



Memorandum to Committee of Adjustment Members

Minor Variance Application: A23-059M - 137 Hatt Court

General Description of Application:

Under Section 45(1) of the *Planning Act*, the following minor variance to Zoning By-law 016-2014, as amended, has been requested to:

- Allow two (cumulative) parking spaces for an additional residential unit and principle unit, whereas the Zoning By-law requires three parking spaces - two associated with the principle unit and one with the additional dwelling unit (a reduction in one parking space).

The subject property is known municipally as 137 Hatt Court and is legally described as Lot 40 on 20M-1180. The lands are generally located north of Britannia Road and east of Bronte Street South. Surrounding land uses include residential, future development and parkland.

The lands currently contain a single detached dwelling with an attached single-car garage. The applicant is seeking to construct an additional residential unit in the form of a basement apartment.

Since 2014, the Zoning By-law 016-2014, as amended, required three parking spaces to be provided on a lot when an additional residential unit is proposed (i.e. two spaces associated with the primary dwelling unit and one with the additional residential unit).

Through the introduction *Bill 23 - More Homes, Built Faster Act*, the Province outlined that municipalities shall not require more than one parking space per dwelling unit. Bill 23 received Royal Assent on December 28, 2022 and at such time, as a municipality required to conform to Provincial direction, the Town of Milton approved additional dwelling units on the basis that only one parking space per unit be required (and further, foregoing Section 4.10 (ii) of the Zoning By-law, as amended).

Since such time, the Province clarified the intent of the parking provisions in Bill 23 noting that the intent was to not allow municipalities to require more than one parking space per additional residential unit - not the primary dwelling unit. This was clarified through *Bill 97 - Helping Homebuyers, Protecting Tenants Act*, which received Royal Assent on June 8, 2023. Upon Bill 97 taking effect, the Town conformed to Provincial guidance and reverted back to the Zoning By-law provisions - including Section 4.10 (ii).

During the time period between December 28, 2022 when Bill 23 received Royal Assent and June 8, 2023 when Bill 97 received Royal Assent, any landowner that *applied* for a Building Permit was subject to the parking requirements set-out in Bill 23 - one parking space associated with the primary dwelling unit and one with the additional residential unit (two spaces on the property). Anyone that applied for a Building Permit after June 8,

2023, has since been subject to the provisions set-out in Section 4.10 (ii) of the Zoning By-law and must demonstrate that three legal parking spaces can be provided on the subject lands.

Following the approval of Bill 23, the owner and applicant of 137 Hatt Court discussed with Town staff the implications of the legislation and decided to pursue the creation of an additional residential unit within their basement, under the assumption that only two parking spaces would be required.

An application for an additional residential unit was applied for on June 12, 2023. Given the date of application and the fact that Bill 97 was in effect, the proposal is subject to Section 4.10 (ii) of the Zoning By-law and must demonstrate that three legal parking spaces can be provided on the property. Should the owner have applied five days prior to making their Building Permit application, their proposal would have been reviewed under the Bill 23 parking provisions.

Official Plan Designation (including any applicable Secondary Plan designations):

The subject property is designated 'Residential Area' on both Schedule B - Urban Land Use Plan within the Town of Milton Official Plan and Schedule C.10.C Boyne Survey Secondary Plan Land Use Plan. The 'Residential Area' designation allows secondary dwelling units, subject to policies within Section 3.2.3.9 of the Town of Milton Official Plan:

- a) The use shall be located in an existing single-detached, semi-detached, row house, and in accessory structures where adequate municipal piped water and wastewater services are available and connected;*
- b) The site is accessible to public transit;*
- c) There will be no significant changes to the external character of the building or property;*
- d) All of the requirements of the Zoning By-law, including the provision of adequate parking, of the Ontario Building Code, of the Property Standards By-law and other relevant municipal and provincial regulations can be satisfied; and,*
- e) The existing dwelling is not within the Regulatory Flood Plan.*

Given that the unit is proposed within a single-detached dwelling with full municipal servicing, is accessible to public transit, results in no external changes to the dwelling, maintains all Zoning By-law provisions (with the exception of the relief being requested through this application), and is not proposed within Flood Plain, it is Town staff's opinion that the proposal is in conformity with the Town of Milton Official Plan.

Zoning:

The subject lands are zoned as Residential Medium Density 1 (RMD1*207) within the Town of Milton Urban Zoning By-law 016-2014, as amended.

Section 4.10 of the Zoning By-law sets-out the following provisions for secondary/accessory dwelling units:

- i) Only 1 accessory dwelling unit shall be permitted per lot and shall be located within the main dwelling unit;*
- ii) A minimum of 1 parking space per accessory dwelling unit is provided in addition to the required parking for the main dwelling unit;*

- iii) The dwelling must be on full municipal water and waste water services; and,*
- iv) The accessory dwelling unit shall not exceed a maximum size of 85 square metres.*

To achieve compliance with Section 4.10, the applicant is seeking to reduce the number of parking spaces required for the entire site. Given the principle dwelling unit and proposed additional dwelling unit, the Zoning By-law requires three spaces, whereas the applicant is proposing two spaces.

Consultation

Public Consultation

Notice for the hearing was provided pursuant to the *Planning Act* on, August 16, 2023. As of the writing of this report on August 23, 2023, Town staff have not received any comments from members of the public.

Agency Consultation

No objections were filed with respect to the variance application from Town staff or external agencies. The applicant is advised that no physical construction can begin until such time that the Minor Variance Application is approved and Building Permit issued.

Planning and Development Department Comments:

The applicant has requested a minor variance to reduce the number of parking spaces required to accommodate the creation of an additional residential unit. The site currently contains a single-car garage and single-car driveway - it can only functionally provide parking for two vehicles (one in the driveway and one in the garage). There is no opportunity to widen the driveway to create an additional space, given the driveway's proximity to the lot line and siting of the porch.

Planning staff recognize the unfortunate timing of the property owner's application. Should they have applied for their Building Permit five days prior to June 12, 2023, the applicant would have been in compliance with Provincial direction contained in Bill 23 and the Zoning By-law 016-2014, as amended.

However, based on the in-effect policy framework, planning staff must consider this application on the basis that relief is required from Section 4.10 (ii) and only two legal parking spaces can be accommodated on site. As such, an analysis of the Four-Tests of a Minor Variance application under Section 45(1) of the *Planning Act* is required. Should one of the tests not be met, the application would not be supportable from a planning policy perspective.

1. Is the development desirable for the development of the subject lands?

The Official Plan encourages gentle intensification within Residential Areas. Further, provincial direction encourages the creation of additional units with the overall goal of increasing house stock. The unit does not disturb the existing residential nature of the community and does not impact adjacent lands given there is no exterior development proposed and the secondary access is to be located at the rear of the lot. Planning staff are of the opinion that the addition of a secondary dwelling unit is desirable for the development of the subject lands.

2. Does the proposal conform to the Official Plan?

Given that the additional residential unit is proposed within an existing dwelling and adheres to all policies within Section 3.2.3.9 of the Official Plan, planning staff are of the opinion that the proposal is in conformity with the Residential Area designation.

3. Does the proposal maintain the intent of the Zoning By-law?

The Zoning By-law is clear in the approach to requiring a dedicated parking space for an additional residential unit, in addition to two spaces for the primary unit. Given that the applicant cannot physically accommodate three vehicles on the site, planning staff are of the opinion that the intent of the Zoning By-law is not maintained through this proposal.

4. Is the relief minor in nature?

Given that the requested relief removes one full parking space from the site, planning staff are of the opinion that the relief is not minor. There is no overnight on-street parking for additional vehicles and regardless of the current owner's vehicular situation, there would not be adequate parking on the site to support the introduction of an additional residential unit.

Based on the foregoing, planning staff are of the opinion that the proposal does not maintain the four-tests of a minor variance in that the relief being requested is not minor in nature and does not maintain the intent of the Zoning By-law. As such, planning staff recommend that the application be refused.

Recommendation:

THAT the application for minor variance **BE DENIED**.

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August 23, 2023