



**Planning Report**

To:                                      Committee of Adjustment

From:                                    Ted Horton  
    Planner

Date:                                    July 18, 2019

Re:                                        Application for Minor Variance **D13-A09-2019**  
    160 Victoria Street  
    Town of Newmarket  
    Made by: COWIE, Wayne & Mary Ann

---

**1. Recommendations:**

That Minor Variance Application D13-A09-2019 be approved, 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 a minor variance has been submitted by the above-noted owner to request relief from Zoning By-law Number 2010-40 as amended, to permit the recognition and legalization of a longstanding triplex on the property. The relief as requested is listed below.

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.2.1	Permitted uses do not include a triplex	To include a triplex as a permitted use

The above-described property (herein referred to as the “subject lands”) is located on the northwest corner of the intersection of Park Avenue and Victoria Street. The subject lands are occupied by a large brick structure and small detached garage and surrounded by a diverse mix of dwellings.

**3. Planning considerations:**

The applicant has indicated that the structure on the lot was built in 1914. In 1979 the lot was zoned Single Residential Zone (R2), which permitted a single detached dwelling. Since 2003 the property has been permitted to also have an accessory dwelling unit, for a total of two dwelling units. In 2010 with the adoption of the current zoning by-law, the property was given its current zoning designation which continues to permit a single detached dwelling with an accessory dwelling unit.

The applicant acquired the property in 2005, and they have stated that at that time it was used as a triplex. According to the applicant, it has been used this way since at least 1989, and it was their belief that it was legally nonconforming in this use – that is to say, had the right to continue legally as a triplex due to having been a legal triplex before and since the zoning by-law prohibited such a use. However,

upon discussions with Planning staff the owner learned that the triplex is not legally nonconforming and thus the owner is now applying for this variance to recognize and legalize the use.

Orders have been given by Central York Fire Services to undertake certain necessary fire safety works under the Fire Protection and Prevention Act. In order to do these works, building permits are required under the Ontario Building Code Act. In order to obtain a building permit, the property must comply with the zoning by-law. As a triplex is not currently permitted, the proposed variance is required for these other works to occur.

As per established practice and jurisprudence from appellate bodies, in considering a minor variance in which the work was already completed in error or to legalize an existing nonconformity the Committee is to consider the application as if the work had not yet been done.

### **3.1 Provincial Policy and Legislation**

While minor variance applications are typically not reviewed within the context of provincial policy, in the case of this application important context is available by considering relevant provincial policy and legislation.

The Provincial Policy Statement (the “PPS”) provides policy direction related to land use planning. All decisions affecting land use planning matters must be consistent with the PPS. The PPS supports an appropriate range and mix of housing that efficiently uses land, promotes a compact built form, and encourages the provision of affordable housing. A mix of types of dwellings can be encouraged by allowing dwellings to be adaptively repurposed by demising and adding additional units.

The Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”) 2019 provides more detailed policy guidance for land use planning decisions. All land use planning decisions must conform to the Growth Plan. The Growth Plan supports housing choice by requiring municipalities to provide a range and mix of housing options including a mix of unit sizes to accommodate a diverse range of household sizes and incomes. The Growth Plan supports the intensification goals of the Town through large-scale efforts such as the Urban Centres Secondary Plan of Yonge Street and Davis Drive, but also directs that municipalities shall encourage intensification generally throughout the built-up area. A triplex use supports these goals by increasing the diversity of housing stock and rental supply.

Beyond the requirement that Committee’s decision conform to superior provincial policy instruments, staff are required to consider the 4 tests under the *Planning Act*.

### **3.2 Conformity with the general intent of the Official Plan**

The subject lands are designated “Stable Residential” in the Town’s Official Plan. It is the objective of the Stable Residential Area policies to:

- a. sustain and enhance the character and identity of existing residential communities; and,
- b. 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.

Section 3 of the Official Plan discusses the stable residential areas as having a mix of housing forms including rowhouses, duplexes, fourplexes, apartments, and other multi-unit dwellings. The Official Plan directs the majority of intensification to the urban centres such as Yonge Street and Davis Drive,

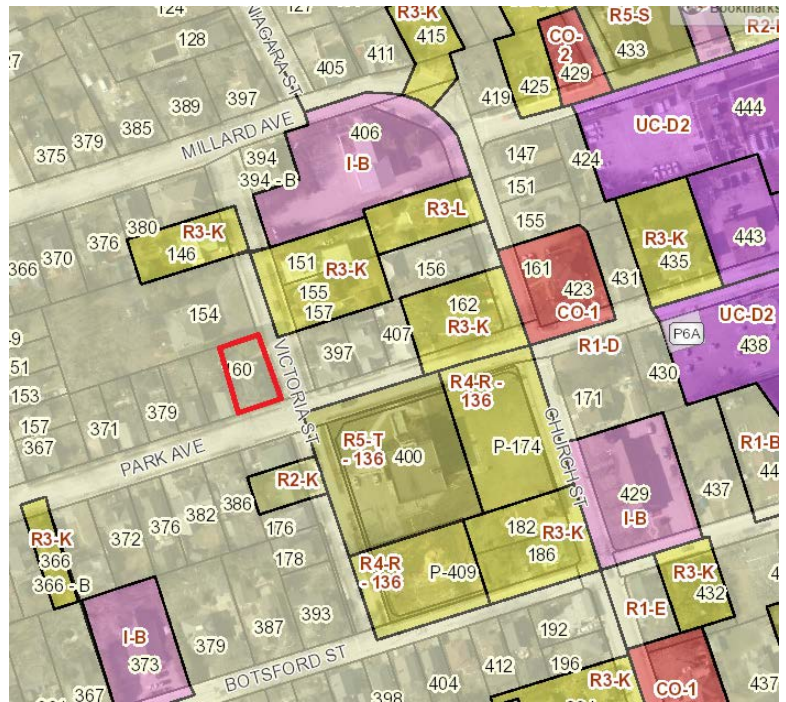
and requires that where intensification is permitted in the stable residential areas that it be compatible and respect the character of these areas.

The proposed variance would recognize a longstanding use that has occurred without adverse effects to the neighbourhood. The proposed use has the same built form permissions as the existing structure and the surrounding single detached structures, and no proposal to change the built form has been made. This test is met.

### 3.3 Conformity with the general intent of the Zoning By-law

The subject lands are zoned Residential Single Detached Dwelling 15.0m Zone (R1-D) by By-law Number 2010-40, as amended. A triplex is not a permitted use in the R1 zone. The surrounding area hosts a range of zones, as can be seen in the excerpt from the zoning by-law below. The surrounding area includes a number of R2 (semi-detached), R3 (duplex, triplex, and fourplex), R4 (townhouse) and other zones. In the provided image the subject lands are indicated with a red outline at the northwest corner of Park Avenue and Victoria Street.

The general intent of the zoning by-law in the stable residential areas is to ensure compatibility. This is achieved in some cases by regulating uses and in some cases by regulating built form. The built form of the existing structure on the lot has lasted more than a century and is not proposed to change. The use of the structure for a triplex has existed for a considerable period of time and not occasioned adverse effects for the surrounding area. Moreover, such a use demonstrates the ability for small multi-unit dwellings to exist in harmony with single detached dwellings. This test is met.



### 3.4 Desirable development of the lot

A triplex 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. Indeed, allowing the gentle and creative repurposing of homes for additional dwelling units can act as a counter to some of the rapid scale change that impacts some neighbourhoods. As property owners seek to maximize the value of their properties, restricting the permitted uses to only single detached dwellings drives the creation of larger homes. Allowing for homes to be used for additional dwelling units can provide an incentive for homes to be retained and changed in a manner that leads to less overall physical change while still increasing the value of a property.

Moreover, the ability to add or remove dwelling units within existing structures allows the Town's housing stock to better reflect the evolution of resident needs by providing rental units of a range of sizes. Finally, providing dwelling units within an existing structure can be accomplished at a significantly reduced cost than newly developed buildings, which thus can support the achievement of more affordable housing.

A minor variance is the appropriate tool for relief from zoning requirements that would prevent an otherwise desirable development that meets the broad policy goals of the Town and the Province. This test is met.

### **3.5 Minor nature of the variances**

The test of whether a variance is minor in nature is not simply an evaluation of the numerical value, nor is impact the sole determining factor. In some cases, a variance may not be minor even if there is no impact on other properties.

No physical change to the property is proposed and the use that is sought to be recognized and legalized is longstanding. While Committee is to consider the request as if it were made before any work or nonconformity occurred, some comfort of the likelihood of adverse impact can be drawn from the observed experience of the longstanding triplex use. 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**

No physical change to the site is proposed and thus no impact to significant trees under the Tree Policy is anticipated.

### **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 21<sup>st</sup>, 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. As no additional height or floor area is proposed, the Interim Control By-law does not affect this application.

### **4.5 Commenting agencies and departments**

The Chief Building Official notes that the applicant should be advised that their works will be required to comply with the Ontario Building Code.

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

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 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  
Planner