



## PLANNING AND BUILDING SERVICES

Town of Newmarket

395 Mulock Drive

P.O. Box 328, STN Main

Newmarket, ON L3Y 4X7

www.newmarket.ca

planning@newmarket.ca

T: 905.953.5321

F: 905.953.5140

### Planning Report

TO: Committee of Adjustment

FROM: Meghan White  
Senior Planner

DATE: December 3, 2020

RE: Application for Minor Variance **D13-A22-20**  
788 Allan Ave  
Made by: SHIP, Catherine and SHIP, Montgomery

---

#### 1. Recommendations:

That Minor Variance Application D13-A22-20 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 deck to have a setback of 2.74 metres from the rear lot line, whereas the By-law requires a 3.9 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 Allan Avenue (an east/west street) where it intersects with Maple Street (a north/south street). This context results in a fairly unique lot configuration involving an east side yard that has no street frontage. 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 in 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 the deck which surrounds the pool to have a setback of 2.74 metres from the rear lot line, whereas the By-law requires a 3.9 metre setback for a deck. 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 deck over 0.6m above grade, may encroach 3.6m into the required rear yard. In this case the rear yard setback is 7.5m with a maximum encroachment of 3.6m thus 3.9m would be the rear yard setback.	To allow the deck to have a rear yard setback of 2.74m

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 “Stable 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 15m Zone (R1-D) by Zoning By-law 2010-40, as amended. A single detached dwelling is a permitted use in this zone, as are pools and decks, 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 to an area that may be considered more private or less likely to generate noise. In this case, the proposed pool location is the principal open space of the subject lands and is well set back from the street, largely due to the lot’s unique context. The proposed location also maintains a side yard setback to the pool that meets the 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 light, sunshine, stormwater run-off, and movement around the home. In the case of the subject lands, the deck will be 1.16 metres closer to the rear lot line than a structure normally would be. However, the proposed reduced setback appears to maintain a functional space and distance from the lot line that is sufficient for stormwater runoff and yard maintenance. In addition, the portion of the rear yard abuts a Town owned green 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 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. As the proposed variance recognizes a unique context and lot configuration, and allows for it to be arranged in a manner that suits the owner without likely negative impact to 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 conditions.

## **4. Other comments:**

### **4.1 Tree Protection**

The applicant has submitted a tree report, at the time of writing the Town's Consulting Arborist had not responded.

### **4.2 Cultural Heritage**

The property is not designated under the Ontario Heritage Act or on the municipal list of non-designated Properties.

### **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. The Interim Control By-law does not prohibit residential accessory uses and structures and as such has no bearing on this application.

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

Building Services has no comments on the application.

Engineering Services has no objection to the application.

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

The Lake Simcoe Region Conservation Authority recommends approval of the application. The applicant has obtained the necessary permit from LSRCA.

#### **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,



Meghan White, MCIP RPP  
Senior Planner, Development