



## STAFF REPORT

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**FUNCTION:** Committee of Adjustment  
**CHAIR:** Cindy Tremblay  
**DATE:** October 10, 2018  
**REPORT NO.:** **PL-2018-72**  
**Minor Variance Application A.22/2018**  
**244 Frank Street**

### **RECOMMENDATION:**

The Planning and Building Services Department recommends approval of Minor Variance Application A.22/2018 respecting the lot known as 244 Frank Street for the following Variances:

- A reduction in the minimum Front Yard setback from 6.0 metres to 5.64 metres, a Variance of 0.36 metres.
- A reduction in the minimum Rear Yard setback from 7.6 metres to 3.048 metres, a Variance of 4.552 metres

Subject to the following condition(s):

1. That the Applicants obtain a Building Permit within one (1) year of the date of Committee decision.

### **BACKGROUND:**

The Town received an application for a Minor Variance on October 10, 2018 for the property known municipally as 244 Frank Street. The property is described legally as Part of Lot 10, Registered Plan 349 and more particularly as Part 1, Reference Plan 51R-32665.

The subject property is an irregularly shaped vacant lot located south and west of Bayshore Drive with frontage onto Frank Street (Attachment #1). The subject property has a total area of approximately 564.2 square metres (6073 sq. ft.), a frontage of approximately 26.96 metres (88.44 ft.) on Frank Street, a depth of 28.04 metres (92.01 ft.) on the west side and a depth of 13.86 metres (45.47 ft.) on the east side. The subject property is currently vacant and grass covered. It is being investigated whether or not the Town owns a 0.3 metre (1 ft.) reserve on

the northern limit of the property. Should the reserve not be owned by the Town, and if determined to be required, an additional condition of approval should be inserted to convey the 0.3 metre (1 ft.) reserve to the Town by the current owners. The reserve is an essential piece of land that helps to prohibit the creation of an entrance from Bayshore Drive to the dwelling or future accessory buildings. It is also a condition of the zone exception. The lot has access to and can be provided with municipal water and sanitary services from Frank Street which is a local assumed municipal road.

### **Proposal and Application Request**

The Applicant is proposing to build a new single detached residential dwelling on the property in general compliance with the “R4-1” Zone. The proposal is for a 1 storey 130.06 square metre (1400 sq. ft.) dwelling with a rear deck that would encroach into the required rear yard and the dwelling is proposed to be closer the front lot line than permitted.

The purpose of the application is for a Variance to reduce the Minimum Rear Yard Setback from 7.6 metres to 3.048 metres and a Variance to reduce the Minimum Front Yard Setback from 6.0 metres to 5.64 metres. The application sketch is provided as Attachment #2 to this report.

### Surrounding Land Uses:

North: Bayshore Drive and Midland Bay Landing Park

South: Low Density Residential

East: Low Density Residential

West: Low Density Residential

### **Provincial Policy Statement, 2014**

Section 3 of the *Planning Act* states that all planning applications must be consistent with the Provincial Policy Statement. The Provincial Policy Statement states that settlement areas are to be the focus of growth and development. Intensification is encouraged and infilling is a form of intensification. In settlement areas, development generally should be on the basis of full municipal services.

### **Growth Plan for the Greater Golden Horseshoe**

Section 14(1) of the *Places to Grow Act*, 2005 requires that all decisions under the *Planning Act* shall conform to the Growth Plan for the Greater Golden Horseshoe area. Generally, the Growth Plan directs growth to built-up areas within communities that have the capacity to accommodate the growth and development and requires intensification of development and greater densities within communities to create more compact, vibrant and complete communities. The 2017 update of the Growth Plan places additional emphasis on setting higher density targets and encouraging development on properties with existing or planned municipal water and wastewater systems.

### **County of Simcoe Official Plan**

The Town of Midland is designated as a “SETTLEMENT AREA” in the County’s Official Plan. The County Official Plan generally indicates that settlements should be the focus of growth and that compact form which provides efficient use of land on full services should be promoted. The County OP also contains policies in Section 4.9 in respect of waste management issues and their relationship to land use. The overall objective of the County policies is to protect the health, safety, convenience and welfare of residents from the potential adverse impacts of waste management activities and sites by restricting or controlling development in the vicinity of such sites (s. 4.9.2). The County OP identifies both County owned and private waste disposal sites on Schedules 5.6.1 and 5.6.2 to the Plan. The subject property is not identified as either type of disposal site on the County OP schedules. The balance of the policies of Section 4.9 of the County OP address the requirements for a Waste Disposal Assessment Area (D-4) Study to address the potential impacts of current and former waste sites on adjacent land uses.

### **Town of Midland Official Plan**

The subject lands are designated **RESIDENTIAL DISTRICT** in the Town’s Official Plan. The intent of the Residential District designation is to allow a variety of housing types and densities. All forms of housing are permitted in this designation.

One of the objectives of the Residential District designation is to create, maintain and enhance residential areas, which foster a sense of neighbourhood, character and belonging, as well as to protect these areas from inappropriate development.

The Town’s Official Plan, in conformity with the 1997 County Official Plan, includes both policy and designation in respect of former waste disposal sites in Midland. The Town OP includes the use of an overlay policy approach for known waste disposal sites defined as Waste Disposal Assessment Area (WDAA). The one site known to the Town that had not been fully cleared, the former Tiny Transfer Site, is designated on Schedule “A” to the Plan as a WDAA and the policies of Section 8.16 apply. Much like the County OP, the Midland OP also recommends that a D-4 study in accordance with Provincial guidelines be undertaken to ensure no adverse impacts from the disposal site on adjacent lands. The subject property is not subject to the WDAA overlay policies of the Town’s Official Plan.

Frank Street, from which driveway access would be obtained, is a local road in the Town’s OP. Bayshore Drive is an Arterial Road and as such the requirement for the 0.3 metre reserve is to prohibit driveway access.

### **Zoning By-law 2004-90, as amended**

The subject property is zoned **Residential Exception “R4-1”** Zone in the Town’s Zoning By-law 2004-90, as amended. The Residential “R4” Zone permits a range of housing types based on the area and frontage of the property. The Residential Exception “R4-1” Zone permits a Single Detached Dwelling and Accessory Buildings subject to the following site specific regulations:

- Single detached dwelling permitted, limited to one storey in height above finished grade (excluding the basement, cellar or foundation)
- A 0.3 metre (1 foot reserve) to be conveyed to Town along Bayshore Drive

The balance of the R4 Zoning Requirements are as follows:

- Maximum Lot Coverage: 33%
- Minimum Yard Setbacks:
  - (a) Front 6.0 m
  - (b) Rear 7.6 m
  - (c) Interior Side 1.22 m
  - (d) Exterior Side 4.5 m

### **Department and Agency Comments**

October 9, 2018 and October 11, 2018 - Director of Operations, Parks and Facilities

1. Note regarding the speculation that the property was used at one time as a waste disposal.
2. Concerned about the impact the proposed dwelling might have on sightlines for traffic, particularly the eastbound traffic on Bayshore Drive.

October 5, 2018 - Director of Engineering/Water and Wastewater Services

1. No comments.

### **ANALYSIS:**

The Application is for a Variance to reduce the Minimum Rear Yard Setback from 7.6 metres to 3.048 metres and a Variance to reduce the Minimum Front Yard Setback from 6.0 metres to 5.64 metres. The variances, if granted, would permit the Applicants to construct a new 130.06 square metre single storey detached residential dwelling on the vacant lot. The proposed dwelling would comply with all other performance standards and regulations of the R4 Zone.

The *Planning Act*, Section 45(i), states that a Committee of Adjustment may authorize a variance to a Zoning By-law where all four (4) tests of the Act have been satisfied. The four tests and Staff analysis of the subject application is provided below:

### **Minor**

Committee may authorize such variance, pursuant to Section 45 (i) where it is deemed minor in nature. When determining if a variance is minor or not, it is both a qualitative and quantitative analysis and not solely a numerical calculation. The size, dimension and conditions of the lot and the character of the other lots in the area are all considerations when determining if the application is minor.

The requested front yard setback is a variance of only 6% of the by-laws requirement and would not be inconsistent with the pattern of development on Frank Street. Setbacks range from 6m to approximately 2m for the homes on Frank Street reflecting the age of the construction of the homes. As such, it is Staff's opinion that the requested Variance of 0.36m is consistent with the development in the area is therefore is minor in nature.

The subject property is located in a unique position and has a unique shape. The property is bounded on the north with a 0.3 metre reserve which prohibits direct access to Bayshore Drive. The property is setback approximately 5.5 to 6.5 metres from Bayshore Drive and is elevated approximately 1.5-2 metres above the grade of Bayshore Drive. The property is also setback over 30 metres from the intersection of Frank and William Streets. In addition, the Frank Street connection to William Street is a right-turn-in and right-turn-out only intersection with traffic control "pork chop" island and together with the size of the boulevard and raised nature of the property, should not impact sight lines for turning motions north bound onto William Street. The variance is primarily required to permit the attached deck extension into the rear yard. While the requested setback is 4.552 m less than the required minimum, it is Staff's opinion that this variance is minor in light of the unique characteristics of the subject property.

### **Desirability**

The proposed Variances would permit the Applicant to construct a modest 1 storey residential dwelling on the subject lot. The property meets the minimum frontage and area standard of the R4-1 Zone and is consistent with the size and character of the other properties in the neighbourhood. The variances would permit the development of a new dwelling on the property that would be in general conformity with the development standards in the area and would therefore permit development that is compatible with the neighbourhood. Therefore, the Variances are considered desirable for the development of the land and area.

### **Intent and purpose of the Zoning By-law**

The proposed lots will meet all other Zoning By-law provisions save for rear yard and front yard setbacks. The intention of these performance standards is to ensure consistent neighbourhood development, adequate front yard and rear yard space for outdoor living areas, provide amenity space in the front yard, and to minimize impact by establishing a consistent neighbourhood standard. The proposed Variances maintain the general intent and purpose of the Zoning By-law by establishing a reasonably consistent neighbourhood character. Therefore, it is Staff's opinion that the variances meet and satisfy the general intent and purpose of the Zoning By-law.

### **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. The application for variances would permit the Owner to construct a new dwelling on the lot which in the opinion of Staff, would be consistent with the size and character of the homes in the area. The requested variances would not create a new development pattern or standard as this is the last vacant lot in the area.

The Town has been aware, since approximately 2004, of the existence of an unlicensed waste disposal site that may have occurred on the property in the 1950's. The site, although known anecdotally in the neighbourhood, was not a formal licenced site and as such was not known to the Town or the Ministry of the Environment prior to 2004. MOE, in April 2004, confirmed to the Town that it had no record of waste disposal occurring at the site. MOE further advised that due to the age of the site, being 30 or more years since any activity occurred on the site, was not subject to any restrictions or prohibitions for development under section 46 of the *Environmental Protection Act*. As such, MOE concluded that it had no jurisdiction in respect of the former landfill and that approval for the development on this property was the responsibility of the Town of Midland pursuant to its planning approval process. MOE recommended a D-4 environmental study.

Beginning in 2004, a previous owner of the property had 3 separate engineering investigations undertaken in regards to the former waste disposal activity. In April of 2004, Geospec Engineering Ltd. (Geospec) undertook a limited Test Pit investigation at the property. Geospec drilled 5 test pits to 0.5m below grade and revealed, in addition to expected silt till, cobbles, concrete, wood, metal garbage and construction debris. Additional investigations were recommended.

In July of 2004, Conestoga-Rovers & Associates (CRA) reported on the additional site investigations conducted at the property to determine the horizontal and vertical extent of waste on the site and the potential impact on groundwater. CRA installed eleven (11) test pits, six (6) bore holes and three (3) monitoring wells on the property. CRA characterized the results of all investigations and selected soil samples for testing. The samples were tested for VOCs, SVOCs, PCBs and metals. CRA concluded that there *"is no exceedances of soil criteria for the analyzed parameters, the soil in the area containing the waste can be considered as non-hazardous, uncontaminated waste."* CRA also concluded that it is *"also unlikely that there would be any exceedances of criteria for the analyzed parameters in the groundwater"*. CRA does provide recommendations for the clean-up of the property through excavation, pulverizing, mixing and restoring, and removal.

A 2007 report by Quantum Engineering reviewed the previous reports and recommended a number of approaches that could be utilized to construct foundations in compliance with the OBC on the property. The report concluded that *"All of the above scenarios are routinely performed in the area and shouldn't present an unmanageable problem for any qualified contractor."*

Although the site is not subject to the Waste Disposal Assessment Area designation or policies of the County or Town Official Plans, significant investigations have occurred on the site confirming the use and development of the property can occur for its planned residential use with no impacts to public health or safety. As such, the general objectives of the Town and County Official Plan as it relates to the historic waste disposal on the site to protect the health, safety, convenience and welfare of residents from the potential adverse impacts of waste

management activities has been satisfied. While extra care, and costs, may be involved in addressing the disturbed fill on the site, these are considered normal construction practices.

Given all of the above, Staff is of the opinion that the proposed Variances conform to and meet the general intent and purpose of the Official Plans.

### **CONCLUSIONS:**

Based on the above review and analysis, it is the opinion of the Planning and Building Services Department that the Application maintains the intent and purpose of the Official Plan and Zoning By-law, is a desirable and appropriate use for the lands, and the Variances are minor.

Given the above, Staff is recommending approval of the application as satisfying the four tests for Minor Variances as set out in Section 45 of the *Planning Act*.

Should Committee decide to approve the Application, it should be subject to the following Condition:

1. That the Applicants obtain a Building Permit within one (1) year of the date of Committee decision.

Staff are not recommending additional conditions with respect to the former use of the property for limited waste disposal activities. Sufficient study and reporting has occurred in respect of the nature of the site and conditions of the soils for staff to conclude that there will be no impact on public health or safety. Mitigation measures with respect to the development of the footings and foundation for the dwelling are within the normal range of construction practices that can be requested by the Town. However, if Committee remains concerned with respect to the soil conditions of the site, the following additional condition could be considered:

2. That the Town ensure, through consultation with the County of Simcoe, that sufficient site investigations have occurred to permit the residential use of the subject property.

### **FINANCIAL IMPACT:**

There are no financial impacts as a result of this application.

Prepared by: W. Crown, Director of Planning and Building Services

Attachments:

- #1 Location Map
- #2 Site Sketches





Attachment #2: Sketch

