



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**212 Vesta Drive – Further Instructions Required
Respecting Minor Variance Appeal to OMB**

Date:	October 21, 2011
To:	City Council
From:	City Solicitor
Wards:	Ward 21
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions. This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report seeks further instructions respecting the City's appeal to the Ontario Municipal Board (the "OMB") of seven variances (now reduced to four variances due to the repeal of the new harmonized zoning by-law) granted by the Committee of Adjustment for the subject property on October 6, 2010 under Application No. A0795/10TEY. The City was largely successful at the first OMB hearing. However, the applicant sought and was granted a Section 43 re-hearing request by the OMB. The re-hearing is scheduled to be heard on November 16, 17 and 18, 2011.

The purpose of this report is to seek further directions from City Council with respect to the re-hearing. This is a time sensitive matter as those directions are required prior to the conclusion of City Council's meeting scheduled for October 24th and 25th, 2011.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council provide instructions to City staff by adopting the Confidential Recommendations contained in Attachment 1 to this report; and

2. City Council authorize the public release, at the end of the Council meeting, of the Confidential Recommendations and Schedule "A" in Attachment 1, if adopted by City Council.

Financial Impact

The confidential attachment to this report comments on financial impacts.

DECISION HISTORY

Under Application No. A0795/10TEY, the Committee of Adjustment, by its decision dated October 6, 2010, granted the following variances to the owner of 212 Vesta Drive:

1. **Section 6(3) Part I 1, By-law 438-86**
The gross floor area of a detached dwelling shall not exceed 0.6 times the area of the lot (290.1 sq. m.). The new dwelling will have a gross floor area equal to 0.89 times the area of the lot (429.73 sq. m.).
2. **Section 6(3) Part IV 3(II), By-law 438-86**
An integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front line is not permitted. The proposed integral garage is below grade and vehicle access to the garage is located in a wall facing the front lot line.
3. **Section 6(3) Part II 3.B(II), By-law 438-86**
The minimum side yard setback is 7.5 m from the portion of the dwelling exceeding a depth of 17 m. The rear 3 m of the dwelling, including a deck, exceeding the depth of 17 m will be located 0.66 m from the south lot line (the deck will be located 3.4 m from the south lot line) and 0.61 m from the north lot line.
4. **Section 6(3) Part II 8 D(I), By-law 438-86**
The maximum permitted height of an uncovered platform is 1.2 m above grade. In this case, the proposed deck will be 1.594 m above grade.
5. **Chapter 10.10.40.40, By-law 1156-2010**
The maximum permitted floor space index is 0.6 times the area of the lot (290.1 sq. m.). The proposed floor space index will be 1.076 times the area of the lot (520.275 sq. m.). Note: The gross floor area used to calculate floor space index includes the entire attic/third floor area and a portion of the basement (that exceeds 17 m in length), but does not include the bay windows on the ground or second floor that were approved previously.

6. **Chapter 10.20.40.20(I), By-law 1156-2010**
The maximum building length for a detached house is 17 m. The proposed building length will be 17.4 m.
7. **Chapter 10.20.40.10(1), By-law 1156-2010**
The maximum permitted height of the main wall of the dwelling is 8.0 m. The proposed main wall height will be 8.53 m.

As authorized by Motion MM52.29 adopted by City Council at its meeting held on August 25, 26 and 27, 2010, the City appealed the October 6, 2010 Committee of Adjustment decision to the Ontario Municipal Board. The owner of 212 Vesta Drive had also appealed an earlier refusal by the Committee of Adjustment (decision dated June 23, 2010 under Application No. A-0455/10TEY) with respect to a request solely for a gross floor area equal to 0.89 times the area of the lot. The appeals of both Committee of Adjustment decisions were consolidated by the OMB. The hearing was held on December 13, 14 and 15, 2010 and by its decision issued on January 14, 2011, the OMB granted the City's appeal on variances numbered 1, 2, 4, 5 and 7 above. The OMB only granted the applicant variances numbered 3 and 6 above relating to the length of the house.

On May 18, 2011 City Council repealed the new harmonized zoning By-law No. 1156-2010, thereby eliminating the need for variances numbered 5 and 7 above.

The applicant made a Section 43 Rehearing request to the OMB on a number of grounds. A Motion was argued before Ms. Seaborn, Vice Chair of the OMB, on July 21, 2011. By her decision issued August 29, 2011 she granted the applicant's request for a re-hearing. The re-hearing has been scheduled for November 16, 17 and 18, 2011.

ISSUE BACKGROUND

As a result of the re-hearing, the City Solicitor requires further directions from City Council.

COMMENTS

The OMB re-hearing has been scheduled for November 16, 17 and 18, 2011, and therefore this is a time sensitive matter for which Council direction is being requested.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

1. Attachment 1 - Confidential Information
2. Attachment 2 - Schedule "A"