

# **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:** November 9, 2023

**Subject:** Minor Variance Application A-36-2023 – 500 County Road 31

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### **Recommendation**

Approve Minor Variance Application A-36-2023 to permit an existing dwelling to temporarily remain on the lot during the development of a new dwelling at 500 County Road 31, and to temporarily permit two driveways at 500 County Road 31 during the development of a new dwelling, subject to the following conditions:

- 1) The owner of the subject property enter into an agreement with the Municipality of Lakeshore that will require the existing dwelling to be demolished, dismantled, relocated and/or removed (including any and all debris) in accordance with the agreement, and that will require the owner to remove one of the driveways in accordance with the agreement. This agreement is to be to the satisfaction of the Municipality of Lakeshore, and registered on title if required by the Municipality of Lakeshore, and all the details of this agreement and requirements of the owner of the subject property under this agreement are to be determined by the Municipality of Lakeshore;
- 2) The owner obtain all necessary permits/approvals required by the Essex Region Conservation Authority;
- 3) The owner obtain all necessary permits/approvals required by the County of Essex for the project.
- 4) A detailed grading plan for the development is provided to the satisfaction of Building Services at the Municipality of Lakeshore

### **Background:**

Community Planning has received a minor variance application for a property located on the east side of County Road 31, south of the Canadian Pacific Limited right-of-way, north of County Road 42, known municipally as 500 County Road 31. The subject property is zoned Residential Waterfront – Watercourse (RW1) in the Lakeshore Zoning By-law and designated “Waterfront Residential” in the Lakeshore Official Plan.

The subject property is approximately 2.15 acres in area with approximately 32.61 metres of frontage along County Road 31. There is an existing dwelling and multiple accessory buildings on the subject property. The applicant is planning on constructing a new dwelling on the subject property and would like to live in their existing dwelling during the development process. Therefore, the applicant is applying to temporarily permit two dwellings on the property during development, with the existing dwelling to be demolished following occupancy of the new dwelling. Additionally, the applicant is applying to temporarily permit two driveways on the subject property during development of the new dwelling, with the south driveway to be removed following occupancy of the new dwelling. The following reliefs from Lakeshore Zoning By-law 2-2012 are required:

- Relief from Section 6.20 Dwelling Units Per Lot to temporarily permit two dwelling units on a lot; whereas Section 6.20 states only one dwelling unit is permitted on a lot;
- Relief from Section 6.41.4 d) to temporarily permit two driveways on the lot; whereas Section 6.41.4 d) limits a property zoned RW1 to have no more than one driveway per lot.

### **Summary:**

#### Surrounding Uses:

North: Residential

South: Residential

East: Ruscom river and residential

West: Agriculture

#### Official Plan:

The subject property is designated “Waterfront Residential” in the Lakeshore Official Plan and is partially located within the “Inland Floodplain Development Control Area” due to the Ruscom River abutting the parcel to the east.

#### Zoning:

The subject property is zoned Residential Waterfront – Watercourse (RW1).

### **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 four tests. If the Committee is not satisfied on all four tests, then the Minor Variance cannot be approved.

#### Official Plan:

Community design policies under Section 4.2.1 state that the Municipality will seek to maintain and improve the physical design characteristics of the Settlement Areas in the context of new and existing development and stress a generally high quality of community design and built form. Moreover, the Municipality will ensure that new development is designed in keeping with the traditional character of the Settlement Areas in a manner that both preserves their traditional community image and enhances their sense of place within the Municipality.

Sewage services are currently unavailable for the Ruscom River Strip settlement area, so the Planning Act does not afford any outright permissions for additional residential units on this property. Moreover, the Waterfront Residential Designation of the Official Plan permits a single unit residential dwelling on a lot suitably sized to accommodate appropriate servicing systems, but the policies do not explicitly permit additional residential units. The Lakeshore Zoning By-law, which implements the Official Plan, only permits one dwelling unit on a lot outside of exceptions which do not apply to the subject property.

The presence of only one single detached dwelling on a residential property is part of the physical design characteristics of this settlement area and its traditional community image. The minor variance is to temporarily permit the existing dwelling to remain on the subject property during the process of developing a new dwelling on the lot, which will provide the applicant with housing during construction of the new dwelling. It is not a development application to permanently permit an additional residential unit on the property.

The proposal will meet the general intent of the policies if approval is conditional on the owner entering into a legal agreement with the Municipality to temporarily permit two dwellings on the property, subject to the terms of the agreement. Under this agreement, an owner can apply for a building permit to build a new dwelling on their lot while their existing dwelling remains on the property during the development process. Following occupancy of the new dwelling, the owner is then required to demolish, dismantle, relocate and/or remove any and all debris of the original dwelling in accordance with the specifications of the agreement. The agreement requires an indemnity deposit as prescribed under the User Fees By-law in effect (e.g. 2023 Indemnity Deposit: \$20,000.00), and also requires the original dwelling – including any and all debris – to be demolished, dismantled, relocated and/or removed within ninety (90) days of occupancy of the new dwelling. The new dwelling will be setback further from the street and replace an aging dwelling located closer to the road.

The subject property is located within the Inland Floodplain Development Control Area. Essex Region Conservation Authority (ERCA) was circulated the proposal for comment. ERCA states that the property owner will be required to obtain a Permit from the Essex Region Conservation Authority prior to any construction or site alteration, or other activities affected by Section 28 of the *Conservation Authorities Act*. They have no objection to the minor variance. It is recommended that the Committee impose a condition on any minor variance approval requiring the owner to obtain all necessary permits from ERCA.

The Lakeshore Official Plan classifies County Road 31 as a “rural secondary road”. As such, the Municipality will address the adequacy of sight distances related to the road alignment and will avoid multiple individual access points when reviewing development applications on this road classification. The County of Essex was circulated for engineering-related comments and no objection to the proposal was received. It was noted that the setback from the County Road is 85 feet from the centre of the right of way, and that permits are necessary for any changes to existing entrances and structures, or the construction of new structures and entrances. Lakeshore’s Operations Department provided the following comments on the proposal:

- *Temporary access is supported pending the full removal of the secondary driveway and restoration upon demolition of the existing structure.*  
It is recommended that the Committee impose a condition on any minor variance approval requiring removal of the second driveway upon occupancy of the new dwelling, and for this requirement to be included in the agreement.
- *Further, County of Essex approval is required to allow for the temporary use of two driveways along County Road 31 for the duration of construction. Approval to be provided to Lakeshore.*
- *County of Essex permit is required for the permanent driveway on County Road 31*

The County of Essex was circulated the proposal, and they have no objections. According to the Engineering Technologist at the County of Essex, the existing north access was completed without a permit. A permit will be required from their office for the construction of the new dwelling, as well as the access to the new dwelling. As part of that process, the County of Essex will require the removal of the second access within their right-of-way once the existing dwelling is demolished. It is recommended that the Committee impose a condition requiring the applicant to obtain all necessary permits/approvals required by the County of Essex for the project.

Departments/agencies do not have any objection to the temporary use of two driveways at this location during the development process of a new dwelling. It is noted that having two driveways will facilitate separate access to development of the new dwelling, and that this accommodation is temporary. It is the opinion of the Planner that the proposal meets the general intent of the Official Plan.

#### Zoning By-law:

The intent and purpose of the regulation restricting a lot to only one dwelling is to preserve neighbourhood character from uncontrolled intensification across the Municipality, and to mitigate urban sprawl that does not efficiently use services where they exist. It is the opinion of the Planner that the proposal will meet this general intent and purpose if the recommended conditions are imposed on approval. The condition will ensure a mechanism to only permit two dwellings on a temporary basis. Under the standard agreement as currently drafted, the original dwelling – including any and all

debris – is to be demolished, dismantled, relocated and/or removed within ninety (90) days of occupancy of the new dwelling.

The intent and purpose of the regulation limiting one driveway on properties zoned residential is to generally limit the number of accesses on streets for the consideration of safety and traffic flow. As previously mentioned, both Lakeshore's Operations department and the County of Essex were circulated the proposal for comment and neither party expressed objection to the proposal. It is also understood that the permission for two driveways will be on a temporary basis, and it is to facilitate the construction of a new dwelling on the property.

### Minor

The minor variance application is considered minor. The proposed deviations from the Zoning By-law will only be permitted for a temporary period, at which point the existing dwelling and one of the driveways will need to be removed to bring these elements into compliance with the Zoning By-law. The Committee should impose all the conditions outlined in the recommendation section of the report to require follow-through with the project and proper development of the land.

### Desirability

The minor variance provides convenience for the applicant by providing them with housing during the development process of a new dwelling which will replace an aging dwelling located closer to the street. In the recent past the Committee of Adjustment has granted similar minor variance approvals on rural residential properties, like the subject property, that are sufficient in lot size to temporarily accommodate two dwellings. At the end of the process the existing standards in the immediate area will be preserved with one dwelling and one driveway remaining on the subject property.

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.
- iii. It would maintain the general intent and purpose of the Zoning By-law.

It is recommended that the Committee of Adjustment impose the conditions included in the recommendation section of the report.

## **Correspondence**

### External and Internal Agencies

The application was circulated to various external agencies and internal departments. Comments received are summarized below.

Building Services requested a detailed grading plan for the development of the land. It is recommended that the Committee require the submission of this plan as a condition of approval. Full comments can be found in Appendix D.

The County of Essex Engineering Technologist stated that there are no objections to the proposal. The setback from the County Road is 85 feet from the centre of the right of way. Permits are necessary for any changes to existing entrances and structures, or the construction of new structures and entrances. Full comments can be found in Appendix E.

Comments from the Operations Department were previously stated in the report and addressed. Full comments can be found in Appendix F.

ERCA states that they have no objection to the minor variance. The property owner will be required to obtain a Permit from the Essex Region Conservation Authority prior to any construction or site alteration, or other activities affected by Section 28 of the *Conservation Authorities Act*. Full comments can be found in Appendix G.

#### 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 Map  
Appendix B – Drawings  
Appendix C – Photos  
Appendix D – Building Comments  
Appendix E – County of Essex  
Appendix F – Operations Comments  
Appendix G – ERCA

#### **Prepared by:**



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Ian Search, BES  
Planner I



## Report Approval Details

Document Title:	A-36-2023 Report.docx
Attachments:	<ul style="list-style-type: none"><li>- Appendix A - Aerial Map.pdf</li><li>- Appendix B - Drawings.pdf</li><li>- Appendix C - Photos.pdf</li><li>- Appendix D - Building Comments.pdf</li><li>- Appendix E - County of Essex.pdf</li><li>- Appendix F - Operations Comments.pdf</li><li>- Appendix G - ERCA.pdf</li></ul>
Final Approval Date:	Nov 9, 2023

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

**Sahar Jamshidi - Nov 9, 2023 - 6:19 PM**