

**PLANNING AND BUILDING SERVICES**

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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