



## 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:</b> Janine Mastronardi	<b>Report Date:</b> January 30, 2025
<b>Author's Phone:</b> 519 736-5408 ext. 2134	<b>Date to Committee:</b> February 5, 2025
<b>Author's E-mail:</b> <a href="mailto:jmastronardi@amherstburg.ca">jmastronardi@amherstburg.ca</a>	<b>Resolution #:</b>

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

**Subject:** A/05/25, 6 Laird Avenue South, Remo and Jo-Anne Mancini

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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/05/25 **BE APPROVED** subject to the recommended conditions.

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

The applicant is requesting relief from Zoning By-law 1999-52, as amended, Section \*5(3)(e) which, as a result of an OMB decision dated July 12, 1990, requires a 1.5 m (5 ft) exterior side yard setback from the north property line of 6 Laird Avenue South. Relief is also being requested from Section 3(26)(d) which requires an 8 m setback from shoreline protection works along the Detroit River.

The applicant is proposing the construction of an outdoor kitchen and entertainment enclosure on an existing concrete pad in the rear yard. The proposed structure will be 0.34 m (1.12 ft) from the north property line and will be 5 m (16.5 ft) from the shoreline protection works along the Detroit River.

Therefore, relief from the \*1.16 m in side yard setback from the north property line and 3 m in setback from shoreline protection works along the Detroit River.

The subject property is designated Low Density Residential in the Town's Official Plan and zoned Special Provision Residential First Density (R1-8) in the Town's Zoning By-law.

### **3. BACKGROUND:**

\*Through a detailed planning analysis on the minor variance application conducted for the preparation of the writing of this report it was noted that the provision of the Zoning By-law for the relief being sought in side yard setback was incorrectly referenced in the Notice of Public Hearing.

On July 12, 1990 the Ontario Municipal Board issued a Decision of the Board and Order of the Board regarding a minor variance to reduce the exterior side yard setback of 7.5 m to 1.5 m, the usual side yard setback requirement of the by-law at that time. The decision of the Committee of Adjustment to reduce the exterior side yard to 1.5 m was upheld and the appeals dismissed. The OMB decision established a 1.5 m side yard setback from the north property line at 6 Laird Avenue South. Therefore the relief being sought is from the required 1.5 m setback not an accessory structure 1.2 m setback.

The Town obtained a legal opinion was obtained that indicated, “any owner can apply for a minor variance or any other new relief that is greater than what was previously received. The OMB’s previous order was a decision concerning only that earlier application for a minor variance and is the final decision on that one particular minor variance application and not applicable to any future potential applications. If a new application is initiated, the committee will be required to assess such new application on its own merits and in accordance with the current planning and bylaw requirements. Any new application should not be refused on the basis of the previous OMB order and that order should be enforced on its own.”

There are no changes to the proposed site plan or the proposed setback from the north property line, both of which were circulated. Therefore, it has been determined that despite the error in reference to the section of the Zoning By-law the intent of the minor variance has been circulated to the neighbouring properties and agencies.

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

Official Plan Designation: Low Density Residential

By-law No. 1999-52: Special Provision Residential First Density (R1-8) Zone

Existing Use: residential

Proposed Use: residential

Neighboring Uses: residential

#### **TECHNICAL INFORMATION**

Property Size: 1650 sq m (17,760 sq ft)

Existing structures: single detached dwelling

Proposed Side Yard Setback to North Property Line: 0.34 m

Required Side Yard Setback to North Property Line: 1.5 m

Relief requested: 1.16 m

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Proposed Setback from Shoreline Protection Works along the Detroit River: 5 m

Required Setback from Shoreline Protection Works along the Detroit River: 8 m

Relief requested: 3 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 orderly development of safe and healthy communities;

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 side yard setback to the north property line to permit the accessory structure to be built on an existing concrete pad within the existing backyard layout.

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 Special Provision Residential First Density (R1-8) Zone in Bylaw 1999-52, as amended. The R1-8 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 Special Provision Residential First Density (R1-8) Zone. The July 12, 1990 Ontario Municipal Board issued Decision established a reduced exterior side yard setback of 1.5 m.

The applicant is proposing the construction of an outdoor kitchen and entertainment enclosure on an existing concrete pad in the rear yard. The proposed structure will be 0.34 m (1.12 ft) from the north property line and will be 5 m (16.5 ft) from the shoreline protection works along the Detroit River.

Therefore, the amount of relief requested is 1.16 m in side yard setback from the north property line and 3 m in setback from shoreline protection works along the Detroit River.

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

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. The reduced side yard will not negatively impact the Town's Alma Street right-of-way. The roof has been designed to slope inward to a drain which is connected to the rear yard drainage system.

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 to enclose an existing outdoor kitchen area. All of the remaining R1-8 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 attached ERCA correspondence acknowledges that an ERCA Permit has been issued for this development under 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/05/25 be approved to grant relief of 1.16 m in side yard setback from the north property line and 3 m in setback from shoreline protection works along the Detroit River subject to the following conditions;

1. That the design of the accessory structure be built in substantial conformity with the plans submitted as part of application A/05/25.

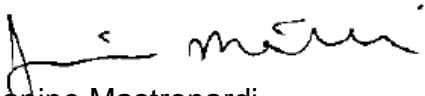
2. Stormwater runoff generated as a result of the proposed accessory building shall be maintained on the private land and managed by the proponent to reduce risk of rear yard flooding.
3. Construction of the accessory buildings shall not adversely impact the rear yard drainage or adjacent neighbouring lands.

**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 variances would not have a negative impact on the environment.

Respectfully submitted,



Jadine Mastronardi  
Secretary-Treasurer Committee of Adjustment

## Report Approval Details

Document Title:	A-05-25, 6 Laird Avenue South, Remo and Jo-Anne Mancini.docx
Attachments:	<ul style="list-style-type: none"><li>- A-05-25- Notice-6 Laird Ave S-RM.pdf</li><li>- A-05-25 - Application_Redacted-RM.pdf</li><li>- A-05-25- Site Photos-RM.pdf</li><li>- Summary of Correspondence Received on A-05-25-RM.pdf</li><li>- A-05-25 PowerPoint- Updated-RM.pdf</li></ul>
Final Approval Date:	Jan 30, 2025

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

Chris Aspila