



Meeting Date: April 28, 2021

Submitted by: Dan FitzGerald MPI RPP

Report No: PLA-36-2021

Subject: Application for Minor Variance (File No. A-7/2021)

Recommendation:

THAT Minor Variance Application A-7/2021, filed by Chris Melchers on behalf of Nelly Van Bello and Ray Ouelette, for relief from the Comprehensive Zoning By-law in order to establish an minimum rear yard setback for an attached covered deck of 5.55 metres (18.2 feet), whereas the Middlesex Centre Comprehensive Zoning By-law requires a minimum rear yard setback of 8.0 metres (26.2 feet), and to establish a maximum permissible lot coverage of 36 percent, whereas the Middlesex Centre Comprehensive Zoning By-law requires a maximum lot coverage of 35 percent, for a property legally described as Lot 82, Plan 33M746 in the Municipality of Middlesex Centre, County of Middlesex. and municipally known as 240 Edgewater Boulevard, be **GRANTED**, subject to the following conditions:

THAT the minimum rear yard setback shall reduction to 5.55 metres (18.2 feet) shall only apply to the deck as shown on the attached drawing, and the remainder of the single detached dwelling shall maintain a minimum 8.0 metre setback as shown on the conceptual site plan;

AND FURTHER THAT the reasons for granting Minor Variance Application A-7/2021:

- 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 south side of Edgewater Boulevard, in the South Winds subdivision in Kilworth.

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 related to the minimum rear yard setback and maximum lot coverage for structures on the lands. The effect of the application would permit the construction of a one storey single detached dwelling with an enclosed deck in the rear yard.

The subject lands are located on the south side of Edgewater Boulevard, in the South Winds subdivision located in Kilworth, west of the Thames River. The lands are surrounded by residentially zoned lands in the form of single detached dwellings to the north, east, and west, and protected forest land to the south. The lands consist of a vacant lot in a new subdivision.

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 (UR1) Zone in the Middlesex Centre Comprehensive Zoning By-law.

The applicant is requesting the minor variance to permit the construction of a deck attached to the main dwelling in the rear yard. As proposed, the application for minor variance would permit a minimum rear yard setback for the deck of 5.55 metres (18.2 feet), whereas the Zoning By-law requires a minimum rear yard setback of 8.0 metres (26.2 feet); as well as permit a maximum lot coverage of 36 percent, whereas 35 percent is currently permitted.

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

Requirements	Relief Requested
As per section 8.1.6, the minimum rear yard setback is 8.0 m (26 ft).	2.45 metres (8 feet)

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 Official Plan. The lot is zoned 'Urban Residential First Density (UR1) Zone' by Middlesex Centre's Comprehensive Zoning By-law. Staff note that the applicants request for minor variances to the rear yard setback and lot coverage is due to the preferred nature of development on the lands, that being a single storey residential dwelling with an attached rear covered deck.

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 as the lot backs onto an undevelopable, protected natural landscape. Additionally, the minor increase in lot coverage as requested would have minimal visual impact to the property and is only required as the applicant wishes to enclose the bottom portion of the deck. 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, or the minor increase in lot coverage permissions.

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 variances 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 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. As the lot backs onto a protected environmental feature, staff also reviewed the proposal in relation to setbacks to natural features. Staff found that existing permission did not limit the development of a deck and that the Upper Thames River Conservation Authority did not have any concerns with the rear yard encroachment. Based on the proposed location of the proposed extension in the rear yard, and the fact that there are no other residential lots abutting the rear of the

property; Planning Staff is satisfied that the requested relief would maintain the general intent and purpose of the Comprehensive Zoning By-law.

The general intent and purpose of the Comprehensive Zoning By-law as it relates to total and main use lot coverage restrictions in residential areas is to ensure that sufficient amenity space is available on each property. Planning staff is satisfied that the requested relief would not have a significant detrimental impact on the amenity space available on the subject property.

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.

Strategic Plan:

This matter aligns with following strategic priorities:

- Balanced Growth

Attachments:

1. Location Map
2. Conceptual Site Plan
3. Concept Floor Plan and Elevation