



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: July 31, 2024
Author's Phone: 519 736-5408 ext. 2134	Date to Committee: August 7, 2024
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To: Chair and Members of the Committee of Adjustment

Subject: A/31/24- 54 Balaclava Street South, Jeff & Michelle Faucher

1. RECOMMENDATION:

It is recommended that:

1. Subject to the Committee's consideration of written and oral submissions at the public meeting that application A/31/24 **BE APPROVED** subject to the recommended condition.

2. PROPOSAL:

The applicant is requesting relief from Zoning By-law 1999-52, as amended, Section 3(1)(b) which permits a maximum lot coverage of 10% of the lot area to a maximum of 100 sq m (1076 sq ft) in a Residential First Density (R1) Zone.

The applicant is also requesting relief from Zoning By-law 1999-52, as amended, Section 3(1)(c) which permits a maximum 5.5 m (18 ft) height of an accessory structure measured to the peak of the roof.

The subject property is designated Low Density Residential and Medium Density Residential in the Town's Official Plan and Residential First Density (R1) and Residential Second Density/Residential Multiple First Density (R2/RM1) in the Town's Zoning By-Law.

The applicant is proposing the construction of a 1424 sq ft (3.85% lot coverage) accessory structure to contain a garage, storage space and covered patio area on the first floor and a future secondary dwelling unit on the second floor with a height of 7.8 m (25.5 ft) to the peak of the roof.

The existing single detached dwelling has a footprint of 2800 sq ft and a height of 26 ft. There is an existing 120 sq ft pool shed and 540 sq ft detached garage on the property. The resulting total lot coverage proposed is 13.2% (4884 sq ft) on a subject lot that is 37,026 sq ft in lot area. All other provisions of the Zoning By-law are in compliance including the setback between the primary and secondary dwelling units which is proposed not to exceed 20 m and the 4ft interior side yard setback.

Therefore, the amount of relief requested is 93.65 sq m (1008 sq ft) in accessory structure lot coverage and 2.3 m (7.5 ft) in accessory structure height.

3. BACKGROUND:

N/A

4. PLANNING INFORMATION:

Official Plan Designation:	Low Density Residential and Medium Density Residential
By-law No. 1999-52:	Residential First Density (R1) Zone and Residential Second Density/Residential Multiple First Density (R2/RM1) Zone
Existing Use:	residential
Proposed Use:	residential
Neighboring Uses:	North: residential South: residential East: residential West: vacant residential

TECHNICAL INFORMATION

Property Size:	3440 sq m (37,026 sq ft)
Existing structures:	single detached dwelling and two accessory structures (one detached 540 sq ft garage and one 120 sq ft shed)

Proposed Accessory Structure Lot Coverage:	193.65 sq m (2084 sq ft) (5.6%)
Permitted Accessory Structure Lot Coverage:	10% up to 100 sq m (1076 sq ft)
Relief requested:	93.65 sq m (1008 sq ft)

Proposed Accessory Structure Height:	7.8 m (25.5 ft)
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Permitted Accessory Structure Height: 5.5 m (18 ft)

Relief requested: 2.3 m (7.5 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.4.”

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 adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
- the orderly development of safe and healthy communities;
- the appropriate location of growth and development;

The owner is permitted to erect an accessory structure containing a secondary dwelling unit on the municipally serviced property in an existing residential development. The minor variance is required to allow for an increase in lot coverage of the accessory structure and an increase in height of the accessory structure.

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 and Medium Density Residential in Amherstburg's Official Plan. The proposed accessory structure is located wholly within the Low Density Residential designation. 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 is proposing the construction of an accessory structure which will contain on the first floor a garage, storage area and covered patio and a secondary dwelling unit on the second floor. The structure and use are permitted on lands designated Low Density Residential. As such, the proposed use is considered to be in keeping with the intent of the Official Plan.

The proposed minor variances maintain the intent of the Official Plan.

3. ZONING BY-LAW

The subject property is zoned Residential First Density (R1) Zone and Residential Second Density/Residential Multiple First Density (R2/RM1) Zone in Bylaw 1999-52, as amended. The proposed accessory structure is located wholly within the R1 Zone which permits single detached dwellings, accessory structures and secondary dwelling units.

Section 3(1)(b) permits a maximum lot coverage of 10% of the lot area to a maximum of 100 sq m (1076 sq ft) in a Residential First Density (R1) Zone. Section 3(1)(c) which permits a maximum 5.5 m (18 ft) height of an accessory structure measured to the peak of the roof.

The applicant is proposing the construction of a 132.3 sq m (1424 sq ft) (3.85% lot coverage) accessory structure to contain a garage, storage area and covered patio on the first floor and a secondary dwelling unit on the second floor with a height of 7.8 m (25.5 ft) to the peak of the roof.

The existing single detached dwelling has a footprint of 260.13 sq m (2800 sq ft) and a height of 7.92 m (26 ft). There is also an existing 120 sq ft pool shed and 540 sq ft detached garage on the property. The resulting total lot coverage proposed is 13.2% (453.74 sq m/4884 sq ft) on a subject lot that is 3440 sq m (37,026 sq ft) in lot area.

Therefore, the amount of relief requested is 93.65 sq m (1008 sq ft) in accessory structure lot coverage and 2.3 m (7.5 ft) in accessory structure height.

The proposed structure complies with all other provisions of the Zoning By-law including being approximately 20 m from the primary dwelling and 1.2 m setback from the interior property line and the property having a total proposed lot coverage of 13.2%.

The Zoning By-law is written to provide provisions that will accommodate appropriate development properties within the zone. In most cases the 10% accessory structure lot coverage permitted on a residential parcel up to a maximum of 100 sq m (1076 sq ft) is

reasonable and works since the lots in residential zones are typically smaller in size with most not able to accommodate the maximum 100 sq m limit. The minor variance application process is a vehicle that allows for property owners in unique situations to request relief from the Zoning By-law provisions. The property at 54 Balaclava Street South is unique in that its lot size is 3440 sq m (37,026 sq ft) which provides lot area to accommodate a larger primary dwelling and larger accessory structures. The intent of the Zoning By-law provisions for residential accessory structures is to ensure the accessory structures are subordinate in size to the main use (primary dwelling). In this unique case the proposed accessory structure is smaller in lot coverage, gross floor area and height than the primary dwelling.

In my opinion the requested variances maintain the intent of the Zoning By-law.

4. APPROPRIATE DEVELOPMENT

The proposed variance does not change the use of the land for residential purposes and therefore the use can be considered appropriate. The proposed variance would appear not to negatively impact any adjacent land uses. 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 accessory structure is proposed to be located in the rear yard as far back as possible from the primary dwelling while still complying with the 20 m setback, the Essex Powerlines setback from an overhead hydro line and to have the structure as far from the abutting property to the south's dwelling and pool area. The structure is proposed to be built behind an existing detached garage and provide space for personal storage to allow for the existing garage to be used for parking vehicles. A future SDU is proposed for the second floor of the accessory structure.

It is the opinion of the author of this report that the proposed variances will not have a negative impact on the neighbourhood.

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 increase in accessory structure lot coverage and height does not change the character of the neighbourhood. The primary dwelling on the property has a height of 7.9 m (26 ft) to the peak. This lot is unique having a lot area 3440 sq m (37,026 sq ft). Looking at the "big picture" of the proposal the total lot coverage proposed with the new structure is 13.2% which is well under the permitted 35% lot coverage. The proposed accessory structure is smaller than the primary dwelling in footprint and gross floor area.

All of the remaining R1 zone provisions and General Provisions are in compliance. The proposed use of the accessory structure as a secondary dwelling unit is consistent with

the Provincial Policy Statement and is in conformity with the Official Plan and maintains the intent of the Zoning by-law.

There appears to be no environmental concerns.

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:

That subject to Committee consideration of written and oral comments received at the meeting, it is recommended that Application A/31/24 be approved to grant relief in accessory structure lot coverage 93.65 sq m (1008 sq ft) and relief in accessory structure height of 2.3 m (7.5 ft) to allow for the construction of an accessory structure with a footprint of 132.3 sq m (1424 sq ft) to contain a garage, storage space and covered patio area on the first floor and a future secondary dwelling unit on the second floor with a height of 7.8 m (25.5 ft) to the peak of the roof subject to the following conditions;

1. That the applicant prepare and implement a lot grading design for the subject property, to the satisfaction of the municipality.

9. CONCLUSION:

From a planning perspective in the opinion of the author of this report:

- 1) The requested variances conform with the intent of the relevant Official Plan policies.
- 2) The proposed variances maintain the intent of Comprehensive Zoning By-law 1999-52, as amended.
- 3) The proposed variances do not change the use of the land for residential purposes and therefore can be considered appropriate.

4) The requested variances would appear to be minor in nature.

5) The proposed variance would not have a negative impact on the environment.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Janine Mastronardi". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

Janine Mastronardi
Secretary-Treasurer

Report Approval Details

Document Title:	A-31-24- 54 Balaclava Street South- Jeff and Michelle Faucher.docx
Attachments:	
Final Approval Date:	Jul 30, 2024

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

Chris Aspila