



**COMMITTEE OF ADJUSTMENT
FOR THE CITY OF OTTAWA**

**COMITÉ DE DÉROGATION
POUR LA VILLE D'OTTAWA**

**DECISION/DÉCISION
MINOR VARIANCE/PERMISSION
DEMANDE DE DÉROGATIONS MINEURES/PERMISSION**
(Section 45 of the *Planning Act*)
(Article 45 de la *Loi sur l'aménagement du territoire*)

File No./Dossier n°: D08-02-19/A-00259
Owner(s)/Propriétaire(s): Capital Hotel GP Inc.
Location/Emplacement: 1 Rideau Street
Ward/Quartier: 12 - Rideau-Vanier
**Legal Description/
Description officielle:** Part Lot B, Concession C (Rideau Front), Reg. Plan
5R-11600, Parts 1, 6, 15, Part of 26
Zoning/Zonage: MD F(4.5)
**Zoning By-law/
Règlement:** 2008-250

Notice was given and a Public Hearing was held on September 18, 2019, as required by the *Planning Act*.

PURPOSE OF THE APPLICATION/OBJET DE LA DEMANDE:

The Owner wants to construct a seven-storey, 147 room addition at the rear of their existing nine-storey Fairmont Château Laurier hotel building, as shown on plans filed with the Committee. The application indicates that the addition will be constructed above a proposed five level underground parking garage.

RELIEF REQUIRED/DISPENSE REQUIRE:

In order to proceed, the Owner requires the Authority of the Committee for Minor Variances from the Heritage Overlay Provisions of the Zoning By-law as follows:

- a) To permit a reduced rear yard setback of 0 metres for a retaining wall ranging in height from 0.2 metres to 1.25 metres along the rear property line (north side abutting Major's Hill Park), whereas the By-law requires that the rear yard setback complies with the underlying zone, but in no case may be less than 3.0

- b) To permit a reduced rear yard setback of 0.39 metres, for the second through seventh floors and the supporting piers, for the most westerly 16.5 metres of the north façade of the addition, in order to accommodate an articulation in the building façade, whereas the By-law requires that the rear yard setback complies with the underlying zone, but in no case may be less than 3.0 metres.

The application specifies that the underlying zone requires a rear yard setback of 0 metres. However, the Heritage Overlay Provisions require a minimum rear yard setback of 3.0 metres.

It should be noted that, for By-law purposes, the frontage on Rideau Street is deemed to be the front lot line for this property.

The application further indicates that the Property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING/AUDIENCE PUBLIQUE:

At the outset of the Hearing, the Committee noted a request for adjournment on file from Mr. M. Polowin, Solicitor and Co-counsel, with Mr. M. Denhez, Solicitor, on behalf of Heritage Ottawa. On the issue of the adjournment request, the Committee heard from Mr. Denhez who advised that a Notice of Application was filed with the Ontario Superior Court of Justice relating to the validity of the Heritage Permit issued by the City of Ottawa, and that while the Chateau Laurier Hotel undergoes that process, the minor variance application should be adjourned until a decision has been made by the Court. Mr. Denhez asserted that the Committee of Adjustment does not have jurisdiction to hear the minor variance application at this time.

Ms. E. Blanchard, Solicitor for the Owner, disagreed with the request for adjournment and argued that the Superior Court is a separate proceeding. She further explained that the application or the outcome of the Superior Court decision would not impact the jurisdiction of the Committee to hear the minor variance application or to render a Decision. She referenced Section 45 of the *Planning Act*, noting that under this section, the Committee has jurisdiction to hear the application. She stated that the Owner appreciates that it will have to accept the decision of the Superior Court in due course. However, she reaffirmed their position that the Committee does in fact have the jurisdiction to hear the application and requested that the application proceed as scheduled.

The Committee recessed to deliberate on the adjournment request. Upon reconvening, the Committee advised that the request for adjournment put forward by Heritage Ottawa was denied. The Committee then proceeded to a full hearing of the application.

The Committee heard presentations from Mr. D. Jacobs, planning consultant and Agent for the Owner, and from Ms. E. Blanchard, the Owner's Solicitor.

Also in attendance was Mr. D. James, Ms. A. Hamlin and Ms. S. Coutts from the City's Planning, Infrastructure and Economic Development Department (PIEDD).

Mr. Jacobs summarized the history of the site and outlined the events leading up to the submission of the current minor variance application before the Committee. He explained that the Owner has undergone a detailed design and review process along with an extensive public consultation process prior to obtaining the heritage permit and site plan control approval, both of which were granted in June of this year.

He advised that the proposal conforms with all other elements of the heritage overlay and with the mixed-use downtown zone. He detailed the relief being sought and demonstrated for the Committee where the variances apply on the plans for the addition. In response to questions posed by the Committee, Mr. Jacobs explained that the purpose of the retaining wall is to support the hand rail, for safety reasons, and that it plays a role with respect to drainage for water runoff. In addressing variance (b), he stated that this variance related only to an articulated, cantilevered projection at the north-west corner of the proposed addition to fulfill a condition that was set as part of their approval processes to date by the Planning Department.

Mr. D. James, of the City's PIEDD, in reiterating the comments expressed in their written submission on file, stated that the Department had no concerns with the application as they were of the opinion that reducing the proposed setback to zero metres will meet the general intent of the Zoning By-law and that the variances being requested met the *four tests* of the *Planning Act* given the open space that exists around the site.

The Committee also heard from Mr. L. Phillips, a planning consultant for Heritage Ottawa. Mr. Phillips, in referring to his submission on file, explained that the lands surrounding the Chateau Laurier are owned by the federal government and therefore, the Chateau parcel of land is landlocked. Mr. Phillips argued that, in his view, given that the Chateau Laurier property does not have frontage on a public street, that the Chateau Laurier is a non-conforming structure. On this basis, an application for minor variance cannot be made to Section 60(3) of the Zoning By-law under the provisions of Section 45(1) of the *Planning Act*. Consequently, an application should be brought forward under Section 45(2) of the *Act*, being permission to extend a non-conforming structure and use.

He added that the proposal would also need relief from the provisions of Section 59 relating to "frontage on a public street", and that given the existence of the parking garage that has since been demolished, Section 60(1) is the relevant section of the Heritage Overlay provisions that the Owner should be seeking to vary. Mr. Phillips concluded that, in his view, the present minor variance application is defective because the variances being sought are being made to the wrong provisions of the Zoning By-law and under the wrong section of the *Planning Act*, and that the application is premature and should be refused.

Ms. Blanchard addressed the Committee and submitted that the City's PIEDD had confirmed that the section of Rideau Street that the Chateau fronts on is a *public street* for the purposes of administering the Zoning By-law. She noted that while it is a road owned by the NCC, it is under the authority of the City, and that the Zoning By-law clearly contemplates scenarios like this where a federal or provincial roadway exists but it falls under the authority of the City of Ottawa and functions by means of the City, which, in turn, determines its status as a public street.

Ms. Blanchard further submitted that it is the responsibility of the applicant to determine what variances are required, and in this regard, they are satisfied that they have applied for the correct relief. She clarified that the application before the Committee is for an addition to a heritage building, correctly submitted under S. 60(3) of the Zoning By-law, and not Section 60(1) relating to the replacement of buildings, and the Committee should consider the application as such.

The Committee also heard from Mr. Denhez who stated that while it is acknowledged that Rideau Street is a public street, the land between the edge of Rideau Street and the start of the Chateau property is not public and therefore the property is landlocked. He added that the City, back in 2018, originally contemplated a variance under Section 60(1) in a report to Planning Committee, and in referring the Committee to Section 59, stated that this section of the By-law is very clear: no frontage, no development.

He concluded that the proposal, notwithstanding the fact that they are of the opinion that the application as filed is fatally flawed as it is being brought forward under Section 45 (1) of the *Act* and not 45 (2), and that it fails to identify key variances, does not comply with the *four tests* of the *Planning Act* that the Committee must consider, asserting that it will have an unacceptable adverse impact on the neighbourhood and the city and country as a whole. He stated that this project, including the request before the Committee, is taking the most iconic, provincially regulated property in the Nation's Capital and blocking key views to that property with the construction of the proposed addition. In his submission, the application should be rejected.

Mr. James confirmed that having consulted with the City's Infrastructure Services Department, that the Chateau property does have frontage on a public street (Rideau Street) as per the Zoning By-law definition, as the portion of land referred to by Mr. Phillips is maintained by the City of Ottawa and to which the City has administrative control. In this regard, the Committee requested that written confirmation from the City's Planning and Legal Services be provided to indicate that they are satisfied that the Chateau Laurier property does have frontage on a public street as per the Zoning By-law. [*Mr. James subsequently provided the Committee with this written confirmation*].

The Committee heard presentations in opposition from the following City residents:

- D. Boudria
- B. Padolsky
- S. Day
- R. Belliveau
- C. Guilbeault
- D. Jeanes
- L. Fortin
- P. Coffman
- B. Keleher-Raffoul
- J. McCann
- M. McTeer
- D. Wright
- G. Haynal
- D. Collette
- J. Thompson Mar
- L. Armstrong
- K. Bosch
- P. Collette
- D. Flemming
- C. Quinn
- E. Hossak
- L. Maitland

The concerns raised by the presenters were numerous and generally related to the design of the proposed addition and its impact to a national historic site. The view was shared that the proposal does not respect the visual qualities of a historic landmark and that it is incompatible with the character of the area. It was raised that the proposal would negatively impact the views of the Chateau Laurier, which was noted as a UNESCO World Heritage Site from Major's Hill Park, the Parliament Buildings and the Rideau Canal. It was presented that the proposed addition to the Chateau Laurier would have a negative national and international impact. Concern was also raised with respect to the impact of the trees and that the proposal does not meet the *four tests*.

In response to the concern raised with respect to the impact on the trees, Mr. Jacobs stated that a tree conservation report had been submitted and reviewed as part of the approval process. He stated that shrubbery will be replaced at a two to one ratio and that measures have been put in place to protect the trees. He added that the National Capital Commission (NCC) has been pruning the trees in order to prepare for upcoming construction.

The following known residents were also in attendance, in opposition to the proposal:

- P. Hyde
- W. P. Dolan
- F. Martin
- G. Neville
- P. Maheu
- A. Heuchan
- S. Jackson
- M. Huber
- R. Cram
- L. Forrester
- M. Doran
- B. Legowski

DECISION AND REASONS OF THE COMMITTEE:

DÉCISION ET MOTIFS DU COMITÉ:

**APPLICATION GRANTED,
IN PART
DEMANDE ACCORDÉE, EN
PARTIES**

At the outset, the Committee appreciates the participation and thorough presentations made at the Hearing by all parties involved in this process and acknowledges the numerous and detailed letters of objection filed by the residents of the City of Ottawa,

other cities and towns throughout the nation and abroad, as well as several accredited authorities on matters of heritage interest and preservation.

In considering the relief being sought in variance (a), the Committee recognizes from the evidence presented that the retaining wall is necessary to provide a curve edge to the walkway itself, the walkway being for the public benefit, that it will replace and extend an existing retaining wall, and that since it is to be supported by the underground garage, it is considered part of the building and therefore subject to the setback requirements of the Zoning By-law. The Committee further acknowledges that the purpose of the retaining wall is also for safety reasons, implementing the use of a hand rail, and to facilitate water run off.

The Committee is of the opinion that the impact of the retaining wall is mitigated by its location adjacent to the park and that it will not cause any undue adverse impacts. The Committee therefore finds that the reduced rear yard setback in this instance is technical in nature and is agreed that variance (a) is minor, that it is desirable for the appropriate development or use of the land and that the general intent of the Zoning By-law and the Official Plan is maintained. This variance is granted subject to the location and size of the proposed retaining wall being in accordance with the plans filed and Committee of Adjustment date stamped August 16, 2019, as they relate to variance (a).

In deliberating on the remainder of the application relating to the setback for the second through seventh floors and the supporting piers, for the most westerly 16.5 metres of the north façade of the addition, the Committee is mindful of the fact that the determination of "minor" is not a simple quantitative analysis as other factors including the potential impact must be considered. While cognizant of the alternative that compliance with the setback would not mitigate the view of the addition from Major's Hill Park, the Committee is of the opinion that the extent of the deviation from the performance standard contemplated here for the articulated portion of the north façade is significant and would allow for a form of development that represents an increase in density on the site in terms of its bulk and mass.

In further noting that the Official Plan establishes criteria for the assessment of a development proposal, and requires that new development be compatible, enhance and co-exist with other properties "without causing undue adverse impacts", the Committee is of the opinion that the approval of variance (b) would allow for a new build that does not respect the landscape and character of the heritage features of the historic properties that surround the site, specifically those of the Rideau Canal, Major's Hill Park and the Parliamentary Precinct, in contravention of the policies currently in place for compatible design and protection of views to these sites.

To this end, the Committee is agreed that there is a failure to demonstrate the need for the relief being requested and is further of the view that the development of the subject

property in the manner proposed with a reduction in the setback in excess of that which is required will result in the creation of negative impacts for the surrounding areas.

In sum, the Committee is not convinced nor satisfied that the general intent and purpose of the Official Plan, specifically as it relates to compatible design, compatible massing, cultural value and protection of views, is being appropriately maintained. Based on the foregoing, the Committee is agreed that approval of this variance would facilitate the development of the subject property in a manner that is not minor, not desirable for the appropriate development or use of the land, nor consistent with the principles of good land use planning. This variance is therefore refused.

NOTICE OF RIGHT TO APPEAL/AVIS DE DROIT D'APPEL:

To appeal this Decision to the Local Planning Appeal Tribunal, an Appeal Form along with a certified cheque or money order payable to the Ontario Minister of Finance must be filed with the Secretary-Treasurer of the Committee of Adjustment by **October 17, 2019**, delivered to the following address:

Secretary-Treasurer, Committee of Adjustment,
101 CentrepoinTE Drive, 4th floor, Ottawa, Ontario, K2G 5K7

The Appeal Form is available on the Tribunal's website at www.elto.gov.on.ca. The Tribunal has established a filing fee of \$300.00 per type of application with an additional filing fee of \$25.00 for each secondary application. If you have any questions about the appeal process, please contact the Committee of Adjustment office by calling 613-580-2436 or by email at cofa@ottawa.ca.

Only individuals, corporations and public bodies may appeal Decisions in respect of applications for consent to the Local Planning Appeal Tribunal. A notice of appeal may not be filed by an unincorporated association or group. However, a Notice of Appeal may be filed in the name of an individual who is a Member of the Association or group on its behalf.

NOTICE TO APPLICANT/AVIS AU RÉQUÉRANT:

If your application has been approved, it should be noted that this Decision is not to be construed as satisfying all the requirements of Hydro Ottawa or the Building Code for the issuance of a building permit.

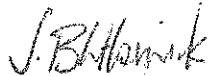
Applicants are advised to take note of comments received from City Departments and other technical agencies like Hydro Ottawa and to consult where appropriate.

DECISION SIGNATURE PAGE
PAGE DE SIGNATURE DE LA DÉCISION

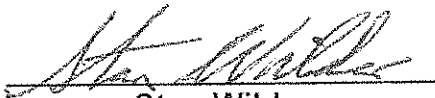
File No./Dossier n°: D08-02-19/A-00259
Owner(s)/Propriétaire(s): Capital Hotel GP Inc.
Location/Emplacement: 1 Rideau Street

We, the undersigned, concur in the decision and reasons of the Committee of Adjustment.

Nous, soussignés, souscrivons à la décision et à la justification ci-devant rendues par le Comité de dérogation.



John Blatherwick
Vice-Chair/ Vice-Président



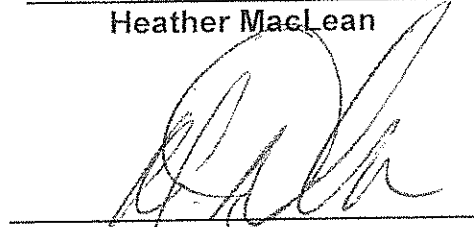
Stan Wilder



Heather MacLean



Bonnie Oakes Charron



Michael Wildman

I, Krista Libman, Secretary-Treasurer of the Committee of Adjustment for the City of Ottawa, certify that the attached is a true copy of the Decision of the Committee with respect to the application recorded.

Je, soussignée, Krista Libman, secrétaire-trésorière du Comité de dérogation pour la Ville d'Ottawa, confirme que l'énoncé ci-joint est une copie conforme de la décision rendue par le Comité à l'égard de la demande visée.

September 27, 2019

Date of Decision:
Date de la décision:



Warnia Brenning
A/ Secretary-Treasurer/
A/ Secrétaire-trésorière