



PLANNING AND BUILDING SERVICES

Town of Newmarket

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Planning Report

TO: Committee of Adjustment

FROM: Alannah Slattery
Planner

DATE: July 22, 2020

RE: Application for Minor Variance **D13-A03-20**
21 Mynden Way
Made by: MOORE, Bradley and MOORE, Tanya

1. Recommendations:

That Minor Variance Application D13-A03-20 be approved, subject to the following conditions:

- i. That the variance pertains only to the request as submitted with the application; and
- ii. That the development be substantially in accordance with the information and sketch 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, in order to permit a swimming pool to be located in a side yard while the by-law normally requires pools to be located in the rear yard.

The owner is also requesting relief from Zoning By-law Number 2010-40 as amended, in order to permit a residential accessory structure (shed) to have a setback of 0.5 metres from the rear lot line, whereas the By-law requires a 1.0 metre setback from a rear lot line.

The above-described property (herein referred to as the “subject lands”) is located in a residential neighbourhood along Mynden Way, south of Woodspring Avenue. The subject lands contain a single detached dwelling and are surrounded by similar single detached dwellings.

3. Planning considerations:

The applicant is requesting relief from the By-law in order to allow a pool to be located in the side yard. Due to the layout of the lot, the largest open space is located to the side of the structure, which is by definition a side yard as defined by Zoning By-law 2010-40. Zoning By-law 2010-40, as amended, only permits pools in rear yards. The applicant is also requesting relief from the By-law to permit a residential accessory structure (shed) to have a setback of

0.5 metres from the rear lot line, whereas the By-law requires a 1.0 metre setback for a residential accessory structure up to 2.8m in height. Each relief requested is presented below:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	4.4	Pools may only be located in the rear yard	To permit a pool in the side yard
2	2010-40	4.2	A residential accessory structure up to 2.8m in height must be set back a minimum of 1.0m from the rear lot line	A residential accessory structure up to 2.8m in height to be set back a minimum of 0.5m from the rear lot line

In order to authorize a variance, Committee must be satisfied that the requested variances individually and cumulatively 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 designated “Emerging Residential” in the Town’s Official Plan. The objectives of the designation are to provide for a range of residential accommodation by housing type, tenure, size, location and price ranges to help satisfy the Town’s housing needs; and to encourage the provision for a range of innovative and affordable housing types, zoning standards and subdivision designs. This designation permits single detached dwellings, and allows for accessory structures and buildings normally associated with residential uses. This test is met.

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

The subject lands are zoned Residential Detached Dwelling 12.0m Zone (R1-E) by By-law Number 2010-40, as amended. A single detached dwelling is a permitted use in this zone, as are pools and residential accessory structures, such as sheds, subject to certain policies.

The general intent of requiring pools to be located in the rear yard rather than side yards is to set them back from the public street and from abutting dwellings in areas that may be considered more private or likely to generate noise by enclosing them in rear yards. In the case of the subject lands the proposed pool location is the principal open space of the subject lands and is well set back from the street. The proposed pool location also maintains a side yard setback of 1.6 metres, which meets the setback requirement of Zoning By-law 2010-40. This test is met.

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 sunlight, airflow, storm water run-off, and

movement around the home. In the case of the subject lands, the residential accessory structure will be 0.5 metre closer to the rear lot line than a structure would otherwise be. However, the proposed reduced setback appears to maintain a functional space and distance from the lot line that is sufficient for runoff. In addition, the proposed shed and reduced rear yard setback abuts a Town owned park space; as such impacts to neighbours are not anticipated. 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.

As the requested relief would allow the property owner to to invest in their property and arrange the property to suit their needs without significant impact to neighbours or the community, the variance is desirable for the appropriate development of the lot. This test is met.

3.4 Minor nature of the variance

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. As the proposed variance recognizes an uncommon lot configuration, and allows for it to be arranged in a manner that suits the owner without likely negative impact on others, this test is met.

In consideration of the above, the proposed variances are deemed to meet the four tests under the *Planning Act* and are recommended to be approved, subject to the conditions provided.

4. 4. Other comments:

4.1 Tree Protection

The applicant has indicated that there are no trees on or within the prescribed radius of the lot that would be defined as significant under the Town's Tree 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 pools or residential accessory structures and as such has no bearing on this application.

4.5 Commenting agencies and departments

Building Services has no comments on the application.

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,

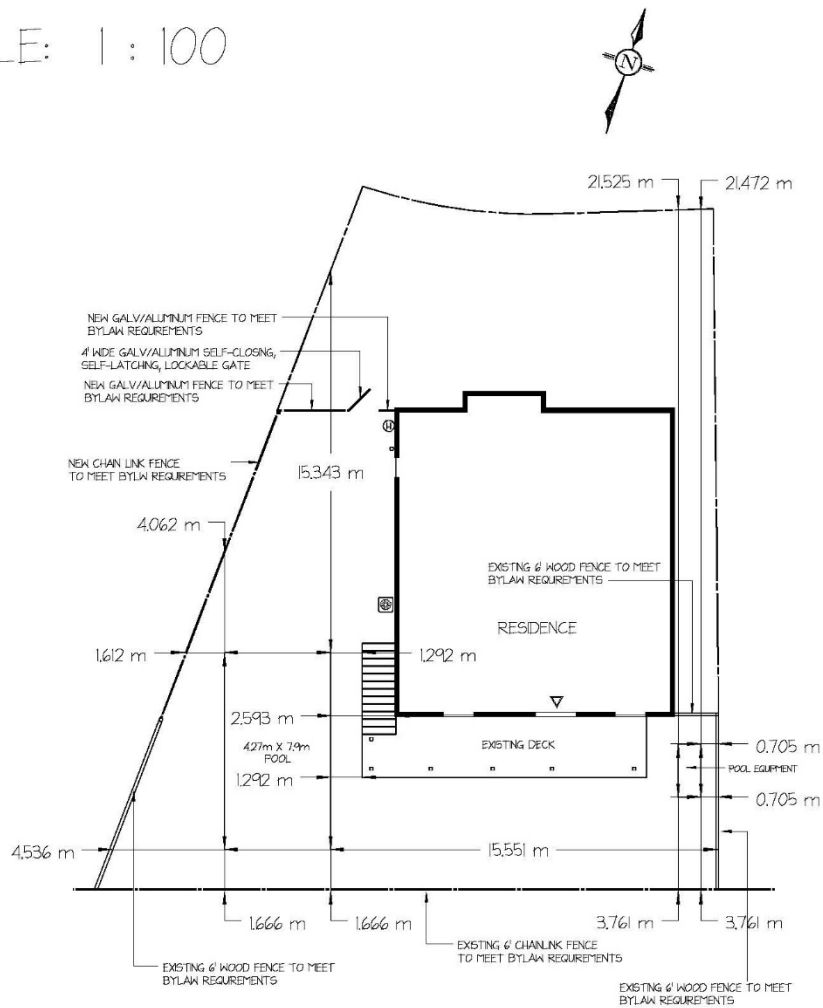


Alannah Slattery, BES, MCC
Planner

Appendix 1

TANYA & BRAD MOORE
21 MYNDEN WAY
NEWMARKET

SCALE: 1 : 100



Appendix 2

