



Town of Niagara-on-the-Lake

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REPORT #: CDS-24-167 **COMMITTEE DATE:** 2024-11-21
REPORT TO: Committee of Adjustment **DUE IN COUNCIL:** N/A

SUBJECT: Consent Application B-13/24 – 479 Butler Street
Minor Variance Application A-19/24 – 477 Butler Street
Minor Variance Application A-20/24 – 485 Butler Street

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Consent Application B-13/24 to merge Part 2, currently of 479 Butler Street, with Part 1 (485 Butler Street) and merge Part 3, currently of 479 Butler Street, with Part 4 (477 Butler Street), through a boundary adjustment, be approved, subject to the following conditions:
 - 1.1.1 That the owner/applicant provides a legal description of Part 2, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent;
 - 1.1.2 That pursuant to *Planning Act* Section 50 (12), it is hereby stipulated that Section 50 (3) or 50 (5) shall apply to any subsequent conveyance of, or other transaction involving the identical subject parcel of land (Part 2); that Part 2 is merged in title with Part 1 and they become one parcel of land; and that the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Director of Community and Development Services, that Part 2 shall be conveyed to the owner of Part 1 and to prepare and register the application to consolidate the lands and forward a copy of the receipted application within two years of issuance of the consent certificate;
 - 1.1.3 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Director of Community and Development Services, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 2, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
 - 1.1.4 That the Town Operations Department be provided with a copy of the deposited reference plan;

- 1.1.5 That all existing servicing laterals connecting to 479 Butler Street (Part 2 and Part 3) be identified, disconnected and capped at the main, with any necessary Permit Approvals completed to the satisfaction of the Town's Environmental Services Division.
- 1.1.6 That the owner/applicant obtains final approval for Minor Variance application A-20/24 to address the lot frontage for 485 Butler Street, to the satisfaction of the Director of Community and Development Services.
- 1.1.7 That the owner/applicant provides a legal description of Part 3, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent;
- 1.1.8 That pursuant to *Planning Act* Section 50 (12), it is hereby stipulated that Section 50 (3) or 50 (5) shall apply to any subsequent conveyance of, or other transaction involving the identical subject parcel of land (Part 3); that Part 3 is merged in title with Part 4 and they become one parcel of land; and that the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Director of Community and Development Services, that Part 3 shall be conveyed to the owner of Part 4 and to prepare and register the application to consolidate the lands and forward a copy of the receipted application within two years of issuance of the consent certificate;
- 1.1.9 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Director of Community and Development Services, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 3, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
- 1.1.10 That the owner/applicant obtains final approval for Minor Variance application A-19/24 to address the lot frontage of 477 Butler Street, to the satisfaction of the Director of Community and Development Services.
- 1.2** Minor Variance Application A-19/24 for 477 Butler Road be approved, subject to the recommended condition:
 - 1.2.1 That the owner/applicant obtain provisional approval of Consent Application B-13/24.
- 1.3** Minor Variance Application A-20/24 for 485 Butler Road be approved, subject to the recommended condition:
 - 1.3.1 That the owner/applicant obtain provisional approval of Consent Application B-13/24.

2. EXECUTIVE SUMMARY

Staff have received one Consent Application submitted pursuant to Section 53(12) of the *Planning Act*, and two Minor Variance Applications submitted pursuant to Subsection 45(1) of the *Planning Act* for the subject lands. The Consent Application (B-13/24) proposes, through a boundary adjustment, to convey a 250.3 square metre parcel (Part 3) from 479 Butler Street to the adjacent parcel east of the lands, being 477 Butler Street (Part 4). This Consent Application also proposes, through the same boundary adjustment, to convey a 250.4 square metre parcel (Part 2) from 479 Butler Street to the adjacent parcel west of the lands, being 485 Butler Street (Part 1). 479 Butler Street (Parts 2 and 3) is currently vacant and is proposed to be entirely conveyed to the adjacent lots.

To accommodate the proposal, the following variance has been requested for 477 Butler Street (Part 3 and Part 4), through Minor Variance Application A-19/24:

1. Required lot frontage from “as existing” (4.57 metres), as required in the Zoning By-law, to 11.4 metres.

To accommodate the proposal, the following variance has been requested for 485 Butler Street (Part 1 and Part 2), through Minor Variance Application A-20/24:

1. Required lot frontage from “as existing” (18.33 metres), as required in the Zoning By-law, to 25.16 metres.

Town Staff have reviewed the Applications and consider them to meet applicable planning legislation and policies, subject to the recommended conditions within this report.

3. PURPOSE

The applicant is proposing to convey the currently vacant lot known municipally as 479 Butler Street in its entirety, to enlarge the existing adjacent lots, being 477 Butler Street and 485 Butler Street. Part 2 (250.4 square metres) is proposed to be severed from 479 Butler Street and merged with 485 Butler Street, being Part 1 (370.3 square metres). Part 3 (250.3 square metres) is proposed to be severed from 479 Butler Street and merged with 477 Butler Street, being Part 4 (1697.7 square metres). The existing single-detached dwellings on Part 1 and Part 4 are proposed to remain as existing, and the vacant lot at 479 Butler Street would no longer be an existing lot of record.

The subject lands are zoned “Old Town Community Zoning District – Established Residential (ER) Zone” in Zoning By-law 4316-09, as amended. The “Established Residential (ER) Zone” requires lot frontage and lot depth to be “as existing.” As the applicant proposes to enlarge the existing lot frontage of 477 Butler Street and 485 Butler Street, minor variance applications are required to recognize the increase in frontages to both lots.

The application drawing is attached as **Appendix I** to this report.

4. BACKGROUND

4.1 Site Description and Surrounding Land Uses

The subject lands are known municipally as 477 Butler Street, 479 Butler Street and 485 Butler Street. The lots are located on the west side of Butler Street, between Mary Street to the north, and John Street West to the south, within the urban area of Old Town. The location of the subject lands is shown on **Appendix II** to this report.

As existing, 479 Butler Street (Part 2 and Part 3) has an area of 500.7 square metres, and a frontage of 13.66 metres on Butler Street. The lands are currently vacant, and are serviced by municipal water and sanitary connections.

As existing, 485 Butler Street (Part 1) has an area of 670.3 square metres, and a frontage of 18.33 metres on Butler Street and contains a one-and-a-half-storey, single-detached dwelling which is serviced by municipal water and sanitary connections.

As existing, 477 Butler Street (Part 4) has an area of 1,697.7 square metres, and a frontage of 4.57 metres on Butler Street and contains a one-storey, single-detached dwelling and detached garage. The lands are serviced by municipal water and sanitary connections.

The surrounding lands are characterized by residential and hospitality/commercial uses.

5. DISCUSSION / ANALYSIS

Section 3(5) of the *Planning Act*, R.S.O. 1990, c. P.13 states that a decision of Council, in respect to any planning matter, shall be consistent with the Provincial Policy Statement and conform with the Provincial Plans that are in effect on that date.

A review of the Applications in consideration of the applicable policies is provided below.

5.1 Consent Application B-13/24 (Boundary Adjustment) Planning Analysis

Section 53(12) of the *Planning Act* states that Council, in determining whether a provisional consent is to be given, shall have regard to the matters under Section 51(24), and that conditions of consent may be imposed as set out in Sections 51(25), 51(26) and 51.1.

The subject lands are designated "Established Residential" and "Built-Up Area" in the Town's Official Plan (2017 consolidated, as amended) and are designated "Delineated Built-up Area" in the Niagara Official Plan (2022).

Section 9.3.3(3) of the Town Official Plan permits for land division within the Established Residential designation, subject to demonstrating that there will be minimal impact on surrounding residential uses, streetscapes and the character of the area through a detailed site and area analysis. This Section also states that changes to lot frontage and/or depth may be permitted within the Established Residential designation, subject to a Zoning By-law Amendment.

No new lots are being created through the proposed boundary adjustment, and no redevelopment is being proposed on either lot at this time. Both reconfigured lots have sufficient area and frontage to accommodate the existing residential uses. As such, no impacts to the surrounding residential uses, streetscapes and the character of the area are anticipated

as a result of the proposed Consent application. It is for these reasons that Staff have determined that Minor Variance Applications to address the proposed changes to lot frontage are appropriate, in lieu of a Zoning By-law Amendment application.

Section 21.2(9) of the Town Official Plan notes that proposed new lots lines shall take into account the existing pattern of surrounding lands, and wherever possible, the new lines shall avoid creating irregular parcel boundaries. The proposed frontage increases result in lot configurations that are generally consistent with the existing varied and unique parcel fabric of the neighbourhood.

The subject lands are zoned “Old Town Community Zoning District – Established Residential (ER) Zone” in Zoning By-law 4316-09 (as amended). The standard ER zone requires for lot frontage to be “as existing” and the proposed severances would alter the as existing condition of each lot. A review of the proposed lot frontages is provided in the Minor Variance analysis below. The remaining provisions of the ER zone are maintained.

Minor Variance Applications A-19/24 – 477 Butler Street and A-20/24 – 485 Butler Street Planning Analysis

5.2 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. Is the requested variance minor in nature?

The requested variances would facilitate the enlargement of the existing lot frontage for 477 Butler Street, from 4.57 metres to 11.4 metres, and the enlargement of the existing lot frontage for 485 Butler Street, from 18.33 metres to 25.16 meters.

The proposed increased lot frontages would result in lot areas and configurations that are generally consistent with the surrounding lands. The proposed lot frontages are considered to be appropriate to accommodate the existing single-detached dwellings on each lot, and are not anticipated to adversely impact the surrounding area. No new development and no lot creation is being proposed at this time.

Staff consider the requested variances to be minor in nature.

2. Is the requested variance desirable for the appropriate development or use of the land, building or structure?

The increases in the existing lot frontages are not anticipated to impact the surrounding residential properties. The reconfigured lots will continue to provide for adequate amenity area, space for parking, and would maintain sufficient building setbacks.

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

3. Does the requested variance maintain the general intent and purpose of the By-law?

The subject lands are zoned “Old Town Community Zoning District – Established Residential (ER) Zone” in Zoning By-law 4316-09, as amended. A single-detached dwelling and

associated accessory buildings and structures are permitted uses within the ER Zone. The ER Zone requires that lot frontage and lot depth are “as existing.”

The intent of the By-law requiring lots within the ER Zone to maintain lot frontage and lot depth “as existing” is to maintain the varied and unique character of the area. The proposed frontage increases result in lot configurations that are generally consistent with the existing parcel fabric of the neighbourhood, and continue to maintain required building setbacks for each property. In addition, since the applications do not result in the creation of a new lot, no impacts to the established residential neighbourhood character are anticipated.

Staff consider the requested variances to maintain the general intent and purpose of the By-law.

4. Does the requested variance maintain the general intent and purpose of the Official Plan?

The subject lands are designated “Low Density Residential” in the Town Official Plan (2017 Consolidation, as amended). A single-detached dwelling and associated accessory buildings and structures are permitted uses within this designation.

The goals and objectives of the Residential designation as set out in the Official Plan outline that new development or redevelopment must be appropriately located and compatible with surrounding land uses in order to minimize the potential for land use compatibility impacts, as well as promote the maintenance and rehabilitation of the existing housing stock.

It is Staff’s opinion that the requested variances would not negatively impact the character of the area, as the single-detached dwellings on the subject lands have already been established, and no additional development is proposed at this time. The requested variances do not conflict with the goals and objectives of the Residential designation, and are proposed to accommodate the continuation of permitted uses.

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

5.3 Town, Agency and Public Comments

The 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 objections.

Finance – No objections.

Fire and Emergency – No objections.

Heritage – No objections.

Operations – No objections. Conditions requested regarding the deposited reference plan, and the disconnection of existing municipal services to 479 Butler Street.

Urban Forestry – While the removal of trees is not required as part of the applications, the applicant will be required to comply with the Town’s Private Tree Protection By-law No. 5139-19, including but not limited to the completion of an Arborist Report and/or Tree Inventory and Protection Plan, in the event of any future construction on the subject lands.

Agencies

Enbridge Gas – No objections.

Hydro One – No objections.

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 Consent and/or Minor Variance applications and/or conditions.

8. FINANCIAL IMPLICATIONS

Not applicable.

9. ENVIRONMENTAL IMPLICATIONS

Not applicable. No tree removal is required to facilitate the proposal.

10. COMMUNICATIONS

Once the Committee of Adjustment makes a decision on the Applications, notice of the decisions will be given as required in the *Planning Act*. The decisions of the Committee are subject to a 20-day appeal period following notice of the Committee’s decisions. If no appeals are received during the appeal period, the decisions of the Committee are final.

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

11. CONCLUSION

In conclusion, Planning Staff recommend approval of Consent Application B-13/24, subject to the recommended conditions, as the application meets the *Planning Act* requirements, is consistent with the Provincial Planning Statement and conforms with the Growth Plan, Niagara Official Plan and Town Official Plan.

Furthermore, Planning Staff recommend approval of Minor Variance Applications A-19/24, and A-20/24, subject to the recommended conditions, 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
- Appendix II – Location Map

Respectfully submitted:

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