



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF DEVELOPMENT SERVICES

MISSION STATEMENT: Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.

Author's Name: Janine Mastronardi	Report Date: June 26, 2024
Author's Phone: 519 736-5408 ext. 2134	Date to Committee: July 3, 2024
Author's E-mail: jmastronardi@amherstburg.ca	Resolution #:

To: Chair and Members of the Committee of Adjustment

Subject: A/19/24, 5 Jones Court, Tammy Metcalfe

1. **RECOMMENDATION:**

It is recommended that:

1. Direction **BE PROVIDED** by The Committee of Adjustment to Administration regarding the decision on the application based on the information found within the report titled "A/19/24, 5 Jones Court, Tammy Metcalfe".

2. **PROPOSAL:**

Purpose of Minor Variance Application A/19/24: The applicant is requesting relief from Zoning By-law 1999-52, as amended, Section 8(3)(g) which permits a maximum lot coverage of 35% in a Residential Second Density (R2) Zone. The applicant is also requesting relief from Zoning By-law 1999-52, as amended, Section 3(29)(a)(i) which requires a minimum 1.5 m setback for a pool to any lot line.

The applicant has installed an above ground pool 0.9 m (3 ft) from the rear lot line. The applicant has also renovated an existing 264 sq ft deck and added 210 sq ft of additional deck area and 100 sq ft in covered deck area for a hot tub. An existing shed will be removed.

Therefore, the amount of relief requested is 0.6 m (2 ft) in setback to permit a 0.9 m (3 ft) above ground pool setback from the rear yard and 6% in total lot coverage to permit an additional 6% (28.8 sq m/310 sq ft) in lot coverage to allow for an elevated 10 ft x 10 ft covered hot tub area and 210 sq ft in additional deck area.

The subject property is designated Low Density Residential in the Town's Official Plan and zoned Residential Second Density (R2) Zone in the Town's Zoning By-law.

3. BACKGROUND:

The pool and deck have been installed on the property without permits. The home owners purchased the property in 2018 and built the deck and installed the pool in the Spring of 2022. They indicated to Town staff that they were unaware that permits were required for this work. The Town was advised of the work being done without a permit in the late Spring of 2024. The applicant is coming forward to the Committee now to request minor variance approvals for lot coverage and pool setbacks. If approved the applicant will proceed with obtaining building permits for the work completed.

The applicants have advised that in the last two years they have not experienced any drainage issues. The Town has not received any complaints regarding drainage from this site. The rain water does not puddle on the deck surface but goes between the boards under the decks. The surface under the decks is permeable being dirt, no stone has been installed.

4. PLANNING INFORMATION:

Official Plan Designation:	Low Density Residential
By-law No. 1999-52:	Residential Second Density (R2) Zone
Existing Use:	Residential- One single detached dwelling, multi level deck with covered hot tub area, above ground pool and shed
Proposed Use:	Residential- Same as above with the existing shed to be removed.
Neighboring Uses:	residential

TECHNICAL INFORMATION

Property Size:	5147 sq ft
Existing structures:	One single detached dwelling, multi level deck with covered hot tub area, above ground pool and shed (to be removed)

Proposed Total Lot Coverage:	44% (2271 sq ft)
Permitted Total Lot Coverage:	35% (1801.5 sq ft)
Existing Non-Conforming Lot Coverage:	38% (1961 sq ft)
Relief requested:	6% (310 sq ft)

Proposed Pool Setback:	0.9 m (3 ft)
Required Pool Setback:	1.5 m (5 ft)
Relief Requested:	0.6 m (2 ft)

5. **PLANNING ANALYSIS:**

1. ***PLANNING ACT (R.S.O. 1990)***

The purposes of the Planning Act are;

- “ (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
- (b) to provide for a land use planning system led by provincial policy;
- (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
- (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
- (e) to encourage co-operation and co-ordination among various interests;
- (f) to recognize the decision-making authority and accountability of municipal councils in planning. 1994, c. 23, s

The proposal is consistent with Section 2 of the Planning Act which requires that the Committee of Adjustment have regard to matters of provincial interest including (the following are excerpts from Section 2 of the Planning Act that apply to this development):

- the orderly development of safe and healthy communities;
- the appropriate location of growth and development;

The deck and pool are permitted uses accessory to a single detached dwelling in an existing fully serviced residential development. The minor variance is required to allow for an increased lot coverage and a reduced pool setback from the rear property line.

When reviewing this application, the Committee must consider the four tests as outlined in Section 45(1) of the Planning Act, R.S.O. 1990, as amended, which states that the Committee be of the opinion that the variance:

- a) maintains the general intent and purpose of the Official Plan;
- b) maintains the general intent and purpose of the Zoning By-law;
- c) is desirable for the appropriate development or use of the land, building or structures; and
- d) is minor in nature.

The application must meet all of the above tests.

2. OFFICIAL PLAN POLICIES

The subject property is designated Low Density Residential in Amherstburg's Official Plan. Section 4.3.1 of the Official Plan states, *'Areas designated as Low Density Residential shall be limited to single detached, semi-detached, duplex, or converted dwelling units, home occupation uses and public uses.'*

The applicant has constructed a multi-level deck which includes a covered hot tub area and has installed a pool with a reduced setback from the rear yard. The deck and pool permitted uses on lands designated Low Density Residential. As such, the proposed uses are considered to be in keeping with the intent of the Official Plan.

In accordance with Section 4.2.3 of the Official Plan, the Committee must determine if the residential character of the neighborhood is being maintained and determine if the proposed minor variances present a burden to existing facilities or services.

3. ZONING BY-LAW

The subject property is zoned Residential Second Density (R2) Zone in Bylaw 1999-52, as amended. The R2 Zone permits single detached dwellings and accessory structures and uses which includes decks and pools.

Section 8(3)(g) which permits a maximum lot coverage of 35% in a Residential Second Density (R2) Zone. Section 3(29)(a)(i) which requires a minimum 1.5 m setback for a pool to any lot line.

The applicant has installed an above ground pool 0.9 m (3 ft) from the rear lot line. The applicant has also renovated an existing 264 sq ft deck and added 210 sq ft of additional deck area and 100 sq ft in covered deck area for a hot tub. An existing shed will be removed. This work was completed without a permit.

When the applicant was advised that a permit was required for the deck and pool the applicant came to the Town to make application. Upon review it was noted that a minor variance would be required to issue a building permit for the deck for an overage in lot coverage and for the pool due to a reduced rear yard setback. The deck cannot be lowered as a portion wraps around an above ground pool and a portion has a hot tub installed on it.

The definition of lot coverage "means that percentage of the lot area of a lot covered by the perpendicular projections onto a horizontal plane of the floor areas of all buildings or mobile homes on the lot, excluding balconies, canopies and overhanging eaves which are 2 metres or more in height above finished grade."

The definition of private outdoor swimming pool "means a privately-owned pool whether or not in the ground, capable of being used for swimming, wading, diving, or bathing and which when filled is capable of containing a depth of 0.6 metres or more of water. For the purpose of regulations pertaining to lot coverage in this By-law a "Private Outdoor Swimming Pool" is deemed not to be a building or structure."

The above ground pool does not contribute to lot coverage calculations.

Therefore, the amount of relief requested is 0.6 m (2 ft) in setback to permit a 0.9 m (3 ft) above ground pool setback from the rear yard and 6% in total lot coverage to permit an additional 6% (28.8 sq m/310 sq ft) in lot coverage to allow for an elevated 10 ft x 10 ft covered hot tub area and 210 sq ft in additional deck area.

It should be noted that if the deck was less than 24" above grade or was a concrete patio instead the areas would not count towards lot coverage. Calculations were completed to confirm the required 30% landscape open space minimum was complied with. As per the definition of landscape open space in the Zoning By-law it was determined that the landscaped open space accounted for 40.4% of the lot area.

The Committee will need to determine if requested variance maintains the intent of the Zoning By-law.

4. APPROPRIATE DEVELOPMENT

The proposed variance does not appear to change the use of the land for residential purposes and therefore the use can be considered appropriate. Lot grading design will be submitted and approved by the municipality and is required to be implemented as part of the building permit process.

The Committee must consider the comments noted by Infrastructure Services and determine if the proposed variance would negatively impact any adjacent land uses .

5. MINOR IN NATURE

No precise definition for what constitutes "minor" exists. Rather, it is a culmination of the review of the Official Plan, Zoning By-law and attempts to address the "big picture" for what the proposed development represents. Each application must be assessed on its own set of circumstances.

The proposed individual variances do not appear to change the character of the neighborhood. The streetscape will not be affected by the requested variances.

The Committee must determine if the proposed deck, covered hot tub area and pool are consistent with the Provincial Policy Statement and in conformity with the Official Plan and Zoning By-law and if there are any physical hazards associated with the request.

6. AGENCY COMMENTS:

See attached.

7. RISK ANALYSIS:

As with all Committee of Adjustment decisions there is a risk that the decision is appealed. As a result of changes in Bill 23, decisions by a CoA can no longer be appealed by a third party. Decisions which are to support or refuse the consent or minor variance

request, can only be appealed by the applicant, the Municipality, the Minister, a specified person or any public body. In the case of a consent decision the appeal must be filed within 20 days after the giving of notice of the decision of the committee, whereas for a minor variance an appeal must be filed within 20 days of the making of the decision of the committee. It is important to note that a tied vote is deemed to be a decision to deny the consent or minor variance request. If there is an appeal to the OLT the Town will incur costs.

8. RECOMMENDATIONS:

Based on the above information, the application has many complexities that the Committee must consider including the concerns of Infrastructure Services and other department comments. Due to the many considerations listed, Administration is requesting direction from the Committee, rather than providing a recommendation at this time.

9. CONCLUSION:

From a planning perspective the Committee must consider the four tests of a minor variance to determine if the requested minor variance relief be approved or denied:

- 1) Do the requested variances conform with the intent of the relevant Official Plan policies?
- 2) Do the proposed variances maintain the intent of Comprehensive Zoning By-law 1999-52, as amended?
- 3) Do the proposed variances change the use of the land for residential purposes and therefore can be considered appropriate?
- 4) Do the requested variances appear to be minor in nature?

Respectfully Submitted,



Janine Mastronardi
Secretary Treasurer

Report Approval Details

Document Title:	A-19-24, 5 Jones Court., Tammy Metcalfe.docx
Attachments:	- A-19-24- Report Attachments-RM.pdf
Final Approval Date:	Jun 27, 2024

This report and all of its attachments were approved and signed as outlined below:

Chris Aspila