



Town of Newmarket

Agenda

Committee of Adjustment

Date: Wednesday, November 20, 2019
Time: 9:30 AM

	Pages
1. Declarations of Pecuniary Interest	
2. Items	
2.1 Minor Variance Application - D13-A21-19 DUNNETT, William and PICKLE, Jody Part Lot 48, Plan 437 134 Avenue Road	1
2.2 Minor Variance Application - D13-A22-19 1029358 ONTARIO LIMITED Part Lot 90, Concession 1, Part 2, Plan 65R-1039 300 Mulock Drive	4
2.3 Minor Variance Application - D13-A23-19 JIMSGATE INC. Part Lot 28, Plan 81 209 Main Street South	8
3. Approval of 2020 Schedule	12
4. Approval of Minutes	
5. Adjournment	


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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton
Senior Planner, Community Planning

DATE: November 8, 2019

RE: Application for Minor Variance **D13-A21-19**
134 Avenue Road
Made by: DUNNET, William James and PICKLE, Jody

1. Recommendations:

That Minor Variance Application D13-A21-19 be denied.

2. Application:

An application for minor variances has been submitted by the above-noted owners to request relief from Zoning By-law Number 2010-40 as amended in order to construct a detached garage in their rear yard in a location and at a size that are not permitted by the zoning by-law.

The above-described property (herein referred to as the “subject lands”) is located on the south side of Avenue Road in a residential neighbourhood northwest of the intersection of Sandford Street and Eagle Street. The relief as requested is as follows:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	4.1.2	Minimum rear yard setback of 7.5m	Rear yard setback of 1.83m
2		4.1.2 vi	Maximum lot coverage for an accessory building of the lesser of 10% of the lot area or 75% of the ground floor area of the main building	Lot coverage for an accessory building of 159% of the ground floor area of the main building

3. Planning considerations:

The applicant is requesting relief from the By-law in order to build a detached garage in the rear yard of their property. The garage is proposed to be closer to the rear lot line than is permitted and larger than is permitted.

In making a recommendation to the Committee, staff are required to consider the 4 tests under the *Planning Act*; staff offer the following comments:

3.1 Conformity with the general intent of the Official Plan

The subject lands are designated “Stable Residential” in the Town’s Official Plan. The objectives of the designation are to sustain and enhance the character and identity of existing residential communities

and ensure compatibility of new development with existing structures. This designation permits single detached dwellings. This test is met.

3.2 Conformity with the general intent of the Zoning By-law

The subject lands are zoned Residential Single Detached Dwelling 15m Zone (R1-D-119) by By-law Number 2010-40, as amended by By-law 2013-30.

The general intent of the zoning by-law is to limit the built form of structures in order to maintain compatibility and similarity of structures. In the case of detached garages, the zoning by-law provides that they have the same setback requirements as the main building, reflecting that garages can have a size and massing akin to a house.

The proposed garage would be 1.83m away from the rear lot line, while the zoning by-law typically requires the same minimum yard setback as for the main building, being 7.5m. The zoning by-law also includes standards for the maximum lot coverage for all accessory buildings on a lot that represents a relationship to the size of the lot and the size of the main building. The by-law allows a maximum coverage for all accessory buildings on a lot to be the lesser of 10% of the lot area or 75% of the ground floor area of the main building. That is to say, for the subject lands whose main building is 87.99 m² in ground floor area, the maximum size for a detached garage would be roughly 65 m². The proposed garage is just over 100 m².

By limiting the size the zoning by-law maintains a similar built form pattern. The by-law ensures that accessory buildings such as garages are secondary in prominence to the main building. By limiting the ability to construct a garage at the very rear of a lot, the by-law effectively maintains backyards as areas where vehicular access is strongly discouraged, as evidenced by other elements of the zoning by-law that limit the amount of a rear yard that can be used for parking and that prohibit driveways in the required rear yard, being the final 7.5m from the rear lot line. In order to access the garage with vehicles, they would need to traverse the length of the yard from the front of the lot. The intent of ensuring compatible building forms and maintaining yards to not be dominant by vehicles is not met by this application.

3.3 Desirable development of the lot

It is generally desirable to allow a property owner to invest in their property and arrange it in a manner that suits their needs, subject to the limits of the zoning by-law and impacts on neighbouring properties. This deference is balanced against the desirability of development in the public interest when permission beyond that of the zoning by-law is sought by way of a minor variance.

The requested relief would place a garage that is larger than typically permitted in a location that is proximate to the yards of the four abutting dwellings. In order to access the proposed garage vehicles would need to travel through the existing garage or across the yard surrounding the garage, which poses questions of the proportion of the rear yard that would effectively be a driveway and thus impact surrounding properties through vehicular movement. It is not clear that this test is met.

3.4 Minor nature of the variances

When considering if the variance is minor, it is not simply the numerical value nor is impact the sole test. Requested relief may not be minor even if no other property is impacted. While dissimilar from the established building and yard patterns of the surrounding area, the proposed design is a relatively small change on the overall lot and neighbourhood. This test is met.

In consideration of the above, it is staff's opinion that the proposed variances do not meet the four tests under the *Planning Act*.

4. Other comments:

4.1 Tree Protection

The Town's Tree Preservation, Protection, Replacement and Enhancement Policy requires properties that are subject to a development application to submit an arborist report, protect trees during construction, and compensate for any removed trees by replanting or paying an amount to the Town commensurate with the removed trees. While the recommendations of this report would not grant the relief requested, if Committee deems to approve this application, standard condition wording can be provided to ensure compliance with the Policy.

4.2 Heritage

No structure on the lot is designated under the *Ontario Heritage Act*.

4.3 Effect of public input

No public input was received as of the date of writing this report.

4.4 Interim Control By-law

On January 21st, 2019 Council adopted an Interim Control By-law under Section 38 of the *Planning Act*. The Interim Control By-law limits the ability to increase the floor area or height of residential dwellings throughout its study area, which includes the lands subject to this minor variance application. However, the Interim Control By-law does not regulate or prohibit the construction of accessory buildings such as detached garages.

4.5 Commenting agencies and departments

Building Services has reviewed the application and does not have any comments on the proposed variances.

Engineering Services has no objection to the application, provided that the existing drainage patterns are not altered.

The Regional Municipality of York has no comment on the application.

5. Conclusions:

The relief as requested does not conform to the four tests as required by the *Planning Act*.

Respectfully submitted,



Ted Horton
Senior Planner, Community Planning



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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton
Senior Planner, Community Planning

DATE: November 8, 2019

RE: Application for Minor Variance **D13-A22-19**
300 Mulock Drive
Made by: 1029358 ONTARIO LIMITED

1. Recommendations:

That Minor Variance Application D13-A22-19 be approved, subject to the following conditions:

1. That the variance pertains only to the request as submitted with the application;
2. That the applicant be required to enter into a site plan agreement with the Town for the development of the lands;
3. That the development be substantially in accordance with the sketch submitted with the application;
4. That the Owner shall obtain a permit from the LSRCA for works with the area Ontario Regulation 179/06 under the Conservation Authorities Act
5. That the Owner shall, prior to the issuance of site plan approval, submit to the Town and LSRCA a topographic survey, and demonstrate to the satisfaction of the LSRCA that the depth of flooding on the site does not exceed 0.8m.

2. Application:

An application for a minor variance has been submitted by the above-noted owner to permit the enlargement of a legal nonconforming use. The applicant is proposing to enlarge the existing motor vehicle sales facility (car dealership) despite this use not being permitted on the property by the zoning by-law.

The above-described property (herein referred to as the "subject lands") is a lot located on the south side of Mulock Drive to the west of the rail corridor. The lot is occupied by an existing motor vehicle sales facility and a large wetland. The subject lands are zoned General Employment (EG) on the northwestern part of the property where the existing motor vehicle sales facility is located, and Open Space – Environmental Protection (OS-EP) on the southwest where the wetland is located. There is one existing structure, being the motor vehicle sales facility.

3. Planning considerations:

The applicant is requesting relief from the by-law in order to permit the enlargement of the existing motor vehicle sales facility despite Zoning By-law 2010-40 not permitting a motor vehicle sales facility in the General Employment zone.

The requested relief is presented below.

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.5.1	Permitted uses do not include a motor vehicle sales facility	To permit the enlargement of a legally nonconforming motor vehicle sales facility

5.1 Legally nonconforming rights

Section 34 of the Planning Act empowers municipalities to pass zoning by-laws that regulate the use of land and buildings. Section 34(9) sets out in statute the longstanding common law principle of acquired rights and prohibits zoning by-laws from interfering with the ability to use land in a way that was legal and is later prohibited by a zoning by-law. The section reads:

(9) No by-law passed under this section applies,

(a) to prevent the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose.

Often referred to as “grandfathering”, legally nonconforming rights are uses or development standards that were legal on a property and then due to changes in zoning became prohibited. So long as the use continues without interruption, municipalities have no ability to use a zoning by-law to cause the use to cease. That use can be continued within the bounds of the existing building. However, in order to expand the use beyond the building as it existed on the day when the use became legally nonconforming, permission in the form of an amending zoning by-law or relief from the Committee of Adjustment is required.

The application is made under Section 45(2) of the Planning Act. This section empowers the Committee of Adjustment to allow for legally nonconforming uses to expand beyond the building where their use was located. The section reads:

[W]here any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,

(i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed.

3.2 Legally nonconforming status of subject lands

The subject lands were zoned Light Industrial Second (M2) by Zoning By-law 1979-50, as amended, until the Council of the Town of Newmarket repealed that by-law and enacted Zoning By-law 2010-40 for the subject lands and much of the town. Under By-law 1979-50, the M2 zone permitted a motor vehicle sales facility. With the adoption of 2010-40, Council zoned the lands General Employment (EG), which does not permit a motor vehicle sales facility. A motor vehicle sales facility was legally operating on the subject lands on the day that the use became prohibited, and the use has continued since that time.

3.3 Application

The applicant is intending to develop a significantly larger motor vehicle sales facility on the subject lands. The development of the lands will require site plan approval under Section 41 of the Planning Act. In order to be permitted to do so, permission from Committee to expand the legally nonconforming use is required. It should be noted the application is not to add a motor vehicle sales facility as a permitted use, only to allow one's expansion – the use will remain legally nonconforming.

Details of the proposed development can be found in the site plan and elevation plan submitted by the applicant. All other elements of the development (e.g. parking requirements, setbacks, building height, coverage, etc) will be required to conform to the zoning by-law. No relief is sought for any performance standards, only to allow the expansion of the use to a larger building. There is no statutory requirement to retain a part or portion of the existing building in order to enlarge the legally nonconforming use.

The test for whether Committee should allow the expansion of a legally nonconforming use is not the four tests commonly applied to an application under Section 45(1) of the Planning Act. The Act provides no such specific guidance on the grounds that Committee should consider, beyond the general requirement that all planning decisions are consistent with and conform to superior policy documents such as the Provincial Policy Statement and applicable provincial plans.

Rather, guidance is found in common law through decisions on applications such as *Central Jewish Institute v. Toronto (City)*, [1948] S.C.R. 101, *Saint-Romuald (Ville) c. Oliver*, [2001] 2 S.C.R. 898, and *TDL Group Corp., Re* (2009) 63 O.M.B.R. 199. In these cases the courts have held that with the passage of time, flexibility is required, normal evolution may occur, and the updating of a building or structure may be required to adapt, modernize and maintain the integrity of the building.

The balance to be considered in an application such as this is whether the proposal would create undue additional or aggravated problems for the municipality, local authorities or the neighbours as compared with what went before. Such concerns, including adverse neighbourhood effects, must be balanced against one another where the owner is proposing a modification or extension of the building or structure.

In the case of this application, the existing motor vehicle sales facility has operated without significant negative impact for an extended period of time. Similar land uses exist in the surrounding area, and sensitive land uses that might be impacted by the proposed expansion are not located in close proximity. The overall physical change to the site is related to the building and not the overall impervious surface area and thus impact to the adjacent wetland is anticipated to be minimal, and any physical changes can be managed through the site plan approval process.

In summary, the legally nonconforming motor vehicle sales facility's proposed expansion does not, in staff's opinion, constitute a concern of community impact. The proposed expansion is a reasonable evolution of a legally nonconforming use that does not conflict with superior policy documents, and should be approved.

4. Other comments:

4.1 Tree protection

The subject lands have an approved site plan agreement that provides for landscaping and the protection of trees and vegetation on the property in accordance with the Tree Preservation, Protection, Replacement and Enhancement Policy.

4.3 Effect of Public Input

Planning Services received no public input on this application as of the time of writing this report.

4.4 Interim Control By-law

On January 21st, 2019 Council adopted an Interim Control By-law under Section 38 of the *Planning Act*. The Interim Control By-law limits the ability to increase the floor area or height of residential dwellings throughout its study area, which does not include the lands subject to this minor variance application. Accordingly the by-law has no force or effect on this application.

4.4. Mulock GO Station Area Secondary Plan

The Town has initiated a planning study to adopt an Official Plan Amendment in the form of a secondary plan for the area around the potential future Mulock GO train station. The study area includes the subject lands. Council has not adopted any amending policy documents, and as such there is no basis on which to consider this application in light of a future secondary plan.

4.5 Commenting agencies and departments

Comments from Building Services were not available as of the date of writing this report.

Comments from Engineering Services are reflected in the recommendations of this report.

The Regional Municipality of York has no comment on the application.

The Lake Simcoe Region Conservation Authority has reviewed the application due to the subject lands being partially within the area governed by Ontario Regulation 179/06 under the Conservation Authorities Act. Development within the area requires a permit from the LSRCA, along with compliance with the Lake Simcoe Protection Plan. The recommended conditions of the LSRCA are reflected in the recommendations of this report.

5. Conclusions:

The proposed use represents good planning and should be approved.

Respectfully submitted,



Ted Horton, MCIP, RPP
Senior Planner, Community Planning



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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton
 Senior Planner, Community Planning

DATE: November 12, 2019

RE: Application for Minor Variance **D13-A23-19**
 209 Main Street South
 Made by: IRONS, Gregory

1. Recommendations:

That Application for Minor Variance D13-A23-19 be granted, subject to the following conditions:

- a) That the variance pertains only to the requests as submitted with the application;
- b) That the applicant be required to enter into a site plan agreement with the Town before any demolition or development takes place; and
- c) That the development be substantially in accordance with the information submitted with the application.

2. Application

The subject lands are located on the east side of Main Street South, south of Botsford Avenue. The subject lands are occupied by a two-storey structure that includes a restaurant that occupies the ground floor and basement and two dwelling units on the second storey. The purpose of the minor variance application is to request relief from the zoning by-law to allow the addition of a third storey to the structure.

The requested relief is presented below:

By-law	Section	Requirement	Proposed
2010-40	6.4.2	Maximum floor space index of 1.0	Maximum floor space index of 3.2
		Maximum building height of 9.0m and two storeys	Maximum building height of 11.5m and three storeys

3. Planning considerations:

The applicant is requesting relief from the zoning by-law to facilitate the addition of a third storey to the building. The requested relief would increase the maximum permitted height and the maximum floor space index.

The relief sought from the Committee of Adjustment is reviewed under the statutory “four tests” for an application under Section 45(1) of the Planning Act. Other matters such as construction methods, prevention of demolition, exterior design, and heritage preservation are addressed through their own statutory regimes. Any development of the property is subject to the typical requirements of the Town’s processes for site plan approval, the regulations of the Ontario Building Code, the regulations of the Town’s zoning by-law, and the heritage processes of the Ontario Heritage Act as enacted through the Town’s Heritage Conservation District.

In order to authorize a minor variance, Committee must be satisfied that the requested variances pass the four tests required by the *Planning Act*. In this regard, staff offer the following comments:

3.1 Conformity with the general intent of the Official Plan

The subject lands are within the Historic Downtown Centre of the Town’s Official Plan. Section 4.3.3 of the Official Plan discusses this area and the intent to “be the heart of historic Newmarket and the cultural and community focus of the Town”. The policies of this designation seek to encourage the maintenance, upgrading, and redevelopment of buildings and facades along Main Street South in a manner that aligns with the Historic Downtown Community Improvement Plan and the heritage nature of the area.

The proposed minor variance applications will recognize an existing built form of structures that exceed the maximum permitted amount of floor space for each lot. This existing condition reflects building styles of an era before minimum parking requirements and other zoning considerations that today impose setbacks and limit density. It is common for buildings in the historic downtown area to already exceed the maximum permitted floor space index for the zone.

The existing buildings on Main Street South are regarded as the heart of historic Newmarket and the Official Plan seeks to allow their repurposing and upgrading, and no reduction in FSI is encouraged by the Official Plan. Accordingly, this test is met.

3.2 Conformity with the general intent of the Zoning By-law

The subject lands are zoned Historic Downtown Zone (UC-D1) by By-law Number 2010-40, as amended.

The general intent of maximum floor space index limits is to control the density of each lot in a manner that ensures compatibility and similar built form massing, avoiding overbuilding on a lot in a manner that does not align well with the surrounding area. In the case of the historic downtown area, many buildings exceed the maximum FSI due to being built out to lot boundaries and having multiple stories. The proposed variances would recognize an existing condition that has been on the site for decades and has provided a compatible built form in the area.

There are other three-storey structures in close proximity that are compatible with the historic streetscape and make attractive elements of the streetscape. The proposed design reflects a respectful addition to the street by stepping back the third storey in a way that reduces the perceived height of the building. It is staff’s opinion that this test is met.

3.3 Desirable development of the lot

It is desirable to allow property owners to invest in, redevelop, and improve their properties in accordance with the Official Plan and the Zoning By-law. The proposed third storey represents an element of gradual growth and change in a heritage district. Small-scale changes such as this allow

for areas to continue to organically evolve and meet the needs of successive generations. Conversely, stifling small evolutions such as this can make possible only the large-scale changes that take place as part of the redevelopment of many lots following a land assembly, which are often transformations that are more impactful to the overall neighbourhood.

As the requested relief allows for a gradual intensification and investment with a compatible size and design, this test is met.

3.4 Minor nature of the variances

When considering if the variance is minor, it is not simply the numerical value nor is impact the sole test. Requested relief may not be minor even if no other property is impacted. The variances are minor in nature as they would facilitate a built form that is similar and compatible to the surrounding area. This test is met.

In consideration of the above, the proposed variances, subject to the recommended conditions, meet the four tests under the *Planning Act*.

4. Other comments

4.1 Tree protection

Any development will be required to comply with the Tree Policy.

4.2 Heritage

All of the structures on the subject land are designated under either Part IV or Part V of the Ontario Heritage Act. Any changes to the structures will be required to be reviewed under the appropriate Planning Act, Ontario Heritage Act, and Ontario Building Code Act requirements.

4.3 Effect of public input

Planning Services received no public input as of the date of writing this report.

4.4 Commenting agencies and departments

No comment was available from Building Services at the time of writing this application.

Engineering Services has no objection to the application.

The Regional Municipality of York has no comment on the application.

4.5 Interim Control By-law

On January 21st, 2019 Council adopted an Interim Control By-law under Section 38 of the *Planning Act*. The Interim Control By-law limits the ability to increase the floor area or height of residential dwellings throughout its study area, which does not include the lands subject to this minor variance application. Accordingly the interim control by-law is of no effect on this application.

4.6 Site Plan Approval and Development

If Committee deems to grant this application, any development of the subject lands will be required to make an application for site plan approval under Section 41 of the Planning Act. Site plan approval allows the Town to review the plans for development to ensure compliance with the zoning

by-law, review exterior design of the building, and manage impacts due to construction. Construction practices and demolition practices are regulated by the Ontario Building Code.

5. Conclusions

That the relief as requested:

- (1) is minor in nature;
- (2) conforms to the general intent and purpose of the Official Plan and Zoning By-law; and
- (3) is considered desirable for the appropriate development of the lot

Respectfully submitted,



Ted Horton
Senior Planner, Community Planning

**COMMITTEE OF ADJUSTMENT****Town of Newmarket**

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M E M O R A N D U M

To: Gino Vescio, Chair
Peter Mertens, Vice Chair
Ken Smith, Member
Elizabeth Lew, Member
Mohsen Alavi, Member
Michelle Starnes, Alternate Member

From: Alannah Slattery, BES, MCC
Planner/Secretary Treasurer

Re: Scheduled hearing dates for 2020

Date: November 20, 2019

The following is a list of proposed hearing dates scheduled for 2020:

Wednesday, January 22, 2020
Wednesday, February 26, 2020
Wednesday, March 18, 2020
Wednesday, April 15, 2020
Wednesday, May 20, 2020
Wednesday, June 17, 2020
Wednesday, July 22, 2020
Wednesday, August 26, 2020
Wednesday, September 23, 2020
Wednesday, October 21, 2020
Wednesday, November 18, 2020
Wednesday, December 9, 2020