



PLANNING AND BUILDING SERVICES

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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton
Planner

DATE: August 12, 2019

RE: Application for Minor Variance **D13-A18-19**
299 Second Street
Made by: MITCHELL, Robert and SCOTT, Ryan

1. Recommendations:

That Minor Variance Application D13-A17-19 be denied.

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, in order to legalize a recent construction that was completed that did not comply with approved building permits or the zoning by-law. The applicant is seeking to permit a driveway that is 11.2m in width whereas the by-law permits a maximum width of 6.0m.

The above-described property (herein referred to as the "subject lands") is located in a residential neighbourhood, specifically at the junction of Cotter Street and Second Street east of Fairy Lake. There is an existing single detached residence on the lot and it is surrounded by similar single detached homes. The Barrie GO rail line runs on the west side of Cotter Street.

3. Planning considerations:

After construction of the single detached dwelling on the lot the Town determined that a driveway wider than is permitted had been installed on the site in a manner that contravened the building permit drawings that were submitted and the Town's zoning by-law, which caused the applicant to make the current application to seek the relief presented below:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.2.2	Maximum driveway width of 6.0m	Maximum driveway width of 11.2m

The approved site plan for the current development from the building permit is presented in attachment 1 in which the proposed 6.0m driveway is underlined in red, followed by the proposed site plan for this minor variance application with its 11.2m driveway in attachment 2 for comparison purposes.

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 encourage the preservation and maintenance of the Town’s existing housing stock. This designation permits single detached dwellings. Therefore the application is found to conform to the Official Plan.

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

The subject lands are zoned Residential Detached Dwelling 15.0 m (R1-D) Zone by By-law Number 2010-40, as amended. A two-storey dwelling is a permitted use in this zone, and a driveway is permitted subject to certain location and size restrictions.

Driveways are limited to a maximum of 6.0m in width in the D zone, which provides for at least two cars outside of a garage or more depending on the depth of the lot. The effect of this limit maintains a consistent size of driveways, which limits the amount of yards that can be paved. This limit provides ecological benefits as paved surfaces (1) increase stormwater runoff during major rain events, (2) reduce the amount of yard that is landscaped for biodiversity and phosphorous retention, and (3) add to the urban heat island effect that increases summer temperatures.

Ecologically, larger driveways reduce the health of our neighbourhoods. Mature trees spread a wide root bed, and paving close to them limits their ability to grow, meaning that on streets where their growth is stunted residents will not benefit as much from the leafy canopy and benefits that mature trees provide – including improving air quality, lowering air temperatures, reducing energy costs, reducing erosion, and reducing stormwater runoff. In the case of this property, a 90cm DBH Manitoba maple was removed from the front lawn in the location of the existing driveway. Increased impermeable surface area causes an increase in the volume of runoff, an increase in the temperature of water runoff, a decrease in the amount of water that infiltrates the soil, and an increase in the amount of phosphorous runoff.

The limit on the size of driveways also maintains a consistency of front façade appearances by limiting how much of the front of the building can be used as a garage. This seeks to maintain a certain degree of consistency in built form appearance to ensure compatibility.

The zoning by-law limits the size of garages through limits on the maximum width of driveways. The zoning by-law defines a garage as being a building that is used for the storage of motor vehicles and the zoning by-law defines a driveway as being the part of a lot used to access an off-street parking area (i.e. a garage) via a driveway.

The non-conforming constructed site has a driveway that is nearly twice the permitted width. And while it presents design that may be an investment and improvement over the pre-existing condition, it remains that the site was not constructed as permitted by the zoning by-law or as was presented in the building permit application. Moreover, allowing the paving of nearly the entire front yard runs contrary to the intent of the zoning by-law both in the amount of paved surface area and the façade design of all garage doors that is associated with it. This test is not met.

3.3 Desirable development of the lot

It is desirable to develop the lot with a residential single detached dwelling as the Official Plan designation and the Zoning By-law both permit this use. However, the nonconformities in the site due

to unapproved changes to the design present negative impacts. As discussed above, paved surface areas increase stormwater runoff which impacts municipal infrastructure and downstream recipients. Increased paved surface areas reduce the amount of soft landscaping which reduces the amount of plant life to support biodiversity, shade, and other ecological benefits. Increased paved surface areas add to the urban heat island effect, increasing summer temperatures. And limits on the amount of parking serve Council's aim of encouraging shifts toward more sustainable transportation options. This test is not met.

3.4 Minor nature of the variances

The impact of the proposed variance will be generalized instead of causing specific impact to one property. The costs of the increase in runoff, loss of soft landscaped area, and increase in ecological detriment due to the near-full paving of the front yard will be shared by the neighbourhood and downstream recipients. As the Town undertakes other investments in stormwater management and low-impact development to combat the effects of climate change, a negative effect such as this is minor overall. This test is met.

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**.

In consideration of the above, the proposed variance does not meet the four tests under the *Planning Act*.

4. Other comments:

4.1 Tree Protection

The applicant has not submitted any documents related to trees on or surrounding the property.

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 limit the size of driveways.

4.5 Commenting agencies and departments

The Chief Building Official has no objection to the application.

Engineering Services has no objection to the application.

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

5. Conclusions:

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

Respectfully submitted,



Ted Horton, MCIP, RPP
Planner

