



## 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.*

<b>Author's Name: Janine Mastronardi</b>	<b>Report Date: July 31, 2024</b>
<b>Author's Phone: 519 736-5408 ext. 2134</b>	<b>Date to Committee: August 7, 2024</b>
<b>Author's E-mail: jmastronardi@amherstburg.ca</b>	<b>Resolution #:</b>

**To: Chair and Members of the Committee of Adjustment**

**Subject: A/27/24, 595 McLeod Avenue, Daniel Deschamps & Cydney Walker, c/o Joseph Walker, Agent**

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#### 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/27/24 **BE APPROVED** subject to the recommended conditions.

#### 2. **PROPOSAL:**

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

The applicant is proposing the construction of a 1024 sq ft accessory structure to contain a garage on the first floor and a secondary dwelling unit on the second floor with a height of 6.7 m (22 ft) to the peak of the roof. Therefore, the amount of relief requested is 1.2 m (4 ft) in accessory structure height.

The subject property is designated Low Density Residential in the Town's Official Plan and zoned Residential Type 1A (R1A) Zone in the Town's Zoning By-law.

#### 3. **BACKGROUND:**

N/A

#### **4. PLANNING INFORMATION:**

Official Plan Designation:	Low Density Residential
By-law No. 1999-52:	Residential Type 1A (R1A) Zone
Existing Use:	residential
Proposed Use:	residential
Neighboring Uses:	North: residential South: residential East: residential West: residential

#### **TECHNICAL INFORMATION**

Property Size:	2771.5 sq m (29,832 sq ft)
Existing structures:	single detached dwelling

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Proposed Accessory Structure Height:	6.7 m (22 ft)
Permitted Accessory Structure Height:	5.5 m (18 ft)
Relief requested:	1.2 m (4 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 to contain a garage on the first floor and a secondary dwelling unit on the second floor accessory to a single detached dwelling on a municipally serviced property within an existing residential development. The minor variance is required to allow for an increase in accessory structure height to permit a height of 6.7m (22 ft) to the peak of the roof.

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 is proposing the construction of a two storey accessory structure to contain a garage on the first floor and a secondary dwelling unit on the second floor accessory to a single detached dwelling. 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 Type 1A (R1A) Zone in Bylaw 1999-52, as amended. The R1A Zone permits single detached dwellings, accessory structures and secondary dwelling units.

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 1024 sq ft accessory structure to contain a garage on the first floor and a secondary dwelling unit on the second floor with a height

of 6.7 m (22 ft) to the peak of the roof. The structure is proposed to be accessed from a second driveway.

Section 3(23)(j)(iii) permits two driveways in the R1A Zone where two driveways subject to the parcel land having a minimum of 30 metres of frontage on the streetline.

The existing single detached dwelling has a footprint of 172.6 sq m (1858 sq ft) and a height of 4.9 m (16 ft). The resulting total lot coverage proposed is 9.66% (267.7 sq m/2882 sq ft) on a subject lot that is 2771.5 sq m (29,832 sq ft) in lot area.

Therefore, the amount of relief requested is 1.2 m (4 ft) in accessory structure height.

The proposed structure complies with all other provisions of the Zoning By-law including being approximately 3.7 m from the primary dwelling and 3.96 m interior side yard setback, an accessory structure lot coverage of 3.43% and the property having a total proposed lot coverage of 9.66%.

Section 3(3)(b) allows for secondary dwelling units to be located above a private garage but the amendment that added this provision to the ZBL in 2019 did not amend the maximum height of accessory structures leaving requests for increased accessory structure height with the Committee of Adjustment.

The height of the accessory structure proposed is greater than the height of the primary dwelling however the increased 13 ft setback from the interior side yard, the mature vegetation in the area and the large lot sizes all contribute to reducing the impact of the height difference between the primary and the accessory structure containing the secondary dwelling.

In my opinion the requested variance maintains 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 interior side yard setback slightly more from the ROW than the existing single detached dwelling on the subject property and abutting property to the west. This allows for a lesser impact on the neighbour's rear yard and provides for the existing mature trees to remain.

It is the opinion of the author of this report that the proposed variance 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 accessory structure containing a garage on the first floor and a secondary dwelling unit on the second floor does not change the character of the neighbourhood. The neighbourhood has large parcels with a range of lot sizes, house sizes and house styles. The increased side yard setback, the mature vegetation and the large lot area all lessen the impact of the proposed accessory structure.

All of the remaining R1A zone provisions and General Provisions are in compliance. The proposed residential use of the property is consistent with the Provincial Policy Statement and is in conformity with the Official Plan and maintains the intent of the Zoning by-law.

An ERCA permit is required for the proposed work. 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/27/24 be approved to grant relief of 1.2 m (4 ft) in accessory structure height to allow for the construction of a 1024 sq ft accessory structure to contain a garage on the first floor and a secondary dwelling unit on the second floor with a height of 6.7 m (22 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
2. That all new driveway entrances or modifications to current driveway entrances will require a Right-of-way Permit from the Town of Amherstburg and be constructed in compliance with the current Driveway Alteration or Installation Policy.
3. That the design of the accessory structure be in substantial conformity with the plans submitted as part of application A/27/24.

**9. CONCLUSION:**

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

- 1) The requested variance conforms with the intent of the relevant Official Plan policies.
- 2) The proposed variance maintains the intent of Comprehensive Zoning By-law 1999-52, as amended.
- 3) The proposed variance does not change the use of the land for residential purposes and therefore can be considered appropriate.
- 4) The requested variance 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', written in a cursive style.

Janine Mastronardi  
Secretary-Treasurer

## Report Approval Details

Document Title:	A-27-24, 595 McLeod, Daniel Deschamps and Cydney Walker.docx
Attachments:	- A-27-24 - 595 McLeod Ave - Report Attachments-RM.pdf
Final Approval Date:	Aug 1, 2024

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

Chris Aspila