleen Ferguson