

**PLANNING AND BUILDING SERVICES****Town of Newmarket**

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**Planning Report**

TO: Committee of Adjustment

FROM: Alannah Slattery  
Planner

DATE: November 18, 2020

RE: Application for Minor Variance D13-A19-20  
239 Pine Street  
Made by: LEACH, Steven

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**1. Recommendations:**

That Minor Variance Application D13-A19-20 be denied.

**2. Application:**

An application for minor variances has been submitted by the above-noted owners to request relief from Zoning By-law Number 2010-40 as amended in order to construct a detached garage in their rear yard in a location and at a size that are not permitted by the zoning by-law.

The above-described property (herein referred to as the “subject lands”) is located in a residential neighbourhood, north of Gorham Street. The relief as requested is as follows:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	4.1.2	Minimum side yard setback of 1.2m	Side yard setback of 0.61m
2	2010-40	4.1.2 vi	Maximum lot coverage for an accessory building of the lesser of 10% of the lot area or 75% of the ground floor area of the main building	Lot coverage for an accessory building of 117.19% of the ground floor area of the main building

**3. Planning considerations:**

The applicant is requesting relief from the By-law in order to build a detached garage in the rear yard of their property. The proposed garage will be replacing an existing, smaller detached garage. The garage is proposed to be closer to the side lot line than is permitted and larger than is permitted.

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 ensure compatibility of new development with existing structures. This designation permits single detached dwellings and residential accessory buildings. This test is met.

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

The subject lands are zoned Residential Single Detached Dwelling 15m Zone (R1-D-119) by By-law Number 2010-40, as amended.

The general intent of the zoning by-law is to limit the built form of structures in order to maintain compatibility and similarity of structures. In the case of detached garages, the zoning by-law provides that they have the same setback requirements as the main building, reflecting that garages can have a size and massing akin to a house.

The proposed garage would be 0.61 metres away from the side lot line, while the zoning by-law requires the same minimum yard setback as for the main building, being 1.2 metres. The zoning by-law also includes standards for the maximum lot coverage for all accessory buildings on a lot that represents a relationship to the size of the lot and the size of the main building. The by-law allows a maximum coverage for all accessory buildings on a lot to be the lesser of 10% of the lot area or 75% of the ground floor area of the main building. That is to say, for the subject lands whose main building is 79.27 square metres in ground floor area, the maximum size for a detached garage would be approximately 59.5 square metres. The proposed garage is 92.90 square metres.

By limiting the size of detached garages, the zoning by-law maintains a similar built form pattern. The by-law ensures that accessory buildings such as garages are secondary in prominence to the main building. The proposed detached garage will have a larger ground floor area than the main dwelling on the lot.

By limiting the ability to construct a garage within yard setbacks, the by-law maintains rear yards as areas where vehicular uses are strongly discouraged, as evidenced by other elements of the zoning by-law that limit the amount of a rear yard that can be used for parking and that prohibit driveways in the required rear yard setback. The by-law maintains side yards to provide for adequate access to rear yards and to reduce impacts on neighboring properties. Staff note that the existing side yard setback of the main dwelling to the north property line is 0.88 metres. The proposed garage would have a side yard setback of 0.61 metres to the south property line. The existing and proposed reduced side yard setbacks would limit access to the rear yard for emergency and maintenance uses. In addition, the proposed garage would be located adjacent to the neighboring property's main dwelling and in-ground pool.

The intent of ensuring compatible building forms and maintaining yards to not be dominant by vehicular uses is not met by this application.

### **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 would place a garage that is larger than typically permitted in a location that is proximate to the neighboring property to the south. The proposed garage may result in run-off and drainage impacts to the southerly neighbours. In addition, detached garages are intended by the By-law to be secondary to the main building on the lot. The size of the proposed garage conflicts with this intent.

It is not clear that 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 design is a relatively small change within the overall neighbourhood. This test is met.

In consideration of the above, it is staff's opinion that the proposed variances do not meet 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. While the recommendations of this report would not grant the relief requested, if Committee deems to approve this application, standard condition wording can be provided to ensure compliance with 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.

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

Building Services 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 as required by the *Planning Act*.

Respectfully submitted,



Alannah Slattery  
Planner