



Staff Report

Report To: Committee of Adjustment
Report From: David Smith, RPP, MCIP Manager of Planning and Development
Meeting Date: April 2, 2024
Subject: A02.2024 - Ballard

Recommendations:

THAT in consideration of staff report 'A02.2024 – Ballard', the Committee of Adjustment approves minor variance application A02-2024, to zoning bylaw 37-2006, as amended, for 443679 Concession 8, to facilitate a new two storey addition to an existing legal non-conforming dwelling subject to the following conditions:

1. That the owner provides a property tax certificate or, correspondence from the municipal finance department, indicating that all property taxes have been paid up-to-date with respect to the property that is subject to this decision;
2. That this decision applies only to the proposed addition to the detached dwelling as indicated on schedule 'A' attached to and forming part of this decision. Any other variances that may appear on the schedules that are not listed in the written decision are not authorized;
3. That the owner prepares and submit to the satisfaction of the municipality an erosion and sediment control plan (ESC) prior to the issuance of a building permit for the two-storey addition. The ESC shall be completed/installed at the time of issuance of a building permit for the two storey addition;
4. That the 'Existing Deck on Gorge Side' be removed as indicated on schedule 'A' attached to and forming part of this decision; and
5. That this decision expires three years from the date of the decision if a building permit has not been issued.

Highlights:

- Application proposes to add an addition to a legal non-conforming dwelling.
- Existing dwelling is in the NE Natural Environment zone.

- Application has been reviewed against the policies of Section 45.2(a(i)) of the Planning Act.
- Saugeen Valley Conservation Authority has reviewed the development and have no concerns.

Previous Report/Authority:

None.

Analysis:

The purpose and effect of the application is to allow for an approximate 3.6 m x 1.3 m addition onto an existing legal non-conforming dwelling.

Comments – agencies:

West Grey Public Works: No concerns.

West Grey Building: No concerns

County of Grey: No concerns.

Saugeen Valley Conservation Authority: SVCA approved an application July 28, 2023, for the construction of a 50 square foot addition to the dwelling with related grading, filling and excavation within lands adjacent to the Rocky Saugeen River valley. No further concerns.

Comments – public:

None received as of the date of writing this report.

Legal Non-Conforming:

The owner seeks to expand a legal non-conforming dwelling by enclosing an existing open porch/verandah. The expansion will occur within the footprint of the existing dwelling.

Municipal Property Assessment Corporation data indicates that the existing dwelling is from 1975. There is sufficient evidence that the dwelling existed prior to the day the former Township of Glenelg passed a comprehensive zoning bylaw.

Section 45(2)(a)(i) allows the Committee of Adjustment to permit the enlargement or extension of a building or structure containing a legal non-conforming use if the use within the building or structure that existed on the day the zoning bylaw was passed continued until the date of the application to the committee. However, no permission

may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the zoning bylaw was passed.

The requirements for approval of a variance to a legal non-conforming use, pursuant to s. 45(2)(a)(i) of the Act, are less onerous than the four tests under s. 45.1 of the Act. The Local Planning Appeal Tribunal in *Fraser v. Rideau Lakes (township)* 2020 Carswell Ont. 17264 provided the following evaluation tests for reviewing applications under s. 45(2)(a)(i) of the Planning Act:

1. Whether the application is desirable for appropriate development of the subject property.
2. Whether the application will result in undue adverse impacts on the surrounding properties and neighbourhood.

There is no basis for distinguishing at law between non-conforming land, buildings or structures (where the use is no longer permitted) and non-complying land, buildings or structures (where the performance standards are no longer met). Both are equally protected under subsection 34(9) of the Planning Act and the common law.

When applying the tests, only the proposed expansion may be evaluated for undue adverse impacts.

The intent and purpose of the Official Plan is not a proper consideration when evaluating an application under s. 45(2) since there is no basis in the language of the Planning Act for such consideration.

In order to refuse the application, the undue adverse impacts of the proposed expansion must be demonstrated by objective evidence and must be sufficient to override the property owner's right to reasonable flexibility, evolution and expansion.

Provincial Policy Statement, 2020 (PPS):

Regardless of the two tests under s. 45(2)(a)(i), s. 3(5)(a) of the Planning Act requires any decision of the Committee of Adjustment be consistent with the PPS.

The existing dwelling is located within hazard lands as defined in the PPS.

Section 3.1.1 of the PPS states that development shall generally be directed to areas outside of hazardous lands adjacent to river, stream and small inland lake systems.

The PPS policy does state that development shall *generally* be directed outside of hazardous lands. In this case the development has been reviewed in relation to the hazard by the conservation authority and a permit has been issued.

The manager, planning and development, is of the opinion that the application is consistent with the relevant policies of the PPS.

Minor Variance Tests:

The application will not have any undue adverse impacts on the neighbourhood that can be demonstrated by objective evidence.

Is the development within the existing building footprint? The expansion will take place within an area currently covered by the existing roof. While there is the need for new footings etc. The manager, planning and development, does not consider the addition to be an extension/enlargement to the building footprint itself.

Are there any potential environmental impacts? The expansion has been evaluated by the conservation authority and found to be acceptable. An erosion and sediment control plan is required as part of the approval in order to reduce/prevent the movement of soil to the river.

Are there any negative visual impacts? The property itself is well treed and there are no neighbouring properties that would be visually impacted by the addition to the existing dwelling.

Is there any threat to life? A visual slope inspection/erosion hazard assessment to determine slope stability setbacks was provided to the conservation authority and found to be acceptable.

The proposed development can reasonably be characterized as a modest intensification of an existing use, which the Supreme Court in *Saint Romuald* has recognized “will rarely be open to objection.”

The manager, planning and development, is of the opinion that the application meets the two tests for an expansion to a legal non-conforming use.

Financial Implications:

Potential appeal to the Ontario Land Tribunal.

Communication Plan:

As per the requirements of the Planning Act.

Attachments:

1. Schedule A
2. Aerial
3. Grey County OP – Schedule A

Recommended by:

Davud Smith, RPP, MCIP Manager of Planning and Development

Submission reviewed by:

Kerri Mighton, Interim Chief Administrative Officer

For more information on this report, please contact David Smith, Manager of Planning and Development at planning@westgrey.com or 519369-2200.