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September 16, 2019

Committee of Adjustment,
101 Centrepointe Drive, 4th Floor
Ottawa, ON K2G 5K7

Attention: Ms. Warna Brenning
Secretary-Treasurer

**Re: Château Laurier, 1 Rideau Street
File No. D08-02-19/A-00259**

Dear Ms. Brenning:

Along with my co-counsel Michael Polowin of Gowling WLG, I represent Heritage Ottawa, opposing the variance application submitted by Mr. Dennis Jacobs on behalf of Larco Investments Ltd., for a proposed addition to replace a now-demolished garage at the Château Laurier Hotel.

On September 4, Mr. Polowin requested an adjournment of the scheduled September 18 Committee hearing, as the matter is before the Courts (documents now filed at Court – copy attached). On September 13, you replied that this request should be repeated at the commencement of the hearing. I shall do so.

However, as that request has not yet been granted, I now submit our substantive objections, with supporting “backgrounder” materials attached. We regret the tight timeframe, but the planning staff report on the application (dated September 13) did not become available until one business day ago.

I propose to speak to the Committee on September 18. There is also our consulting planner Mr. Lloyd Phillips. We have six objections, summarized as follows.

1. This Is the Wrong Subject-matter under the Heritage Overlay

City planning staff had earlier predicted that:

A minor variance application is required to exempt the proposal from provisions of the Heritage Overlay which state that, **where a building subject to the heritage overlay is removed or destroyed, it must be rebuilt with the same character, scale, massing, volume and floor area, and in the same location as existed prior to its removal** or destruction. In this instance, the demolition and replacement of the parking garage with an addition to the hotel triggers the need for the minor variance application.

This application does nothing of the kind. Although the City's website says “it is the responsibility of the Applicant to identify all required variances accurately on the application”, this application merely addresses setbacks for a retaining wall and a cantilever projection – but *nothing* about the other ‘general’ Heritage Overlay requirements at s. 60(1) of Zoning By-law 2008-250 mentioned above.

Indeed, the covering letter to the application quotes s. 60 – but the letter’s citation *omits* the generic requirements of s. 60(1) from the quotation. That is not only an error of law; it is unconscionable. The application is fatally incomplete.

2. This Is the Wrong Authority under the *Planning Act*

The applicant’s covering letter claims the proposal meets the “four tests” for minor variances of s. 45(1) of the *Planning Act*, whereas **“policies relating (to) building profile (and) views... are of limited relevance to rear yard variance** which is the subject of this application.” That is another error.

This is no “rear yard variance”, factually, because of its obvious foreground visibility from the Parliament Precinct, Major’s Hill Park, the Mackenzie Avenue Ceremonial Route, and the Rideau Canal.

It is also not a “rear yard”, for the legal reason that the property, being **landlocked on all four sides by NCC land, has no “frontage”** which “abuts an improved public street”. Under your governing By-law 2008-250, this property has nothing which legally qualifies as a “front” – or “side”, or “back”.

That is more than a technicality. The corollary is that the property is **legally non-conforming** – meaning that the governing provision for variances here is not s. 45(1) of the Act, but rather s. 45(2). This application was brought under the wrong section of the *Planning Act*.

It would be a breach of all principles, legal and administrative, for the Committee to authorize a **variance which was neither applied for nor granted under the right authority**.

For good measure, and as shown in the attached backgrounder materials, the application does not comply with either s. 45(1) or s. 45(2), not to mention the general criteria binding on Committees of Adjustment under s. 3 of the Act and the Provincial Policy Statement.

3. “No Development” without a Variance for Frontage

Another consequence of being landlocked is that, in order for the application to be complete, it would need to refer not only to an application for a variance from Zoning By-law s. 60(1) as explained above, but also to a variance from s. 59, which insists that properties have frontage on a street:

No person shall develop or otherwise use any lot unless that land abuts an improved public street for a distance of at least 3.0 metres.

No frontage, no development.

4. The Application Is Not Consistent with the Provincial Policy Statement (PPS)

Whether under s. 45(1) or s. 45(2), the Committee is not authorized by the Act to issue decisions unless they are “consistent” with the PPS, meaning here that the Committee cannot approve this application unless it is established:

- That the application ensures that the “château-style elements and picturesque silhouette’ are “retained”; and
- That it demonstrates that “significant views/vistas” are “retained” from the Rideau Canal, Major’s Hill Park, and the Parliamentary Precinct.

This application does none of the above. Indeed, the Committee is faced with a **total absence of evidence of same: that slate is blank**. The Committee has no ground on which to suppose compliance with the PPS. On the contrary, we attach the professional opinion of recognized experts demonstrating the application’s *non-compliance* with these binding criteria.

5. The Application Complies with neither the Letter nor Intent of the Official Plan (OP)

As outlined in the attached backgrounder analysis, the OP is not satisfied, unless it is established that the application:

- Allows heritage to “continue its contribution” to character, tourism, and the community;
- There is no adverse impact on cultural value;
- There are no adverse impacts on significant views from the Rideau Canal;
- The application has ensured compatible massing;
- The application has ensured compatible profile;
- The application has ensured compatible character; and
- The application protects views along Mackenzie Avenue.

These factors are all black-letter provisions of the OP, which the **applicant again declined to address because of their supposed “limited relevance”** to rear yard variance. Again, that slate is blank. Inversely, we attach the professional opinion of recognized experts demonstrating the application’s non-compliance with *any* of these OP criteria.

6. The Application Does Not Comply with the other Planning Act Criteria

The *Planning Act* describes other relevant factors, described in the attached background analysis. If this matter were under s. 45(1), that would lead to the following questions:

- Does the application preserve the heritage character of the original building?
- Is it desirable for planning and the public interest?
- Is the variance “small” enough to be called “minor”?
- Is the variance “unimportant” enough to be called “minor”?

Under s. 45(2), there is an equal requirement for the application to be “desirable”, for planning and the public interest. A further question is whether its impact upon surrounding uses is unacceptably “adverse”.

Again, we attach the professional opinion of recognized experts attesting to the application’s non-compliance with *any* of these prescribed questions – under *both* s. 45(1) and s. 45(2):

- It fails on the planning criteria (see professional opinion of Lloyd Phillips, planning expert);
- It fails on the architectural criteria (see professional opinion of Julia Gersovitz, architecture and heritage expert); and
- It fails on the heritage criteria (see professional opinion of Dr. Christina Cameron, heritage expert).

Unless the application meets *all* the applicable criteria, it is the duty of the Committee to dismiss the application.

We call on the Committee to do so.

Yours truly,

Marc Denhez
Law Society of Ontario #18308K

Attachment #1: Backgrounder

Attachment #2: Copy of Application to Ontario Superior Court of Justice, Court File CV19-00081410-0000