



PLANNING AND BUILDING SERVICES
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Planning Report

TO: Committee of Adjustment

FROM: Aida Hosseinzadeh
Intermediate Planner, Development

DATE: December 13, 2024

RE: Application for Consent **CON-2024-006** and Minor Variance **MV-2024-048**
589 and 593 Watson Avenue
Made by: Andrei Balakai

1. Recommendations:

Consent Application

That Consent Application **CON-2024-006** be approved, subject to the following:

Clearing conditions:

1. To the satisfaction of the Secretary-Treasurer:
 - i. An electronic copy of the deposited reference plan showing the subject lands, which conforms substantially to the application as submitted;
 - ii. Proof of payment of all outstanding taxes and local improvement charges owing to date; and,
 - iii. Any required transfers to affect the severance and conveyance of the land.
2. The Secretary-Treasurer shall receive a letter from the Town of Newmarket, Development and Infrastructure Services – Planning Services Division, indicating that the benefitting and retained lots comply with the provisions of the Zoning By-law, or alternatively; that any variances are approved by the appropriate authorities and that such approval is final and binding.

Advisory comments:

1. The consent pertains only to the request as submitted with the application;
2. The development be substantially in accordance with the information submitted with the application; and,
3. Failure to comply with and maintain the conditions and comments of the Committee shall render the approval null and void.

Minor Variance Application

That minor variance application MV-2024-048 be approved, subject to the following:

Advisory comments:

1. The variance pertains only to the request as submitted with the application;
2. The development be substantially in accordance with the information submitted with the application; and,
3. Failure to comply with and maintain the conditions and comments of the Committee shall render the approval null and void.

2. Subject Lands

The application pertains to the property municipally known as 589 and 593 Watson Avenue and is described by a legal description below:

PT LT 13 PL 125 EAST GWILLIMGBURY; PT LT 14 PL 125 EAST GWILLIMBURY AS IN R587818;
NEWMARKET

The subject land is located on the north side of Davis Drive and east of Lundy's Lane. The property is currently occupied by two single detached dwellings and is surrounded by similar single detached dwellings to the north.

3. Application:

An application for consent has been submitted to sever the subject land:

- Part 1 is being severed and the existing 2-storey dwelling (municipally known as 589 Watson Avenue) would remain on the severed parcel.
- Part 2 is being retained and the existing 1-storey dwelling (municipally known as 593 Watson Avenue) would remain on the retained parcel.
(See attachment #1)

The consent application is required as the lots merged on title in 2022. Prior to the owner purchasing the Part 1 (589 Watson) in 2022, these were separate conveyable lots. When Part 1 was purchased by Andrei Balakai, the parcels merged on title at the Land Registry Office as per routine process.

As a result of the Consent application, a minor variance application is also required for the retained parcel (593 Watson Avenue). The existing building on the retained parcel predates Zoning By-law 1979-50. Based on the historic aerial images, the garage existed on this lot in 1978. However, it seems that it was expanded between 1978-1988. In this case, if the applicant were able to prove the garage was expanded prior to 1979 (between 1978 and 1979), the Town would consider the structure to have legal non-complying status. The Town does not possess any record of the garage being built before 1979. Furthermore, the Town has not received any documents from the owner indicating the expansion of the garage happened prior to 1979 (please refer to attachment #2 for comparison of the properties in 1978, 1988 and 2024). Therefore, the minor variance application is required to bring the deficiency into compliance with Zoning By-law 2010-40. The purpose of the minor variance application is to seek relief from the Zoning By-law minimum required interior side yard setback for 593 Watson Avenue.

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	A 1.2 metres interior side yard setback	To permit the existing interior side yard setback of 1.1 metres.

Since there are no physical changes to the existing structure located on the severed lot (589 Watson Avenue) a minor variance application is not required due to the following reasons:

1. The dwelling on 589 Watson Avenue predates Zoning By-law 1979-50 and is considered a “Legal Non-Complying Building”. The severance is not further increasing the extent of non-compliance.
2. The lot existed legally prior to the effective date of Zoning By-law 1979-50, and it is considered a “Legal Non-Complying Lot”. Please refer to Section 3.1. of this report for further information on legally non-complying lot.

(Please refer to attachment #2 for a comparison of the air photos of the properties in 1978 and 2024).

3.1. Planning Considerations – Consent

i. Conformity with the Official Plan

Section 16.1.5.2 of the Official Plan sets out the circumstances in which an application for consent will be granted. The section outlines that consents shall only be granted where:

- a. The severance is for the purpose of infilling within the existing development;
- b. A plan of subdivision of not necessary;
- c. The number of lots created is three or less;
- d. The lot can be adequately services by sanitary sewage disposal, water supply, and storm drainage facilities;
- e. No extension, improvement or assumption of municipal services is required;
- f. The lot will have frontage on an improved public road, and access will not result in traffic hazards;
- g. The lot will not restrict the ultimate development of adjacent lands;
- h. The size and shape of the lot conforms with the requirements of the Zoning By-law, is appropriate to the use proposed and compatible with adjacent lots; and,
- i. The consent complies with all relevant provisions of the Official Plan.

589 Watson Avenue: the severed lot meets clauses (a) to (g) and (i), as the subject land is within an existing neighbourhood with existing services. Clause (h) does not apply as the lot pre-dates Zoning By-law 1979-50 and is deemed to be legal non-complying. Therefore, it is not required to meet the minimum lot area and minimum lot frontage requirements of the current bylaw (ZBL 2010-40).

593 Watson Avenue: the retained lot meets clauses (a) to (i), as the subject land is within an existing neighbourhood with existing services. A minor variance application is required to permit a reduced interior side yard setback for this property. Please see Section 3.2 of this report for the planning analysis of the minor variance application.

The purpose of the consent application is to re-divide the lots. Both the retained and the severed lot would still maintain the characteristics of the low-density residential neighbourhood and use the existing servicing. The proposed consent meets the intent of the Official Plan.

ii. Conformity with the Zoning By-law

The subject land is zoned Residential Detached Dwelling 15m Zone (R1-D) by Zoning By-law 2010-40, as amended. This zone contains requirements for minimum lot area, lot frontage, yard setbacks, height and lot coverage. After the proposed severance:

- 589 Watson Avenue: the severed lot does not meet the minimum lot area and lot frontage of the current R1-D zone. As explained previously, a minor variance application is not required for this lot as the lot has been deemed legal non-complying. All other zoning requirement has been met.
- 593 Watson Avenue: the retained parcel complies with the minimum lot area and frontage requirements of the R1-D zone. A minor variance application is required to permit a reduced interior side yard setback for this property. Please see Section 3.2 of this report.

The proposed application meets the intent of the Zoning By-law.

3.2. Planning Considerations – Minor Variance

The applications for consent and variance must be addressed in tandem. If committee approves the consent, the application for minor variance is unnecessary. Conversely, if committee denies the minor variance application, the consent application cannot be approved as the minor variance is required for the retained lot to comply with the requirements of the Zoning By-law. It is logical and appropriate to deal with the minor variance application as a condition of the approval of the consent.

In order to authorize a minor 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:

i. Conformity with the General Intent of the Official Plan

The subject lands are designated “Residential Areas” in the Town’s Official Plan, which permits a range of residential built form types. The objectives of the Residential Areas policies are 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) A 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 contextuality 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; and,
- 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 lands are within the area characterized as a “Traditional Suburban Character Area”. This area is generally characterized by landscaped boulevards and a moderate and evolving canopy of maturing street trees; rectangular and pie-shaped lots; building heights between 1 and 2 storeys and a limited range of architectural expression and styles.

Section 12.4 of the Official Plan outlines the criteria that developments must be reviewed against to and determine if the design will fit into the existing character of the surrounding area. The proposed application meets the general characteristic of the Residential Area designation and Traditional Suburban Character Area, as the physical features, such as street pattern and block size of the neighbourhood would remain unchanged. Similarly, no changes to the public realm are proposed. The proposed application would result in lots that fit into the existing lot fabric of the neighbourhood. Therefore, the proposed application meets the intent of the Official Plan.

ii. 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, as amended.

The general intent of the By-law is to ensure the orderly development of properties and to prevent developments that are incompatible with the surrounding context. The buildings on the subject lands predate Zoning By-law 1979-50. Currently, there are no physical changes proposed on the severed or the retained lots.

- The existing building on the severed lot (589 Watson Avenue): the existing building on the severed lot predates Zoning By-law 1979-50 and based on the historic aerial images, the structure is considered legal non-complying. No minor variance is required for the lot to meet the minimum requirement for the lot frontage and lot area. The existing building on the severed lot meets the setback requirement of the Zoning By-law 2010-40 for the dwelling.
- The existing building on the retained lot (593 Watson Avenue): the existing building was built prior to the implementation of Zoning By-law 1979-50. However, it seems that between 1978 and 1988, the attached garage was expanded. If the applicant were able to prove the expansion happened prior to 1979, the Town would consider it legal non-complying. However, the Town does not possess any record of the garage being built before 1979 and has not received any proof of the structure being expanded prior to 1979. Therefore, a minor variance is required for the interior side yard setback on the west side of the property.

The existing western interior side yard setback is 1.1 metres, whereas the Zoning By-law 2010-40 requires a 1.2 metres setback for buildings up to 4.2 metres in height within this zone.

The intention of the side yard setbacks in the Zoning By-laws is to provide an appropriate distance from the property line, maintaining the privacy of the adjacent neighbour and proper access around the dwelling. Currently, the attached garage is encroaching into the required interior side yard setback less than 0.1 metres. The encroachment is considered negligible and does not adversely affecting the purpose of a side yard or the intent of the By-law. Moreover, the structure has existed approximately 40 years and the Town has not received any concerns from the neighbours. Therefore, the proposed request conforms with the general intent of the Zoning By-law. This test is met.

iii. Desirable for the appropriate development of the land

It is generally desirable to allow the owner to invest in, redevelop, and improve their property subject to the limits of the By-law and impacts on neighbouring properties. And to allow property owners to arrange their properties in a manner that suits their needs, subject to compliance with the Zoning By-law and ensuring the orderly development of the lots. The structures on the retained and the severed lots existed prior to the lots merging on title.

As the requested relief related to the interior side yard setback would allow the property owner to arrange the property to suit their needs without significant impact to the adjacent neighbours or the broader community, the variance is considered desirable and an appropriate development of the lot. This test is met.

iv. Minor Nature of the Variance

When considering if the variance is minor, it is not just the numerical value that should be considered. Committee is requested to consider the overall impact of the variance, and more specifically, whether an application creates unacceptable adverse impacts. The proposed variance to the required interior side yard setback would not significantly alter the character of the neighbourhood. This test is met.

In consideration of the above, the proposed variance meets the four tests under the *Planning Act*.

4. Other Comments:

Tree Preservation

Based on the provided Arborist Report, the scope of the proposed consent and minor variance application is to sever the lots with no physical changes to the existing buildings. For these reasons, no tree protection fencing has been shown and no tree inquiry or removal needs to take place.

Heritage

The subject lands are not listed as designated heritage properties.

Commenting Agencies and Department

Engineering Services have no objections to the application. However, the existing drainage patterns and swales would be required to remain and there should be no negative impacts to the grading and drainage of this property or neighbouring properties as a result of the proposed changes.

The subject lands are not within the LSRCA floodplain regulated limit.

York Region has provided the following comments: Source Protection staff have no comments on this application, while it is in a Source Protection Area the proposed application does not trigger any Regional Source Protection requirements. Should the proposal change and/or the application be amended, Source Protection staff will require recirculation. For more information on source protection please visit www.york.ca/protectingwater.

Please note that any future development, depending on the proposal, may be subject to source water

protection policies for any development that is ICI or multi-residential (4 units or more). Contact sourcewaterprotection@york.ca to determine if any future development will be subject to requirements.

Legislative Services: No known parking or property standard concerns.

Effect of Public Input

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

5. Conclusion:

i. Consent Application

It is staff's opinion that the consent application meets the intent of the Official Plan, the Zoning By-law, and is recommended to be granted, subject to the clearing conditions and advisory comments.

ii. Minor Variance Application

The requested variance be granted as the relief:

- (1) is minor in nature;
- (2) conforms to the general intent and purpose of the Official Plan;
- (3) conforms to the general intent and purpose of the Zoning By-law;
- (4) is considered desirable for the appropriate development of the lot.

Respectfully submitted,

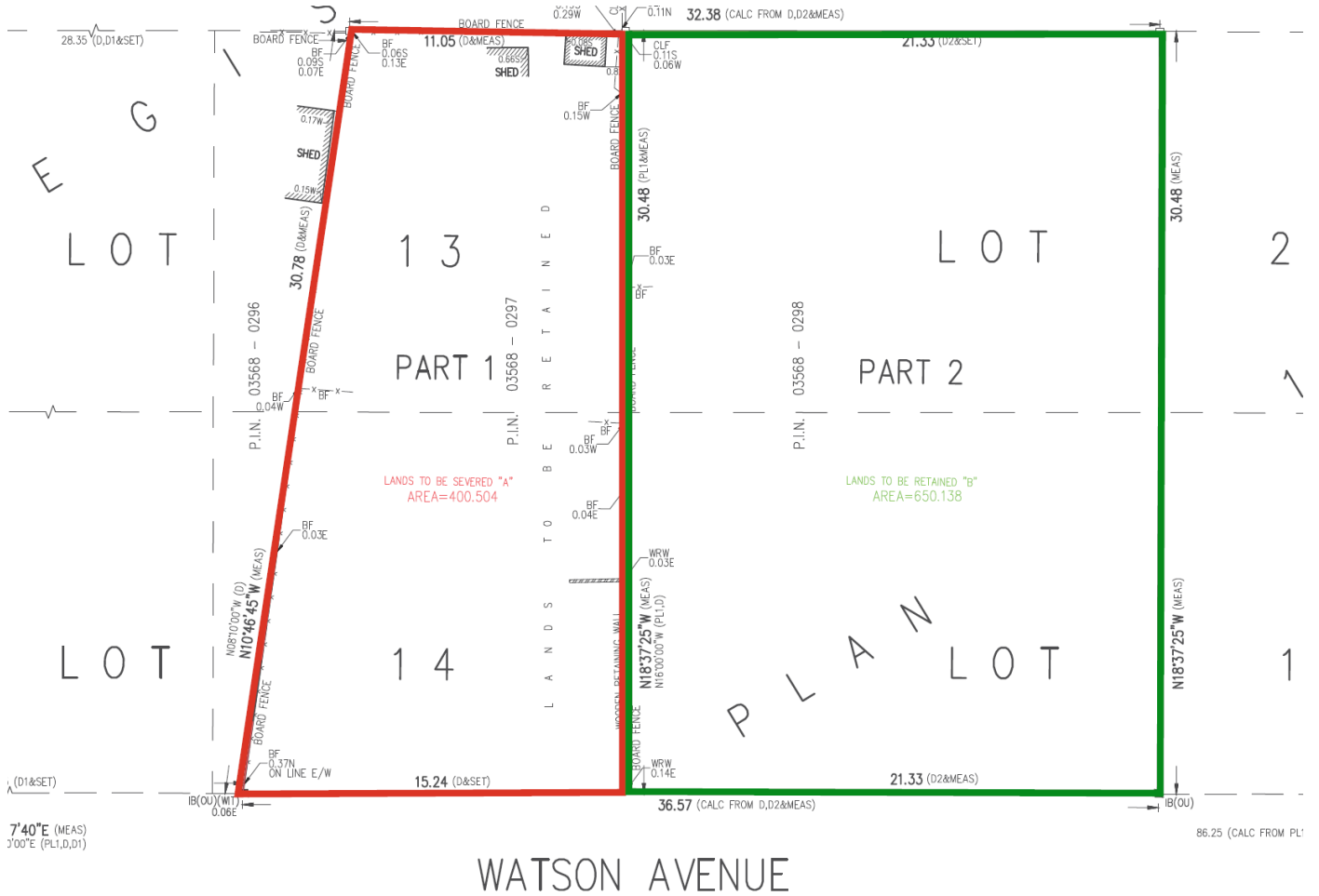
A. Hosseinzadeh

Aida Hosseinzadeh
Intermediate Planner, Development

Appendixes:

- Attachment #1: The retained and the severed lots.
- Attachment #2: Comparison of properties in 1978, 1988, and 2024.

Attachment #1:



Attachment #2:



Image 1 - 1978



Image 2 - 1988



Image 3 - 2024