



**Meeting Date: March 24, 2021**

**Submitted by: Dan FitzGerald MPI, Planner**

**Report No: PLA-23-2021**

**Subject: Application for Minor Variance (File No. A-4/2021)**

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**Recommendation:**

THAT Minor Variance Application A-3/2021, filed by Andrew Kooman for relief from the Comprehensive Zoning By-law in order to establish an interior side yard and rear yard setback of 0.6 metres (2 feet) for a pool, whereas the Middlesex Centre Comprehensive Zoning By-law requires a minimum interior side yard and rear yard setback for a pool of 1.5 metres (4.9 feet); for a property legally described as unit 13 in vacant land condominium COND840, Municipality of Middlesex Centre, County of Middlesex, and Municipally known as 13-41 Earls court Terrace, be GRANTED, subject to the following condition:

AND THAT the reduction to the rear and interior side yards only apply to an above ground hot tub, interpreted as a pool in the Comprehensive Zoning By-law;

AND FURTHER THAT the reasons for granting Minor Variance Application A-4/2021:

- 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 west side of a vacant land condominium on the north side of Earls court Terrace. The subject property is municipally known as 13-41 Earls court Terrace.

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 interior side yard and rear yard setback required in the Urban Residential First Density Exception (UR1-21) Zone for a pool. The applicant is requesting a minimum interior side yard and rear yard setback of 0.6 metres (2 feet) for a pool, whereas the Middlesex Centre Comprehensive Zoning By-law requires a minimum interior side yard and rear yard setback of 1.5 metres (4.9 feet) for a pool. The effect of the proposal is to facilitate the construction of an above ground hot tub on the lot. A site plan is included as Attachment 2.

The subject lands were created through a plan of subdivision and subsequent vacant land condominium application. The unit in question has a frontage of 13.7 metres (44.9 feet) and an area of approximately 417.5 m<sup>2</sup> (0.1 ac), which is in compliance with the requirements of the Urban Residential First Density Exception (UR1-21) Zone.

The applicant has provided a conceptual site plan showing the proposed location of the hot tub located along the north west portion of the backyard. As shown on their conceptual site plan, the north interior side yard and west rear yard are proposed to have a uniform 0.6 metre (2 feet) setback for the proposed hot tub. The proposed reductions are summarized below:

Requirements	Relief Requested
As per section 4.28 (b) no swimming pool shall be located closer than 1.5 metres (4.9 ft) to any rear lot line or side lot line.	0.9 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.

**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. Planning staff is of the opinion that the proposal satisfies the aforementioned Planning Act tests.

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 Komoka-Kilworth Secondary Plan, within the Middlesex Centre Official Plan. The lot is zoned 'Urban Residential First Density Exception (UR1-21) Zone' by Middlesex Centre's Comprehensive Zoning By-law. Staff note that the applicants request for a minor variance to the interior side yard and rear yard setback requirements is generally due to the preferred nature of development on the lands. The applicant has also indicated that the location of the hot tub is based on the existence of a concrete pad in the proposed area.

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, staff have reviewed whether to consider the variance minor based on the location, the context of development on the lands, and the existing characteristics of the neighbourhood. The reduction to the interior side yard and rear yard setbacks for a pool would be considered minor as the proposed form of development is not anticipated to have any negative impacts on surrounding land. As such, the impact of the proposal can be considered to be minor in that it would be in keeping with the residential character of the area.

Is the variance an appropriate use of the land? YES

This development of pool (hot tub) 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 accessory use (hot tub) 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 interior side yard and rear yard setbacks for pools is to provide for an adequate separation distance between abutting residential uses, to limit the potential impact to existing grading, and to ensure the location of a pool excavation would not undermine any structures located on abutting lands. Staff have reviewed the proposal against the existing development within the neighbourhood and are satisfied that the proposed above ground hot tub would not cause negative impacts to spatial separation or grading. Additionally, the reduction to 0.6 metres (2 feet) would not pose a structural concern for an excavation as the entirety of the structure is located above ground. As such, planning staff are satisfied that the general intent and purpose of the Zoning By-law would be maintained as staff do not anticipate a negative impact to abutting property owners.

Given the above, Planning Staff is satisfied that the proposed minor variance can be supported. Given the above, 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.

**Strategic Plan:**

This matter aligns with following strategic priorities:

- Engaged Community

**Attachments:**

1. Location map
2. Proposed Site Plan