

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

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**Planning Report**

To: Committee of Adjustment

From: Janany Nagulan  
Planner

Date: March 18, 2021

Re: Application for Minor Variance D13-A05-21  
315 Kirby Crescent  
Town of Newmarket  
Made by: PRICE, Catherine Ann

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**1. Recommendations:**

That Minor Variance Application D13-A05-21 be approved, subject to the following conditions:

- i. That the variance pertains only to the request as submitted with the application; and,
- ii. That one space in the garage be reserved for the purpose of required parking and for no other use;
- iii. That failure to comply with and maintain the conditions of the Committee shall render the approval null and void.

**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, to vary the minimum number of off- street parking spaces required for a single detached residential dwelling to permit a new Accessory Dwelling-Unit (ADU). The description of the proposed variance is below.

Relief	By-law	Section	Requirement	Proposed
1	2010-40	5.3.1	To provide four parking spaces exterior to a garage for a dwelling unit and accessory dwelling unit.	To provide two parking spaces exterior to a garage and one parking space inside of a garage for a dwelling unit and accessory dwelling unit.

The Zoning By-law requires four exterior parking spaces. Ontario Regulation 299/19, enacted by the Provincial Government in September of 2019, supersedes this requirement and states that municipalities can only require one parking space for an accessory dwelling unit. The effect of this is that three exterior parking spaces are required.

The above-described property (herein referred to as the “subject property”) is located in a residential neighbourhood, west of Yonge Street and south of Davis Drive. There is an existing single- detached residence on the property, and it is abutted by similar single –detached homes.

### **3. Planning considerations:**

The request for variance is to permit a reduction in the minimum number of off-street parking spaces required to create a legal ADU in the existing single detached dwelling located at 315 Kirby Crescent. However, provincial legislation requires a total of three exterior parking spaces for a single detached dwelling with an ADU. The application was submitted as the current driveway length cannot accommodate the required number of minimum exterior parking spaces, therefore a variance is required to recognize one parking space in the existing garage.

In order to authorize a variance, Committee must be satisfied that the requested variance passes the four tests required by the Planning Act. In this regard, staff offer the following comments:

#### **Conformity with the general intent of the Official Plan**

The subject property is designated “Residential Areas” in the Official Plan. This designation permits a range of residential accommodation built form types. Regarding this designation, the Town’s Official Plan states:

It is the objective of the Stable Residential Area policies to:

- a. Provide for a range of residential accommodation by housing type, tenure, size and location to help satisfy the Town of Newmarket’s housing needs in a context sensitive manner.
- b. Maintain the stability of Residential Areas by establishing zoning standards that acknowledge and respect the existing physical character of the surrounding neighbourhood.
- c. Recognize the desirability of gradual ongoing change by allowing for contextually-sensitive development through *Planning Act* applications, to permit development which contributes to a desirable urban structure, diversifies housing stock, optimizes the use of existing municipal services and infrastructure, and is compatible with and complementary to the surrounding neighbourhood.
- d. Encourage a range of innovative and affordable housing types, zoning standards and subdivision designs where it can be demonstrated that the existing physical character of the Residential Area will be maintained.

The Official Plan permits Accessory Dwelling Units in single-detached dwellings in subject to the provisions of the zoning by-law. It also encourages a range residential accommodations and affordable housing types. Subject to the recommended conditions of approval, the requested variance is considered to conform to the Official Plan and therefore, this test is met.

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

The subject property is zoned Residential Detached Dwelling 15.0 Metre (R1-D) according to By-law 2010-40, as amended. Single-detached dwellings and accessory dwelling units are permitted uses in this zone.

Section 5.3.1 of the Zoning By-law sets out the parking standards for residential uses. This Section states that both a single-detached dwelling and an ADU must have two exterior parking spaces each, for a total of four exterior parking spaces. This zoning regulation is superseded by provincial regulation, which states that municipalities can only require one parking space for an accessory dwelling unit. Therefore only three exterior parking spaces are required. Within the Zoning By-law, a dwelling unit with an ADU is required to provide parking spaces exterior of any garage or structure. Therefore the parking requirement is three (3) outdoor parking spaces.

The general intent of the By-law is to provide a sufficient number of parking spaces for those residing in the two dwelling units on the property. Currently, the applicant's driveway from the garage face to the sidewalk is not long enough to accommodate the three spaces. The applicant has two exterior parking spaces and an attached garage however the Zoning By-law prevents parking spaces in the garage from being counted towards the parking requirement. Therefore, the proposed variance would allow for a sufficient number of parking spaces for the two dwelling units on the property.

The variance requested maintains the general intent of the zoning by-law. This test is met.

### **Desirable for the appropriate development of the land**

The variance is considered desirable for the development and the use of the land. An ADU contributes to the mix of housing types in Newmarket and supports the Town's goals of providing for more affordable forms of housing and an increased supply of rental housing. Furthermore, ADUs allow a modest increase in the density of dwelling units and allow homeowners a source of income for their property. While the standard parking requirement of three exterior spaces, in addition to any spaces provided in a garage, may provide ample parking, not all ADUs will generate such a parking demand. A minor variance is the appropriate tool for relief from zoning requirements that would prevent an otherwise desirable development, and a minor parking variance should not overshadow the desirability of an ADU as a development as encouraged by Town, Region, and Provincial policy.

### **Minor nature of the variance**

The impact of the proposed variance appears to be minimal as the potentially increased number of vehicles generated by the accessory unit can still be accommodated on site, either by the existing two exterior spaces or by the reserved parking space in the garage that is required by the proposed condition.

In consideration of the above, the proposed variance is deemed to meet the four tests under the Planning Act and is recommended to be approved subject to conditions.

## **4. Other comments:**

### **Heritage**

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

### **Commenting agencies and departments**

The Chief Building Official has no objection to this application subject to compliance with Building Code.

Engineering has deferred their comments to Planning and have no objects at this time.

York Region has no comments with regards to this application.

### **Effect of Public Input**

Neighbouring property owners at 313 and 317 Kirby Street have provided their support for this 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,

A handwritten signature in black ink, appearing to read 'Janany'.

Janany Nagulan  
Planner