



PLANNING AND BUILDING SERVICES

Town of Newmarket

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Planning Report

TO: Committee of Adjustment

FROM: David Sanza
Junior Planner, Development

DATE: May 24, 2024

RE: Application for Minor Variance **MV-2024-023**
292 Rushbrook Drive
Made by Armon De Jesus Martinez & Paula Jane Martinez

1. Recommendations:

1. That Minor Variance Application MV-2024-023 be approved.

2. Clearing Conditions:

1. The applicant needs to submit to the Town a sealed grading plan designed and stamped by a P.Eng of Ontario. The Grading Plan shall comply with the Town's standards for grading and drainage requirements. The applicant shall demonstrate that there will be no negative impacts to the grading and drainage of this property or neighbouring properties because of the proposed changes. See letter TF054M dated May 17, 2024.

3. 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. The municipal boulevard is not recognized as a legal parking space pursuant to Zoning By-law 2010-40; and,
4. Failure to comply with and maintain the conditions of the Committee shall render the approval null and void.

4. 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 accessory dwelling unit in the basement of the existing dwelling. The dwelling will host an entrance for the ARU on the eastern side of the building along with an existing widened driveway to accommodate the required parking outside of a structure.

The following variances have been requested from Zoning By-law 2010-40, as amended:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.2.2	To provide an interior side yard setback of 1.2m from the lot line.	To provide a walkway and entrance for the proposed ARU.
2	2010-40	6.2.2	The maximum permissible driveway width is 5.5m wide	To allow for the currently existing driveway to be made legal.

Section 6.2.2 of the Zoning By-law requires that the dwelling has an interior side yard setback of 1.2 metres. The applicant is proposing an encroachment into this required setback for a walkway and an entrance to the ARU. The other section of 6.2.2 the applicant is seeking relief from is the maximum permissible driveway width of 5.5 metres. The existing driveway exceeds the maximum width of 5.5 metres, and the applicant is seeking relief to legalise the width.

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

5. Planning considerations:

The variances are being requested to seek relief from two different standards of Section 6.2.2 of the Zoning By-law. The first variance is looking to allow an encroachment into the required side yard setback. Section 6.2.2 of the By-law requires that a 1.2 metre setback be maintained, however the setback for the walkway and the steps, required to access the ARU entrance, is 0.224 metres. The second variance is to seek relief from the standards of Section 6.2.2 which only allows for a maximum driveway width of 5.5 metres. The applicant’s existing driveway is 5.715 metres wide. Therefore, variances are required to permit a walkway to encroach into the side yard and to allow the existing driveway to be considered legal.

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:

- 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.
- Maintain the stability of Residential Areas by establishing zoning standards that acknowledge and respect the existing physical character of the surrounding neighbourhood.
- 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 all dwelling types, subject to certain criteria including compliance with the Town's Zoning By-law. The Official Plan also encourages a range of residential accommodations and affordable housing types. Subject to the advisory comments, the requested variances are considered to conform to the Official Plan and therefore and this test is met.

Conformity with the general intent of the Zoning By-law

The subject land is zoned Residential Detached Dwelling 9.7m Zone (R1-F) by Zoning By-law 2010-40. Single-detached dwellings and additional residential units are permitted within the zone.

Section 6.2.2 of the Zoning By-law establishes the building setbacks and maximum driveway widths for dwellings located within the R1-F zone. The required side yard setback is 1.2 metres from the interior side lot line. The proposed setback for the new walkway and side door entrance is 0.224 metres. The second standard of Section 6.2.2 the variance is seeking relief from is the maximum driveway width of 5.5 metres, as the existing driveway width is 5.715 metres.

The general intent of the By-law in setting out minimum side yard setbacks is to allow for access to the rear yard through the side yard. In this instance, the applicant is looking to allow better access to the ARU by adding in a walkway to the eastern side of the dwelling. This will provide a stable path for future tenants to access the ARU.

The general intent of the By-law in establishing maximum driveway widths is to allow for adequate parking space for the dwelling's vehicles, while ensuring that there is still enough space allocated within the front yard for soft landscaping. The soft landscaping is to ensure that the front yard has enough capacity for drainage and a uniform look amongst the other dwellings on the street. The driveway extension is only 0.215 metres larger than the permissible driveway width, providing a continuous coverage of the garage with a paved surface. Allowing the driveway to maintain its current width follows the intent of the By-law by still providing enough space on the property to have soft landscaping within the front yard while accommodating the minimum parking requirements set out in the By-law.

Given the analysis above, the requested variances maintain the general intent of the Zoning By-law and therefore, this test is met.

Desirable development of the lot

The proposed variances are considered desirable for the development and use of the land. An ARU contributes to the mix of housing types within Newmarket and supports the Town's goals of providing for more affordable forms of housing and provides for modest increases in density. A variance to the interior

side yard setback to allow for a walkway and for an increased in driveway size should not overshadow the desirability of an ARU as a development as encouraged by Town, Region, and Provincial policy.

Allowing the increase to the driveway is desirable as enough soft landscaping in the front yard is maintained. Permitting the walkway within the side yard allows for an easily accessible entrance to the ARU helping to promote additional housing options to the neighbourhood. Thus, providing a desirable addition to the lot. Therefore, the 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 proposed driveway and setback variances appears to be minimal as there is still adequate access to the rear yard without negatively impacting the neighbour and as the widened driveway does not significantly reduce the amount of soft landscaping.

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.

6. Other comments:

Tree Preservation

No trees are being impacted by the approval of this variance.

Heritage

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

Commenting Agencies and Departments

Please see cleaning conditions for engineering comments TF054M dated May 17, 2024.

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

The subject land is not within the LSRCA-regulated area.

Central York Fire Services has not commented on the application.

Effect of Public Input

No public input has been received as of the date of writing this report.

7. 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,

David Sanza

David Sanza
Junior Planner – Development