CITATION: Ho v. The Corporation of the City of Ottawa and the Committee of Adjustment for the City of Ottawa, 2025 ONSC 5428
DIVISONAL COURT FILE NO.: DC-23-2823-00
DATE: 20250924

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

EDWARDS R.S.J., O'BRIEN AND BALE JJ.

BETWEEN:	
BENOIT HO Applicant	*Marc Kremerer*, Counsel for the Applicant
– and –	
THE CORPORATION OF THE CITY OF OTTAWA AND THE COMMITTEE OF ADJUSTMENT FOR THE CITY OF OTTAWA Respondent	*Garett Schromm*, Counsel for the City of Ottawa **HEARD:** At Ottawa on February 5, 2025, via videoconference

REASONS FOR DECISION

EDWARDS R.S.J.:

NATURE OF PROCEEDING:

[1] This is an application for judicial review under s. 2 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1. Benoit Ho (the "Applicant") seeks judicial review from the Committee of Adjustment for the City of Ottawa's Consent Decision and the Minor Variance Decision, both dated September 15, 2023 (collectively, "the Decisions"). Through the Decisions, the COA granted two applications by the Applicant's neighbour (the "Owner") for consent to sever its property (Consent Decision) and for authorization of the minor variances from the applicable zoning by-law (Minor Variance Decision).

[2] On this application for judicial review, the Applicant submits that the COA denied the Applicant procedural fairness and erred in law in making the Decisions and seeks the following relief:

1. An order setting aside the Decisions and declaring them to be of no force and effect; or

2. In the alternative, an order directing the applications for consent and minor variance be returned to the COA for reconsideration.

BACKGROUND:

[3] On May 15, 2025 this court released an endorsement that dismissed the Application. In its endorsement the court determined as follows: a) the Applicant did not have private interest standing; b) that the Applicant was not denied procedural fairness; and c) that the reasons of the COA were adequate. These reasons of the court now explain our determination communicated to the parties by way of the May 15 endorsement.

[4] The Applicant and the Owner are neighbours. The "Respondent" is the Corporation of the City of Ottawa and the Committee of Adjustment for the City of Ottawa ("the COA"). The Applicant owns the property immediately adjacent to the Owner's property. The Owner sought to subdivide their property into two separate parcels for the construction of a new detached dwelling and brought two applications to the COA. One application was for consent to sever the Owner's property. The other application was for authorization of minor variances from the applicable zoning by-law. The Applicant opposed these applications.

[5] On September 5, 2023, the COA held a public hearing for the applications. The COA heard oral submissions and received written submissions relating to the applications from the parties. Following the hearing, the COA reserved its decision. On September 15, 2023, the COA released two decisions granting both of the Owner's applications: the Consent Decision and the Minor Variance Decision. In both decisions, the COA set out the statutory tests that the Owner was required to meet on the applications, the evidence heard and the effect of the parties' submissions on the COA's decisions.

[6] Following the release of the Decisions, the City of Ottawa ("the City") appealed the Consent Decision to the Ontario Land Tribunal. The City sought to impose a condition for tree protection. The COA had not imposed such condition in the Consent Decision. Ultimately, the City and the Owner reached a settlement, where a condition for tree protection on the Consent Decision was agreed upon by the parties and authorized by the Ontario Land Tribunal.

COURT'S JURISDICTION:

[7] This court has jurisdiction to hear the application pursuant to ss. 2(1) and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1. The application for judicial review was brought within 30 days of the decisions being reviewed.

STANDARD OF REVIEW:

[8] On judicial review of an administrative decision, unless rebutted, the standard of review is presumed to be reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 16-17. On this application for judicial review, there is nothing to rebut this presumption.

[9] Further, on questions of procedural fairness, it is not necessary to engage in a standard of review analysis. Rather, the court must determine whether the requisite level of procedural fairness was met by applying the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

FRESH EVIDENCE APPLICATION:

[10] Before the application for judicial review was heard, the Applicant brought a motion for leave to receive further evidence. The Applicant relies on r. 61.16(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 that "a motion under clause 134(4)(b) of the *Courts of Justice Act* (motion to receive further evidence) shall be made to the panel hearing the appeal."

[11] The jurisdiction to adduce fresh evidence on a judicial review application is not found in r.61.16(2) of the *Rules* nor in s.134 (4)(b) *Courts of Justice Act* as both relate to appeals. The application before this court is not an appeal. It is an application for judicial review. In *Liu v Ontario Labour Relations Board* 2024 ONSC 1253 this court reiterated that:

> … Fresh evidence is only admissible on a judicial review application in exceptional circumstances. The proposed fresh evidence must fit into one of the narrow exceptions namely, to show a breach of natural justice that is not apparent on the record or to show a complete absence of evidence on an essential point: *Kids Kingdom Daycare Inc. v. Ontario (Min. of Education)*, 2024 ONSC 487(Div. Ct.), at para. 28, *Canadian National Railway Company v. Teamsters Canada Rail Conference*, 2019 ONSC 3644 (Div. Ct.).

[12] The Applicant seeks to adduce as fresh evidence a letter from the City of Ottawa (the "City") to the Ontario Land Tribunal (the "Tribunal") which the applicant asserts deals with a similar issue raised in this application-that being the insufficiency of the reasons of the Tribunal. The Applicant also seeks to have this court review two judicial decisions - one of which is a decision of this court that deals with procedural fairness and the other is a decision of the Federal Court that addresses the sufficiency of reasons of an immigration officer.

[13] Counsel for the Applicant argued this court should consider the fresh evidence as there would be no prejudice to the City. Prejudice is not the issue. The issue is whether the Applicant can establish this is one of those exceptional cases where the fresh evidence establishes a breach of natural justice not apparent on the record or that the fresh evidence demonstrates a complete lack of evidence on an essential point. In our view the fresh evidence does not fit within either narrow exception established by this court in *Kids Kingdom.*

[14] With respect to the Applicant's request to rely upon cases from the Divisional Court and Federal Court, caselaw is not evidence and does not require a fresh evidence application.

[15] With respect to the Applicant's request to rely upon the City's request to review an unrelated decision of the tribunal, the Applicant suggests the City's letter addresses the inadequacy of the Tribunals reasons *in that case*. This court has not been provided with any context for the letter, including the reasons at issue. The letter simply holds no probative value *in this case*.

[16] The application before this court is an application for judicial review. It is not an appeal. As this court made clear in *Liu* it is only where exceptional circumstances can be established that a motion to adduce fresh evidence may be successful. The Applicant has not met the high bar of establishing exceptional circumstances and for that reason the motion to admit the fresh evidence was dismissed.

KEY POSITIONS OF THE PARTIES:

Issue 1: Does the Applicant have standing to seek judicial review? Private and or Public Interest Standing

Applicant's Position

[17] The Applicant's factum did not address the question of whether he had standing to bring his judicial review application. In oral argument counsel for the Applicant argued that, as the Owner's immediate neighbour, he is the person most directly affected by the Decisions and as such he met the definition of someone with a private interest standing. It was also argued that the Applicant met the definition of someone who could assert public interest standing as he was dealing with matters of general importance – specifically the obligation of the COA to provide reasons and to deal with persons appearing before it with procedural fairness.

Respondent's Position

[18] The Respondent submits that the Applicant does not have standing to seek judicial review.

[19] Dealing with the suggestion of the Applicant that he is most directly affected by the Decisions, the Respondent submits that the Applicant is relying on private interest standing to bring this application for judicial review. Relying on *Kilian v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 5931, at para. 42, the Respondent submits that the Applicant must have "a personal and direct interest in the issue being litigated" to have private interest standing. To make this determination, the court must consider the statutory purpose, the subject matter of the proceeding, the person's interest in the subject and the effect that the decision might have on that interest. Here, the statutory purpose and the subject

matter of the proceeding was to consider whether it was appropriate to permit the severance of the property and grant relief from the zoning by-law.

[20] While the Respondent concedes that the application record raises concerns with respect to process and documentation, it does not substantially impact on the Applicant's property. In fact, the COA found there to be "no unacceptable adverse impact" with respect to the adjacent properties. As such it is argued that the Applicant cannot establish that he has a private interest standing to bring the application for judicial review

Analysis Private and or Public Interest Standing

[21] The provisions of the *Planning Act*, R.S.O. 1990, c P.13, provide a process that allows a property owner to obtain a minor variance that is fair and expeditious. There is no right of appeal afforded to third parties such as a neighbour like the Applicant. The parties who are afforded the right of appeal from a decision of a committee of adjustment are set forth in s. 45 (12) of the *Planning Act*. These parties include the applicant seeking a minor variance; a specified person or a public body that has an interest in the matter before the committee of adjustments. As such there can be no doubt that the Applicant before this court had no right of appeal. An application for judicial review is not an appeal. The Applicant can only pursue an application for judicial review if he can establish he has standing to do so.

[22] While the Applicant in his factum did not deal directly with whether the interest he asserts is private or public interest standing it seems relatively clear from para 28 of his factum, as well as from his oral submissions before this court, that the interest he asserts is private interest standing. The Applicant argues that he is the immediate neighbour most affected by the decisions of the COA.

[23] In *Kilian v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 5931, at paras 42 and 43, the Divisional Court set forth the relevant factors that must be considered when private interest standing is being asserted. Those factors include the:

(a) statutory purpose;

(b) subject matter of the proceeding;

(c) person's interest in the subject; and

(d) effect the decision might have on that interest.

[24] In *Kilian*, the applicants who were seeking private interest standing had concerns that their medical records would be disclosed to the investigators of the College of Physician and Surgeons ("CPSO"). The Divisional Court, despite these concerns, held that it would not be appropriate to grant private interest standing given the purpose of the regulatory regime and the subject matter of the judicial review proceeding. The Divisional Court, at paragraph 45, held:

> [45] Any finding of private interest standing of the Patients would be contrary to the statutory purpose. The College has the statutory responsibility to regulate physicians' conduct in the public interest. An important way in which it does so is through investigation of possible professional misconduct or incompetence by its members, as well as by placing interim restrictions on a member's practice where necessary to protect patients from harm.

[25] In this case, the application to the COA was to consider whether it was appropriate to permit the severance of a property and to grant relief from a zoning by-law. The Applicant asserts concerns with respect to the process and documentation before the COA but does not assert any substantial impact upon his property. The COA concluded that there was no "unacceptable adverse impact" upon the Applicant's property. In my view, the Applicant fails to establish any private interest standing.

[26] As it relates to public interest standing, this issue was addressed by the Divisional Court in *Loeb v. Toronto (City)*, 2024 ONSC 277.

[27] At para 21 of *Loeb*, Nishikawa J. held:

> [21] Different considerations apply where a party seeks public, as opposed to private, interest standing. The courts have taken a more flexible, discretionary approach to public interest standing. In exercising its discretion to grant public interest standing, the

> court must consider three factors: (i) whether there is a serious justiciable issue raised; (ii) whether the plaintiff has a real stake or genuine interest in it; and (iii) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts: *Carroll v. Toronto-Dominion Bank*, 2021 ONCA 38, at para. 34. The party seeking standing must persuade the court that a purposive and flexible application of the factors favours granting standing.

[28] It was recognized by the Divisional Court in *Loeb* that the issue of a third-party seeking judicial review of decisions of a committee of adjustment had not been previously raised or decided.

[29] At paras 25-27 of *Loeb*, Nishikawa J. held:

> [25] Assuming, without deciding, that the Applicants have shown a serious justiciable issue, they have not demonstrated the second and third factors. They do not have a real stake or genuine interest in the issues that they raise. The Applicants attempt to characterize the issue as one of public interest in the process before the Committee. The participatory rights of third parties, however, are those that are provided for in the *Planning Act* and the Committee's Rules.
>
> [26] Moreover, the very interests that the Applicants assert in the substance of the minor variance application, including their ability to enjoy their own properties, are private in nature. The Applicants were entitled to receive notice of the hearing because they were among the property owners living within 60 metres of the property. The Applicants attempt to characterize the issue before this court as engaging "public rights" because their concerns relate to the character of the neighbourhood. However, the concern articulated before the Committee related to the height of the main floor and an enclosed deck at the rear of the proposed house, suggesting that their concern was whether Ms. Yan would be able to see into their properties. In terms of private rights, as argued by the City, in a dense urban environment like the City of Toronto, no one has an absolute right to light, views, and prevention of overlook from adjacent properties.
>
> [27] In addition, an application for judicial review is not a reasonable and effective way to bring the issue before the courts. The City highlights the incongruity that would result if the Applicants are able to seek judicial review of a decision of the Committee before

> this court while parties with a greater interest, such as the COA (the minor variance applicant) and the City must first proceed with an appeal to the TLAB and may only proceed before this court with leave on a question of law In my view, it is unlikely that the legislator intended, by removing the right of third parties to appeal to the TLAB, that those parties be able to proceed directly before this court. It is worth noting that third party appeal rights concerning the adoption or amendment of official plans and zoning by-laws were maintained under the *More Homes Faster Act*.

[30] I agree entirely with the aforesaid comments of Nishikawa J. as it relates to the application before this court. What the Applicant seeks to do through his application for judicial review is, essentially come through the back door where the front door has been barred because he has no right of appeal. We do not accept that the Applicant has public interest standing anymore than he has private interest standing to assert his application for judicial review.

Issue 2: Did the COA deny the Applicant procedural fairness and err at law in making the Decisions?

Applicant's Position

[31] The Applicant submits that the COA denied the Applicant procedural fairness and erred at law in making the Decisions.

[32] The Applicant argues that the COA mischaracterized or ignored evidence and submissions that did not support the Owner's applications. It is also argued that the COA failed to properly consider the submissions before it, particularly the Applicant's submissions regarding the reliability of the information in support of the Owner's applications and all the submissions opposing the Owner's applications (i.e., the objections). Counsel for the Applicant repeatedly suggested that the COA relied on false and misleading information provided by the Owner and as such the Applicant argues these were errors of law.

[33] Counsel for the Applicant also argues that the COA did not engage in a sufficient consideration of the application of its own processes and procedures. Without evidence it was argued that the Decisions deviated from the COA's normal processes and procedures.

[34] Counsel for the Applicant argues that the COA did not engage in a sufficient consideration of the applicable provisions of the *Planning Act*. Specifically, it is argued that the COA had a duty to act fairly and as part of that duty, was required to provide sufficient reasons to support its Decisions. The reasons of the COA it is argued do not provide sufficient rationale to grant the Owner's applications under the *Planning Act*. It is argued that the reasons do not provide a fulsome and intelligible basis for the Decisions. Finally, it is argued that the reasons of the COA did not provide a sufficient explanation as to why the submissions of the Applicant had been unsuccessful.

[35] Because the Applicant is the Owner's immediate neighbour, the Applicant argues he was the person most directly affected by the Decisions and as such the Applicant had a legitimate expectation that the COA would carefully consider and report on the fullness of his submissions, both oral and written.

Respondent's Position

[36] The primary position of the Respondent is that the COA did not deny the Applicant procedural fairness. The COA extended the appropriate level of procedural fairness to the Applicant.

[37] Counsel for the Respondent relies on *Loeb*, where this court conducted a review of the *Baker* factors in determining the level of procedural fairness owed by a Committee of Adjustment upon an application for minor variances and held that only a low level of procedural fairness was owed. The Respondent submits that same level of procedural fairness should be applied in this case.

[38] As for the adequacy of the COA reasons the Respondent argues that the reasons were adequate. In making this submission counsel for the Respondent directed the court to the *Planning Act* which requires the COA to provide a "brief explanation" of the effect that the oral and written submissions had on the decision. The COA discharged this statutory duty in both Decisions by providing an explanation of the effect of oral and written submissions. The Respondent relies on *Loeb*, at para. 41, where this court affirmed that the correct approach to assess the adequacy of reasons requires the court to consider whether the reasons

1) explain the decision to the parties; 2) provide public accountability; and 3) provide effective appellate review.

[39] Counsel for the Respondent notes that in the Minor Variance Decision, the COA addressed the four tests set out in s. 45 of the *Planning Act* in concluding that granting the minor variance would not have an unacceptable adverse impact on adjacent properties. In the Consent Decision, the COA addressed the tests set out in ss. 51(24) and 53(12) of the *Planning Act* in granting consent to sever. It is therefore argued that the COA's reasons for the Decisions were adequate.

Analysis, Procedural Fairness, and Adequacy of the COA Reasons

[40] In *Loeb* at para 29, the Divisional Court noted that, "on application for judicial review, issues of procedural fairness are reviewed in this court on a correctness standard through the lens of the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817, 1999 CanLII 699."

[41] At paras 33 through 34 of *Loeb*, the Divisional Court reviewed the various factors in *Baker* with respect to the level of procedural fairness that is to be provided in a matter before a committee of adjustment where the application is for a minor variance. The court in *Loeb* concluded that a low-level of procedural fairness was required.

[42] The Applicant in this case was given notice and he was given an opportunity to make submissions both written and oral before the COA.

[43] The application before the COA was heard on September 5, 2023 in-person and by video conference. The decision of the COA was released on September 15, 2023. Prior to the public hearing, a request was made for an adjournment of a hearing that had been scheduled on February 15, 2023. The request for adjournment made by the Applicant and others was granted by the COA.

[44] The hearing which was conducted on September 5, 2023, included oral submissions from a number of parties including the Applicant who is noted in the reasons released on September

15, 2023 to have raised concerns regarding lack of consultation with neighbours, change of proposal, and the possibility of a restrictive covenant registered on title.

[45] The decision of the COA was reserved and its decision was released approximately 10 days after the hearing.

[46] Section 45 of the *Planning Act* sets for the powers of a committee of adjustment. It also provides for the timing of a hearing and notice of hearing. As required under s. 45(6), the hearing must be held in public; the committee has an obligation to hear the applicant and "every other person who desires to be heard in favour of or against the application". The committee of adjustment is then required to render a decision in writing setting out its reasons.

[47] In his oral submissions, the Applicant suggested that a normal process for a committee of adjustment is to conduct a hearing in public including any caucus discussions and that it would be unusual for a committee of adjustment not to engage with the public. The hearing in this case was heard in public. There is no obligation for a committee of adjustment to have their deliberations held in open session. The obligation on a committee of adjustment is to render a decision after the public hearing is completed. This is precisely what the COA did in this case.

[48] The decisions of a committee of adjustment are intended to be brief and are intended to address the concerns raised during a hearing whether they are in writing or oral. There is no obligation on a committee of adjustment to provide the types of reasons that one might typically find in decisions of this court. Committees of adjustment have tight timelines in which to render their decisions. Committees of adjustment also deal with a high volume of cases and cannot be expected to provide anything more than a succinct explanation as to how the decision rendered was reached.

[49] In this case, the COA explained the decision to the parties; the COA provided public accountability; and provided reasons that would allow for effective appellate review. The reasons of the COA were more than adequate.

[50] The Applicant was in all respects afforded procedural fairness. The reasons of the COA when read in the context of S 45 of the *Planning Act* more than met the statutory obligation of the COA to provide reasons for their decision.

[51] The application is dismissed with costs payable by the Applicant in the agreed upon amount of $6,000.

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M. Edwards R.S.J.

I agree _____

O'Brien J.

I agree _____

L. Bale J.

Released: September 24, 2025

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Respondent

REASONS FOR DECISION

Released: September 24, 2025