

Development and Legislative Services

Planning Division Report

February 9, 2024

Secretary-Treasurer
Port Colborne Committee of Adjustment
66 Charlotte Street
Port Colborne, ON L3K 3C8

Re: Application for Minor Variance A26-23-PC
3637 Firelane 12
Lot 40 Plan 811
Agent: Craig Esposti
Owner(s): Diana Leon

Proposal:

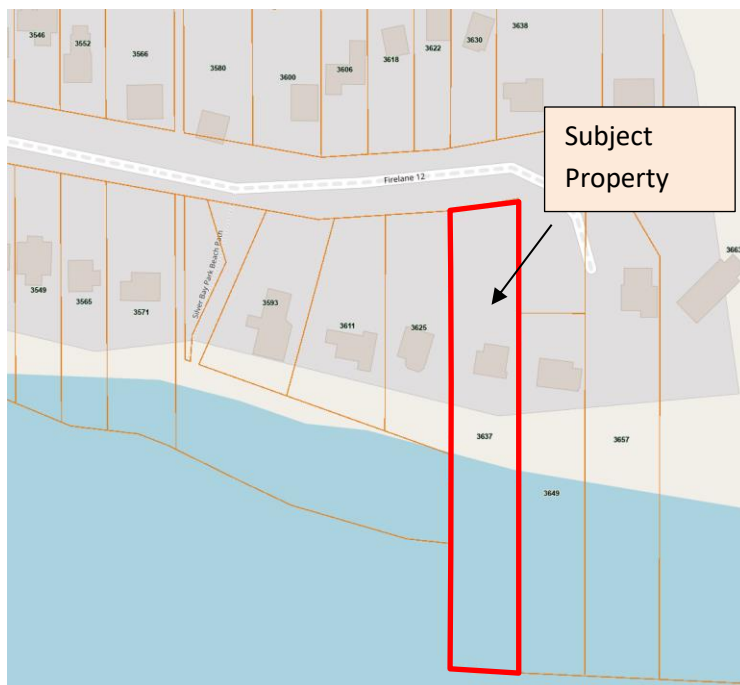
The purpose and effect of this application is to permit the construction of a detached dwelling and detached garage. The applicant is requesting an interior sideyard setback of 2.05m be provided where 3m is permitted, a maximum lot coverage of 16.16% where 15% is permitted, and an accessory structure height of 7m where 6m is permitted. All other provisions of the Zoning By-law are proposed to be met.

Surrounding Land Uses and Zoning:

The parcels surrounding the subject lands are zoned Rural Residential (RR) to the north and Lakeshore Residential (LR) to the east and west. The surrounding land uses consist of single detached dwellings to the north, east, and west with Lake Erie being to the south.

Official Plan:

The subject property is designated as Rural in the City's Official Plan. Detached dwellings are a permitted use under this designation.



Zoning:

The subject property is zoned LR, in accordance with Zoning By-Law 6575/30/18. Detached dwellings are a permitted use in this zone.

Environmentally Sensitive Areas:

Staff notes that the property is located within a Natural Hazard area. Natural Hazards may include flooding, erosion, or dynamic beach hazards. Section 4.2.4.1 (d) of the Zoning By-law states the following:

4.2.4.1

- d) *The main permitted uses in all areas shown on Schedule B1 as Natural Hazard areas, and designated on Schedule B as Environmental Protection may include passive, non-structural conservation and resource management uses including flood and erosion control works. Minor additions, enlargements, and reconstruction to existing uses may be permitted in those portions of Natural Hazard areas (floodplains) where the effects and risks to public safety are minor so as to be mitigated in accordance with the provincial standards as determined by the demonstration and achievement of: flood-proofing standards, protection works standards and access standards; safe access during times of flooding, erosion or other emergencies; new hazards are not created and existing hazards are not aggravated; and no adverse environmental impacts, particularly water quality impacts will result. All development and site alteration must comply with the applicable regulations of the Niagara Peninsula Conservation Authority.*

Planning Staff are satisfied that the proposed dwelling and accessory structure conform to this policy as the project is considered to be a reconstruction of an existing dwelling. Furthermore, the applicant has submitted a Slope Stability Report, which has been included in the Agenda Package and has been circulated to the NPCA for comments.

Public Comments:

Notice was circulated to the public on December 20th, 2024, as per Section 45 (5) of the Planning Act. As of January 12th, 2024, the following comments have been received.

Shawn, Darren, and Danny Leon (3649 and 3657 Firelane 12)

All three members of the public signed a document stating that they have reviewed the drawings for the new dwelling, have no objections, and support the application. The signed document can be viewed in the Agenda Package.

Agency Comments:

Notice was circulated on December 5th, 2023 to internal departments and external agencies. As of January 12th, 2024, the following comments have been received.

Engineering Department

The Engineering Department has no concerns with the application.

Drainage Superintendent

No comments on the proposed application.

Fire Department

No objection to the proposed application.

NPCA

The subject property is impacted by the Lake Erie Shoreline flood and erosion hazard as well as back dunes.

The NPCA notes that in principle there are no objections to the 3rd requested variance:

- That a maximum accessory structure height of 7m be permitted whereas 6m is required.

However, at this time the NPCA would request a DEFERAL for this application to better assess the remaining requesting variances, as the NPCA does not presently have enough information to provide support for them.

Regarding the first requested variance (the reduction in the interior side yard setback):

- The NPCA is typically not supportive of new side yard setbacks less than 5 m in the shoreline hazard when there is not a minimum of 5m provided on an adjacent side yard.
- The NPCA typically requests a minimum 5m side yard setback along one side yard to provide maintenance access to service the shore wall.
- The NPCA has previously verified the state of the shore protection via email, for the subject property.
- The NPCA will request the applicant provide justification as to how the property's shore protection can be maintained with the requested 2.05 m interior side yard setback, to the satisfaction of the NPCA.

Regarding the second requested variance (the increase in lot coverage):

- The NPCA has reviewed the 'Slope Stability Assessment' for 3637 Fireline 12 dated July 12, 2023, by Soil-Mat engineers and has no objections to the concluded Lake Erie Shoreline stable top of the slope or the Back Dune Hazard stable top of the slope.
- The proposed dwelling appears to be landward of the Lake Erie Shoreline stable top of the slope.
- The proposed accessory building (garage) appears to be landward of the Back Dune Hazard stable top of the slope.
- However, the proposed septic bed is proposed to extend past the Back Dune Hazard stable top of the slope.
- The NPCA does not typically permit development to extend past the stable top of the slope.
- The NPCA will require a grading plan be provided that demonstrates the work (including fill needed) for the proposed grading exercise to flatten the slope for the proposed development, including the septic system. The submitted grading plan will need to be to the satisfaction of the NPCA to ensure that existing hazards are not aggravated, and new hazards are not created.
- The NPCA will require that the Grading Plan includes:
 - Both stable top of slopes as identified by the Geotechnical Report.
 - Identifies the extent of trees and vegetation to be removed.
- Once the grading plan has been received and reviewed, a site visit would be beneficial to gain site-specific context. If the applicant could stake the extent of the proposed works (mainly the garage and septic) prior to NPCA Staff attending the site visit, this would further assist with the NPCA review.

The requested Grading Plan and Site Visit are necessary in order for the NPCA to ensure that the septic system can be placed on the property with the requested increase in lot coverage – due to the sites environmental constraints.

Staff Response

The applicant has provided a grading plan and the NPCA has provided additional comments below. The grading plan can be seen in the Agenda Package.

NPCA Additional Comments (February 1, 2024)

Following the review of the grading plan and the recent site visit the NPCA notes that there are no objections to any of the three variances as initially applied for.

The NPCA notes that work permits will still be required for the proposed dwelling, accessory building, and septic.

Furthermore, technical staff have indicated that at the time of the permit application the following will need to be addressed:

- 1) NPCA requires a stable top of slope to be shown on the provided site plans.
- 2) With regard to the works on the slope for the septic, please explain if is this regrading works or if fill is being brought to the site. The geotechnical report speaks a bit about regrading, if fill is being brought to the site the NPCA may request the geotechnical engineer weigh in on that and the impacts to the slope.

Staff Response

Planning Staff has confirmed with the NPCA that both of the above requirements can be addressed during the work permit review process.

Niagara Region

Regional Growth Strategy and Economic Development staff does not object to the proposed Minor Variance application in principle. Subject to fulfilling the conditions below, the proposal is consistent with the PPS and conforms to Provincial and Regional policies.

1. That the applicant/owner receive acceptance from the Ministry of Citizenship and Multiculturalism (MCM) for the archaeological assessment report titled Stage 1 & 2 Archaeological Assessment, prepared by Archaeological Consultants Canada (dated November 8, 2023). If the Ministry requires further archaeological work to be completed prior to acknowledging this report, these report(s) must also be submitted to and acknowledged by the Ministry, to the satisfaction of Niagara Region, prior to clearance of this condition. No demolition, grading or other soil disturbances shall take place on the subject property prior to the issuance of a letter from MCM through Niagara Region, confirming that all archaeological resource concerns have met licensing and resource conservation requirements.
2. That the applicant implements Best Management Practices during construction, including (but not limited to) a Tree Protection Plan (TPP) and an Erosion & Sediment Control (ESC) plan.

3. That the applicant applies and receives approval for a new class 4 sewage system meeting Ontario Building Code requirements.

Staff Response

Planning Staff have added these as conditions.

Planning Act – Four Tests:

In order for a Minor Variance to be approved, it must meet the four-part test as outlined under Section 45 (1) of the Planning Act. These four tests are listed and analyzed below.

Is the application minor in nature?

Staff finds the requested variances to be minor in nature as all of the requested variances constitute a minor change to the zoning requirements. The reduction in sideyard setback does not result in an encroachment to the neighbouring dwelling. Additionally, the increase in lot coverage does not result in the overdevelopment of the property, allowing for an appropriate amount of amenity space to be retained. The requested height of the garage preserves the accessory nature of the structure, due to its location over 10m from the front property line.

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

The proposal is desirable and appropriate as the requested variances for side yard setback and lot coverage do not pose a concern to the shoreline hazard and no new hazards are to be created, as per the satisfaction of the NPCA. Furthermore, the proposed development is consistent with the character of the area and does not pose a significant increase to the site that did not previously exist and does not result in the overdevelopment of the site.

Is it in keeping with the general intent and purpose of the Zoning By-law?

The Zoning By-law permits detached dwellings and accessory structures within the LR zone, and the proposal meets the majority of the zoning requirements. The side yard setback intends to ensure adequate spacing between structures on the property and on adjacent properties. Staff is satisfied that the proposed variance does not result in an extreme encroachment into the sideyard and adequate spacing has still been maintained. The lot coverage requirement intends to ensure that a property is not being overdeveloped and that proper amenity space is still being provided. Staff are satisfied that the increase in lot coverage does not constitute overdevelopment in this case and amenity space is still being provided via access to the beach. The accessory structure height intends to ensure that accessory structures remain accessory in nature. Staff are satisfied that the structure remains accessory in nature as it is located at an appropriate distance from the property line, which is permitted for shoreline-facing properties.

Is it in keeping with the general intent and purpose of the Official Plan?

The Official Plan permits detached dwellings and accessory structures are permitted within the Rural designation. Staff finds this variance application meets the general intent and purpose of the Official Plan.

Recommendation:

Given the information above, Planning Staff recommends application A26-23-PC be **granted** for the following reasons:

- 1. The application is minor in nature.**
- 2. It is appropriate for the development of the site.**
- 3. It is desirable and in compliance with the general intent and purpose of the Zoning By-Law.**
- 4. It is desirable and in compliance with the general intent and purpose of the Official Plan**

Subject to the following conditions:

1. That the applicant/owner receive acceptance from the Ministry of Citizenship and Multiculturalism (MCM) for the archaeological assessment report titled Stage 1 & 2 Archaeological Assessment, prepared by Archaeological Consultants Canada (dated November 8, 2023). If the Ministry requires further archaeological work to be completed prior to acknowledging this report, these report(s) must also be submitted to and acknowledged by the Ministry, to the satisfaction of Niagara Region, prior to clearance of this condition. No demolition, grading or other soil disturbances shall take place on the subject property prior to the issuance of a letter from MCM through Niagara Region, confirming that all archaeological resource concerns have met licensing and resource conservation requirements.
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Submitted by,



Chris Roome, MCIP, RPP
Planner