



STAFF REPORT

FUNCTION: Committee of Adjustment

CHAIR: Cindy Tremblay

DATE: July 29, 2019

REPORT NO.: PL-2019-66
A.19/2019 – 475 Parkview Court
Minor Variance Application

RECOMMENDATION:

The Planning and Building Services Department supports the approval of Minor Variance Application A.19/2019 respecting 475 Parkview Court for the following Variances:

- To reduce the required Front Yard Setback from 8.0 metres to 7.88 metres
- To reduce the required Rear Yard Setback from 11.0 metres to 10.15 metres
- To reduce the required Interior Side Yard Setback from 3.0 metres to 1.54 metres
- To increase the Maximum Height for an accessory building from 4.0 metres to 5.5 metres

To permit the construction of a single detached dwelling and a detached garage subject to the following Condition:

1. That a Building Permit be obtained within one (1) year.
2. That approval of the Variances are granted and fixed to the size, extent and design of the proposed development as shown on the Site Plan attached to Staff Report PL-2019-66 dated July 29, 2019 and shown on Attachment #2.

The Planning and Building Services Department supports the request for the refund of the Minor Variance Application fee respecting Application No. A.19/2019 for 475 Parkview Court pursuant to Subsection 69(2) of the *Planning Act*.

BACKGROUND:

Site and Surrounding Area

The Town received an application for a Minor Variance on July 19, 2019, for the property known as 475 Parkview Court. The subject property is legally described as Lot 12 on Plan 1554, Concession 2. The subject property is located at the end of the Parkview Court cul-de-sac (See Attachment #1: Location Map).

The property is irregular in shape and has a frontage of approximately 19 metres on Parkview Court and a lot area of approximately 539 square metres. The subject property is currently vacant with a watercourse in the rear of the property.

Surrounding Land Uses:

North: Residential/Environmental Protection

South: Residential

East: Residential

West: Residential

Proposed Development and Application Requests

The Applicant is proposing to construct a new single detached dwelling with a detached garage on the subject property. The detached garage is proposed to have a height of 5.5 metres. A sketch of the proposed development is included in the report as Attachment #2. To permit the dwelling and the garage, the Applicant is requesting the following variances:

Table 1 - Requested Variances for Application A.19/2019

Provision	Required	Proposed	Variance/Relief
Minimum Front Yard Setback	8.0 metres	7.88 metres	0.12 metres
Minimum Rear Yard Setback	11.0 metres	10.15 metres	0.85 metres
Minimum Interior Yard Setback	3.0 metres	1.54 metres	1.46 metres
Maximum Height for an Accessory Building in a Residential Zone	4.0 metres max	5.5 metres	1.5 metres

By email dated July 19, 2019 (Attachment #3) the Applicant has also requested the Committee to consider a waiving or reduction in the Application fee pursuant to the *Planning Act*.

Provincial Policy Statement, Provincial Plans and County Official Plan

Section 3 of the *Planning Act* states that all planning applications must be consistent with the Provincial Policy Statement. The PPS contains several policies regarding intensification and redevelopment in fully serviced settlement areas. Section 14(1) of the *Places to Grow Act*, 2005 requires that all decisions under the *Planning Act* shall conform to *A Place to Grow: Growth Plan for the Greater Golden Horseshoe*, which came into effect on May 16, 2019. The Growth Plan 2019 directs growth to *delineated*

built-up areas within communities that have the capacities to accommodate the growth and development and requires intensification of development and greater densities within communities to create more compact, vibrant and complete communities.

Town of Midland Official Plan

The property is designated as **RESIDENTIAL DISTRICT** and in the Town of Midland's Official Plan. The objectives of the designation stated in Section 3.3.1 a) are to create, maintain and enhance residential areas, which foster a sense of neighbourhood, character and belonging and to protect these areas from inappropriate development.

The subject property is also located in the Shoreline Residential special policy area which intends to protect the character of the neighbourhood by ensuring that the number and location of accessory buildings, boathouses and outdoor storage are compatible.

Town of Midland Zoning By-law 2004-90, as amended

The subject property is zoned **Residential Zone – R5** and **Environmental Protection Zone - EP**, in the Town's Zoning By-law 2004-90, as amended. Approximately 20-30% of the lot is zoned "EP" which contains a small watercourse that traverses the property. While all of the proposed development is contained wholly within the R5 Zone boundary of the property, the "EP" zoned lands can be said to constrain the use and development of the property. The permitted uses of the R5 Zone include Accessory Building, Boat Dock, Boat House, Boat Slip, Detached Dwelling Unit, Home Occupation, Public Use and Secondary Unit. The required minimum Front Yard Setback is 8 metres, the required Minimum Rear Yard Setback is 11 metres, while the required Interior Yard Setback is 3.0 metres.

Section 3.8 of the Zoning By-law sets out the performance standards for accessory buildings. Accessory buildings are permitted a maximum height of 4 metres. The proposed developments meet all other provisions of the Zoning By-law with the exception of the Minimum Front Yard Setback, the Minimum Rear Yard Setback, the Minimum Interior Yard Setback and the Accessory Building Height.

Departmental and Agency Comments

July 29, 2019 - Director of Engineering, Water and Wastewater
No comments.

ANALYSIS:

As set out by section 45 of the *Planning Act*, a Minor Variance should only be approved based on whether it meets all four of the following tests:

- Is the application minor in nature?

- Is it desirable for the appropriate development or use of the land, building or structure?
- Is it in keeping with the general intent and purpose of the Zoning By-law?
- Is it in keeping with the general intent and purpose of the Official Plan?

The following sets out Staff's review and analysis of the subject application in respect of the four tests as set out in Section 45 of the *Planning Act*.

Minor in Nature

The Applicant is proposing to reduce the required Front Yard Setback from 8.0 metres to 7.88 metres and to reduce the required Rear Yard Setback from 11.0 metres to 10.15 metres. The requested variance for the Front Yard setback is a difference of 0.12 metres, which represents 0.15% of the By-law requirement, while the requested variance for the Rear Yard Setback is a difference of 0.85 metres and represents 7.7% of the By-law requirements. The requested variances are minor. In addition, the impact of the proposed variances is further mitigated given the requested Front Yard Setback is only for a covered entry to the dwelling as opposed to the entirety of the dwelling, while the requested Rear Yard setback is for one corner of the dwelling.

The requested Interior Yard Setback reduction from 3 metres to 1.46 metres is for the purpose of a deck which will provide side access to the building. The deck represents approximately 3.5 metres of an approximately 60 metres long shared property line with the neighbour. The width of the deck represents only 5.8% of the shared property line. The deck has an approximate area of 5.4 square metres which represents 4.5% of the R5 zone area on the subject property. Furthermore, the deck will be situated above a raised retaining wall which will further separate the structure from the neighbouring property. Given the small length and size of the deck, the requested variance is minimal.

The increase in building height from 4.0 metres to 5.5 metres is a difference of 1.5 metres which represents 37.5% of the By-law requirements. The proposed garage will have a rear yard setback of approximately 2.16 metres to the edge of the R5 zone boundary and more than 10 metres of the EP Zone to the edge of the property line, which is an adequate buffer from the neighbours to the rear. The additional height of the garage will be adjacent to the neighbouring garage and driveway rather than living space of any existing residential dwellings. As such, it is the opinion of Staff that the additional height should have no foreseeable negative impact.

Desirability

The Applicant is requesting the Variances to facilitate the construction of a single detached dwelling and a detached garage. The proposed development will utilize a vacant residential property that is intended for development. The proposed variances will also minimize the encroachment on the "EP" zone at the rear of the property and thus help protect the integrity of the creek and associated environmental areas on the property. As previously described, there is minimal impact on the neighbourhood with

the proposed Variances and will help to accommodate the dwelling on an irregularly shaped lot with environmental constraints. As such, it is the opinion of Staff that the proposed Variances are desirable, is an appropriate use of the property and will not negatively impact the neighbourhood.

Intent and Purpose of the Zoning By-law

The intent of the Zoning By-law regulations as it relates to setbacks is to provide for appropriate separation between dwellings, structures and public infrastructure and to create an appropriate relationship of the dwellings to the street and streetscape. As previously described, the proposed variances for Front Yard and Rear Yard Setback are minimal. The requested Interior Yard Setback is required only for a 5.4 square metre deck that represents approximately 4.5% of the R5 boundary area and not the balance of the dwelling. The general intent of the Zoning By-law as it relates to setbacks is maintained.

The intent of the Zoning By-law for accessory building height is to ensure the accessory building remains secondary to the primary residential dwelling use and does not become the primary feature of the lot. The proposed garage is further setback from the street than the proposed dwelling. The additional height would not compete or intrude on the main dwelling or adjacent uses. The proposed detached garage would remain secondary to the dwelling. Therefore, the proposed garage meets the general intent and purpose of the Zoning By-law in ensuring an accessory building remains secondary and accessory to the residential dwelling.

Intent and Purpose of the Official Plan

The property is designated as **RESIDENTIAL DISTRICT** in the Town of Midland's Official Plan. The intent of the designation is to foster a sense of neighbourhood and protect areas from inappropriate development. Staff finds that it does not disrupt from the sense of neighbourhood and is appropriate for the development of the last vacant lot on the cul-de-sac. Therefore, it is the opinion of Staff that the application meets the general intent and purpose of the Official Plan.

CONCLUSIONS:

Based on a review of Minor Variance Application A.19/2019, it is the opinion of the Planning and Building Services Department that the Application satisfies the four tests for Minor Variances as set out in Section 45 of the *Planning Act*. Therefore, the Planning and Building Services Department are supportive of the application, subject to the following Conditions:

1. That a Building Permit be obtained within one (1) year.
2. That approval of the Variances are granted and fixed to the size, extent and design of the proposed development as shown on the Site Plan attached to Staff Report PL-2019-66 dated July 29, 2019 and shown on Attachment #2.

REQUEST FOR WAIVING OF APPLICATION FEES

As noted above, the Applicant submitted the application and the required fee together with a Letter dated July 19, 2019 (Attachment #3) with a request for reimbursement of the application fees.

Section 69 of the *Planning Act* sets out the legal basis for the establishment of a tariff of fees respecting applications to the Committee of Adjustment. Subsection 69(2) of the Act states as follows:

*(2) Despite a tariff of fees established under subsection (1), the council of a municipality, a planning board, **a committee of adjustment** or a land division committee in processing an application may reduce the amount of or waive the requirement for the payment of a fee in respect of the application where the council, planning board or **committee** is satisfied that it would be unreasonable to require payment in accordance with the tariff. (Emphasis added).*

Committee therefore has the authority to either waive the fee in its entirety or reduce the fee from the set amount of \$800.00.

Requests of the nature submitted to Committee are best considered within a policy framework established by Council. However, Council has not set a specific policy with respect to the waiver or reduction of planning application fees. Council has, in respect of other fees and charges and other decisions on related matters, established some guidance that can be considered by Committee.

First, Council has waived fees and charges where an Applicant is a non-profit organization and the matter before the Town will provide a public benefit and good to a large number of residents of the Town. For example, a charity that was required to submit a planning application to establish a club house on leased lands had the application fee waived. Council has also waived development charges for affordable housing projects that are proposed by non-profit organizations.

Second, application fees have been waived or refunded where the need for the application has been caused by an error or mistake on behalf of the municipality. An error in an interpretation or application of a By-law and issuance of a permit that is later found to have been issued in error that triggers the requirement for a variance or amendment to the By-law for the non-complying structure has resulted in the fee being waived in these instances. In this case, the applicant has indicated that an error in the interpretation of the By-law, while caught prior to building permit application and issuance, has resulted in additional costs in revising the location of the proposed dwelling and the requirement for a minor variance application.

Committee has three options in respect of this request; 1) refuse the request to waive/refund the fee, 2) approve the request and refund the fee, 3) approved the request and refund a portion of the fee. Your Director believes that there was a sufficient level of confusion in respect of the Town's interpretation of the By-law as it related to the subject property between the Owner, the Surveyor and multiple Town staff that resulted in the multiple revisions to the site plan and the need for minor variance application. Staff support the request for the refund of the fee.

FINANCIAL IMPACT:

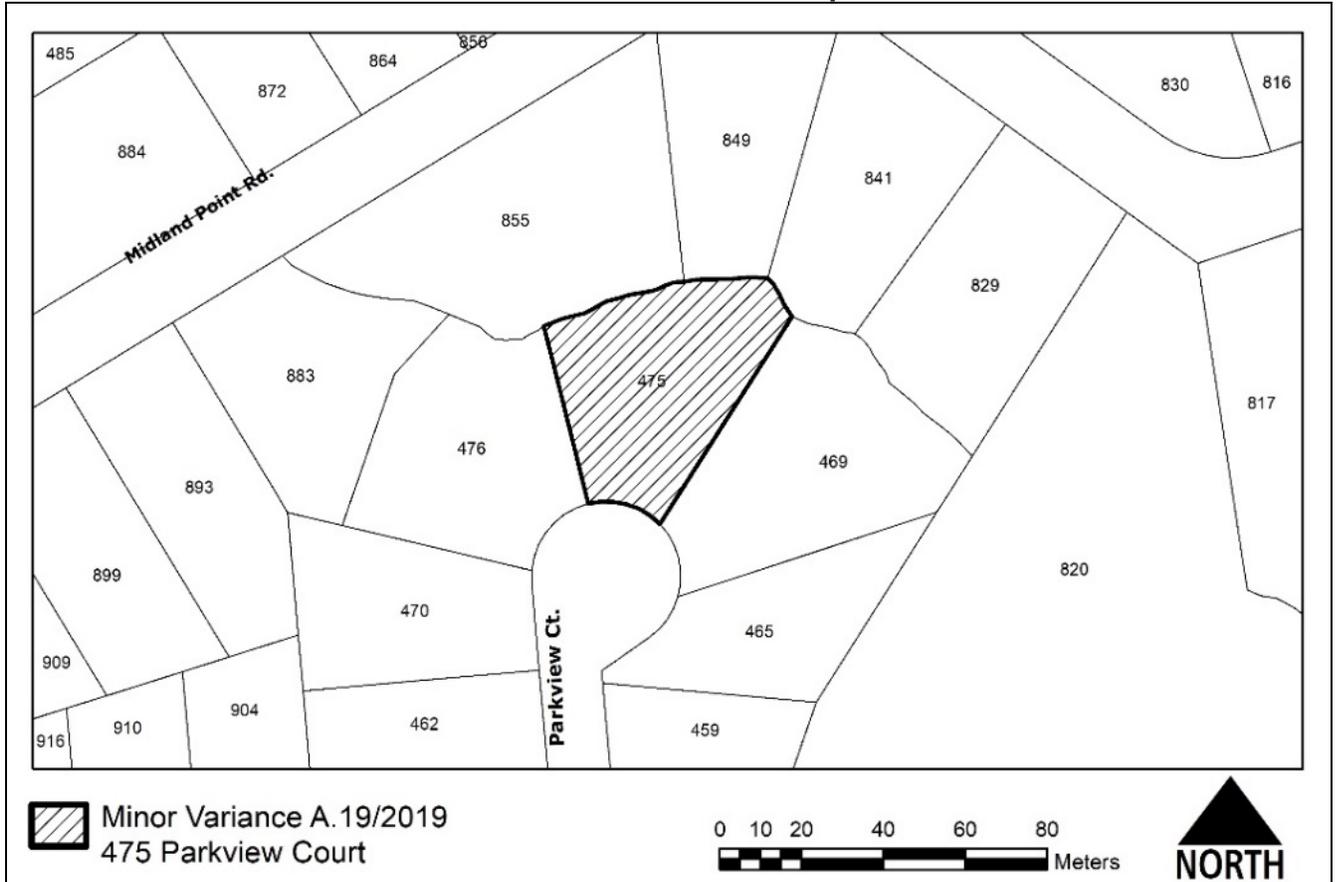
There are no financial impacts as a result of this application for Minor Variance. Depending on Committee decision with regards to the request for a refund of the application fee, there may be a reduction in fee revenue for the Committee.

Prepared by: Angela Zhao, Planner
Approved by: Wesley Crown, MCIP, RPP
Director of Planning & Building Services

Attachments:

- #1: Location Map
- #2: Site Plan
- #3: Letter dated July 19, 2019

Attachment #1: Location Map



From: [jonathan.reid](#)
To: [Angela Zhao](#)
Subject: reasoning for variance
Date: July 19, 2019 5:31:05 PM

CAUTION: This email originated from outside of the organisation. Please **DO NOT** click (or follow) any links, open any attachments or follow any instructions unless you recognise the sender and the intent or you are certain the content is safe.

Remember; if you are in doubt, it is always safer to **DELETE** the message and initiate contact with the sender directly.

If you have any questions, please contact IT Support.

Dear Committee,

I have been working with the Town over the past several months to finalize my building plans for my property at 475 Park View Court. Having received information from the Town I have spent considerable money to have detail house plans prepared and a lot grading and site plan for building permit purposes. I submitted the site plan to the Town and was advised that there was an error in the application of the zoning by-law and that the front yard set back that my surveyor was told was correct was now interpreted as not complying with the By-law. I have now had to revised my site plan and move the building back on the property and as such am now required to submit an application for minor variance.

I understand that my lot is unique with the curved frontage and the EP area located at the rear of the property, and understand the tricky interpretation that was required by Staff. If the By-law had been interpreted correctly I would not have spent the money to have my building plans prepared and I have and would not have had to submit this minor variance application.

I am therefore requesting the Committee to consider my request to refund the application fee on the basis of the incorrect information provided by Town staff. I appreciate the Committee's consideration of this request.