



## Town of Niagara-on-the-Lake

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**REPORT #:** CDS-24-049 **COMMITTEE DATE:** 2024-03-21  
**REPORT TO:** Committee of Adjustment **DUE IN COUNCIL:** N/A  
**SUBJECT:** Minor Variance Application A-04/24 – 69 Firelane 2 Road

### 1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Minor Variance Application A-04/24 for 69 Firelane 2 Road be approved, subject to the following conditions:
  - 1.1.1 That a new septic system is installed on the property to service the proposed development, which meets all Ontario Building Code requirements. A permit for the new system shall be applied for and obtained from Niagara Region prior to installation;
  - 1.1.2 That engineered approved plans are provided to mitigate the wave uprush hazard for the proposed development, to the satisfaction of the Niagara Peninsula Conservation Authority; and,
  - 1.1.3 That an archaeological assessment be completed at the owner/applicants' expense for the areas of site alteration required to accommodate the proposed garage and rear porch, and that no demolition, grading or other soil disturbances shall take place on the subject property prior to the Ministry of Citizenship and Multiculturalism confirming to the Town that all archaeological resources concerns have met licensing and resource conservation requirements, and that a copy of all archaeological assessment reports and Ministry Compliance Letters are submitted to the Town, to the satisfaction of the Town.

### 2. PURPOSE

The applicant is proposing the addition of a new attached garage, outdoor kitchen, second-floor cantilevered addition, and pergola. To accommodate the proposal, the following variances have been requested:

1. Maximum lot coverage from 15%, as required by the Zoning By-law, to 17% for the proposed additions;
2. Minimum interior side yard setback from 3 metres, as required by the Zoning By-law, to 1.6 metres for the proposed attached garage and pergola;
3. Minimum interior side yard setback from 3 metres, as required by the zoning by-law,

- to 2.8 metres for the proposed second floor cantilevered addition; and
4. Minimum interior side yard setback from 3 metres, as required by the Zoning By-law, to 1.2 metres for the proposed outdoor kitchen.

The application drawing and building elevations are attached as **Appendix I** to this report.

### **3. BACKGROUND**

#### **3.1 Site Description and Surrounding Land Uses**

The subject lands are known municipally as 69 Firelane 2 Road, lying on the east side of Firelane 2 Road and along the shoreline of Lake Ontario, in the agricultural area of the Town. The location of the subject lands is shown in **Appendix II**.

The subject lands have an area of 1,872 square metres with a frontage of approximately 24.36 metres along the Lake Ontario shoreline. Lake Ontario is considered as the front lot line, in accordance with Zoning By-law 500A-74, as amended, since the lot has frontage on a navigable waterway. The existing dwelling fronts Firelane 2 Road, which is a private road and is considered as the rear lot line for the purposes of Zoning By-law 500A-74, as amended. The subject lands contain a single-detached dwelling.

The shoreline of Lake Ontario is regulated by the Niagara Peninsula Conservation Authority (NPCA). The surrounding lands are used for residential and agricultural purposes.

### **4. DISCUSSION / ANALYSIS**

#### **4.1 Minor Variance Tests – Subsection 45(1), *Planning Act, R.S.O. 1990, c. P.13***

Subsection 45(1) of the *Planning Act* establishes four tests for considering minor variances:

##### **1. Are the requested variances minor in nature?**

The existing dwelling is two-storeys and has side yard setbacks of 2.8 metres to the north interior lot line and 1.61 metres to the south interior lot line. The dwelling currently occupies 12% of the subject property. No tree removal is required to accommodate the proposal, and the proposed attached garage, pergola, second floor addition, and outdoor kitchen are not uncommon for residential lots. The requested lot coverage increase and setback reductions are considered minor and are not anticipated to pose adverse impacts to adjacent properties.

Niagara Region Staff have also reviewed the proposal and note that no negative impact on the Region's Natural Environment System, consisting of Lake Ontario, which is considered a Key Hydrologic Feature, and its shoreline area, are anticipated. The variances are requested to enable additions to the existing dwelling and are further from the shoreline than existing structures on the property. Due to the existing shore protection (retaining wall) on the subject property, the NPCA is also satisfied that suitable mitigation is provided on-site related to shoreline erosion and dynamic beach hazards. Accordingly, the variances are not anticipated to pose any adverse impacts to Lake Ontario or its shoreline.

Staff consider the requested variances to be minor in nature.

**2. Are the requested variances desirable for the appropriate development or use of the land, building or structure?**

Outdoor amenity areas, which may include an outdoor kitchen and pergola, are commonly associated with a residential use. Due to the lot's narrow size and the location of the existing structures, there is limited space for the proposed new additions without encroaching on the interior side yard. Town Staff consider the location of the proposed structures and additions to be appropriate based on the lot configuration and existing structure locations.

The proposed lot coverage is appropriate as it is generally consistent with the surrounding lots.

The NPCA has advised that they have no objections to the proposed variances. Similarly, the Region has no objections to the variances; however, note that the proposed addition of a bathroom on the second floor will result in added flows to the existing legal non-conforming septic system. Accordingly, a new septic system will be required to be installed on the property to service the proposed development.

Staff consider the requested variances to be appropriate for the development and use of the land.

**3. Do the requested variances maintain the general intent and purpose of the By-law?**

The subject lands are zoned "Shoreline One Family Residential (RC) Zone" in Zoning By-law 500A-74, as amended. Single-detached dwellings and accessory structures are permitted in the RC zone.

The applicant is requesting a lot coverage of 17%, whereas the Zoning By-law limits the lot coverage to a maximum of 15%. The minor increase in lot coverage is in keeping with the intent of the Zoning By-law, and still provides for privacy, spacing between dwellings and access within the property.

The applicant also is seeking an interior side yard of 1.2 metres for the outdoor kitchen, 1.6 metres for the attached garage and pergola, and 2.8 metres for the second-floor cantilevered addition. Staff are of the opinion that the interior side yard setbacks, as proposed, align with the surrounding lands. A number of other properties along Firelane 2 Road, including 71, 73 and 75 Firelane 2 Road appear to have interior side yard setbacks of less than 1.5 metres, based on available aerial imagery and previous Minor Variance approvals.

Staff are of the opinion that the variances maintain the overall character of the RC zone and the surrounding area, and consider the variances to maintain the general intent and purpose of the Zoning By-law.

**4. Do the requested variances maintain the general intent and purpose of the Official Plan?**

The subject lands are designated "Conservation" in the Town's Official Plan (2017 Consolidation, as amended).

The goals and objectives of the Conservation designation as set out in the Official Plan include the following:

- Protect areas of natural and scientific interest;
- To prevent damage to the shoreline;
- To control development within the 100-year erosion limit of Lake Ontario; and
- To delineate and regulate development on all lands having inherent physical environmental hazards such as flood susceptibility, poor drainage or other physical conditions which act as a constraint to development in order to prevent loss of life and to minimize property damage and social disruption.

Further, Section 16.4(5) of the Official Plan states that:

Existing uses will be recognized despite the hazardous characteristics of the land. Expansions of such uses will, however, be discouraged unless they are in conformity with the following:

- a) Reconstruction and/or minor additions to existing buildings or structures, pump houses, storage sheds and in-ground swimming pools which are approved by the Niagara Peninsula Conservation Authority, in accordance with the Fill, Construction and Alteration to Waterways Regulations.

NPCA Staff have reviewed the proposal and note that an engineer will be required to confirm that triple glazing of the windows is sufficient to mitigate the wave uprush from Lake Ontario. As such, the NPCA requires, as a condition of approval, that means are provided to mitigate the wave uprush hazard for the proposed development. Given the comments of NPCA Staff, Town Staff are satisfied that the proposal will not damage the shoreline or the structures on the subject property.

Town Staff consider the proposed structures and additions to be appropriately located and compatible with the surrounding area. Town Staff are also satisfied that the Official Plan's General Conservation Policies, including Policy 16.4(5), have been addressed because the proposal includes minor additions and an accessory structure, and is supported by the NPCA.

Staff consider the variances to maintain the general intent and purpose of the Official Plan.

## **5. Town, Agency and Public Comments**

This application was circulated to all appropriate Town Departments and external agencies, and public notice of the application was provided as required by the *Planning Act*. The following responses were received:

### Town Departments

Building – No objection.

Fire and Emergency Services – No objection.

Finance – No objection.

Heritage – No objection, subject to a condition requiring the submission of an archaeological assessment for the areas of proposed development including the proposed garage and rear porch.

Operations – No objection.

### External Agencies

NPCA – No objection, subject to a condition requiring that engineered approved plans are provided to mitigate the wave uprush hazard.

Region – No objection, subject to a condition requiring the installation of a new septic system.

### Public

No public comments were received at the time this report was prepared.

## **6. STRATEGIC PLAN**

The content of this report supports the following Strategic Plan initiatives:

### **Pillar**

1. Vibrant & Complete Community

### **Priority**

1.1 Planning for Progress

### **Action**

1.1 b) Planning for Progress Initiatives

## **7. OPTIONS**

The Committee may approve, refuse or modify the requested application.

## **8. FINANCIAL IMPLICATIONS**

Not applicable.

## **9. ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications associated with the proposal, as no trees are proposed to be removed from this development and there will be no impacts to Lake Ontario or its shoreline as confirmed by Niagara Region and the Niagara Peninsula Conservation Authority.

## **10. COMMUNICATIONS**

Once the Committee of Adjustment makes a decision on the application, notice of the decision will be given as set out in the *Planning Act*. The decision of the Committee of Adjustment is subject to a 20-day appeal period from the date of the decision. If no appeals are received during the appeal period, the decision is final.

Changes to provincial legislation have been made by way of Bill 23 and third-party appeals from private property owners are no longer permitted.

## **11. CONCLUSION**

Planning Staff recommend approval of Minor Variance Application A-04/24 as the requested variances are considered to be minor in nature, appropriate for the development or use of the land, building or structure, and are considered to maintain the general intent and purpose of the By-law and the Official Plan, pursuant to Subsection 45(1) of the *Planning Act*.

**12. PREVIOUS REPORTS**

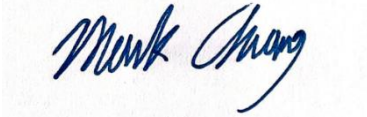
Not applicable.

**13. APPENDICES**

- Appendix I – Application Drawing and Building Elevations
- Appendix II – Location Map

Respectfully submitted:

**Prepared by:**



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Planner II**

**Reviewed by:**



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Senior Planner**