



**PLANNING AND BUILDING SERVICES**  
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## Planning Report

TO:                                      Committee of Adjustment

FROM:                                  David Sanza  
    Junior Planner, Development

DATE:                                  July 31, 2024

RE:                                      Application for Minor Variance **MV-2024-025**  
    932 Isaac Philips Way  
    Made by Netspace Investment Inc.

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### 1.      **Recommendations:**

1. That Minor Variance Application MV-2024-025 be denied. Should the Committee see merit in the application any approval should be subject to the following clearing conditions and advisory comments.

### 2.      **Clearing Conditions:**

1. The Secretary-Treasurer shall receive an updated arborist report if the minor variance is granted.

### 3.      **Advisory Comments:**

1. That the variance, if granted, 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, if granted; 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 (ADU) in the basement of the existing dwelling. The applicant is proposing to widen the existing driveway to accommodate the required three parking space outside of the garage.

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

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.2.2	The maximum permittable driveway width is 3.5 metres wide	To allow for the proposed driveway width of 5.2 metres

Section 6.2.2 of the Zoning By-law permits a maximum of 3.5 metres driveway width for this property. The applicant is looking to seek relief from the maximum driveway width, increasing the maximum permitted driveway width to 5.2 metres.

The above-described property (herein referred to as the “subject land”) is located in a residential neighbourhood, south of Joe Persechini Drive and west of Yonge Street. The subject land is occupied by an existing townhouse dwelling and is surrounded by similar dwellings.



Figure 1 932 Isaac Philips Way

**5. Planning considerations:**

The variance is being requested to seek relief from Section 6.2.2 of the Zoning By-law to permit a 5.2 metre driveway whereas the By-law permits a maximum of 3.5 metres. The reason for the extension

is to provide a third parking space exterior to the car garage in order to accommodate an ADU. Therefore, a variance is required to permit the proposed driveway widening to meet the parking requirements needed for the proposed ADU in the basement.

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 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 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 land is zoned Residential Multiple Dwellings (Townhouse) Exception Zone (R4-R-X1) by Zoning By-law 2010-40. Townhouse dwellings and ADUs are permitted within the zone.

Exception 143 of Zoning By-law 2010-40 (By-law reference 2018-17) sets forth the maximum permissible driveway widths for dwellings located within the R4-R-X1 zone. Under this By-law the maximum permissible driveway width is 3.5 meters wide. The applicant is proposing to expand the driveway by 1.7 metres to achieve a total width of 5.2 metres to accommodate an extra parking space for the ADU (3 exterior parking spaces are required for the main dwelling and the ARU).

The general intent of the By-law is to provide a maximum driveway size that establishes a consistent and aesthetically pleasing streetscape, with a balance of hard and softscape areas. The maximum permissible driveway width is also designed to allow for adequate space for the dwelling’s vehicles to

park, 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 proper surface water drainage. In addition to the soft landscaping concerns the overall lot size is very narrow, the widening of the driveway would not be proportionate and take up a lot of visual space on the property. Disrupting the visual appeal of the neighbourhood.

The proposed driveway widening does not meet the criteria listed within the Public Tree By-law. A public tree is located in the boulevard and has the potential to be negatively affected from the addition of the widening however, without an arborist report we cannot say to what extent the damage may be. Permitting this widening has the potential to damage the roots of the tree, further impacting the availability of water drainage and increase the risk of flooding in the front yard, as well as harming or killing the tree.

Overall, staff believe the requested variance to expand the driveway from 3.5 metres to 5.2 metres will result in:

- Reducing the soft landscaping;
- Drainage issues on the property and adjacent properties; and
- Town owned tree will negatively affect by driveway widening.

Given the above, the requested variance does not maintain the general intent of the Zoning By-law and therefore the test is not met.

### **Desirable development of the lot**

The proposed variance is not considered desirable for the development and use of the land. An ADU 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 a modest increase in density. However, in this specific instance the subject property is only 7.35 metres in width, and the front (soft) landscaped area is only 3.05 metres in width. The majority of the soft landscaped area would be used as a driveway as per the proposal, which would present negative effects on drainage and aesthetics. Therefore, the test is not 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 widening does not appear to be minor in nature, has undesirable surface water drainage implications, and has aesthetic implications to the streetscape, and has the potential to damage the growth of a Town-owned tree.

In consideration of the above, the proposed variances are deemed to not meet the four tests under the *Planning Act* and are recommended to be denied.

## **6. Other comments:**

### **Tree Preservation**

The Tree Report has been filed incorrectly. There is a street tree present and would be impacted by the driveway extension which has not been addressed by an Arborist Report.

## **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 have provided the following comments:

- The Tree Report Form has been filed incorrectly. There is a Street Tree present and would be impacted by the driveway extension.
- The Street Tree is part of the engineering approved drawings and is a requirement.
- There is no space to shift the Street Tree to accommodate the driveway while meeting the required tree offset of 1.5 metres from hard surfaces.
- Due to space constraints of the subdivision, there are minimal areas where Street Trees can be planted.
- It is not recommended that this Minor Variance be permitted due to the impacts on the Street Tree.

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.

Please see comments below from UFI dated July 18, 2024.

- No tree report form or arborist report has been submitted as part of application. An arborist report and a tree protection plan must be provided to accurately reflect the species, size, condition and the correct location of all significant trees located on or within 4.5 metres of the subject lands.
- Based on Survey Grading Plan and Property Photo 1 (Figure 1), there is a significant tree on the subject property or within 4.5m from the subject property line (Figure 2). This tree has not been reported in the current submission. The next submission must include appropriate reporting, as per requirements in the Policy.
- Additional comments on trees affected by this application will be provided when the requested additional information is available for further review.

### **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 not minor in nature;
- (2) conforms to the general intent and purpose of the Official Plan;
- (3) does not conform to the general intent and purpose of the Zoning By-law; and
- (3) is not considered desirable for the appropriate development of the lot.

Respectfully submitted,

*David Sanza*

David Sanza  
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