



PLANNING AND BUILDING SERVICES

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Application for Enlargement of a Legal Non-Complying Dwelling Unit Staff Report to Committee of Adjustment

Report Number: MV-2024-050
Property Address: 423 Penn Ave
Made By: Madelyn J. Wheeler & Scott C. Wheeler
Department(s): Building and Planning Services
Author(s): David Sanza, Junior Planner
Meeting Date: January 29, 2025

1. Recommendations:

1. That application **MV-2024-050** to expand a legal non-complying dwelling unit be approved. The request, as considered, is desirable for the appropriate development of the lot and would not cause unacceptable adverse impacts on surrounding dwellings.

2. Clearing Conditions

Staff recommend 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 have been made with respect to the Town's Tree Preservation, Protection, Replacement and Enhancement Policy prior to the issuance of any building permit.
2. The applicant will need to submit a sealed grading plan and servicing plan designed and stamped by a P.Eng of Ontario to the Town, complying with the Town's standards for grading requirements. There should be no negative impacts on the grading and drainage of this property or neighbouring properties as a result of the proposed changes. Please be advised that this application will require a review by the Building Department. See Letter AG019M dated January 17, 2025.

3. Advisory Comments:

1. That the variance pertains only to the request as submitted with the application.
2. Prior to any demolition or construction activity on the subject lands, the Town must be notified to conduct an inspection of the installed tree protection fencing and other tree protection measures; and,
3. That the development be substantially in accordance with the information submitted with the application; and,

4. Failure to comply with and maintain the conditions of the Committee shall render the approval null and void.

4. **Application:**

An application has been submitted by the above-noted owners to permit the enlargement of a legal non-complying single detached dwelling unit. The applicant is proposing an enlargement to the existing dwelling unit by adding an addition within the rear yard.

The above-described property (herein referred to as the “subject land”) is located in a residential neighbourhood, east of Main St N and north of Davis Drive. The lot is occupied by an existing two-storey single-detached dwelling and is surrounded by similar single-detached dwellings. The subject land is designated as “Residential” by the Official Plan and is within the “Historic Core Character Area”. The subject land is zoned Residential Detached Dwelling 15m Zone (R1-D) by Zoning By-law 2010-40.

5. **Planning considerations:**

The applicant has requested permission to expand a legal non-complying dwelling to provide more living space within the house. The new addition will add extra space for a recreational room and an additional bedroom to the dwelling; adding in more living space and amenity space to the dwelling unit. The applicant is seeking relief from section 6.2.2 of Zoning By-law 2010-40 for lot coverage.

Permission from the Committee is required to expand the legal non-complying dwelling, which has existed before the introduction of the reduced lot coverage from the Established Neighbourhood Study in 2020. In consideration of the application, Staff offer the following comments:

i. Legal Non-Complying Rights

The application is made under Section 45(2) of the *Planning Act*, which authorizes the Committee of Adjustment to allow the expansion or extension of legal non-complying uses. This section of the Act allows the Committee to:

Where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,

- (i) the expansion or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed.

Consistency with the Provincial Planning Statement (PPS) is a requirement for all applications under the *Planning Act*, with the Official Plan serving as one of the most important tools for implementing the PPS. The subject land is within the Residential Area designation of the Official Plan. Residential uses, including single-detached dwellings and accessory uses, are permitted in this designation.

Neither the *Planning Act* nor the Official Plan prescribe criteria that Committee should consider when evaluating a proposal as they do for minor variance or consent applications. When considering the

enlargement of a legal non-complying dwelling, the Committee must instead evaluate if the proposed development is considered “good planning” by evaluating the following:

- a. Is the proposal desirable for the appropriate development of the subject property; and,
- b. Is the proposal’s impact upon surrounding uses unacceptably adverse?

iii. Desirable Development of the Lot

It is generally desirable to allow property owners to invest in and arrange their property in ways that suit their needs, provided the proposal aligns with appropriate development standards for the lot.

The proposed enlargement of the legal non-complying lot coverage would enhance the lot by providing additional amenity and living space for the residents. The proposal includes a modest increase in the dwelling's footprint, raising the lot coverage from 29.5% to 34.8%—an increase of 5.3%. This would result in an overall lot coverage of 9.8% above the allowable maximum of 25%.

Table 1: Changes to Maximum Permitted Lot Coverage

	Maximum Permitted Lot Coverage	Actual Lot Coverage
Pre-Established Neighbourhood Study	35%	29.5%
Post-ENS	25%	29.5%
With proposed addition	34.8% (if variance approved)	34.8%

Despite the increased coverage, the proposal remains consistent with the character of the neighbourhood and avoids overdevelopment of the lot. Additionally, the visual impact of the expanded dwelling is mitigated by an abundance of mature trees, which obstruct views into the rear yards of neighbouring properties. Staff believe that the requested enlargement represents appropriate development of the lot.

iv. Impact on Surrounding Uses

In assessing the anticipated impacts on surrounding uses, the Committee must balance property owners' rights to exercise reasonable flexibility in evolving or expanding legally non-complying uses with the public interest, ensuring such changes do not cause undue adverse impacts on the surrounding neighbourhood.

The existing legal non-complying dwelling has been in place since before the implementation of the Established Neighbourhood Study, which in 2020, reduced the allowable lot coverage. To date, the dwelling has not been associated with any known conflicts or significant negative impacts on neighbouring properties or uses. The proposed enlargement maintains a substantial distance from neighbouring properties and adheres to the minimum required rear yard setback of 7.5 metres: exceeding the minimum with a setback of 21.23 metres. Furthermore, the proposed addition does not alter the existing side yard setbacks or change the height of the dwelling, preserving the dwelling’s appearance from the street.

Neighbours have submitted a letter of support, noting that the enlargement would make the dwelling comparable in size to other homes in the area. Staff believe the proposed addition represents a reasonable evolution and extension of a legal non-complying dwelling that would not cause undue adverse impacts on the surrounding neighbourhood.

6. Other comments:

i. Tree Preservation

Please refer to the comments made by Urban Forest Innovation Dated January 17, 2025.

ii. Heritage

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

iii. Commenting Agencies and Departments

Engineering Services: Please see comments dated January 17, 2025.

The Regional Municipality of York: No comments with regard to this application.

The subject lands are outside of a Lake Simcoe Region Conservation Authority-regulated area.

Central York Fire Services: Has not commented on this application.

iv. Effect of Public Input

One letter from a member of the public was received at the time of writing this report was in support of the application.

7. Conclusions:

That the application **be approved** as the relief as requested:

- (1) Is desirable for appropriate development of the lot; and,
- (2) Would not unacceptably adversely impact surrounding uses.

Submitted By:

David Sanza

David Sanza, Junior Planner, Planning & Building Services

Report Contact

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