

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: MAY 15, 2017

FROM: Legal Department

DATE: April 26, 2017

SUBJECT: OMB Appeal CAV A/067/2017 - 309 Church Street

LOCATION: OMB Appeal CAV A/067/2017
309 Church Street

WARD: 3

Page 1

RECOMMENDATION:

1. That the appeal to the Ontario Municipal Board of Committee of Adjustment Decision CAV A/067/2017, 309 Church Street, be:

(i) confirmed;

OR

(ii) withdrawn.

2. That if Council confirms the Appeal, then the Town Solicitor or his designate be authorized to pursue this appeal of COA Decision CAV A/067/2017 in accordance with the position set out in Appendix C attached to the report dated April 26, 2017, from the Legal department.
3. That if pursuant to clause 1 above this appeal is continued, then in consultation with the Director of Planning or his designate the Town Solicitor or his designate be authorized to negotiate a proposed settlement of the Appeal either before or at the Board Hearing in a manner that addresses the issues and concerns identified in Appendix C attached to the report dated April 26, 2017, from the Legal department.

KEY FACTS:

The following are key points for consideration with respect to this Report:

- The owner of 309 Church Street, Oakville, wishes to construct a fourth storey addition with a rooftop terrace directly above the existing third storey. The site is in the Central Business District (CBD) Zone. It would have a setback from

From: Legal Department
Date: April 26, 2017
Subject: OMB Appeal CAV A/067/2017 - 309 Church Street

the edge of the roof of 0.0 metres.

- While Zoning By-law 2014-014 permits rooftop terraces in a number of Zones, rooftop terraces are not permitted in the CBD Zone.
- The owner applied to the Committee of Adjustment to permit a rooftop terrace and to permit a rooftop terrace with a 0.0 m setback instead of 2.0 m.
- Planning Staff advised the Committee against granting the variances, as in Planning Staff's opinion they did not satisfy all of the 4 Minor Variance Tests, as the Zoning By-Law only permits Rooftop Terraces in the RH, MU, C2, C3 and E1 zones and not in the CBD Zone.
- A study is intended to be done by Planning in 2017 as to whether rooftop terraces should be allowed in any other Zones under the Zoning By-law, including the CBD Zone, and Planning believes that until that study is complete and the results implemented, Rooftop Terraces should not be approved in any Zones not permitting them, such as in the case at hand. In addition, the study would identify the appropriate performance standards should rooftop terraces be recommended to be permitted in additional zones.

BACKGROUND:

The owner of 309 Church Street Road, Oakville, being The Purple House Inc., owner since 1998, wants to construct a fourth storey addition to the existing building at the subject site and to add a Rooftop Terrace to that proposed addition.

An unrelated appeal of the Zoning By-law 2014 – 014 led to a request by the Town to the OMB for the inclusion of the "rooftop terraces" use and performance standards to be included in the new Zoning – By-law 2014 – 014 in certain zones but not the CBD zone. That request resulted in the OMB permitting the use in the Zones suggested by the Town (RH, MU, C2, C3 and E1) with a minimum setback performance standard of 2.0 m.

In this case, the Planning Staff recommended against C of A Approval on the basis that this property is in the CBD zone where rooftop terraces are not permitted, as any such approval would not be in keeping with the general intent and purpose of the Zoning By-Law. See Planning Staff memorandum in Appendix C. Notwithstanding Town Staff advice, the Committee approved the variance requests. The Approval Decision of the Committee is attached as Appendix B to this Report. The location map for the particular lands concerned is attached as Appendix A to this Report.

From: Legal Department
Date: April 26, 2017
Subject: OMB Appeal CAV A/067/2017 - 309 Church Street

COMMENT/OPTIONS:

Planning staff's advice and reasoning to the Committee of Adjustment as to why the Application should not be approved is shown in Appendix C. If the Council decision is to confirm the appeal, staff recommend that Council instruct the Town Solicitor or his designate to take a position at the Hearing based on the advice in Appendix C.

The third recommendation is to allow some flexibility to the Town Solicitor or his designate and the Director of Planning or his designate before or at the hearing to negotiate a settlement with the Applicants provided that any proposed settlement is in keeping with the Planning advice in Appendix C.

Accordingly, the options for Council are to confirm the appeal and pursue the dismissal of the Variance Request as not being in keeping with the general intent and purpose of the Zoning By-law, or withdraw the appeal considering the circumstances of this particular case.

CONSIDERATIONS:**Legal Advice**

In considering whether to confirm or withdraw the appeal, Legal Staff have prepared for your consideration a "Legal Memorandum" attached as Confidential Appendix "D" to the report.

CONSIDERATIONS:**(A) PUBLIC**

This matter may be considered in public, but staff recommend that any questions or discussion be in the absence of the public under Section 239(2) of the *Municipal Act* where such questions or discussion deal with:

- Litigation or potential litigation
- Solicitor and client privilege

(B) FINANCIAL

Staff time in preparing the appeal and this report. The additional cost to the Town would be further cost in the Legal and Planning Departments in processing the Appeal to the OMB.

From: Legal Department
Date: April 26, 2017
Subject: OMB Appeal CAV A/067/2017 - 309 Church Street

(C) IMPACT ON OTHER DEPARTMENTS & USERS

The Commissioner Community Development has reviewed this report.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be accountable in everything we do

(E) COMMUNITY SUSTAINABILITY

The issue impacts the pillar of economic sustainability through the appropriate use of internal and external resources.

APPENDICES:

Appendix A – Location Map

Appendix B – Decision of the Committee of Adjustment CAV A/067/2017

Appendix C – Planning Staff Report to the Committee

Confidential Appendix D – Confidential Legal Services memorandum to the Committee (*See confidential agenda.*)

Prepared by:

Dennis Perlin
Assistant Town Solicitor

Submitted by:

Doug Carr
Town Solicitor