



Planning and Development Services

Prepared for: Committee of Adjustment

Meeting Date: December 19, 2024

Application Number: A80/24

Address: 2826 Nigh Road, Fort Erie

Owner: Steve James and Sarah James

Applicant: Yager Architectural Design Service (Tony Aiello)

1. Title

Minor Variance Application A80/24 for lands located at 2826 Nigh Road, Fort Erie

2. Purpose

The purpose and effect of this application is to permit a reduced interior side yard setback to a garage that is proposed to be attached to a single detached property on the subject lands.

The application requests a variance to Section 9.3 of the Town of Fort Erie's Comprehensive Zoning By-law No. 129-90, as amended:

1. To permit a reduced Interior Side Yard Setback of 1.8 metres for dwellings whereas a minimum Interior Side Yard Setback of 3.0 metres is required.

3. Recommendations

Planning staff recommend **APPROVAL** of Minor Variance application A80/24, subject to the following conditions:

1. That in the event of any tree removal, that may result in injury or harm to a public or private tree, the Owner / Applicant shall submit and receive final approval of a Tree Protection Plan and Arborist Report prepared by an ISA Certified Arborist (or per the Town's definition in the By-law) to the satisfaction of the Town.
2. That in the event of any tree removal requiring re-planting, the Owner / Applicant shall submit and receive final approval of a Landscape Plan prepared by a member of the OALA in good standing demonstrating the re-planting using compensation ratios per Table B.1 of (Tree) By-law No. 33-2024, as amended, to the satisfaction of the Town.

4. Analysis

4.1 Site Context

The subject lands are a through lot located within a rural residential area that is outside of the Urban Boundary. The subject lands contain a single detached dwelling, a detached garage, and several other miscellaneous accessory structures. The surrounding land uses include:

North: Portage Trail, single detached dwellings and vacant, wooded rural residential land;
 South: Nigh Road, single detached dwellings and vacant, wooded rural residential land;
 East: A single detached dwelling, Centralia Avenue North and the draft-approved Hershey Estates rural residential plan of subdivision;
 West: Single detached dwellings and Oakhill Boulevard.

4.2 Environmentally Sensitive Areas

The Niagara Peninsula Conservation Authority (NPCA) has confirmed that the proposed addition to connect the garage to the single detached dwelling is not within NPCA-regulated area and therefore they do not object to the proposed Minor Variance. However, the septic system may be within area with unevaluated wetlands that are regulated by the NPCA. NPCA review and approval may be required if septic works are required to implement the proposed addition.

Portions of the subject lands are identified as Other Woodlands that are part of the 2022 Niagara Official Plan Natural Environment System (NES). Detailed comments from Niagara Region are pending.

The subject lands are designated Environmental Conservation, in part, on Schedule A – Land Use of the Official Plan. This designation is reflective of the subject lands being within area that is identified as a Significant Natural Area and part of a Woodlot Over 2 Hectares on Schedule C – Natural Heritage Features of the Town's Official Plan. Portions of the subject lands are also zoned Environmental Conservation (EC) Overlay Zone in the Zoning By-law to reflect the natural heritage features.

Planning staff note that the garage and single detached dwelling already exist on site. A Building Permit application was submitted to the Town to attach the garage to the dwelling. It is noted that the area where the garage will attach to the dwelling is outside of area with the EC Overlay Zone. The Town's Environmental Planning staff have confirmed that due to the limited scope of construction proposed for the subject lands a Tree Preservation Plan and/or an Environmental Impact Study (EIS) are not required. If tree removal or injury or harm to a public or private tree occurs, 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 or injury or harm to a public or private tree occurs Town Environmental Planning staff can clear the

conditions.

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?

Reduced Interior Side Yard Setback

The proposed variance to permit a reduced interior side yard setback of 1.8 metres to the garage is minor and is a technical variance. Attaching the garage to the dwelling subjects the garage to the regulations for dwellings under the Rural Residential (RR) Zone. A Minor Variance approval is required as the minimum interior side yard setback requirement for dwellings is greater than the interior side yard setback requirement for a detached garage (3.0 metres versus 1.0 metre). It is noted that the existing setback of 1.8 metres is sufficient for access and drainage in the westerly interior side yard, among other things.

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

The proposal to attach the garage to the single detached dwelling is appropriate and desirable. A single detached dwelling with an attached garage is a permitted use on the subject lands. The setback to the garage is an existing situation and no undue impacts to the parcel to the west are anticipated to result from this proposal.

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

The subject lands are designated “Environmental Conservation”, in part, and “Rural Residential” in the Town’s Official Plan. The proposed addition is located outside of the Environmental Conservation area of the subject lands. A single detached dwelling with an attached garage are permitted under the Rural Residential land use designation. 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?

Reduced Interior Side Yard Setback

The general intent of regulations in the Zoning By-law for minimum interior side yard setbacks for dwellings is to ensure that there is sufficient space in the side yard of a dwelling for maintenance, access and drainage, among other things. It is noted that the 1.8 metre setback of the garage to the west property line is an existing situation and there are no known issues with maintenance, access or drainage in the yard. The setback will not decrease further as a result of this proposal.

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

5. Comments from Departments, Community and Corporate Partners

Community Planning

No comments or 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 an "other woodland" that surrounds the entire 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 (OLA in good standing).

Based on the application received, it appears that the work is slated to take place in a very narrow passage that falls in the footprint of the existing structure. Therefore, there should be no need for a Tree Protection Plan or EIS.

Canadian Niagara Power

No objections.

Niagara Peninsula Conservation Authority (NPCA)

The NPCA regulates watercourses, flood plains (up to the 100-year flood level), Great Lakes shorelines, hazardous land, valleylands, and wetlands under Ontario Regulation 41/24 of the Conservation Authorities Act.

The NPCA Policy Document: Policies for Planning and Development in the Watersheds of the Niagara Peninsula Conservation Authority (NPCA policies) provides direction for managing NPCA regulated features.

The NPCA has reviewed the NPCA mapping of ARN 270302002318700 and notes that the subject proposal to connect the garage and the dwelling unit does not encroach NPCA regulated area. Therefore, NPCA would have no objection to this proposal.

Notwithstanding the above, please be advised that the subject property is surrounded by potential unevaluated wetlands along the East, West and North boundary. Please note that the Plan of Survey included within the application shows a proposed "Septic (by others)". The proposed septic encroaches within the identified potential unevaluated wetlands. If this area meets the definition of a regulated NPCA feature, further discussion with the NPCA is required as the septic may not be permitted in this area or may have to be modified. It should be noted that, if the proposed septic is required to accommodate the proposed addition under this minor variance, the NPCA will require review of the proposed work, a completion of a site visit, and possible NPCA Permits prior to the start of works.

Any future proposed works within NPCA Regulated Areas will require review, approval, and possible work permits (with fees).

Niagara Region

Comments pending. The subject lands are partially within Other Woodlands that are part of the 2022 Niagara Official Plan Natural Environment System (NES).

Conclusion

Based on the above analysis, the Planning Staff recommend **APPROVAL** of Minor Variance Application A80/24, 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