



Planning and Development Services

Prepared for: Committee of Adjustment

Meeting Date: December 19, 2024

Application Number: A50/24

Address: 2491 Windmill Point East Lane, Fort Erie

Owner/Applicant: Fouad Abdel Malik

1. Title

Minor Variance Application A50/24 for lands located at 2491 Windmill Point East Lane, Fort Erie

2. Purpose

The purpose and effect of this application is to permit increased maximum lot coverage and a reduced setback to the 1-in-100-year flood elevation along the Lake Erie shoreline in order to permit a covered patio attached to the single detached dwelling on the subject lands.

The application requests a variance to Section 16A.3 and Section 6.48 of the Town of Fort Erie's Comprehensive Zoning By-law No. 129-90, as amended:

1. To permit an increased maximum lot coverage for dwellings of 11% whereas a maximum lot coverage of 10% for dwellings is required.
2. To permit a reduced setback to the 1-in-100-year flood elevation along the Lake Erie shoreline to 22.0 metres whereas a minimum setback of 30.0 metres is required.

3. Recommendations

Planning staff recommend **APPROVAL** of Minor Variance application A50/24.

4. Analysis

4.1 Site Context

The subject lands are a waterfront property located within a rural residential area of the Town of Fort Erie outside of the Urban Boundary. There is an existing single detached dwelling on the subject lands. The surrounding land uses include:

North: Windmill Point East Lane, single detached dwellings and wooded area;

South: Lake Erie;

East: Single detached dwellings along the Lake Erie shoreline;

West: Single detached dwellings along the Lake Erie shoreline and the Windmill Point Road South waterfront access point.

4.2 Environmentally Sensitive Areas

A portion of the subject lands are within shoreline area under the regulation of the Niagara Peninsula Conservation Authority (NPCA). The NPCA has reviewed the proposed variance and noted that the proposed covered patio is outside of the NPCA regulated area.

Niagara Region has confirmed that the subject lands are partially impacted by the Natural Environment System in the Niagara Official Plan. The site was reviewed in detail as part of a previous Minor Variance application in 2023. Regional staff have noted that some Provincial policies have changed since the last application, such as the implementation of the new Provincial Planning Statement (PPS, 2024) and the removal of the Growth Plan for the Greater Golden Horseshoe (2020). As a result the Provincial Natural Heritage System policies that were part of the Growth Plan are no longer applicable to the site. However, the new PPS policies have not altered the Region's position that the proposal is consistent with the PPS and conforms to Provincial and Regional plans.

The subject lands are partially designated Environmental Protection on Schedule A – Land Use of the Official Plan. Portions of the subject property are identified as a Significant Natural Area and an Environmental Corridor on Schedule C – Natural Heritage Features in the Town's Official Plan. A portion of the subject property is also identified as Natural Hazard Area on Schedule C1 – Natural Hazards and Fish Habitat of the Official Plan.

The Town's Environmental Planning staff note that the subject lands are subject to the Town's Tree By-law 33-2024. If tree removal is proposed, the Applicant will be required to submit a Tree Preservation Plan, an Arborist Report (prepared by an International Society of Arboriculture (ISA) Certified Arborist) and a Landscape Plan (prepared by an Ontario Association of Landscape Architects (OALA) in good standing).

The requirement for a Tree Preservation Plan, an Arborist Report and a Landscape Plan will be required as a condition of approval as a precautionary measure. If no tree removal is proposed Town Environmental Planning staff can clear the condition.

4.3 Four Tests of Minor Variance – Section 45(1) of the Planning Act, R.S.O. 1990, c. P.13

The Planning Act provides that a minor variance must meet the following four tests to be considered supportable.

4.3.1 Is the proposal minor in nature?

Increased Maximum Lot Coverage for a Dwelling

The proposed variance to permit an increase to the maximum lot coverage of the dwelling to 11% is minor. It is noted that this increased lot coverage is a result of the covered patio being attached to the dwelling. The covered patio is included as part of the lot coverage of the dwelling if it is attached. The increase in lot coverage is small and no adverse impacts to adjacent properties are anticipated to result from this Minor Variance request.

Reduced Setback to the 1-in-100-Year Flood Elevation

The proposal to permit a reduced setback to the 1-in-100-year flood elevation from 30.0 metres to 22.0 metres is minor. The NPCA has reviewed this proposal and confirmed that the covered patio is outside Natural Hazard Area (the 1-in-100-year flood elevation). The NPCA has no objections to this variance request.

4.3.2 Is the proposal desirable for the appropriate development or use of the land, building or structure?

The proposal to permit Minor Variances for increased lot coverage and a reduced setback to the 1-in-100-year flood elevation to permit a covered patio attached to the main dwelling is appropriate and desirable. A single detached dwelling with an attached covered patio is permitted on the subject lands. Further, comments from the NPCA, Region and Town Environmental Planning staff noted that there are no anticipated impacts to natural heritage features on the subject lands resulting from this application.

4.3.3 Does the proposal meet the general intent and purpose of the Official Plan?

The subject lands are designated “Environmental Protection”, in part, and “Rural Residential” in part, in the Town’s Official Plan. A single detached dwelling with an attached covered patio is permitted under the Rural Residential land use designation. The patio itself was confirmed by the NPCA to be outside of Natural Hazard Area associated with the Lake Erie shoreline. There are no anticipated impacts to natural heritage features on the subject lands resulting from this application. This proposal meets the general intent and purpose of the Official Plan.

4.3.4 Does the proposal meet the general intent and purpose of the Zoning By-law?

Increased Maximum Lot Coverage for a Dwelling

The general intent of regulations in the Zoning By-law for maximum lot coverage is to ensure that a dwelling is sufficiently sized and does not overpower the lot, among other things. This intent is maintained. The increase in lot coverage is only 1% and sufficient space remains onsite for parking and amenity area. The increase in lot coverage will not result in the dwelling overpowering the lot. It is noted that the covered patio maintains the existing side yard setbacks and complies with the rear yard setback requirement. No undue massing impacts will result from the small increase in lot coverage.

Reduced Setback from the 1-in-100-Year Flood Elevation

The general intent of the regulation in the Zoning By-law requiring a 30.0 metre setback from the

1-in-100-year flood elevation along the Lake Erie shoreline is to ensure buildings and structures along the lake are adequately protected from flooding hazards. This proposal meets this intent. The NPCA has reviewed proposed Minor Variance application and have confirmed that the covered patio is outside of the Natural Hazard Area associated with the 1-in-100-year flood elevation.

Therefore, the proposal meets the general intent of the Zoning By-law.

5. Comments from Departments, Community and Corporate Partners

Community Planning

No objections.

Environmental Planning

The subject property is not located within the Town's Urban Boundary but is within Natural Heritage system. There are Natural Heritage features present. There is a regulated shoreline extent at the southern end of the property. The lands are subject to the Town's Tree By-law 33-2024. If any trees are proposed to be removed from the lands, the subsequent removal application must be accompanied by a Tree Protection Plan, an Arborist report (ISA Certified Arborist or per the Town's definition in the By-law) and a Landscape Plan (OALA in good standing).

Based on the application received, it appears that the work has already been done and that this request is retroactive in nature. Therefore, there should be no need for a Tree Protection Plan or EIS.

Infrastructure Services

No objections.

Canadian Niagara Power

No objections.

Niagara Peninsula Conservation Authority (NPCA)

Technical staff have had a review of the provided Survey Sketch, prepared by Chambers and Associates Surveying Ltd., Dated August 29, 2024, and offer the following notes:

- The NPCA can confirm that Regulatory Flood Level of the Lake Erie Shoreline Hazard is 177 m.
- The NPCA indicates that the denoted flood limit on the provided survey appears to be a bit off from NPCA mapping.
- However, the NPCA can indicate that the flood limit appears to be in the general vicinity of what is shown in the provided survey sketch.
- The NPCA would need to review a topographic survey to confirm the flood location of the regulatory flood level.

Additionally, the NPCA notes that there does not appear to be any development around the flood limit.

The NPCA has been informed that a minor variance is being proposed and that it is to address the possibility of attaching the existing cover patio to the main building to attach/ extend the roof.

The provided Survey Sketch do not have anything labeled as a “covered patio” however it does have something labeled as a “covered porch”.

Additionally, what is labelled as covered porch shows a 24.9 m setback from the rear lot line.

Should the structure that is identified as a “covered porch” be proposed to be attached to the existing “2 storey dwelling” the NPCA notes that the work would be outside of the NPCA regulated area and the NPCA would have no objections or require a review fee.

Niagara Region

This property was subject to a Minor Variance application for the same structure in 2023. Regional staff note that their previous comments from the October 4, 2023 remain applicable. Regional staff acknowledge that since that time the new Provincial Planning Statement (PPS, 2024) has come into effect and the Growth Plan has been repealed. As such, natural heritage comments regarding the Provincial Natural Heritage System (PNHS) impacting the northern portion of the lands no longer apply. Nonetheless, the new PPS policies do not alter the previous conclusion that the proposed Minor Variance application is consistent with Provincial and Regional planning policy. Further, Niagara Region has confirmed that an Environmental Impact Study (EIS) will not be required for this proposal.

Public Comments

One letter was submitted to the Town requesting a copy of the staff report for this application. Further, the letter requested clarification on how policies in the Town’s Waterfront Strategy and the Town’s Parkland Dedication By-law requiring dedication of waterfront lands gratuitously as a condition of development will be applied with respect to this Minor Variance application.

Staff Response

Planning staff note that this variance seeks to permit a covered patio that is attached to an existing dwelling. No new dwellings or lot creation will result from this proposal. It has been the Town’s practice to request conveyance of waterfront lands in the event of new lot creation or for large scale development that has the effect of substantially increasing the size or the usability of land use such as a Consent, a major Site Plan Application or Plan of Subdivision / Condominium. While the Town reserves its right to request waterfront lands, in this instance Planning staff do not recommend requiring conveyance of the waterfront lands given the minor nature of the proposed covered patio.

Conclusion

Based on the above analysis, the Planning Staff recommend **APPROVAL** of Minor Variance Application A50-24, subject to the condition above.

6. Report Approval

Prepared by:

Daryl Vander Veen
Intermediate Development Planner

Reviewed and submitted by:

Devon Morton, MCIP, RPP
Supervisor, Development Approvals

7. Attachments

Appendix 1 – Application Sketch