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ITEM: Minor Variance – Recommendation Report
DATE: February 15, 2023
TO: Committee of Adjustment
FROM: Planning & Development Department
FILE NO: A-2023-01
OWNER(S): John Edgar
ADDRESS: 49 Durrell Road

1. Description of Property

This property is located on Durrell Road down a private driveway that services multiple properties on the Road. There is an existing home on the property. The property had direct frontage to the public road allowance on Durrell Road but most of the property is occupied by a watercourse that runs into Trout Lake so access to the property is through the private driveway over the adjacent property at 43 Durrell Road

2. Proposed Development

The applicant is seeking a reduction in the required setback to a septic system on their property. The requested setback reduction appears significant at face value; however, there are extenuating circumstances that have led to the request. Historically, the applicant (49 Durrell Road) has shared a septic system with the adjacent property owner at 43 Durrell Road. A severance was approved in the 1980s that allowed for the creation of 49 Durrell Road with the shared septic system. This type of lot creation would not be permitted under our current planning policies but historically it was treated differently.

With the shared system coming to the end of its life and needing replacement, the applicant is in a position where they are unable to connect to a new shared system as a result of North Bay-Mattawa Conservation Authority policies surrounding septic systems. The NBMCA will not issue a permit for a shared system, which would leave 49 Durrell Road without any form of septic system.

As a result, a solution needs to be found for 49 Durrell. Two possible solutions are viable:

- 1) Install a septic system with a reduced setback as requested in this application
- 2) Install a septic system on the westerly edge of the property near Durrell Road, which would not require a variance application

Although it appears that option 2 would be favourable as a result of not requiring a variance application and meeting the required setback, it has one significant drawback. To install a septic system in this location would require the watercourse running from Durrell Road to Trout Lake to be dug up to install septic lines running under and through it to the bed location from the home. This would cause an extremely significant environmental disruption to the watercourse and the small valley that it flows through. As a result, through consultation with the NBMCA, staff are of the opinion that the reduced setback requested in this variance application is the best overall option for this property.

3. Planning Review

A. Ontario Planning Act

Section 45 (1) of the Ontario Planning Act establishes four 'tests' for the review and consideration of a minor variance. The four 'tests' are:

1. Is the proposal minor in nature?
2. Is the proposal desirable for the appropriate development or use of land, building or structure?
3. Does the proposal maintain the purpose and intent of the Official Plan?
4. Does the proposal maintain the general purpose and intent of the Zoning By-law?

The four tests must be considered when reviewing a minor variance application and all tests must be met in order for an application to be approved.

B. Provincial Policy Statement

The Provincial Policy Statement (PPS 2020) was issued under Section 3 of the Planning Act, and came into effect May 1st, 2020. The PPS 2020 requires that decisions affecting planning matters "shall be consistent with" policy statements issued under said Act. The PPS 2020 contains high level direction for planning matters in the Province of Ontario, with the general vision being implemented through local Official Plans.

The current proposal has been reviewed in the context of the PPS 2020 and deemed to be consistent with the policies outlined in it.

C. Growth Plan for Northern Ontario

The Growth Plan for Northern Ontario (2011) was issued under the Places to Grow Act, which ensures a long term vision for strong communities while implementing policies directed at economic prosperity. Similar to the PPS 2020, the Growth Plan provides high level direction for broad planning matters in Northern Ontario. The current proposal is in conformity with the Growth Plan for Northern Ontario

D. Official Plan Policies

The property is designated as Waterfront Designation in the Official Plan.

The Waterfront designation permits a variety of land uses including low density residential and accessory structures, such as a garage.

Section 5.3.7.1(2)(E) of the Official Plan speaks to the setback for septic systems on Trout Lake and situations where emergencies are required to be dealt with. This section of the Official Plan was not in force and effect at the time of receipt of this application; however, the municipality would consider this application to fall under the emergency requirements of this section were it to have been applicable.

Generally speaking, the intent of the Official Plan related to septic systems is to ensure that environmental factors are considered and water features are reasonably protected while still allowing for appropriate development along our shorelines. In this case, although a numerically significant setback reduction is requested, the actual impact from an approval would be minor in the sense that it would allow the preservation of the adjacent watercourse in its natural state and not have a massive disruption to that feature. Staff are of the opinion that the reduced setback is preferable to the alternative environmental disruption. Further, this would be a brand new septic system installation that would not be likely to fail or have significant leaching. Recent monitoring shows very low phosphorus movement through soil from new septic installations in similar naturally vegetated shoreline conditions.

The applicant's proposal is consistent with the general intent and purpose of the Municipality's Official Plan.

E. Zoning By-Law

The property is currently zoned Lakefront Residential Zone (RL), which permits a residential dwelling and accessory structures. There is no conflict with the Zoning By-Law from a use perspective. The applicant is seeking permission to reduce the Zoning By-Law's provisions regarding the setback required for a septic system from Trout Lake. The Zoning By-law requires 60 m whereas the applicant is requesting a 21 m setback. The actual setback may be as large as 23 m but 21 m is the minimum that may be required depending on the specifics of the installation. Due to the extenuating circumstances described in section 3) D. of this report, staff

are of the opinion that the general intent of the zoning by-law with regards to the required setback for a septic system are met.

F. Conclusions

The application has been reviewed with the four 'tests' of Section 45(1) of the Ontario Planning Act.

For the reasons described in section 3) D. & E. staff are of the opinion that the general intent of the Official Plan and Zoning By-law are maintained with this application. As a result of the incredibly unique situation, there is no concern with this creating a precedent setting situation for future applications.

This application is also desirable for the appropriate development of the lands in that it allows for the septic system issue to be resolved with the least amount of environmental disruption. By granting a reduced setback this allows limited disruption to occur in the creek bed adjacent to the applicants home on the southern and western portions of his property.

When evaluating whether an application is minor or not, generally the impact is what is to be considered. Although the numerical reduction that is being requested in this application is significant at face value, the impact of the request must be evaluated. The circumstances around the request mean that the impact from the reduction is minor in nature and meets the required test.

G. Recommendation

That Minor Variance Application A-2023-01 to permit the installation of a septic system as requested be approved.

Respectfully Submitted,



Greg Kirton
Director of Community Services

Location of Property (Not to Scale)

