

Municipality of Lakeshore Committee of Adjustment Report

Growth & Sustainability

Community Planning



To: Chair & Members of Committee of Adjustment
From: Ian Search, BES, Planner I
Date: October 4, 2023
Subject: Minor Variance Application A/31/2023 – 0 Oriole Park Drive

Recommendation

Approve the following reliefs from Lakeshore Zoning By-law for a single detached dwelling with covered porches and a detached accessory building on the subject property:

- Relief from Section 6.5 a) vi) to permit an accessory building to be located in an exterior side yard, whereas the by-law states accessory structures shall not be permitted in the exterior side yard in the case of a corner lot
- Relief from Section 8.9 to permit a dwelling to have a front yard of 0 metres, whereas the Bylaw requires a front yard of 15 metres
- Relief from Section 8.9 to permit a dwelling to have a minimum rear yard of 13.11 metres, whereas the By-law requires a rear yard of 15 metres
- Relief from Section 6.42 to permit one porch to encroach a maximum of 3.2 metres into the rear yard (located a minimum 11.8 metres from the rear lot line), and for a second porch to encroach a maximum 2.93 metres into the rear yard (located a minimum 12.07 metres from the rear lot line), whereas the By-law only permits a 2.5 metre encroachment.

Impose the following conditions on approval:

- 1) The dwelling and any detached accessory building is to be located at least 7.5 metres from the longest side exterior lot line abutting Oriole Park Drive, and this setback is to be verified through the submission of a setback certificate to Building Services and to the satisfaction of Building Services;
- 2) The rear yard setback and porch encroachment reliefs are to be verified through the submission of a setback certificate to Building Services and to the satisfaction of Building Services;

- 3) A grading plan is submitted to the satisfaction of the Municipality of Lakeshore at the time of building permit application;
- 4) If outlet for drainage is into a municipal drain, an updated schedule of assessment will be required;
- 5) No buildings and structures will be developed on the subject property that obstruct the “covered drain” on the site plan drawing submitted with the minor variance application to the satisfaction of the Municipality of Lakeshore.

Proposal

The Municipality of Lakeshore has received a minor variance application for a vacant property located on the east side of Oriole Park Drive, south of Highway 401, west of County Road 27 (aerial photo attached). The subject property is zoned Agriculture (A) in the Lakeshore Zoning By-law and designated “Agricultural” in the Lakeshore Official Plan.

The subject property is approximately 1.47 acres in area and has lot lines that abut Highway 401 and Oriole Park Drive. The applicant is planning on constructing a single detached dwelling with covered porches and a detached accessory building on the subject property, which will require the following reliefs from the Lakeshore Zoning By-law:

- Relief from Section 6.5 a) vi) to permit an accessory building to be located in an exterior side yard, whereas the by-law states accessory structures shall not be permitted in the exterior side yard in the case of a corner lot
- Relief from Section 8.9 to permit a dwelling to have a front yard of 0 metres, whereas the Bylaw requires a front yard of 15 metres
- Relief from Section 8.9 to permit a dwelling to have a rear yard of 13.11 metres, whereas the By-law requires a rear yard of 15 metres
- Relief from Section 6.42 to permit one porch to encroach 3.2 metres into the rear yard (located 11.8 metres from the rear lot line), and for a second porch to encroach 2.93 metres into the rear yard (located 12.07 metres from the rear lot line), whereas the By-law only permits a 2.5 metre encroachment.

A map showing the location of the subject parcel is provided (Appendix A). A site plan of the proposed development is also provided (Appendix B), as well as a version of the site plan with lot lines and yards labelled based on definitions in the Zoning By-law (Appendix B). Lastly, a drawing of the proposed septic system is provided (Appendix B).

The property was the subject of a previous minor variance application in March 2021 (File: A-12-2021). A minimum rear yard setback of 7.62 metres was requested under that minor variance application along with permission for a porch to encroach 9.51

metres into the required rear yard setback. During the processing of that application, it came to the attention of Community Planning that there was a drain located on the subject property, and that the dwelling was proposed to be constructed over this drain. This drain is labelled “covered drain” on the site plan drawing submitted for the current minor variance application (File: A-31-2023) and the dwelling is now proposed to be located approximately 16.87 metres north of the drain.

It was brought to the attention of Community Planning at the time of the March 2021 application that the neighbouring farm parcel to the east currently utilizes the drain located on the subject property, and that it connects to a municipal drain located on the west side of Oriole Park Drive. The Planning Recommendation Report recommended deferral to allow the applicant to:

1. revise their proposal to maximize/comply with the rear yard setback;
2. indicate a feasible location for the septic system;
3. Confirm the legal status of the drain, and explore possibilities of landowners entering into an agreement with respect to the drain.

Ultimately the Committee of Adjustment decided to defer the March 2021 application. Since that time the applicant has revised their site plan drawing/ proposal which warranted a new minor variance application seeking the above noted reliefs.

By locating the dwelling 16.87 metres north of the covered drain, the proposed setback from the rear lot line has increased significantly from the original request, but variances are still required with respect to this setback. The applicant has also submitted a draft “mutual agreement drains” under the Drainage Act to ensure the continuation of the drain and future maintenance of same. If executed and registered, it becomes a private agreement between two landowners that is binding upon successors.

Summary

Location

The subject property is located south of Highway 401 and abuts this highway corridor. It is located at the north end of Oriole Park Drive on the east side of the street. Oriole Park Drive is a municipally owned street located north of County Road 46, west of County Road 27, and east of County Road 25. The subject property is approximately 1.47 acres and has a lot line approximately 120 metres in length that abuts Oriole Park Drive.

Surrounding Land Uses

Across the street from the subject property on the west side of Oriole Park Drive are rural residential lots and agricultural lands. Directly south of the subject property is a rural residential lot surrounded by woodlands. To the north is the Highway 401 corridor abutting the subject property. East of the subject property is a 61 acre (approx.) farm parcel.

Official Plan

The subject property is designated “Agricultural” in the Lakeshore Official Plan and County of Essex Official Plan.

In the very southeast corner of the subject property there is land designated “Woodlands” and “Natural Environment Overlay” in the Lakeshore Official Plan and County of Essex Official Plan respectively. Prior to initiating any proposed works on this property, it is the proponent’s responsibility to contact the Species at Risk Branch of the Ontario Ministry of Environment, Conservation & Parks (MECP) to ensure all issues related to the Endangered Species Act are addressed.

Zoning

The subject property is zoned “Agriculture” (A) in the Lakeshore Zoning By-law 2-2012.

Conclusion

Section 45(1) of the *Planning Act* gives the authority of granting minor relief from the provisions of the Zoning By-law to the Committee of Adjustment. Such relief can only be granted if the Minor Variance passes all four tests. If the Committee is not satisfied on all four tests, then the Minor Variance cannot be approved.

Official Plan

Section 6.2.1 of the Lakeshore Official Plan states that a single residential dwelling will be permitted per lot in the Agricultural designation, as well as accessory uses to any permitted uses. Likewise, Section 3.3.3.1 d) of the County of Essex Official Plan permits a single detached dwelling on an existing lot of record.

Section 3.3.4 of the County of Essex Official Plan states that in prime agricultural areas, agricultural uses and normal farm practices will be promoted and protected. The Lakeshore Official Plan has a similar policy under Section 3.3.11 e) which states that impacts from new or expanding non-agricultural uses on surrounding agricultural uses/operations and lands should be mitigated to the extent feasible.

Each of the requested reliefs maintains the general intent and purpose of the Lakeshore and County of Essex Official Plan. The applicant is developing a dwelling and an accessory building on an existing lot of record which are permitted uses. It is not anticipated that the requested 13.11 metre rear yard setback for the dwelling, along with the requested porch encroachments, will result in land use conflicts between the owners of the subject property and the neighbouring farm parcel to the east. It is anticipated that any such conflicts that do arise could be dealt with through a landscape buffer or fencing.

The applicant has moved the proposed location of the dwelling further north from their original minor variance application to protect a drain utilized by a neighbouring farmer to

the east. This has in turn increased the rear yard setback of the dwelling and porches significantly from the original request. Relocating the dwelling further north is balanced with maintaining desirable separation from the Highway 401 corridor. The other two reliefs are technical in nature based on definitions in the Zoning By-law and do not present any issues with conformity to the Lakeshore or County of Essex Official Plan.

Zoning By-law

The proposed reliefs maintain the general intent and purpose of the Zoning By-law.

The purpose of a rear yard setback and restrictions for porch encroachments on a residential lot is to ensure sufficient space as a private amenity area for outdoor activities. The requested rear yard setback does not threaten that purpose and there are other spaces – namely north of the future dwelling – that could provide additional opportunity for outdoor amenity.

A front yard setback and rear yard setback of 15 metres on a residential lot zoned “A” maintains a rural design and ensures adequate space for a private septic system on the lot. The applicant has submitted a septic plan as part of their application which will be accommodated in the side yard. Furthermore, while these setbacks are deficient, the subject property meets the minimum area for a residential lot zoned “A”.

As previously mentioned, land use conflicts between the owners of the subject property and the neighbouring farm parcel to the east are not anticipated as a result of the reduced rear yard setback and porch encroachments. It is anticipated that any such conflicts could be dealt with through a landscape buffer or fencing.

The purpose of the front yard setback is to leave adequate separation for landscaping purposes, and at least a 3-metre setback for the construction and maintenance of public services within the road allowance. None of those purposes are threatened by the minor variance application as the longest side exterior lot line abutting Oriole Park Drive will serve as the front lot line for all intended purposes. The dwelling and accessory building will be setback 7.62 metres from this lot line.

The shortest lot line abutting a street is deemed the front lot line in the case of a corner lot. As a result, the definition of front yard in the Zoning By-law technically results in the proposed dwelling have a front yard setback of 0 metres.

FRONT YARD - shall mean a yard extending across the full width of a lot between the front lot line and the nearest wall of the main building or structure on the lot.

The purpose of the exterior side yard is to ensure adequate space for maintenance of the existing streetscape and sight lines for vehicle turning. Technically the accessory building is proposed to be in the exterior side yard of a corner lot. The purpose of the exterior side yard is not threatened by the proposed location of the accessory building. Traffic does not intersect at this location and the Ministry of Transportation (MTO) has no objection to the application (Appendix F).

Minor

There are no anticipated impacts or land use compatibility issues with permitting the requested reliefs. Reducing the rear yard setback from 15 metres to 13.11 metres is considered a minor deviation from the regulation. So is the request to permit porches to encroach 3.2 metres and 2.93 metres into the rear yard rather than 2.5 metres. The other reliefs are minor in nature as they are a result of applying technical definitions in the Zoning By-law to an irregular shaped property that abuts two streets with no intersecting traffic.

Desirability

The requested reliefs are considered desirable for the appropriate development of the building and land. There is undue hardship for the applicant in trying to meet the required setback regulations in the Zoning By-law on this irregular shaped property. Permitting the reliefs will allow the applicant to maintain some desirable separation from the Highway 401 corridor by allowing the dwelling to be located further south. It will also allow the applicant to build an accessory building in the exterior side yard away from the drain south of the dwelling.

The applicant has located the future dwelling further north than what was proposed under their original minor variance application from March 2021. This has increased the rear yard setback to a distance where land use compatibility issues are not anticipated, and a drainage system can be preserved.

It is the opinion of the Planner that the requested variance passes the four tests prescribed under Section 45 (1) of the *Planning Act*.

- i. The variance would be “minor” in nature.
- ii. It would be desirable for the appropriate development or use of the land, building or structure.
- iii. It would maintain the general intent and purpose of the Official Plan.
- iv. It would maintain the general intent and purpose of the Zoning By-law.

The committee should impose the following conditions on any approval of the minor variance:

- 1) The dwelling and any detached accessory building is to be located at least 7.5 metres from the longest side exterior lot line abutting Oriole Park Drive, and this setback is to be verified through the submission of a setback certificate to Building Services and to the satisfaction of Building Services;
- 2) The rear yard setback and porch encroachment reliefs are to be verified through the submission of a setback certificate to Building Services and to the satisfaction of Building Services;

- 3) A grading plan is submitted to the satisfaction of the Municipality of Lakeshore at the time of building permit application;
- 4) If outlet for drainage is into a municipal drain, an updated schedule of assessment will be required;
- 5) No buildings and structures will be developed on the subject property that obstruct the “covered drain” on the site plan drawing submitted with the minor variance application to the satisfaction of the Municipality of Lakeshore.

Correspondence

External and Internal Agencies

The application was circulated to various external and internal agencies, comments received are summarized below.

The Operations Department stated that a grading plan will be required to be submitted at the time of building permit application. They note that the property is not assessed into the Hostine Drain across the street. An updated schedule of assessment will be required in order that they can outlet their storm drainage into a municipal drain. All costs for this will be borne 100% by the applicant. Full comments can be found in Appendix D.

The Fire Department has no comments regarding the setbacks, but they want the applicant to be aware that the closest municipal fire hydrant is just under two miles away and that the Fire Department is staffed by a volunteer fire service. Full comments can be found in Appendix E.

The Ministry of Transportation (MTO) does not object to the proposed minor variance. They note the site plan addresses their setback requirement. A Building & Land Use permit is required prior to construction. Full comments can be found in Appendix F.

Public Notice Circulation

Notice of Public Meeting and information regarding the requested minor variance application was sent to all property owners within 60 metres of the subject land. At the time of writing, no written comments were received.

Attachment(s):

Appendix A – Aerial Photo
Appendix B – Drawings
Appendix C – Photos
Appendix D – Operations Department
Appendix E – Fire Department
Appendix F – MTO Comments

Prepared by:



Ian Search, BES
Planner I

Report Approval Details

Document Title:	A-31-2023 - 0 Oriole Park Drive Report.docx
Attachments:	<ul style="list-style-type: none">- Appendix A - Aerial Photo.pdf- Appendix B - Drawings.pdf- Appendix C - Photos.pdf- Appendix D - Operations Department.pdf- Appendix E - Fire Department.pdf- Appendix F - MTO Comments.pdf
Final Approval Date:	Oct 13, 2023

This report and all of its attachments were approved and signed as outlined below:

Sahar Jamshidi - Oct 13, 2023 - 10:47 AM