



**PLANNING AND BUILDING SERVICES**

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**Planning Report**

TO:    Committee of Adjustment

FROM:                                         Peterson Rissis  
   Junior Planner, Development

DATE:                                         February 23, 2024

RE:     Application for Minor Variance **MV-2024-005**  
   124 Avenue Road  
   Made by: Frank & Eleni Henriques

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**1. Recommendations:**

That Minor Variance Application MV-2024-005 be approved, subject to the following clearing conditions:

1. The Secretary-Treasurer shall receive a letter from the Town of Newmarket, Development, and Infrastructure Services – Planning Services Division, indicating that satisfactory arrangements and posting of securities have been made with respect to the Town’s Tree Preservation, Protection, Replacement and Enhancement Policy prior to the issuance of any building permit; and,
2. The Secretary-Treasurer shall receive a letter from the Lake Simcoe Region Conservation Authority, indicating that satisfactory arrangements have been made with respect to the outstanding payment.

**2. Advisory Comments:**

1. That the variance pertains only to the requests as submitted with the application; and,
2. That the development be substantially in accordance with the information submitted with the application; and,
3. Prior to any demolition or construction activity on the subject lands, the Town must be notified in order to conduct an inspection of the installed tree protection fencing and other tree protection measures; and,
4. Failure to comply with and maintain the conditions of the Committee shall render the approval null and void.

**2. Application:**

An application for Minor Variance has been submitted by the owner of the above-noted property to request relief from Zoning By-law 2010-40, as amended, to permit the construction of an attached double-car garage with a second-storey addition above.

The following variance has been requested from Zoning By-law 2010-40, as amended:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.2.2	To provide a minimum interior side yard of 1.80 metres	To provide a minimum interior side yard setback of 1.21 metres

The above-described property (herein referred to as the “subject land”) is located in a residential neighbourhood, north of Eagle Street and east of Yonge Street. The subject land is occupied by an existing single-detached dwelling and is surrounded by similar single-detached dwellings.

### 3. Planning considerations:

The request for variance is to permit a reduction to the required minimum interior side yard setback from 1.8 metres to 1.21 metres to facilitate the construction of an attached double-car garage with a second-storey addition above. Currently, there is an existing two-storey single-detached dwelling on the property, with a single-car garage and enclosed breezeway that conforms to the current zone standards. The single-car garage and enclosed breezeway would be demolished to construct a new addition that would extend into the required side yard setback. A variance is, therefore, required to facilitate the proposed addition.

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” in the Official Plan. This designation permits a range of residential built-form types. Regarding this designation, the Town’s Official Plan states:

It is the objective of the Residential Area policies to:

- a. Provide a range of residential accommodations 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 subject land is within the area characterized as “Historic Core Character Area”. This area is generally characterized by:

- Traditional street grid patterns;
- Short blocks with many intersections;
- Landscaped boulevards and an extensive canopy of established mature trees;
- Continuous sidewalks on one or both sides of the street;
- Building heights of 1 to 2 storeys;
- A range of architectural expressions and styles, with a significant focus on Victorian-era Architecture; and,
- A significant concentration of Listed and Designated heritage properties.

Developments within the Historic Core Character Area shall acknowledge and respect the general physical characteristics as outlined above, while responding to the unique site and contextual conditions and demonstrating compatibility with the existing neighbourhood. Where a new dwelling is being proposed within or abutting an established neighbourhood, it must be designed, massed, and located to respect the predominant context.

More specifically, Section 3.1.2 of the Official Plan outlines policies that require development in Residential Areas to have specific consideration of the following:

- Lot dimensions;
- Lot frontage;
- Front, side, and rear yard setbacks;
- Siting and orientation;
- Lot coverage;
- Building entrance location;
- Private landscaping;
- Building height, massing, and depth; and,
- Ground floor height.

The proposal has been reviewed against the policies above and is compatible with the existing character of the surrounding neighbourhood. The proposed garage and two-storey addition are in keeping with the design and scale of the existing dwelling and neighbourhood. The variance requested only pertains to the side yard setback, which maintains the neighbourhood's existing character. The proposed variance complies with all other considerations noted above.

The Official Plan allows for compatible design and the gradual change and improvement of homes through Planning Act applications. Subject to the recommended clearing conditions and advisory comments, the requested variance is considered to conform to the Official Plan. Therefore, this test is met.

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

The subject land is zoned Residential Detached Dwelling 15m Zone (R1-D) by Zoning By-law 2010-40. Single-detached dwellings are permitted within the zone.

Section 6.2.2 of the Zoning By-law sets out the zone standards applicable for residential zones, including minimum required interior side yard setbacks. The by-law requires a minimum interior side yard setback of 1.8 metres for buildings over 5.7 metres in height. The proposal includes adding a second-storey

addition over the new garage, which is 6.89 metres in height; therefore, the required side yard setback is 1.8m, whereas the applicant is proposing an interior side yard setback of 1.21 metres.

The general intent of the minimum interior side yard setback is to ensure visual consistency in the streetscape, the use of the property does not infringe upon the rights of the neighbouring properties, allow sufficient access and clearance to the rear of the property, and permit adequate drainage, airflow, and landscaping between dwellings. This intent is maintained as the proposed reduced setback maintains sufficient separation to access the rear yard and accommodate drainage around the property. Additionally, the proposal would not unduly impact the visual character of the streetscape. The proposal complies with all other zone standards of the By-law.

The variance requested maintains the general intent of the Zoning By-law, and therefore, this test is met.

### **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 impact on neighbouring properties.

The overall impact of the variance would be minimal as the requested variance is limited to the side yard setback and the addition would remain a sufficient distance from the property line. As the requested relief would allow the property owner to invest in their property and arrange it to suit their needs without significant impact on neighbouring properties or the community, it is considered desirable for the appropriate development of the lot. This test is met.

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

The test of whether a variance is minor in nature is not simply an evaluation of the numerical value; the Committee is requested to consider the overall impact of the variance. The overall impact of the reduced side yard setback is minimal as sufficient space is maintained for access to the rear yard of the subject property, and the proposed addition would have minimal visual impact on the neighbouring properties. The proposed alteration is generally consistent with the surrounding neighbourhood context, and therefore, this test is met.

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 the clearing condition.

## **5. Other comments:**

### **Tree Preservation**

The submitted Arborist Report and Tree Preservation Plan notes that one tree conflicts with the proposed addition. Additionally, there are several significant trees on the subject land and on adjacent properties within 4.5 metres. As such, the variance is conditional upon the provision of satisfactory compensation and securities through replacement planting or cash-in-lieu.

### **Heritage**

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

### **Commenting Agencies and Departments**

Engineering Services has no objection to the application.

Lake Simcoe and Region Conservation Authority has no objection to the proposal. However, it is noted that there is an outstanding fee to be paid to LSRCA for review of the application.

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

### **Effect of Public Input**

One letter of public input was received, indicating no objection to the proposal.

### **6. 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,



Peterson Rissis  
Junior Planner – Development