



The Corporation of the Town of Milton

Report To: Committee of Adjustment and Consent

From: Rachel Suffern, MPA, M.Sc., MCIP, RPP

Date: July 17, 2024

File No: A24-026/M

Subject: 51 Court Street North

Recommendation: THAT the application for minor variance **BE APPROVED SUBJECT TO THE FOLLOWING CONDITION:**

1. That the development shall be located and constructed generally in accordance with the site plan and building elevations, prepared by Alana + Kelly Design Co., date stamped by Town Zoning on June 17, 2024;
2. That a Building Permit be obtained within two (2) years from the date of the decision; and,
3. That the approval be subject to an expiry of two (2) years from the date of decision if the conditions are not met, if the proposed development does not proceed and/or a Building Permit is not secured.

General Description of Application

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

- Allow a maximum height of an accessory building to be 3.4 metres, whereas the Zoning By-law permits 3.0 metres (an increase of 0.4 metres).
- Allow a total gross floor area of 15 square metres for all accessory structures on a lot, excluding detached garages and decks, whereas the Zoning By-law permits 12 square metres (an increase of 3 metres).
- Allow a residential fence, located in an interior side yard, to be 3 metres, whereas the Zoning By-law permits 2 metres (an increase of 1 metre).
- Allow a minimum unobstructed driveway width of 2.5 metres, whereas the Zoning By-law requires a minimum width of 3.2 metres (a reduction of 0.7 metres).
- Allow a 0.0 metre permeable residential landscaping strip abutting the south lot line (adjacent to the proposed driveway extension), whereas the Zoning By-law requires a minimum of 0.6 metres (a reduction of 0.6 metres).
- Allow a minimum interior side yard setback of 2.2 metres, whereas the Zoning By-law requires 3.5 metres (a reduction of 1.3 metres).

Under Section 45(2) of the Planning Act, the following request to expand a legal non-conforming use has been requested:

General Description of Application

- To allow a residential dwelling to have an 8.0 metre setback from a railway right-of-way, where as the current Zoning By-law 016-2014, as amended, requires 30 metres (a reduction of 22 metres).

The subject property is known municipally as 51 Court Street North and is legally described as Part of Lot 14 on Concession 2 TT. Surrounding land uses include a railway right-of-way to the north, low density residential immediately to the south-west, and a mid-rise residential apartment building to the east.

The lands currently contain a single detached dwelling and detached garage. Through this application, the landowner intends to construct an addition with a porch at the rear of the dwelling and to convert the existing detached garage to an accessory structure (shed).

Official Plan Designation (including any applicable Secondary Plan designations)

The subject property is designated as Central Business District on Schedule B - Urban Land Use Plan and Low-Density Residential Sub-Area on Schedule C - Central Business District Land Use Schedule. These designations permit single-detached, semi-detached and duplex dwellings.

Regarding the request under Section 45 (2) of the Planning Act, Section 5.8.3.4 sets out criteria that must be met when evaluating an application to expand a legal non-conforming use:

“In accordance with the provisions of the Planning Act, Council may amend a by-law passed under Section 34 to permit the extension or enlargement of any land, building or structure prohibited by the Zoning By-law provided the following requirements are met.

- (a) It is not possible to relocate such a use to a place where it will conform to the By-law;
- (b) The proposed extension or enlargement will not unduly aggravate the situation already created by the existence of the use and should, if possible, be designed to alleviate adverse effects of the use such as outside storage;
- (c) The abutting uses will be afforded reasonable protection by the provision of appropriate buffering and setbacks;
- (d) The proposed extension or enlargement should be in appropriate proportion to the size of the non-conforming use;
- (e) Adequate provision will be made for safe access and adequate off-street parking and loading facilities; and
- (f) All services, including private sewage disposal and water supply systems, shall be or can be made adequate.

Section 5.8.3.5: The Town shall not be obligated to grant permission to extend or enlarge a non-conforming use under any circumstances.”

Official Plan Designation (including any applicable Secondary Plan designations)

The development cannot be relocated to an area where it will comply with contemporary zone standards as the residential lot is located entirely within the 30 metre setback from the rail right of way. Further, a Professional Engineer retained by the landowner confirmed that the proposed residential addition and accessory structure will not aggravate the situation or create adverse impacts beyond what currently exists. Finally, the proposal will not impact adjacent residential uses, is appropriate in proportion to what currently exists, provides for adequate access, and parking, and is appropriately serviced.

Based on the aforementioned, it is Staff's opinion that the proposal is in conformity with the Town of Milton Official Plan.

Zoning

Section 45 (1) - Minor Variances

The subject lands are zoned site-specific Residential Low Density I (RLD1*279) within the Town's Zoning By-law 016-2014, as amended. In order to facilitate the proposed residential addition and accessory structure, the landowner is seeking relief from the following provisions:

1. Accessory Structure - Maximum Height

Section 4.2.1 Table 4A of the Zoning By-law permits a maximum height of 3 metres for an accessory structure or building. The landowner is requesting a maximum height of 3.4 metres to accommodate the existing detached garage which will be converted to an accessory structure (shed).

The intent of this provision is to ensure that an accessory structure remains secondary to the primary residential dwelling and does not impact adjacent lands in way of privacy, personal enjoyment or sightlines.

2. Accessory Structure - Maximum Gross Floor Area

Section 4.2.1 Table 4A(l) of the Zoning By-law permits a cumulative maximum gross floor area of 10 square metres for all accessory structures on a lot that has an area less than 660 square metres. The landowner is requesting a maximum gross floor area of 13 square metres to accommodate the existing footprint of the detached garage which will be converted to an accessory structure (shed).

The intent of this provision is to ensure that an accessory structure remains accessory to the primary residential dwelling and does not result in over-development of a lot.

3. Fence - Maximum Height

Section 4.8.1 i) of the Zoning By-law permits a maximum height of 2 metres for a residential fence located within an interior side yard. The landowner is requesting a 3 metre fence in the northern interior side yard to provide enhanced screening from the adjacent rail right-of-way.

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The intent of this provision is to ensure that a fence does not impact views of adjacent lands nor create a sightline hazard.

4. Driveway - Minimum Width

Section 5.6.2 vi) a) of the Zoning By-law requires a minimum unobstructed driveway width of 3.2 metres. Based on the siting of the proposed addition, a portion of the driveway extension has a reduced width of 2.5 metres.

The intent of the provision is to ensure that a driveway provides for adequate vehicular access and movement.

5. Driveway - Minimum Permeable Landscaping Strip

Section 5.6.2 viii) a) of the Zoning By-law requires that a minimum width of 0.6 m abutting both side lot lines on interior lots of detached dwellings shall be a permeable residential landscaped surface. To accommodate and extend the existing driveway, the applicant has requested a reduction in the minimum width of the permeable landscaped surface to 0 metres.

The intent for this provision is to provide a permeable buffer between the lot line and hard surfacing that accommodates water run-off.

6. Addition - Minimum Interior Side Yard Setback

Section 6.2 Table 6B (*2) ii) a) of the Zoning By-law requires a minimum interior side yard setback of 3.5 metres on the side of the driveway closest to the proposed addition. Based on the siting of the proposed addition and the lot configuration, a minimum interior side yard setback of 2.2 metres is proposed at the rear of the addition where the lot tapers towards the rear.

The intent of this provision is to ensure that any principle structure has an adequate setback from adjacent properties, that any run-off from a structure can be accommodated on the subject property, and that there is unobstructed access to the rear yard.

Foregoing the above-noted provisions, the proposal complies with all other applicable sections of the Zoning By-law.

Section 45 (2) - Expansion of Legal Non-Conforming Condition

The existing setback to the rail right-of-way (being less than 30 metres) is considered legal non-conforming as the condition existed before the date on which the current Zoning By-law took effect; as such, the current Zoning By-law provisions do not apply to the site and any expansion or alteration is considered through the Section 45 (2) (a) (i) of the Planning Act.

Section 4.15 of the Zoning By-law speaks to Legal Non-Conforming Uses and notes that:

“No land, building or structure shall be used except in conformity with the provisions of the By-law unless such use legally existed prior to the date of passing of this By-law and provided that it continues to be used uninterrupted for such purpose, and that such use,

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when originally established, was not contrary to a By-law passed under Section 34 of the Planning Act, R.S.O 1990, cP. 13 or a predecessor thereof that was in force at that time.”

Based on records, Planning Staff are satisfied that the use was existing prior to the date Zoning By-law 016-2014 took effect. As such, it is appropriate to consider the expansion under Section 45 (2) (a) (i) of the Planning Act.

Consultation

Public Consultation

Notice for the hearing was provided pursuant to the Planning Act on July 10, 2024. As of the writing of this report on, July 17, 2024, Staff have not received any comments from members of the public.

Agency Consultation

No objections were filed with respect to this application from Town Staff or external agencies.

Town Planning Staff note that the applicable rail authority no longer issues clearance on development applications and defers to the [Guidelines for New Development in Proximity to Railway Operations](#) (referred to as the ‘Guidelines’) prepared by the Federation of Canadian Municipalities and Railway Association of Canada. As such, the landowner retained a Professional Engineer to review the proposal against the Guidelines and provide an Opinion Letter. The Opinion Letter concluded that the Guidelines are not intended to apply to existing locations where proximity issues already exist and further, that the addition is minor in nature when evaluated against the requirement of a 30 metre setback from the rail right-of-way. As such, Town Staff are satisfied that the rail authority’s comment has been adequately addressed by way of the Opinion Letter prepared by Stantec Consulting Limited.

Development Services Comments

The landowner is requesting minor variances and an expansion of a legal non-conforming condition to facilitate a residential addition and porch, along with a conversion of a detached garage to a shed. The proposed addition includes a family room, washroom and pantry.

Section 45 (1) - Minor Variances

Variance 1 & 2: Accessory Structure - Maximum Height and Maximum Gross Floor Area

Given the landowner intends to convert the existing detached garage into an accessory structure, the Zoning By-law provisions that are applied change upon conversion. As such, in order to accommodate the existing height and gross floor area under the definition of an accessory structure, a minor variance is required to increase both performance standards.

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Both variances are technical in nature and are legalizing an existing condition upon the conversion. As such, Planning Staff are of the opinion that the variance is minor in nature and the impact is negligible. The built form is existing and does not result in over-development of the lot - further, the accessory structure will remain secondary to the principle dwelling and respects existing neighbourhood character.

Variance 3: Fence - Maximum Height

The landowner is requesting a variance to increase the maximum height of a residential fence in the northern interior side yard. Given the fence is only proposed in the side yard abutting Town-owned land and the rail right-of-way, Planning Staff are of the opinion that the requested increase is minor in nature. The fence will contribute to minimizing noise and visual disruptions associated with adjacent non-residential lands and provides greater privacy to the landowner in their backyard. Further, there is no impact anticipated on other residential properties as a result of the increased height.

Variance 4: Driveway - Minimum Width

Staff are of the opinion that the reduction in driveway width is minor in nature as only a portion of the driveway extension will have this condition. The driveway will remain functional and provides adequate access for vehicles.

Variance 5: Driveway - Minimum Permeable Landscaping Strip

Staff are of the opinion that the decrease in permeable landscaped surface will not impact neighbouring properties and assists in providing adequate access to the proposed detached garage. The proposal seeks to extend the existing driveway, which does not currently have a permeable landscaped surface at the interior lot line.

As of the writing of this report, adjacent property owners have expressed no concern for this variance, specifically the proposed decrease in permeable landscaped area. Further, the applicant demonstrated a willingness to respect existing elevations and will ensure any excess runoff does not affect neighbour properties, which will be confirmed by Development Engineering prior to Building Permit issuance.

Variance 6: Addition - Minimum Interior Side Yard Setback

Based on the siting of the proposed addition, the rear corner creates a pinch point where there is an interior side yard setback of 2.2 metres. Planning Staff are of the opinion that the reduction is minor in nature given it is only located at the rear of the dwelling as the lot tapers towards the rear of the lot. From a street view perspective, the reduced interior side yard setback does not disrupt existing neighbourhood character and development patterns. Further, adequate access to the rear yard is maintained despite the reduced interior side yard setback at the identified pinch point.

Based on the aforementioned, Planning Staff are of the opinion that the variances being requested are minor in nature, desirable for the development of the subject lands, maintain the



Consultation

intent of the Zoning By-law and conforms to the Official Plan. As such, Planning Staff offer no objection to the approval of this application.

Section 45 (2) - Expansion of Legal Non-Conforming Condition

Section 4.22.3 i) of Zoning By-law 016-2014, as amended, requires that any buildings containing residential uses shall not be located closer than 30 metres to a railway right-of-way. The dwelling at 51 Court Street North existed prior to 1999 which means that the current 30 metre setback does not apply given the provision was not in existence when the dwelling was initially established. As such, the landowner has requested to expand a legal non-conforming condition to allow the residential addition to be located less than 30 metres setback from a railway right-of-way.

The landowner retained a Professional Engineer to provide an Opinion Letter which concluded that the Guidelines are intended to apply to new development rather than existing lots of record with proximity issues. Further, it was noted that the reduced setback in this instance was minor in nature. Planning Staff defer to the technical expertise of the Professional Engineer and are satisfied with the Opinion Letter in that regard. From a practical perspective, the continuation and expansion of the deficient setback is unavoidable as the entire lot is located within the current 30 metre setback - there is no option to relocate the addition to a location where it would comply with contemporary standards.

Based on the aforementioned, Planning Staff offer no objection to the expansion of the legal non-conforming condition being requested as it does not further aggravate an existing situation nor impacts adjacent residential uses.

In conclusion, Planning Staff offer no objection to either requests being made under Section 45 (1) and 45 (2) of the Planning Act, subject to the conditions set forth being fulfilled.

Respectfully submitted,

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For questions, please contact:

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Attachments

Figure 1 - Site Plan and Elevations (A24-026/M)



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