



Town of Newmarket

Agenda

Committee of Adjustment

Date: Wednesday, December 11, 2019
Time: 9:30 AM
Location: Council Chambers
Municipal Offices
395 Mulock Drive
Newmarket, ON L3Y 4X7

Pages

1. Declarations of Pecuniary Interest

2. Items

- | | | |
|-----|---|----|
| 2.1 | Minor Variance Application - D13-A24-19 | 1 |
| | RODGER, Ian and Janet | |
| | Part Lot 37, Plan 437 | |
| | 199 Avenue Road | |
| 2.2 | Minor Variance Application - D13-A25-19 | 5 |
| | WONG, Phillip | |
| | Lot 23, Plan 65M3485 | |
| | 355 Marble Place | |
| 2.3 | Consent Application - D10-B06-19 | 9 |
| | MARIANNEVILLE DEVELOPMENTS LIMITED | |
| | BLOCK 89, PLAN 65M-2263 | |
| 2.4 | Consent Application - D10-B07-19 | 14 |
| | BIANCHI, David | |

Part Lot 22, Lot 23, Plan 78

53 Ontario Street

3. **Approval of Minutes**
4. **Adjournment**



PLANNING AND BUILDING SERVICES

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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton
Senior Planner, Community Planning

DATE: December 6, 2019

RE: Application for Minor Variance **D13-A24-19**
199 Avenue Road
Town of Newmarket
Made by: RODGER, Ian & RODGER, Janet

1. Recommendations:

That Minor Variance Application D13-A24-19 be granted, subject to the following conditions:

1. That the variance pertains only to the request as submitted with the application; and
2. That the development be substantially in accordance with the information submitted with the application.

2. Application:

An application for minor variance has been submitted by the above-noted owner to request relief from Zoning By-law Number 2010-40 as amended, in order to allow a residential accessory structure (shed) to be constructed closer to the side lot line in the rear yard than is permitted by the by-law.

| Relief | By-law | Section | Requirement | Proposed |
|--------|---------|-------------|---|--|
| 1 | 2010-40 | Section 4.2 | A residential accessory structure greater than 2.8m in height must be set back a minimum of 2.4m from the side lot line | A residential accessory structure greater than 2.8m in height in height to be set back a minimum of 0.76m from the side lot line |

The above-described property (herein referred to as the "subject lands") is located on the north side of Avenue Road in a residential neighbourhood northeast of the intersection of Scott Avenue and Eagle Street. There is an existing single detached residence on the lot and it is surrounded by similar single detached homes.

3. Planning considerations:

The applicant is requesting relief from the By-law in order to permit a side yard setback of 0.76 metres from the residential accessory structure to the side lot line. The existing residential accessory structure (shed) in the rear yard will be removed and replaced with the construction of a new residential accessory structure (shed) with a larger footprint.

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. This designation permits a range of residential accommodation built form types. Regarding this designation, the Town's Official Plan states:

It is the objective of the Stable Residential Area policies to:

- sustain and enhance the character and identity of existing residential communities; and,
- encourage the preservation and maintenance of the Town's existing housing stock, supplemented by various forms of residential intensification such as infilling and the creation of accessory dwelling units.

This designation permits, among other uses, single detached dwellings, and allows for accessory buildings normally associated with residential uses. This application is found to conform to the Official Plan. This test is met.

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

The subject lands are zoned Residential Detached Dwelling 15 Metre Zone (R1-D-119) by By-law Number 2010- 40, as amended. A single detached dwelling is permitted in this zone, and residential accessory structures such as sheds are permitted subject to certain setbacks.

The general intent of setbacks are to ensure that the use of a property does not infringe on the rights of neighbours, and to allow sufficient space for light, sunshine, storm water run-off, and movement around the home. In the case of the subject lands, the residential accessory structure will be closer to the lot line than a structure normally would be. However, the proposed reduced setback appears to maintain a functional space and distance from the lot line that should prevent adverse impact. This test is met.

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 provides for a structure that is within the general size and height limits for a residential accessory structure, and appears to continue to maintain sufficient distance to avoid adverse impact on adjacent properties. 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 proposed residential accessory structure is not out of keeping with common rear yard accessory structures and is not expected to adversely impact neighbouring properties. This test is met.

In consideration of the above, the proposed variance meets 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. If Committee deems to approve this application, the applicant will be required to install tree protection fencing, have the fencing inspected before any demolition or construction takes place, and pay for the costs of the Town's consulting arborist undertaking their review(s), as provided for by 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. The Interim Control By-law does not prohibit residential accessory structures and as such has no bearing on this application.

4.5 Commenting agencies and departments

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

Engineering Services has reviewed the application and does not have any objections to the proposed variance provided that existing drainage patterns are not altered, and that any increase in stormwater runoff is maintained onsite and construction does not occur within any easement(s), where applicable.

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

5. Conclusions:

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 a desirable development of the lot.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ted Horton". The signature is stylized with a large initial "T" and a cursive "Horton".

Ted Horton, MCIP, RPP
Senior Planner, Community Planning



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Planning Report

To: Committee of Adjustment

From: Ted Horton
Senior Planner

Date: December 5, 2019

Re: Application for Minor Variance D13-A25-2019
355 Marble Place
Town of Newmarket
Made by: WONG, Phillip

1. Recommendations:

That Minor Variance Application D13-A25-2019 be approved, subject to the following conditions:

- a. That the variance pertains only to the request as submitted with the application;
- b. That two spaces in the garage be reserved for the purpose of required parking and for no other use; and
- c. That the development be substantially in accordance with the information submitted with the application.

2. Application:

An application for a minor variance has been submitted by the above-noted owner to request relief from Zoning By-law Number 2010-40 as amended, to vary the parking requirements for a single detached residential dwelling with an accessory dwelling unit. The requested relief is below.

| Relief | By-law | Section | Requirement | Proposed |
|--------|---------|---------|---|--|
| 1 | 2010-40 | 5.3.1 | To provide four parking spaces exterior to a garage for a dwelling unit and accessory dwelling unit | To provide two parking spaces exterior to a garage and two parking spaces inside of a garage for a dwelling unit and accessory dwelling unit |

The zoning by-law requires four exterior parking spaces. Ontario Regulation 299/19, enacted by the Provincial Government in September of 2019, supersedes this requirement and states that municipalities can only require one parking space for an accessory dwelling unit. The effect of this is that three exterior parking spaces are required.

The above-described property (herein referred to as the "subject lands") is located in a residential neighbourhood, southwest of the intersection of Yonge Street and Green Lane West and south of Aspenwood Drive. There is an existing single detached residence on the lot and it is abutted by similar single and semi-detached homes.

3. Planning considerations:

The applicant is requesting relief from the By-law in order to permit a reduction in the required parking to facilitate the creation of an Accessory Dwelling Unit (ADU) in the existing building. The Zoning By-law, as modified by provincial regulation, requires that three outdoor parking spaces be provided when a dwelling unit has an ADU. In this case, the driveway is not large enough to accommodate three spaces due in part to the presence of a sidewalk across the front of the property.

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

Conformity with the general intent of the Official Plan

The subject lands are designated "Stable Residential" in the Town's Official Plan. This designation permits a range of residential accommodation built form types. Regarding this designation, the Town's Official Plan states:

It is the objective of the Stable Residential Area policies to:

sustain and enhance the character and identity of existing residential communities; and,
encourage the preservation and maintenance of the Town's existing housing stock,
supplemented by various forms of residential intensification such as infilling and the creation of
accessory dwelling units.

This designation permits, among other uses, single detached dwellings of a range of sizes and built forms. The application is found to conform to the Official Plan. Furthermore, the Planning Act requires the Town's Official Plan to contain policies that authorize ADUs, and to create standards that support the creation of ADUs. This test is met.

Conformity with the general intent of the Zoning By-law

The subject lands are zoned Residential Detached Dwelling 12 Metre (R1-E) Zone by By-law Number 2010-40, as amended. Single detached dwellings and accessory dwelling units are permitted uses in this zone. Save for the number of parking spaces, this property meets all zoning requirements for an ADU.

Section 5.3.1 of the Zoning By-law sets out the parking standards for residential uses. This Section states that a single detached dwelling must have two spaces. An ADU must also have one space, as modified by provincial regulation. There is a note which states that when there is a dwelling unit and an ADU, the required parking spaces shall be provided exterior of any garage or structure. Therefore the parking requirement is three (3) outdoor parking spaces. The length of the driveway is measured from the garage face to the sidewalk or curb of the road, whichever is closest. In this case, the applicant's driveway from the garage face to the sidewalk is not long enough to accommodate the three spaces given the maximum length permitted under the zoning by-law. The applicants have two outdoor parking spaces and an attached garage, but the zoning by-law typically precludes any space in the garage from being counted toward the parking requirement.

The general intent of the By-law is to provide sufficient parking for the two dwelling units. Accessory dwelling units arguably have a generally lower parking demand. In addition to being smaller than the principal dwelling unit, they are by nature rental units. These factors are commonly associated with lower parking demand. Providing two parking spaces outdoors and two spaces inside the garage, as would be required by the proposed condition, meets the general intent of the zoning by-law. This test is met.

Desirable for the appropriate development of the land

The variance is considered desirable for the development and the use of the land. An ADU contributes to the mix of housing types in Newmarket and supports the Town's goals of providing for affordable housing and an increased supply of rental housing. Furthermore, ADUs allow an increase in the density of dwelling units and allow homeowners a source of income for their property. While the standard parking requirement of three spaces exterior and additional to any spaces provided in a garage may provide ample parking, not all ADUs will generate such a parking demand. A minor variance is the appropriate tool for relief from zoning requirements that would prevent an otherwise desirable development, and a minor parking variance should not overshadow the desirability of an ADU as a development as encouraged by Town, Region, and Provincial policy.

Minor nature of the variance

The impact of the proposed variance appears to be minimal as the potentially increased number of vehicles generated by the accessory unit can be accommodated on site, either by the existing two spaces or by the parking spaces in the garage as would be required by the proposed condition.

In consideration of the above, the proposed variance meets the four tests under the Planning Act.

4. Other comments:

Heritage

No structure on the lot is listed under the Ontario Heritage Act.

Commenting agencies and departments

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

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

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

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. This property is not proposed to add floor area or increase the building height. As such, the Interim Control By-law it has no effect on this application.

Effect of Public Input

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

5. Conclusions:

The relief as requested:

is minor in nature;

conforms to the general intent and purpose of the Official Plan and Zoning By-law; and

is considered desirable for the appropriate development of the lot.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ted Horton".

Ted Horton, MCIP, RPP
Senior Planner, Community Planning



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Planning Report

To: Committee of Adjustment

From: Ted Horton
Senior Planner

Date: December 5, 2019

Re: Application for Consent **D10-B06-19**
Block 89, Plan 65M-2263
Made by: MARIANNEVILLE DEVELOPMENTS LIMITED

1. Recommendations:

That Consent Application D10-B06-18 be granted subject to the following conditions:

- a. That the application be subject to Section 50(5) of the *Planning Act* RSO 1990, c.P.13, which shall apply to any subsequent transaction or conveyance involving the parcels of land that are the subject of this consent;
- b. That the Owner be required to provide to the satisfaction of the Secretary-Treasurer of the Committee of Adjustment the following:
 - i. proof of payment of all outstanding taxes and local improvement charges owing to date against the subject, recipient, and retained parcels
 - ii. three white prints of a deposited reference plan showing the subject land, which conforms substantially to the application as submitted;
 - iii. required transfers to effect the severance and conveyance, conveying the subject lands, and issuance by the Secretary-Treasurer of the certificate required under subsection 53(42) of the *Planning Act*.

2. Application:

An application for Consent has been submitted by the owner of the above noted lands. The application proposes to convey a vacant triangular-shaped area of land of 252 square metres (the 'subject lands') that is part of the remaining westerly lands of the former Glenway golf course. The application proposes to convey and merge the 252 m² subject lands to Block 120 of Registered Plan 65M-4587.

The lands from which the subject lands are proposed to be severed are subject to Planning Act applications for which Council has not yet rendered a decision:

- D9NP1902 (Official Plan Amendment)
- D14NP1902 (Zoning By-law Amendment)
- D12NP1902 (Draft Plan of Subdivision)

These applications propose to amend the Zoning By-law and Official Plan to allow for the development of the westerly lands of the former golf course into a residential subdivision akin to the

developments approved by the Ontario Municipal Board for the easterly former golf course lands. These applications are not required for the Committee of Adjustment to render a decision on the current application, nor does a decision by this Committee prejudice the decision of Council.

Block 120, the lands to which it is proposed that the subject lands will be merged, were part of the easterly lands development that was approved by the Ontario Municipal Board. Block 120 is subject to Site Plan Approval application D11-NP18-21 for approval of a development of single detached residential Parcels of Tied Land (POTLs) fronting onto a common-element condominium road. The subject lands, if conveyed, would then form part of this development and form part of the backyards of these single detached POTLs. Attachment 1 shows an excerpt of the site plan for Block 120 with the lands proposed to be conveyed and merged with Block 120 indicated with a red outline.

3. Planning considerations:

Conformity with Provincial Policy

Provincial plans are to inform Committee's decision regarding consents. Relevant plans include the Places to Grow Act, the Growth Plan for the Greater Golden Horseshoe, and the Provincial Policy Statement 2014. Matters of Provincial Interest, as set out in Section 2 of the Planning Act, are to be regarded by the Committee when considering an application for consent.

The question of the conformity with provincial policy for the lands subject to the application for development of the easterly former golf course lands was explored in detail in the decision of the Ontario Municipal Board following Council's refusal of the proposed amendments (PL130413 and PL100685, dated November 18, 2014). As this application for consent is a minor lot adjustment that continues the Board-approved development, there is little benefit in exploring the same issues.

Conformity with the Official Plan

The subject lands are designated "Parks and Open Space" in the Town's Official Plan. This designation permits open, recreational, and conservation uses. No development of the lands is proposed by this application, as applications for consent do not amend land use rights.

Section 16.1.5 of the Official Plan sets out the circumstances in which an application for consent will be granted. The section is written largely to address applications for consent among existing residential lots, and provides limited guidance for circumstances such as this. Section 16.1.5 reads that consents shall only be granted where:

- a. the severance is for the purpose of infilling within existing development;
- b. a plan of subdivision is not necessary;
- c. the number of lots created is three or less;
- d. the lot can be adequately serviced by sanitary sewage disposal, water supply, and storm drainage facilities;
- e. no extension, improvement or assumption of municipal services is required;
- f. the lot will have frontage on an improved public road, and access will not result in traffic hazards;
- g. the lot will not restrict the ultimate development of adjacent lands;
- h. the size and shape of the lot conforms with the requirements of the Zoning By-law, is appropriate to the use proposed and compatible with adjacent lots; and,
- i. the consent complies with all relevant provisions of this Plan.

In considering the consent application, regard has been given to the consent policies of Section 16.1.5 of the Official Plan. The proposed application would not conflict with the purpose and intent of the Official Plan.

Conformity with the Zoning By-law

The subject lands are zoned Private Open Space Zone Exception 32 (OS-2-32) by By-law Number 2010-40, as amended, as is much of the remaining westerly portions of the former Glenway golf course. This zone permits conservation uses, golf courses, and accessory buildings. No residential use of the subject lands (the triangular lands proposed to be conveyed) is permitted. Zoning By-law 2010-40 also states in Section 2.4 that:

[W]here a *lot* is divided into two or more *zones* the *zone* boundary dividing the *lot* shall be deemed to be a *lot line* for purposes of calculating required setbacks and coverage, and each portion of the *lot* is required to satisfy the provisions of this By-Law for the applicable *zone*.

The effect of this is that if the subject lands are conveyed and merged with Block 120 that the OS-2-32 zone will remain in effect over the subject lands, while the lands of Block 120 to which they would be conveyed are zoned Holding Provision 15 Metre Single Detached Residential Zone Exception 122 ((H) R1-D-122), where the residential development is permitted. Setbacks for buildings will continue to be measured from the zone boundary and not from the conveyed lot lines, and permitted coverage for the overall POTL will be measured only from the ((H) R1-D-122) lands.

No development of the OS-2-32 lands that does not comply with the Private Open Space Zone will be permitted. If Council deems to approve the above-listed applications for Official Plan Amendment and Zoning By-law amendment for the subject lands and the easterly former golf course lands, the by-law may eventually include that the subject lands have the same designation and zoning as the lands to which the subject lands are proposed to be conveyed.

The proposed conveyance complies with the zoning by-law.

4. Other comments:

Tree protection

The Town's Tree Preservation, Protection, Replacement and Enhancement Policy applies to the subject lands and compliance will be required through the other applicable *Planning Act* applications.

Heritage

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

Effect of public input

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

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. The Interim Control By-law does not apply to the subject or recipient lands.

Commenting agencies and departments

Comments from the Regional Municipality were not available as of the date of this report.

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

Engineering Services has reviewed the application and does not have any objections to the proposed consent provided any required easements are conveyed.

5. Conclusions:

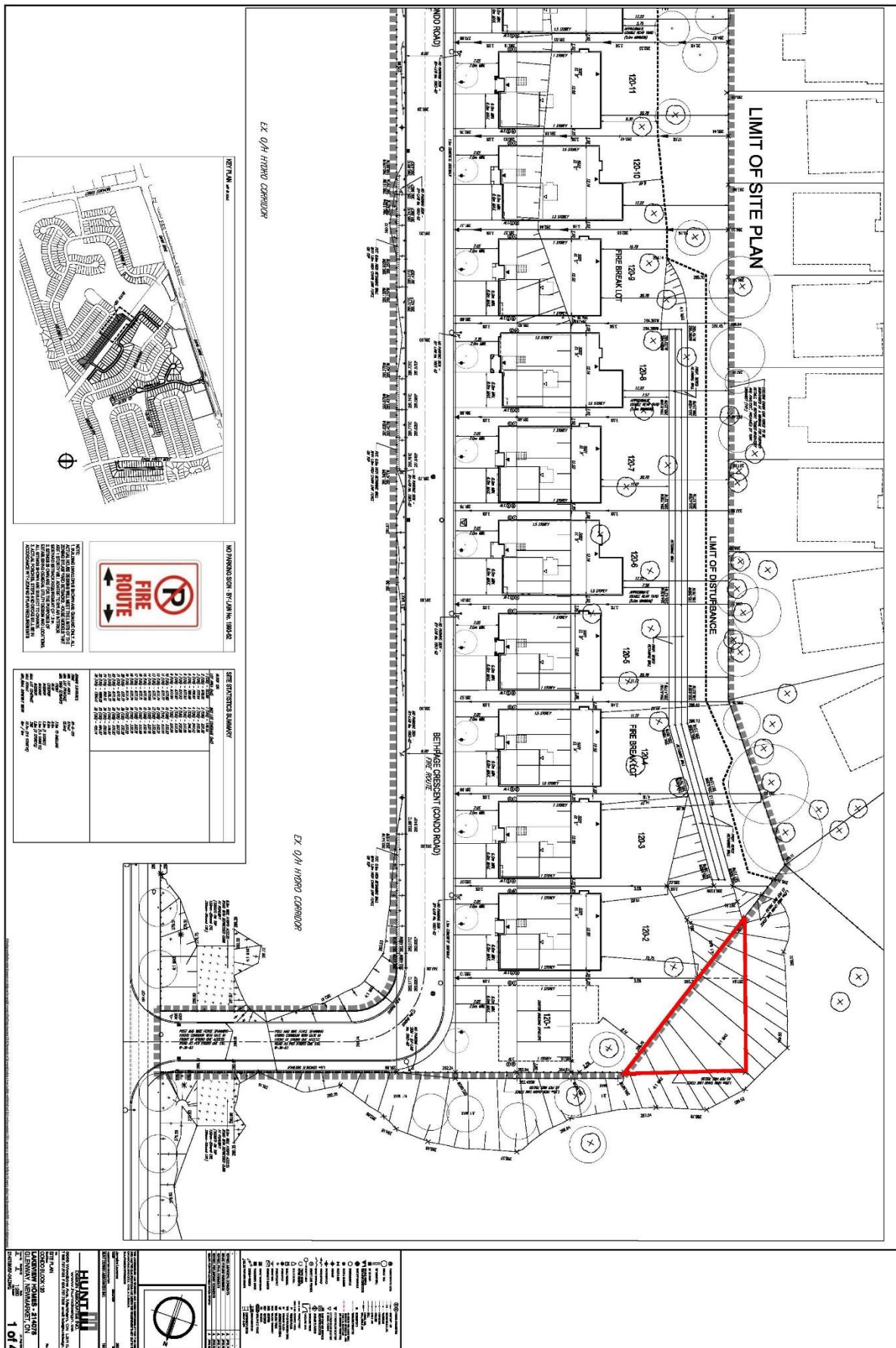
The consent is an appropriate division of land that meets the relevant requirements of the Zoning By-law, Official Plan, and matters of Provincial interest, and should be granted.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Ted Horton', is written over a horizontal line.

Ted Horton
Senior Planner

Attachment 1: Site Plan





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Planning Report

To: Committee of Adjustment

From: Ted Horton
Senior Planner

Date: December 5, 2019

Re: Application for Consent **D10-B07-19**
Part Lot 22, Lot 23, Plan 78
353 Ontario Street, Newmarket
Made by: BIANCHI, David

1. Recommendations:

That Consent Application D10-B07-19 be granted subject to the following conditions:

- a. That prior to the issuance of the Certificate of Official, that the owner be required to obtain a demolition permit and remove the existing structures on the lot;
- b. That the Owner be required to prepare at their sole cost an R-Plan showing a municipal easement of 3 metres in width centered over the existing sanitary sewer, and to register an easement in favor of the Town over this area at their sole cost, to the satisfaction of the Town;
- c. That the applicant be required to provide to the satisfaction of the Town proof that they have registered on title easements for sanitary infrastructure under the property to the satisfaction of the Town;
- d. That the applicant be required to provide to the satisfaction of the Town proof that they have registered on title easements for Bell Canada infrastructure under the property to the satisfaction of the Town;
- e. That the Owner be required to provide to the satisfaction of the Secretary-Treasurer of the Committee of Adjustment the following:
 - i. proof of payment of all outstanding taxes and local improvement charges owing to date against the subject, recipient, and retained parcels
 - ii. three white prints of a deposited reference plan showing the subject land, which conforms substantially to the application as submitted; and
 - iii. required transfers to effect the severance and conveyance applied for under Consent Application D10-B07-19, conveying the subject lands, and issuance by the Secretary-Treasurer of the certificate required under subsection 53(42) of the *Planning Act*.

2. Application:

An application for Consent has been submitted by the owner of the above noted lands. The Committee of Adjustment previously granted provisional consent for the subject lands on January 12, 2017 as part of the following applications:

- Application for Consent D10-B01-13
- Applications for Minor Variance D13-A01-13 and D13-A02-13

Under Section 53 (41) of the Planning Act, if an application for consent includes conditions that are imposed and those conditions are not fulfilled within one year after notice of decision is provided the consent is deemed to be refused. The applicant for consent application D10-B01-13 did not fulfill the conditions that were imposed by Committee, and thus the consent was deemed to be refused. They then sought a second application for consent in order to complete the consent, which was granted by Committee under application D10-B03-18.

Following this second application for Consent, it was determined that the proposed conveyance was not possible as both the recipient lands and retained lands had merged in ownership and were one parcel of land. Accordingly, it was not possible to transfer land from a parcel to the same parcel, nor was it possible to sever the lots without an application for consent. Accordingly, the applicant has submitted this application to bring about the intended result of the two previous applications, being that there be two residential lots of 13.77m in frontage.

2. Other comments:

Tree protection

The Town's Tree Preservation, Protection, Replacement and Enhancement Policy will apply to this application and its application is recommended as a condition of this consent.

Heritage

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

Effect of public input

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

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 application. The by-law exempts lands that have been subject to a complete *Planning Act* application, which includes the subject lands.

Commenting agencies and departments

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

Comments from the Regional Municipality of York were not available as of the date of this report

Engineering Services has reviewed the application and does not have any objections to the proposed consent, provided that the proposed conditions are imposed.

3. Planning considerations:

Staff continue to support the recommendations of the previous reports.

4. Conclusion:

That the proposed application for consent conforms with the Official Plan, the Zoning By-law, and applicable Regional and Provincial legislation, regulations and planning policies.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ted Horton", is written over a horizontal line.

Ted Horton
Senior Planner