



City of
Peterborough

TO: Members of the Planning Committee

FROM: Ken Hetherington, Manager, Planning Division

MEETING DATE: August 27, 2012

SUBJECT: Report PLPD12-037A
834 Water Street

PURPOSE

A report to provide additional information to Planning Committee related to the adequacy of the accessory building to support a dwelling unit at 834 Water Street and related to the encroachment of the buildings on to the property known as 840 Water Street.

RECOMMENDATIONS

That Council approve the recommendations outlined in Report PLPD12-037A dated August 27, 2012, of the Manager, Planning Division, as follows:

- a) That Report PLPD12-037A be received for information.
- b) That Section 3.9 Exception 272 be added to the City's Comprehensive Zoning By-Law #97-123, in accordance with the draft amendment, attached as Exhibit 'C' to Report PLPD12-037 (Attached as Exhibit 'A' to Report PLPD12-037A).
- c) That the zoning of the subject property, be amended from the R.1, R.2 – Residential District to the R.3 – 272 - 'H' – Residential District in accordance with the draft amendment attached as Exhibit 'C' to Report PLPD12-037 (Attached as Exhibit 'A' to Report PLPD12-037A).
- d) That the 'H' Holding Symbol be removed from the property subject to the following:

- i. Site Plan Approval is granted;
- ii. Cash in Lieu of Parkland is provided for the fourth unit;
- iii. Obtain a Building Permit for Residential Occupancy for Unit C as identified on the Concept Sketch prepared by Beninger Surveying Ltd., Mar. 19, 2012;
- iv. Obtain approval and final inspection from the Electrical Safety Authority for Unit C as identified on the Concept Sketch prepared by Beninger Surveying Ltd., Mar. 19, 2012; and
- v. Payment of all applicable Development Charges for the fourth unit.

BUDGET AND FINANCIAL IMPLICATIONS

There are no direct budget or financial implications arising from the receipt of this Report PLPD12-037A.

BACKGROUND

The Planning Committee of the City of Peterborough held a Public Meeting related to an application to amend the Zoning By-Law for the property known as 834 Water Street on July 16, 2012. The application proposes to modify the zoning of the property at 834 Water Street to recognize the existing use of the property for a total of four dwelling units as a permitted use. The Committee has heard from several area residents regarding the proposal. Consideration of the application has been deferred until such time as further information is provided regarding the ability of the accessory building to support a residential unit and how the owner may address the encroachment of the building onto the abutting lands to the north.

Planning Staff have discussed the matter of compliance with the Ontario Building Code and Fire Safety Authority with Building Division Staff and have sought advice from the City's Solicitor regarding the encroachment issues raised at the Public Meeting.

Building Issues:

A Building Permit was issued by the City of Peterborough for an accessory building (20' by 40' detached garage) in 2006. A Site Plan, prepared by D.M. Wills, dated July 18, 2006 was submitted in support of the Building Permit application and illustrated compliance with the minimum setback requirement for an accessory building of 0.76m (2.5 ft.) from the northerly property line (side lot line). As verified by the recent sketch

prepared by Beninger Surveying Ltd. (dated March 19, 2012), the accessory building is non-compliant with the 2006 Building Permit submission, and the City's Zoning By-Law. The Sketch submitted with the current Rezoning application illustrates that the eave of the accessory building encroaches onto the neighbouring property to the north.

Some time since 2006, the previous owner of the property converted the accessory building to a dwelling unit. Although the use commenced with the former owner, continuation of an illegal use is the responsibility of the current owner. The subject application to rezone the property, seeks to legalize the non-compliant use of the accessory building and permit a 0m setback from the northerly side lot line.

The change in use from an accessory structure to a dwelling unit has, in conjunction with the already non-compliant setback from the property line, created a potentially unsafe building condition. The recommended condition of approval to ensure compliance with the Ontario Building Code will ensure that the building is constructed with the spatial separation requirements of the Ontario Building Code for a dwelling unit. If the owner is unable to reach an agreement with the neighbouring landowner regarding the encroachment of the building constructed in 2006, the building will require modification, which would include proper fire separation among other changes, in accordance with drawings prepared by a provincially qualified designer, including as built drawings and drawings for the revisions.

The 2006 building is serviced from the main building on the westerly portion of the property. The sanitary service is provided via a sewage ejection pump that ties into the sanitary service of the main building, as part of the 2006 building permit application. Water supply is also provided through the main building. It is anticipated that this servicing is adequate for a residential unit, however, the recommendations to obtain Building Permit and approval and final inspection from the Electrical Safety Authority for Residential Occupancy, will ensure examination of all servicing aspects.

Encroachment Issues:

At the July 16th Planning Committee Meeting the applicant provided Council with a copy of a letter from her lawyer pertaining to various encroachments which references a Concept Sketch prepared by Beninger Surveying Ltd., dated March 19, 2012, attached as Exhibit 'A'. The gist of legal counsel's letter is that the encroachments of Units A, B and D have been in place since 1871 (Unit A) and 1956 (Units B, D) and therefore a prescriptive right has been established due to the undisputed longevity of the encroachments of Units A, B and D. In addition, when the previous neighbouring landowner to the north built the apartment building in 1985, these encroachments were acknowledged and any title to these lands would have been extinguished.

The encroachment of Unit C, occurring sometime since 2006 is a civil matter between the two property owners and must be settled between them. From the City's perspective we will ensure the existing building complies with both the Building and Fire Codes.

As noted above, if the applicant is unable to reach an agreement with the neighbouring landowner regarding the encroachment, then the building will require modification.

SUMMARY

Planning Staff supports the proposed rezoning as an acceptable form of intensification within the neighbourhood. The application has been considered based on its own merits and is anticipated to function well within the neighbourhood from a traffic and parking perspective. The proposal meets the criteria as is set out in the City's Official Plan related to the introduction of intensified development within low density residential areas. The 2006 building will be subject to further inspection and approval requirements by the City of Peterborough and Electrical Safety Authority to ensure compliance with requirements for Residential Occupancy. The proposed requirement for a Site Plan Agreement for the property will require the introduction of additional parking and the formalization of the parking area in the rear. In addition, a Site Plan Agreement will provide a tool for the City and the neighbourhood, to ensure continued maintenance of the property, registered on title and binding for current and future owners.

A copy of Report PLPD12-037 is attached as Exhibit 'B' to this report (PLPD12-037A). The formal Public Meeting related to the proposed application was held on July 16, 2012, at which time Planning Committee heard from neighbouring property owners as well as from the owner of the subject lands. The application was referred to allow for additional information regarding the construction of the 2006 building and the encroachment issues related to the building. The additional information is included within this report.

Submitted by,

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Attachments:

Exhibit A – Concept Sketch prepared by Beninger Surveying Ltd., dated March 19, 2012

Exhibit B – Report PLPD12-037