



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
Author's E-mail: jmastronardi@amherstburg.ca	Resolution #:

To: Chair and Members of the Committee of Adjustment

Subject: A/30/24, Blocks 1, 22, 26 Mulberry Court, Petcon Realty Group Inc., c/o Joe Varacalli, Agent

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**.

2. **PROPOSAL:**

The applicants are proposing the construction of semi-detached dwellings on each of the 26 Blocks, resulting in 52 dwelling units. The lot configuration has received draft plan approval, servicing work is nearing completion and model home permits have been issued. Three (3) of the Blocks, 1, 22 and 26, require minor variance approvals to facilitate the semis on the street to have a uniform appearance.

The applicants are requesting relief from Zoning By-law 1999-52, as amended, as follows:

- Section 3(23)(i)(vii) requires a minimum distance between a point of intersection of streetlines and a driveway providing access to a lot from an improved street, measured along the street line intersected by such driveway shall be 8 metres.
 - o Block 1 is proposing a 3 m distance from the driveway to the point of intersection. Therefore, the amount of relief requested is 5 m.
 - o Block 26 is proposing a 6.33 m distance from the driveway to the point of intersection. Therefore, the amount of relief requested is 1.67 m.
- Section 3(26) requires a 25 m setback from the centerline of Simcoe Street.

- Block 1 is proposing a 21.3 m setback from the centerline of Simcoe Street. Therefore, the amount of relief requested is 3.7 m.
- Block 26 is proposing a 19.8 m setback from the centerline of Simcoe Street. Therefore, the amount of relief requested is 5.2 m.
- Section 8(4)(f) requires a 3 m exterior side yard setback in an R2-6 Zone.
 - Block 1 is proposing a 1.5 m exterior side yard setback. Therefore, the amount of relief requested is 1.5 m.
 - Block 22 is proposing a 2.41 m exterior side yard setback. Therefore, the amount of relief requested is 0.59 m.
- Section 8(3)(d) requires a 1.5 m interior side yard setback in an R2-6 Zone.
 - Block 26 is proposing a 1.2 m interior side yard setback. Therefore, the amount of relief requested is 0.3 m.

The subject property is designated Low Density Residential in the Town's Official Plan and zoned Special Provision Residential Second Density (R2-6) Zone in the Town's Zoning By-law.

3. BACKGROUND:

Mulberry Subdivision has been going through the draft plan of subdivision process over the past several years. Notice of Decision on application for approval of draft plan of subdivision was issued by the County of Essex on February 22, 2023. A subdivision agreement was executed and registered on May 8, 2023. Servicing of the subdivision commenced in Spring 2024 with a report being brought before Council on August 12, 2024 for the initial acceptance of services.

4. PLANNING INFORMATION:

Official Plan Designation:	Low Density Residential
By-law No. 1999-52:	Special Provision Residential Second Density (R2-6) Zone
Existing Use:	residential
Proposed Use:	residential
Neighboring Uses:	North: residential South: residential East: residential West: residential

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 semi-detached dwellings on the municipally serviced property in a residential development. The minor variance is required to facilitate the construction of semis on Blocks 1, 22 and 26 which have a uniform appearance to the remainder of the street.

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. 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 development of 26 blocks to contain 52 semi-detached dwellings. The structures 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.

OP Section 3.3.3 Extractive Industrial Policies acknowledges the active quarry operation located at the southwest corner of Simcoe St. and Meloche Rd. The policy states, *“to ensure the safety of any person and enjoyment of use of surrounding lands, any new development within 600 metres of a quarry operation, excluding the limited development permitted by virtue of the Agricultural and Natural Environment designations which surround the quarry, shall be required to carry out a noise and vibration assessment/study and to implement the attenuation and mitigation measures as recommended by the study.”*

The subject property is within 600 m of the quarry operation. Walker Aggregates participated through the previous official plan amendment, rezoning and subdivision approvals for Mulberry Court Subdivision starting in 2019. As a result of Walker’s comments, the applicant prepared a Blasting and Noise Study in 2022 with recommendations. The Town included these recommendations in the registered Subdivision Agreement in 2023 which includes a warning clause be registered on title advising future purchasers of the Amherstburg Quarry.

Clause 51 from Mulberry Court Subdivision Agreement:

51. **Quarry Acknowledgement in Purchase and Sale Agreement**

The Developer shall include the following clauses in all offers to purchase, agreements of sale and purchase or lease, and in the title deed or lease of each dwelling, where possible, as follows:

“The Purchaser hereby acknowledges that an active, licensed quarry is located near this property. Notwithstanding that the quarry must operate within provincial guidelines and the conditions of its license, it is possible that these operations may generate noticeable noise, vibration, dust and traffic and/or other potential impacts.

Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment.

This dwelling unit has been designed with the provision for adding central air conditioning at the occupant’s discretion. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Municipality and the Ministry of the Environment.”

The proposed minor variances do not change the review and approvals under Section 3.3.3. The proposed minor variances maintain the intent of the Official Plan.

3. ZONING BY-LAW

The subject property is zoned Special Provision Residential Second Density (R2-6) Zone in Bylaw 1999-52, as amended. The applicants are proposing the construction of semi-detached dwellings on each of the 26 Blocks, resulting in 52 dwelling units. Three (3) of the Blocks, 1, 22 and 26, require minor variance approvals to facilitate the semis on the street to have a uniform appearance.

The applicants are requesting relief from Zoning By-law 1999-52, as amended, as follows:

- Section 3(23)(i)(vii) requires a minimum distance between a point of intersection of streetlines and a driveway providing access to a lot from an improved street, measured along the street line intersected by such driveway shall be 8 metres.
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 - o Block 26 is proposing a 1.2 m interior side yard setback. Therefore, the amount of relief requested is 0.3 m.

The proposed structures comply with all other provisions of the Zoning By-law including being lot coverage, driveway widths and front yard setback.

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.

Infrastructure Services has confirmed in their comments that the requested reduced setbacks of the driveways from the point of intersection will not negatively impact the area as part of the approved draft plan of subdivision committed to transferring sight triangles within the right-of-way on both sides of the intersection of Mulberry Court and Simcoe Street.

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 requested reduced setbacks do not change the character of the neighbourhood. The requested relief will ensure a consistent appearance of all semi-detached units on the street.

All of the remaining R2-6 zone provisions and General Provisions are in compliance. The proposed use of the land for semi-detached dwelling units 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/30/24 be approved to grant relief of:

- 5 m for Block 1 and 1.67 m for Block 26 from Section 3(23)(i)(vii) which requires a minimum distance between a point of intersection of streetlines and a driveway providing access to a lot from an improved street, measured along the street line

intersected by such driveway shall be 8 metres to permit Block 1 to have a 3 m distance from the driveway to the point of intersection and to permit Block 26 to have a 6.33 m distance from the driveway to the point of intersection respectively.

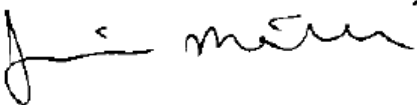
- 3.7 m for Block 1 and 5.2 m for Block 26 from Section 3(26) which requires a 25 m setback from the centerline of Simcoe Street to permit Block 1 a 21.3 m setback from the centerline of Simcoe Street and to permit Block 26 a 19.8 m setback from the centerline of Simcoe Street.
- 1.5 m for Block 1 and 0.59 m for Block 22 from Section 8(4)(f) which requires a 3 m exterior side yard setback in an R2-6 Zone to permit Block 1 a 1.5 m exterior side yard setback and to permit Block 22 a 2.41 m exterior side yard setback.
- 0.3 m for Block 26 from Section 8(3)(d) which requires a 1.5 m interior side yard setback in an R2-6 Zone to permit Block 26 a 1.2 m interior side yard setback.

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,



Janine Mastronardi
Secretary-Treasurer

Report Approval Details

Document Title:	A-30-24, Blocks 1, 22, 26 Mulberry Court, Petcon Realty Group Inc.docx
Attachments:	- A-30-24 - Blks 1, 22, 26 Mulberry Crt - 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