



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.

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To: Chair and Members of the Committee of Adjustment

Subject: A/47/24, 1641 Park Avenue, Annette Zahaluk

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/47/24 **BE APPROVED** subject to the recommended conditions.

2. PROPOSAL:

The applicant is requesting relief from Zoning By-law 1999-52, as amended, Section 6(3)(e) which requires a minimum exterior side yard of 7.5 m in a Residential Type 1A (R1A) Zone.

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

The applicant is proposing the construction of a 14 ft x 20 ft, 280 sq ft, accessory structure to contain personal storage with a 0.61 m exterior side yard setback. There is an existing gazebo on the property with an exterior side yard setback of 3 m. The proposed accessory structure could be constructed in line with the gazebo but due to the location of the gas service to the home the only location that is possible for the proposed accessory structure is 0.61 m from the north property line.

Therefore, the amount of relief requested is 6.89 m in exterior side yard setback.

3. BACKGROUND:

Typically, in established neighbourhoods like this Section 3(23)(b) is used to determine setbacks when existing structures exist that do not comply with required setbacks. Section 3(23)(b) states, "EXEMPTION IN BUILT-UP AREAS: The minimum setback required on a lot that is between two adjacent lots on which are located existing buildings not more than 90 metres apart shall be the average of the established building lines on the said adjacent lots, provided that no setback requirement calculated in accordance with this Clause shall exceed the applicable setbacks required of the appropriate zone provisions"



In this instance, being a corner lot, there is no lot adjacent on the west to use to average out the established building line. Therefore, a minor variance was brought forward for consideration in setback relief.

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: residential

TECHNICAL INFORMATION

Property Size: 678 sq m (7298 sq ft)

Existing structures: single detached dwelling and two accessory structures (gazebo and shed)

Proposed Minimum Exterior Yard Setback: 0.61 m

Required Minimum Exterior Side Yard Setback: 7.5 m

Relief requested: 6.89 m

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 on a municipally serviced property in an existing residential development which already contains a single detached dwelling. The minor variance is required to allow for a reduced exterior side yard setback to permit the proposed location of the accessory structure due to the location of the gas service to the house.

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 an accessory structure which will be 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 variance maintains 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 and accessory structures.

Section 6(3)(e) which requires a minimum exterior side yard of 7.5 m in a Residential Type 1A (R1A) Zone. The applicant is proposing the construction of a 14 ft x 20 ft, 280 sq ft, accessory structure to contain personal storage with a 0.61 m exterior side yard setback. There is an existing gazebo on the property with an exterior side yard setback of 3 m. The proposed accessory structure could be constructed in line with the gazebo but due to the location of the gas service to the home the only location that is possible for the proposed accessory structure is 0.61 m from the north property line. Therefore, the amount of relief requested is 6.89 m in exterior side yard setback.

The proposed structure complies with all other provisions of the Zoning By-law including lot coverage and height.

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. The location of the proposed accessory structure is consistent with the neighbourhood.

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 does not change the character of the neighbourhood and is required by the property owner for additional storage on the property.

Determination of minor can be based on the numerical amount of relief requested OR can be based on how many provisions from the Zoning By-law require relief. In this case due to the location of a gas service line not allowing the structure to be constructed in line with the existing gazebo and not having a neighbour to the west to determine the established building line results in the need for a minor variance. 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.

The Essex Region conservation Authority has no objections to the application for minor variance. The applicant is required to obtain an approval from ERCA prior to any construction or site alteration or other activities affected by Section 28 of the *Conservation Authorities Act*. 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/47/24 be approved to grant relief of 6.89 m in exterior side yard setback for a 14 ft x 20 ft, 280 sq ft, accessory structure to contain personal storage to have a 0.61 m setback from the north property line subject to the recommended conditions:

1. That the proposed accessory structure shall not contain windows on the north wall of the structure.

2. That a grade design be approved and implemented to the satisfaction of the municipality.

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,



Janine Mastronardi
Secretary-Treasurer

Report Approval Details

Document Title:	A-47-24, 1641 Park Avenue, Annette Zahaluk.docx
Attachments:	- A-47-24- Notice- 1641 Park Ave- FEB Mtg-RM.pdf - A-47-24 - Application_Redacted-RM.pdf
Final Approval Date:	Jan 30, 2025

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

Chris Aspila