



COMMITTEE OF ADJUSTMENT

Department of Planning and Building Services
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February 9, 2024

TO: Chairperson and Members of the Committee of Adjustment

SUBJECT: Minor Variance Application D13-03-2024
57 Regent Street

PROPOSAL:

An application has been submitted to permit a second dwelling unit within an accessory structure to the rear of an existing triplex dwelling within the Residential Second Density Special (R2S) Zone. In order to facilitate the development, the following variances from the City's Zoning Bylaw provisions are being requested:

1. Bylaw 2140(97), Part 12 - Residential Second Density Special R2S – To permit a second dwelling unit in an accessory structure in accordance with Part 3 – General Regulations, Section 3.21 – Second Dwelling Units in Bylaw 60-2019; and
2. Relief from Bylaw 60-2019, Section 3.18 – Railway Setbacks – To reduce the railway setback for a structure containing a dwelling from 15 metres to 4.81 metres.

RECOMMENDATION:

That Minor Variance Application D13-03-2024 to permit a second dwelling unit in an accessory structure within the R2S zone, and to reduce the railway setback for a structure containing a dwelling from 15 metres to 4.81 metres **BE APPROVED**.

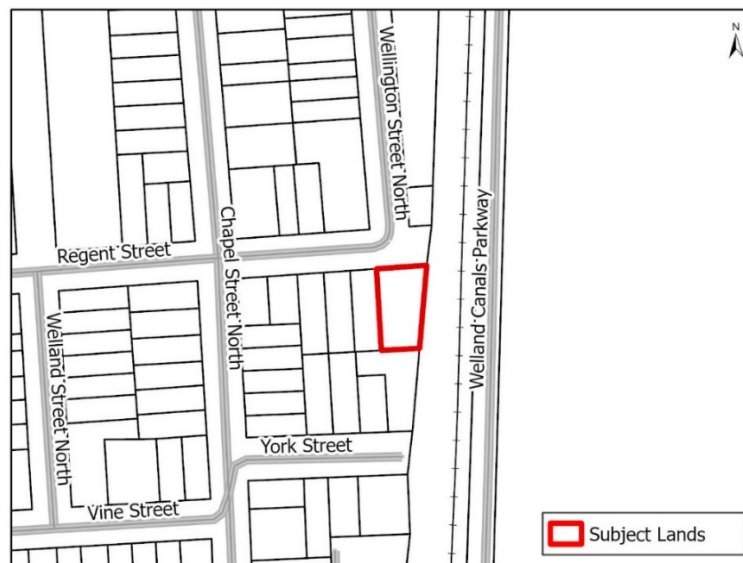


Figure 1: Location Map

Site Description

The subject lands are located at the south of the intersection of Regent Street at the southern limit of Wellington Street North, west of the Welland Canal, and situated within the Thorold Urban Area. A single family residence converted to a triplex dwelling, and an attached garage exists on the property. Additionally, an accessory structure to the rear of the property is currently under construction.

A building permit was issued for the construction of the accessory structure, following additional review, it was recognized that two variances were required to permit a second dwelling unit within the accessory structure, and to reduce the railway setback for a structure containing a dwelling from 15 metres to 4.81 metres.

The existing structures, including the accessory structure under construction, comply with all other regulations of the R2S zone under Zoning Bylaw 2140(97).

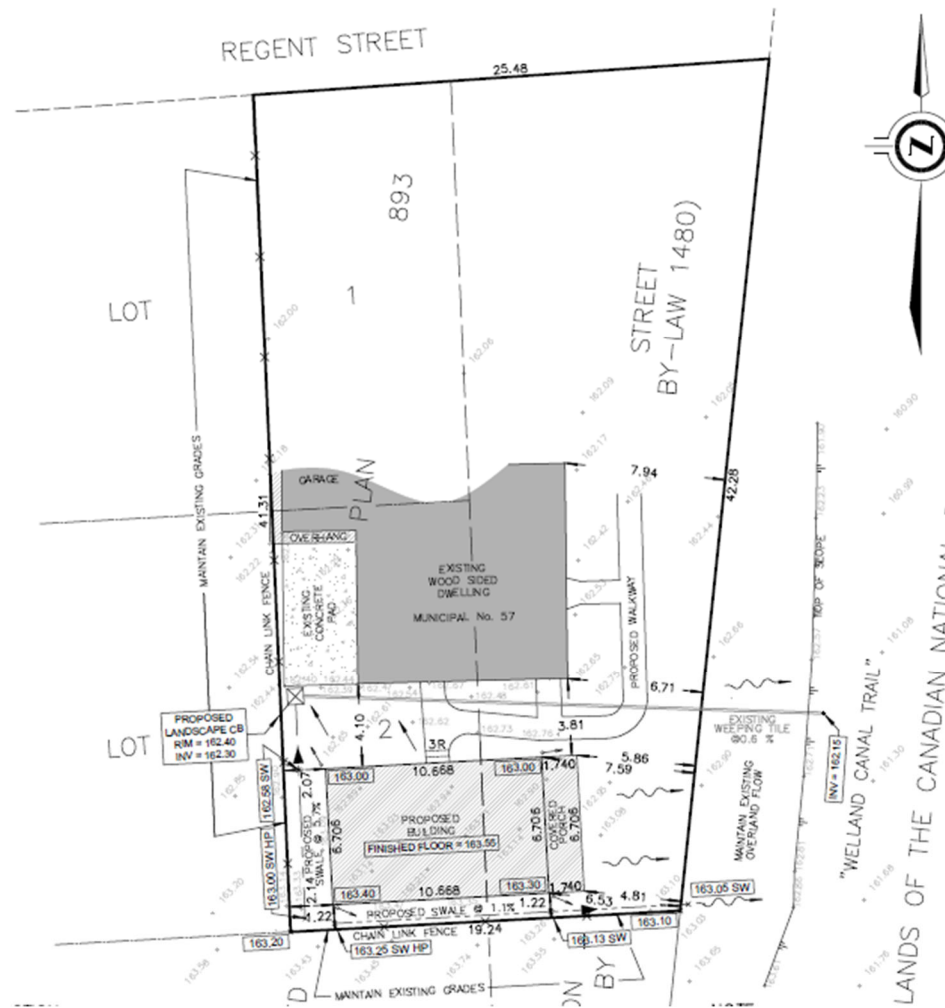


Figure 2: Proposed Building Plan

MINOR VARIANCE PLANNING ANALYSIS:

Is the general intent and purpose of the Official Plan maintained?

The property is designated as Urban Living Area within the City's Official Plan. In addition to being designated Urban Living Area, it also is subject to three Official Plan overlays: Urban Area Boundary, Centre Community Improvement Area and Built Boundary.

The Built-Up Area comprises all lands within the Urban Area Boundaries of Thorold that have been developed into urban uses as of June 2006. Lands designated Urban Living Area are the site of existing and planned residential development and complementary uses on full municipal services.

Variance 1 – According to the City's Official Plan, secondary dwelling units are considered to be an appropriate form of residential intensification and such housing will also contribute to the supply of affordable housing in the City. On this basis, according to the Official Plan, secondary dwelling units are permitted in the Urban Living Area designation and are also permitted as-of-right in the City's implementing Zoning Bylaw within the Urban Living Area designation.

Therefore, the permission to allow a second dwelling unit within the accessory structure is in keeping with the general character of the neighbourhood and the permission does not compromise the intent of the Official Plan.

Section B.1.1.4.2 of the Official Plan outlines objectives for urban character in the City, which include:

- To respect the character of stable residential areas and only support applications for new development that are physically compatible with the character of the surrounding neighbourhood; and
- To maintain and enhance the character and stability of existing and well-established residential neighbourhoods by ensuring that development and redevelopment is compatible with the scale and density of existing development.

The proposed variance would allow for an additional dwelling unit within the permitted accessory structure, behind the existing dwelling on the subject lands. The existing established neighbourhood contains a variety of low rise residential dwellings. With the introduction of an additional dwelling unit, no negative impacts to the existing neighbourhood are anticipated as the scale and character of the neighbourhood has been maintained. In the opinion of Planning staff, the proposed development is in keeping with the existing neighbourhood character.

Variance 2 - Section D.2.10 of the Official Plan includes policy objectives for land uses within the vicinity of marine and rail facilities noting “Planning for land uses in the vicinity of rail and marine facilities shall be undertaken in a manner that protects the long-term operation and economic role of the facility and integrates surrounding land use in a compatible manner. The variances would allow established conditions to continue and facilitate compatible residential development.”

The south corner of the proposed secondary dwelling will be 0.9 meters closer to the railway right-of-way (4.81 meters), compared to the existing residence, which is situated 5.71 metres from the railway right-of-way. Furthermore, the neighbourhood includes several residences with similar setbacks to the railway right-of-way. Given the elevation of the track in relation to the proposed dwelling unit, and the established dwellings in the neighbourhood with similar setbacks to the rail right-of-way, no long-term impacts to the operation and economic role of the railway facility are anticipated.

Therefore, staff is of the opinion the requested variances would maintain the general intent and purpose of the Official Plan.

Is the general intent and purpose of the Zoning Bylaw maintained?

Variance 1 – The subject property is zoned Residential Second Density Special ‘R2S’ in Zoning Bylaw 2140(97), as amended. The R2S zone permits triplex dwellings and their associated accessory buildings. However, accessory buildings or structures do not permit human habitation. All other requirements of the R2S zone are being maintained or exceeded.

The proposed variance is to permit the second dwelling unit within the permitted accessory structure within the R2S zoning. According to Section 3.21 in Zoning Bylaw 60-2019, where a second dwelling unit is permitted, the following regulations apply:

- a) A maximum of one (1) second dwelling unit is permitted on a lot;
- b) A second dwelling unit is subject to a Building Permit being issued;
- c) A second dwelling unit shall have a gross floor area of a maximum of 40% of the principal dwelling unit gross floor area;
- d) One (1) additional parking space shall be provided on the lot and it is permitted to be in tandem;
- e) A second dwelling unit in an accessory building shall also be subject to Section 3.1, except within the Agricultural Zone, subject to Section 9.4; and,
- f) A second dwelling unit and a garden suite dwelling shall not be permitted on the same lot.

The accessory building meets all of the relevant regulations outlined above in Section 3.21, and no negative impacts to the subject lands or adjacent properties are anticipated through the permission of the second dwelling unit within the accessory structure. As such, staff is of the opinion that requested variance would maintain the general intent and purpose of the zoning bylaw.

Variance 2 – The purpose of the railway setback for sensitive land uses including structures that contain dwelling units, is to prevent development that will be negatively impacted by high amounts of noise and vibration from an active rail line, and maintain a safe setback. Once again, the south corner of the proposed dwelling will be only 0.9 meters closer to the railway right-of-way (4.81 meters), than the existing building which is 5.71 metres from the railway right-of-way. Furthermore, the neighbourhood includes several residences with similar setbacks to the railway right-of-way. As such, it is staff's opinion, supported by the aforementioned, that the general intent and purpose of the Zoning Bylaw has been maintained.

Are the variance appropriate for the development of the land?

Variance 1 – The variance is required to permit a secondary dwelling within the permitted accessory structure to the rear of the property. In Planning Staff's opinion, the variance is appropriate for the development of the lot, as there are no adverse impacts anticipated and all other requirements of the bylaw are being met.

Variance 2 – The variance is required due to proximity to the rail line, however, due to supporting documentation and confirmation from the railway operator, the variance poses no concerns, and is appropriate for the development of the land. The land is raised significantly above the railway, and due to the elevation does not cause concern for proximity to the rail line.

As such, staff is of the opinion that the requested variances are appropriate for the development of the land.

Is the variance minor?

Variance 1 – It is staff's opinion that the variance requested to permit a second dwelling unit within an accessory structure within the R2S zone is minor and has no impact on adjacent properties.

Variance 2 – The reduced setback to the railway is not anticipated to create any adverse impacts to the future residents, or residents on adjacent properties.

All other requirements of the zoning bylaw are being maintained, including all zoning provisions for the permitted accessory structure.

As such, staff are of the opinion that the requested variances are minor in nature.

COMMENTS:

The application was circulated in accordance with the requirements of the Planning Act to property owners within 60 metres of the subject lands. The application was also circulated to internal departments and external agencies for comments, which are summarized below. The following Departments/Agencies provided comments noting no concerns with the proposal: Canadian National Railway, Building Division, Tax Department, Bell Canada, Cogeco, Engineering Division, Hydro One, Niagara Peninsula Conservation Authority, Niagara Escarpment Commission, Fire Department, and the Ministry of Transportation.

Agency Comments

GIO Railways

- GIO Railways provided the general requirements for developments located adjacent to spur railway lines including:
 - a) Safety setback of dwellings from the railway rights-of-way to be a minimum of 15 metres.
 - b) The Owner shall install and maintain a chain link fence of minimum 1.83 metre height along the mutual property line.
 - c) The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300m of the railway right-of-way: "Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."
 - d) Any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway and be substantiated by a drainage report to the satisfaction of the Railway.
 - e) The Owner may be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.

- GIO Railways provided further clarification that GIO Railways is not opposed to the proposed reduction in setback noting that this property is somewhat elevated over track level and the distance from the south corner of the proposed dwelling will be almost as far from the tracks as the existing building at 5.71 metres from the property line.
- GIO Railways also noted that there is an existing chain link fence along the trail that satisfies the fencing requirement.

Niagara Region

- Regional staff noted that the subject property is mapped as having archaeological potential and that future development subject to a Planning Act Application may require an archaeological assessment.
- Additionally, Regional staff noted that due to the proximity to an active rail line, purchasers/tenants are advised that sound levels due to increasing rail traffic may occasionally interfere with some activities of the dwelling unit occupants as the sound level exceed the Municipality's and the Ministry of Environment, Conservation and Parks' noise criteria.

Public Comments

One letter, and one phone call were received from adjacent property owners in proximity to the subject lands on Regent Street in opposition to the proposed minor variance. Below is a summary of concerns raised by the property owners:

- Concern regarding the mature tree removed from the property to accommodate the construction of the accessory structure;
- Concern regarding the impact to view of ships within the Welland Canal;
- Concern regarding the construction of the accessory commencing prior to the minor variance to permit a second dwelling unit within the accessory structure being considered;
- Concern regarding the City permitting additional units to be constructed on lots with established single detached dwellings;
- Concern regarding parking available for the property; and
- Concern regarding impact to sanitary services as a result of the additional dwelling unit.

Response to Resident Concerns

Impact to Trees

The tree removed at 57 Regent was located on private property. Currently, the City does not have any applicable bylaw or policies regulating the removal of trees located on private property within the R2S zone.

Impact to View of the Welland Canal

The structure does conform to most setback provisions of Zoning Bylaw 2140(97), the only relief required is the setback from the existing rail line. Further to this, relief is also being requested the use of the structure as a second dwelling unit. As the minor variance sought is limited to permitting a second dwelling unit within the accessory structure, and not related to the construction, size, or location of the accessory structure itself, the minor variance proposed will not have any visual impact. Further to this, the views which residents may have enjoyed are not currently regulated within City policy.

Construction of Accessory Building Prior to Variance Application Consideration

The proposed minor variance is limited to permitting a second dwelling unit within the accessory structure, and not related to the construction of the accessory structure itself. However, it was noted upon further review of the building permit that minor variances were required prior to commencing construction. In the opinion of staff the structure currently under construction would comply with all other regulations of the R2S zone under Zoning Bylaw 2140(97). As a result, had the requirement for the variances been recognized prior to the issuance of the building permit, staff would have been supportive of the application as submitted.

Permitting Additional Units on Lots with Established Single Detached Dwellings

The surrounding neighbourhood is characterized by a range of housing types and lot sizes typical of existing suburban development. Similar to other areas of the City this neighbourhood has been transformed over time as lands became available and is in keeping with overriding provincial policies and plans for directing residential growth.

Parking

Bill 23, More Homes Built Faster Act, 2022, requires that a maximum of 1 parking space per dwelling unit can be required by the City. The property would comply with this requirement with the proposed additional unit.

Sanitary Services

It is the City's opinion that the benefits of the opportunity for gentle intensification and increase of one dwelling unit in the neighbourhood will not have a significant impact of sewage generation, and would not impact the surrounding properties.

CONCLUSION:

It is the recommendation of Planning staff that minor variance application D13-03-2024 requesting a minor variance to Zoning Bylaw 2140(97) in order to permit a second dwelling unit within an accessory structure within the R2S Zone; and a minor variance to Zoning Bylaw 60-2019 to reduce the railway setback for a structure containing a dwelling from 15 metres to 4.81 metres on lands addressed as 57 Regent Street be **approved**.

Prepared by:

ORIGINAL SIGNED

Connor Maclsaac
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Respectfully Submitted By:

ORIGINAL SIGNED

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