
Development and Government Relations

Planning Division Report

May 9, 2025

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

Re: Application for Minor Variance A10-25-PC
Lot 38 on Plan 52, New Plan 811
3611 Firelane 12
Owner: Danny Leon
Agent: Craig Esposti, Willmott and Strickland Inc.

Proposal

The purpose of this minor variance application is to facilitate the construction of an addition to an existing residential dwelling and the construction of a new accessory building, as depicted in the sketch attached as Appendix A. This application requests:

Variance 1

That a maximum lot coverage of 19.65% be permitted, whereas a maximum lot coverage of 15% is permitted.

Variance 2

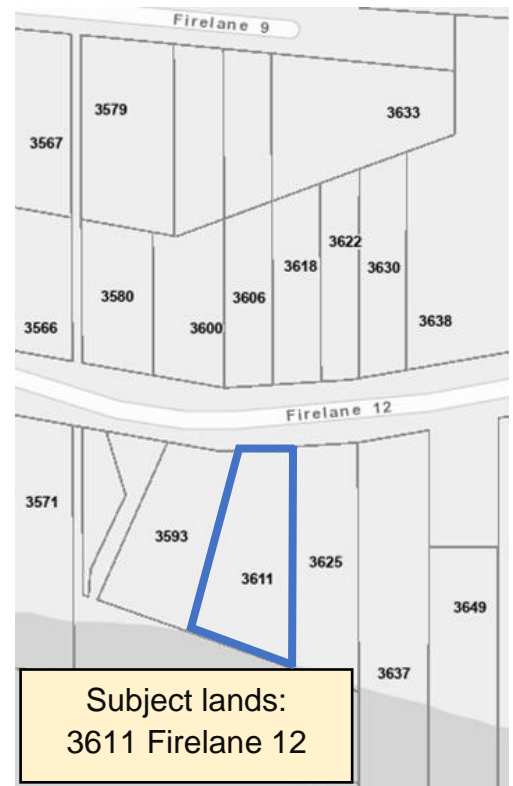
That a maximum accessory lot coverage of 5.93% be permitted, whereas a maximum accessory lot coverage of 5% is permitted.

Variance 3

That a minimum interior side yard setback of 2.9 metres be permitted, whereas a minimum interior side yard setback of 3 metres is permitted in the Lakeshore Residential (LR) zone.

Variance 4

Requesting that an accessory building height of 7.15 metres be permitted whereas a maximum accessory building of 6 metres is permitted.



Surrounding Land Uses and Zoning

The subject lands are in the Lakeshore Residential (LR) zone with a Hazard (H) overlay. The parcels surrounding the subject lands are zoned LR with an H overlay to the east and west, and Rural Residential (RR) with an Environmental Conservation (EC) overlay to the north. The surrounding uses consist of detached dwellings to the north, east, and west; Lake Erie abuts the subject lands to the south.

Environmentally Sensitive Areas

The subject property is impacted by the Region's Natural Environment System (NES), consisting of Lake Erie, a Key Hydrologic Feature (KHF), and its Shoreline Area, as well as potential Other Woodlands. The property also contains features regulated by the Niagara Peninsula Conservation Authority (NPCA), including a back-dune feature on the northern portion of the property, and the Lake Erie Shoreline, along with its associated regulatory hazards, to the south of the property. This application was circulated to the Niagara Region and the NPCA for formal comments. Full comments from each agency are included in the Committee of Adjustment agenda package dated May 9, 2025.

Public Comments

Notice was circulated on April 29, 2025, to properties within 60 metres of the subject lands, in accordance with the *Planning Act*. As of May 9, 2025, no comments from the public have been received.

Agency Comments

Notice of the application was circulated on April 14, 2025, to internal City departments and external agencies. As of May 9, 2025, the following comments have been received.

Drainage Superintendent

The subject property is within the watershed of the Bearss Drain, but there are no objections to the proposed development.

Fire Department

Port Colborne Fire has no objections to this minor variance application.

Engineering Division

Development Engineering has no comments on this minor variance application.

Please note: Based on the reviewed site plan, a grading plan is not required at the time of building permit application. However, it remains the applicant's responsibility to ensure that adjacent properties are not adversely affected by improper drainage.

Niagara Region

The property is mapped as an area of archaeological potential in Schedule K of the NOP. Given the proposed development and site alteration, a Stage 1-2 Archaeological Assessment is required, prepared by a licensed archaeologist, as well as the Ministry's acknowledgement letter of receiving the report.

The subject property is impacted by the Region's Natural Environment System (NES), consisting of Lake Erie and its Shoreline Area, and potential Other Woodland. Lake Erie is considered a Key Hydrologic Feature (KHF).

Due to the scope, nature and location of the proposed garage, a Tree Preservation Plan (TPP) will be required, to indicate any trees that need to be removed to allow for the construction of the garage, and appropriate mitigation measures to protect adjacent trees.

The TPP must be prepared in accordance with Region's Woodland Conservation By-law (By-law 20-79). If any trees are planned for removal, they should be compensated for by planting native species that complement that existing vegetation communities.

There is potential for sensitive habitat in the vicinity, including a Species at Risk (SAR) habitat, so the applicant is encouraged to contact the Ministry of Environment, Conservation and Parks to do their due diligence regarding their responsibilities under the *Endangered Species Act*.

A private sewage system inspection and review is required, as it appears a bedroom and living space are proposed to be added. A septic design will likely be needed as it is unlikely the existing septic system can accommodate the increased capacity. A septic permit will likely be required prior to a building permit being issued.

Note: Full Regional comments are included in the Committee of Adjustment agenda package dated May 9, 2025.

Staff Response

To facilitate the proposed development, a Stage 1-2 Archaeological Assessment and a Tree Preservation Plan must be completed, and a private sewage system inspection and potential redesign must be completed to accommodate the proposed new bedroom.

Note: Regional Planning staff provided their comments on this application on February 20, 2025, to assist City Planning staff in preparing this recommendation report.

As of March 31, 2025, the Niagara Region has become an upper-tier municipality without planning responsibilities under the Planning Act. As the 2022 Niagara Official Plan (NOP) is an official plan of an upper-tier municipality without planning responsibilities, section 70.13 (2) of the Planning Act provides that the NOP has been "deemed to constitute an official plan of the lower-tier municipality" and "remain in effect until the lower-tier

municipality revokes it or amends it to provide otherwise.” As of April 1, 2025, the City of Port Colborne is now responsible for administering both the NOP and the City’s 2013 Official Plan.

The Niagara Region continues to provide planning advice and assistance to the City of Port Colborne on matters related to archaeology, environmental review. The Niagara Region remains the approval authority for septic permitting.

Niagara Peninsula Conservation Authority (NPCA)

The Lake Erie Shoreline forms the southern lot line of this address. Lake Erie's associated regulatory hazards traverse onto the property. There is also a back-dune feature which forms a significant portion of the addresses' northern extent; the regulation distance for this feature must be established by a geotechnical report.

Two separate reports have been produced, for the proposed garage and addition, at this property. Both reports must be circulated on all future Minor Variances for this address.

The NPCA reviewed the Slope Stability Assessment for the proposed cottage addition at 3611 Firelane 12, authored by Soil-Mat Engineers & Consultants LTD., dated July 25, 2024. The NPCA agrees with this report's Stable Top of Slope limit. All development must remain setback landward from the Stable Top of Slope limit.

The proposed addition extends beyond the Stable Slope limit and, thus, is not supported by the NPCA; however, the NPCA could support a revised design which respects the Stable Top of Slope Allowance.

The NPCA recommends deferral of this application until the applicants provide a revised plan that no longer proposes any work beyond Lake Erie's Stable Top of Slope limit.

Note: Full NPCA comments are included in the Committee of Adjustment agenda package dated May 9, 2025.

Staff Response

The proposed addition to the dwelling that the NPCA objects to is at the southernmost building wall of the dwelling, which would extend beyond the stable slope limit. The NPCA recommends deferring the application until they revise their plan to propose works only within the stable top of slope limit.

Planning staff note that the subject property is impacted by the Hazard (H) overlay in the Zoning By-law. Section 35.3 (b) of the Zoning By-law prohibits any uses, buildings, structures, or expansion to existing buildings or structures until a permit for development or site alteration is issued by the NPCA.

NPCA and Planning staff note that the purpose and effect of the proposed minor variances are primarily to facilitate the construction of the garage; however, changes to the siting of the addition to the dwelling on the lot may result in changes to the garage.

Discussion

For a minor variance application to be approved, it must meet the four-part test outlined under section 45 (1) of the *Planning Act*. All four tests must be met for Planning staff to provide a positive recommendation. The four tests are:

1. Is the variance minor in nature?
2. Is the variance desirable for the appropriate development or use of the land, building, or structure?
3. Does the variance maintain the general intent and purpose of the Zoning By-law?
4. Does the variance maintain the general intent and purpose of the Official Plan?

City Planning staff note that Regional and NPCA Planning comments on this minor variance application have identified additional work for the applicants. As this work has not been completed yet, the application does not maintain the general intent and purpose of the Zoning By-law or Official Plan.

The intent of section 35 of the Zoning By-law, which includes regulations for the Hazard (H) overlay, is to ensure proposed uses, buildings, structures, or expansions to existing buildings or structures, are able to receive a permit for development or site from the NPCA. Since the NPCA has indicated they do not support the current proposal, an NPCA permit could not be received for the proposed development. Until the proposal is revised to satisfy the requirements of the NPCA, the application does not meet the general intent and purpose of the Zoning By-law.

The NOP has been deemed to constitute an official plan of the City of Port Colborne as of April 1, 2025. Section 6.4 of the NOP requires a Stage 1-2 Archaeological Assessment to be completed for lands mapped within Schedule K. Section 3.1 of the NOP requires an Environmental Impact Study for development proposed within 120 metres of a Key Hydrologic Feature and within 50 metres of an Other Woodland; however, Regional staff note that due to the scope, nature, and location of the proposed garage, a Tree Preservation Plan will suffice. Section 5.2.3 of the NOP requires development outside of urban areas to be serviced by sustainable individual on-site sewage services. The Niagara Region remains responsible for issuing permits for individual on-site sewage services, i.e. septic systems; therefore, Regional staff must be satisfied that the proposed private sanitary servicing is appropriate to facilitate the development.

To pass the test that requires this minor variance application to maintain the general intent of not only the Port Colborne Official Plan, but also the NOP, the outstanding archaeological, environmental, and private servicing matters must be satisfactorily addressed. Until these matters are further investigated, the application does not meet the general intent and purpose of the NOP.

An analysis of the remaining two tests follows for each requested variance.

Variance 1: That a maximum lot coverage of 19.65% be permitted, whereas a maximum lot coverage of 15% is permitted.

Is the variance minor in nature?

The requested increase in the maximum lot coverage is minor in nature, as this variance is unlikely to cause negative impacts on neighbouring parcels. The existing lot coverage is 11.2%, which is proposed to increase to 13.29% with the addition to the dwelling. The garage is proposed to be constructed into the dune and set far enough back from the road to help mitigate the impact of the increased lot coverage. The addition to the dwelling is proposed to be constructed primarily towards the Lake Erie shoreline, where only the neighbouring properties to the east and west would see it. There are no anticipated compatibility concerns from neighbouring parcels as the buildings are proposed to reflect other building envelopes of properties in the neighbourhood.

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

The requested increase in the maximum lot coverage is desirable for the appropriate development of the subject lands, as the increased coverage will help maximize the space that can be built up on the lot. The Slope Stability Assessment for the proposed cottage addition, by Soil-Mat Engineers and Consultants Ltd., dated July 25, 2024, and the Slope Stability Assessment completed by Soil-Mat Engineers and Consultants Ltd. for the proposed garage, dated January 27, 2025, states there will not be a negative impact on the stability of the subject slope at or uphill of the top of stable slope location, so long as their identified design and construction considerations are followed.

Variance 2: That a maximum accessory lot coverage of 5.93% be permitted, whereas a maximum accessory lot coverage of 5% is permitted.

Is the variance minor in nature?

The requested increase in the maximum accessory lot coverage is minor in nature, as this variance is unlikely to cause negative impacts on neighbouring parcels. The new garage is proposed to cover 5.93% of the lot while only 5% accessory lot coverage is permitted. The increase of 0.93% will not result in a visible difference in the accessory lot coverage. The garage is proposed to be constructed into the dune and set far enough back from the road to help mitigate the impact of the increased lot coverage. There are no anticipated compatibility concerns from neighbouring parcels as the garage is proposed to reflect similar accessory buildings of other properties in the neighbourhood.

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

The requested increase in the maximum accessory lot coverage is desirable for the appropriate development of the subject lands, as the increased coverage will help maximize the space that can be built up on the lot. The Slope Stability Assessment for the proposed garage, by Soil-Mat Engineers and Consultants Ltd., dated January 27, 2025, states there will not be a negative impact on the stability of the subject slope at or uphill of the top of stable slope location, so long as their identified design and construction considerations are followed.

Variance 3: That a minimum interior side yard setback of 2.9 metres be permitted, whereas a minimum interior side yard setback of 3 metres is permitted in this zone.

Is the variance minor in nature?

The requested decrease in the minimum interior side yard is minor in nature, as this variance will not cause negative impacts on neighbouring parcels. The variance has been requested to legalize an existing reduced side yard setback of 2.9 metres. As no changes are proposed to the existing deficient side yard setback, there are no anticipated compatibility concerns from neighbouring parcels.

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

The requested decrease in the minimum interior side yard is desirable for the appropriate use of the subject lands, as no issues have arisen in the past from this reduced side yard setback. The interior side yard setback deficiency of 0.1 metres has no impact on the use of the land, and is unlikely to have any impact on any future development.

Variance 4: That an accessory building height of 7.15 metres be permitted, whereas a maximum accessory building of 6 metres is permitted.

Is the variance minor in nature?

The requested increase in accessory building height of 7.15 metres is minor in nature, as this variance is unlikely to cause negative impacts on neighbouring parcels. The variance has been requested to facilitate the construction of a new accessory building, which would be constructed on a portion of the lot with a significantly lower elevation than that of the dwelling. There are no anticipated compatibility concerns from neighbouring parcels as the accessory building is proposed to be constructed into the lower portion of the dune.

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

The increase in accessory building height is desirable for the appropriate development of the subject lands. The height proposed for the new accessory building has been requested to permit a two-storey garage. The northeastern portion of the lot includes a septic bed that constrains where a building can be situated. The environmental features on and around the lot pose additional constraints to the building footprint. The increased height is proposed to allow for the desired amenity space despite these constraints.

Recommendation

That minor variance application A10-25-PC be **deferred** until:

1. The proposal is revised to ensure the addition is no longer proposed on an unstable portion of the slope, to the satisfaction of the NPCA staff.
2. A Stage 1-2 Archaeological Assessment is completed;
3. A Tree Preservation Plan is completed; and
4. An inspection is completed to determine whether the existing private sanitary service can accommodate the proposal, and if the existing system will not suffice, a new design of the septic system, to the satisfaction of Regional staff;

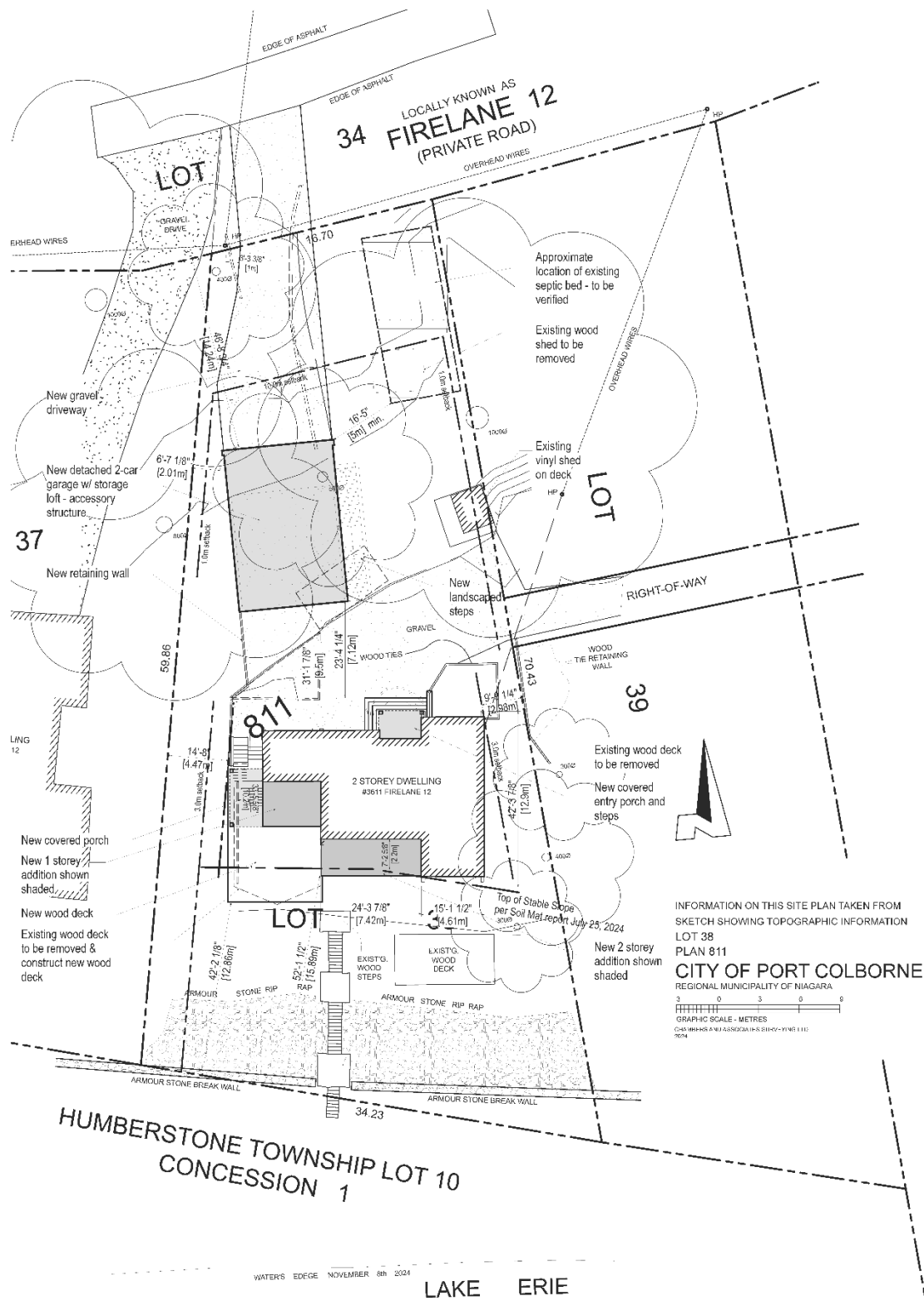
For the following reasons:

1. While the proposed variances are minor in nature and desirable for the appropriate development of the site, the proposed variances do not maintain the general intent and purpose of the Zoning By-law or Official Plan at this time.

Respectfully submitted,

Diana Vasu
Planner

Appendix A



LEON RESIDENCE

Site Plan • C.A.V. Application • 1:250
3611 Firelane 12, Port Colborne, ON • March 27, 2025

WILLMOTT &
STRICKLAND
Architecture & Interiors