

Committee of Adjustment
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City of Ottawa | Ville d'Ottawa
Comité de dérogation



Minor Variance
COMMENTS TO THE COMMITTEE OF ADJUSTMENT
Panel 2

Site Address: 131 Winding Way

Legal Description: Lot 13, Registered Plan 4M-1282

File No.: D08-02-23/A-00062

Date: April 14, 2023

Hearing Date: April 19, 2023

Planner: Justin Grift

Official Plan Designation: Neighbourhood, Suburban Transect

Zoning: R1E

PROPOSED MODIFICATION

~~Lots 12 & 13, Registered Plan 4M-1282; Lot 13, Registered Plan 4M-1282~~

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **has some concerns** with the minor variance request as Staff is not satisfied it meets policy 4.9.3.7 of the Official Plan.

DISCUSSION AND RATIONALE

The subject property is on Winding Way, backing directly onto the Rideau River in Ward 24 – Barrhaven East. The surrounding area is primarily residential. A building permit for a two-storey detached dwelling was issued on the property in August 2022.

The Official Plan (2021) designates the property Neighbourhood in the Suburban Transect. The policies pertaining to this transect and designation include supporting a wide variety of housing types with a focus on missing-middle housing, which can include new housing types. The Official Plan also identifies a large portion of the property to have Unstable Slopes (*Schedule C15 – Environmental Constraints*) and to fall within the Natural Heritage Features Overlay (*Schedule C11-A Natural Heritage System, West*). Staff has communicated with the City's Environmental Planner regarding these layers in the Official Plan, their comments can be examined further in this report.

Additionally, Section 4.9.3 of the Official Plan explains that development exceptions to allow development to encroach within watercourse setbacks shall be considered where it is impossible to meet the minimum setback because of lot size or location. This Section expands that land within the minimum setback to a watercourses should remain in a naturally vegetated condition to protect the ecological function of surface water features from adjacent land uses.



The property is zoned *Residential First Density Zone with Subzone E (R1E)*. The purpose of this zone is to restrict the building form to detached dwellings and regulate development in a manner that is compatible with existing land use patterns so the residential character of the neighbourhood is maintained or enhanced. As per Section 69, the Zoning By-law prescribes a 30 metre setback from the *normal highwater mark* of any watercourse or waterbody for any building or structure; as per the definitions in the Zoning By-law, a terrace is considered a structure. This section expands that the setback is to “provide a margin of safety from hazards associated with flooding and unstable slopes and to help protect the environmental quality of watercourses and waterbodies.”

As seen in the submitted site plan, the proposed rear terrace would encroach within the 30 metre watercourse setback in two instances, one encroaching for 3.05 metres into the required setback and the other for 3.6 metres. Staff notes the proposed encroachment is cantilevered and does not touch the ground. Staff is not satisfied the applicant has demonstrated the cantilever cannot meet the minimum watercourse setback, as detailed in the exceptions permitted in policy 4.9.3.7 of the Official Plan. Therefore, Staff is of the opinion the minor variance does not meet the general intent of the Official Plan; and subsequently, does not pass the four tests outlined in Section 45(1) of the Planning Act.

If the Committee grants the variance approval, Staff requests a condition for the applicant to prepare and submit an Environmental Impact Study to address the concerns of the Environmental Planner (see below). An EIS would determine whether the proposed cantilever encroachment would have a negative impact on any important environmental features in the area.

ADDITIONAL COMMENTS

Notwithstanding the subject minor variance request, Staff noticed a zoning deficiency regarding the driveway’s placement between the dwelling and the street in the submitted site plan. The deficiency pertains to Section 107 of the Zoning By-law. Staff recommend the applicant submit a separate minor variance application to legalize the placement of the driveway.

Environment Planner comments

The requirements for a watercourse setback variance are contained in section 4.9.3.7 of the Official Plan and specify that such exceptions are only provided if “it is impossible to achieve the minimum setback because of the size or location of the lot, approved or existing use on the lot or other physical constraint.” This site would not meet these conditions. It is possible to develop this site in a manner that does not encroach on the 30 metre watercourse setback. I would encourage the applicant to consider a new design that respects the full 30 metre setback.

Should this application move forward regardless, an EIS will need to be submitted to satisfy the conditions set out in 4.9.3.7, which states:



a) The ecological function of the site is restored and enhanced, to the greatest extent possible, through naturalization with native, non-invasive vegetation and bioengineering techniques to mitigate erosion and stabilize soils; and

b) Buildings and structures are located, or relocated, to an area within the existing lot that improves the existing setback, to the greatest extent possible, and does not encroach closer to the surface water feature.

It is through policy a) here that an EIS is triggered. The EIS is the mechanism used to describe the ecological function of the site and to establish, with evidence, that no negative impact will occur to these ecological functions as a result of the proposed development. Furthermore, this site is located partially within the natural heritage system overlay, which also requires an EIS pursuant to section 5.6.4.1, specifically policies 4 and 5:

4) Development or site alteration proposed in or adjacent to natural heritage features shall be supported by an environmental impact study prepared in accordance with the City's guidelines.

5) Development and site alteration shall have no negative impact on the Natural Heritage System and Natural Heritage Features. Development and site alteration shall be consistent with the conclusions and recommendations of an approved environmental impact study.

These two EIS triggers, located in section 4.9.3.7 and 5.6.4.1, exist separate of one another, but a single EIS can be submitted to satisfy the requirements of both of these sections. In the case that the application proceeds in its current form, the EIS would need to establish that no negative impact would occur because of development and cover such matters as:

- The ecological function of the areas adjacent to the watercourse
- Wildlife habitat
- Habitat for, or presence of, species at risk
- Slope stability (note that this site is within an area with slope stability hazards)
- Erosion, sediment, and stormwater flows into the watercourse
- Any other ecological functions as identified by a qualified environmental professional

Additionally, there are some exceptions for overhanging terraces/decks encroaching into setbacks in the Zoning By-law, Section 65(1)(d) specifies that none of these exceptions apply to watercourse setbacks.

Heritage Planner comments

Heritage staff have reviewed the proposal against OP policy 4.5.2.2, and have determined



that there are no impacts to the Rideau River, a protected heritage property. Only the cantilevered part of the terrace is beyond the 30m buffer zone. Heritage staff have not requested a heritage impact assessment.

Forester comments

There are no trees impacted by the proposed minor variance, though the watercourse setback is an ideal location to plant new trees to protect the shoreline soils. Both protected trees identified in the Tree Information Report must be protected throughout construction in accordance with the City's Tree Protection Specifications. It is recommended to develop a comprehensive planting plan to improve the canopy cover on this site with a minimum of one new 50mm tree planted in the Right of Way following construction, to benefit the streetscape.

CONDITION

The Department requests that the following condition be imposed on the Minor Variance Application if approved:

1. Prior to the issuance of a building permit, the Owner/Applicant(s) shall prepare and submit an Environmental Impact Study (EIS) to the satisfaction of the Development Review Manager of the South Branch within Planning, Real Estate and Economic Development Department, or his/her designate.

If required, the Owner(s) agrees to enter into a Development Agreement, with the City, at the expense of the Owner(s) and to the satisfaction of the Development Review Manager of the South Branch within Planning, Real Estate and Economic Development Department, or his/her designate to implement the specific mitigation measures or other requirements outlined in the accepted Environmental Impact Statement (EIS).

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