



Meeting Date: July 19, 2023

Submitted by: Dan FitzGerald MPI MCIP RPP, Senior Planner

Report No: PLA-51-2023

Subject: Application for Minor Variance (File No. A-12/2023)

Recommendation:

THAT Minor Variance Application A-12/2023, filed by Salim Ferwati, on behalf of Negal Aljaaouni for relief from the Comprehensive Zoning By-law in order to establish a minimum rear yard setback for an attached deck of 4.8 metres (15.7 feet), whereas the Middlesex Centre Comprehensive Zoning By-law requires a minimum rear yard setback of 6.5 metres (21.3 feet), for a property legally described as Part of lot 6, Concession 2 Lobo, Part 2 on Reference Plan 33R20376, in the Municipality of Middlesex Centre, County of Middlesex, and is municipally known as 10083 Oxbow Drive, be GRANTED, subject to the following conditions:

THAT the minimum rear yard setback shall reduction to 4.8 metres shall only apply to the deck, and the remainder of the single detached dwelling shall maintain a minimum 8.0 metre setback as shown on the site plan;

AND THAT the reasons for granting Minor Variance Application A-12/2023:

- The request complies with the general intent and purpose of Middlesex Centre's Official Plan;
- The request complies with the general intent and purpose of Middlesex Centre's Comprehensive Zoning By-law;
- The request is minor in nature; and
- The request represents appropriate development on the subject property.

Purpose:

The purpose of this report is to provide the Committee of Adjustment with a recommendation regarding a minor variance for a property located on the south side of Oxbow Drive, north of the intersection at Queen Street and Oxbow Drive.

A location map is included as Attachment 1.

Background:

The purpose and effect of the Application for Minor Variance is to seek relief from the Middlesex Centre Comprehensive Zoning By-law 2005-005 as it relates to the minimum rear yard setback requirement for a deck in the in the Urban Residential First Density – Exception (UR1-41) Zone. The applicant is requesting a minimum rear yard setback of 4.8 metres (15.7 feet), whereas the Zoning By-law requirements a minimum rear yard setback of 6.5 metres (21.3 feet). The effect of the proposal is to facilitate the construction of a deck into the rear yard setback.

The subject lands are located in Komoka. The lands are bounded by low density single detached residences on both interior sides, as well as a future residential subdivision to the south, and an existing institutional use to the north.

The property is designated ‘Settlement Area’ in the Middlesex County Official Plan, ‘Residential’ in the Middlesex Centre Official Plan, and zoned Urban Residential First Density – Exception (UR1-41) Zone in the Middlesex Centre Comprehensive Zoning By-law.

An illustration of the proposal is included in Attachment 2. The proposed reductions are summarized below:

Requirements	Relief Requested
As per section 4.30, the maximum rear yard encroachment is 1.5 metres, and as per section 8.1.6, the minimum rear yard setback is 8 metres	minimum rear yard setback of 4.8 metres

Consultation:

Notice of the applications have been circulated to agencies, as well as property owners in accordance to the requirements of the Planning Act.

Public Comments:

At the time of writing the subject report, no comments or concerns had been received from the public regarding this proposal.

Agency Comments:

The following comments were received at the time of writing this report;

Enbridge Pipelines does not have any assets in the area.

The Municipality’s Chief Building Official has reviewed the application and has indicated no objection to the proposal.

Development Review Coordinator has reviewed the application and has indicated no objection to the proposal.

Director of Public Works and Engineering: No objections.

Analysis:

Section 45(1) of the Planning Act authorizes the Committee of Adjustment to grant relief from the Comprehensive Zoning By-law requirements if a request is deemed to be desirable for the appropriate development or use of the land, building, or structure; the requested relief is minor; and the general intent and purpose of both the Official Plan and Comprehensive Zoning By-law are maintained.

In addition to the above, Section 10.9 of Middlesex Centre's Official Plan must also be satisfied in order for a minor variance to be granted. Section 10.9 provides the following policies with respect to minor variance applications:

- I. The proposal is compatible with the surrounding neighbourhood;
- II. The proposal is in keeping with the general intent and purpose of the Comprehensive Zoning By-law;
- III. The proposal is in keeping with the general intent and purpose of the Official Plan;
- IV. The proposal is appropriate and desirable use of land; and
- V. The variance is generally minor in nature. The interpretation of what is minor is not necessarily based on the extent by which the by-law is varied. Rather, it is based on whether the effect of the variance could be considered minor.
- VI. There are valid reasons as to why the by-law cannot or should not be complied with, and that reasonable alternatives that comply with the by-law have been considered.

As previously noted, the subject land is designated 'Settlement Area' according to the County of Middlesex and 'Residential' in the Middlesex Centre Official Plan. The lot is zoned 'Urban Residential First Density – Exception (UR1-41) Zone' by Middlesex Centre's Comprehensive Zoning By-law. Staff note that the applicants request for a minor variance to the rear yard setback is due to the preferred nature of development on the lands, that being a residential dwelling.

Planning has reviewed the proposed minor variances in relation to the four Planning Act tests as listed above. The analysis has been broken up below which takes into consideration each variance against the four tests.

Is the variance considered minor in nature? YES

The interpretation of what is minor is not necessarily based on the extent to which the zoning by-law is varied. Rather it is based on whether the impact of the variance can be considered minor. In review of the proposed minor variances, Planning Staff is of the opinion that the proposal is considered minor in nature as the proposed location of the deck is to be located in the rear yard directly in line with the single detached dwelling. It would be appropriately screened by a fence on the interior side yard and would pose no conflict with a neighbouring property to the rear given the proposed setback and height of the structure. As such, Staff is not anticipating any negative adverse impacts on neighbouring properties by extending the permissions for the rear yard setback related to the deck.

Is the variance an appropriate use of the land? YES

The development of a single detached dwelling and associated accessory uses would be consistent with the character of the area which includes residential uses and uses accessory thereto. Therefore, the proposed variance would represent an appropriate use of the land.

Does the variance maintain the intent of the Official Plan? YES

The intent of the Official Plan through the Residential designation is to provide for a variety of dwellings and accessory buildings in the area. The proposed deck, and in extension of the single detached dwelling, would be directly associated with the residential use of the property. Therefore planning staff find that the subject proposal would maintain the general intent and purpose of the Municipal Official Plan.

Does the variance maintain the intent of the Zoning By-law? YES

The general intent and purpose of the Comprehensive Zoning By-law as it relates to the subject request is to ensure that the proposed deck as an extension of the main dwelling is located an appropriate distance from the rear property line, and that the residential dwelling remains the main use on this portion of the lot. Based on the proposed location of the proposed extension in the rear yard, Planning Staff is satisfied that the requested relief would maintain the general intent and purpose of the Comprehensive Zoning By-law.

Given the above, Planning Staff is satisfied that the proposed minor variance can be supported. Planning Staff recommend that the subject application be approved, as the proposal meets the four test of a minor variance of the Planning Act.

This opinion is provided prior to the public meeting and without the benefit of potentially receiving all comments from agencies or members of the public. Should new information arise regarding this proposal prior to or at the public meeting, the committee is advised to take such information into account when considering the application.

Financial Implications:

None.

Attachments:

1. Location Map
2. Conceptual Site Plan