

# Committee of Adjustment Comments from Staff, Public and Agencies

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## Application Details

Application Number: A-47/21  
Location: 135 Niska Road  
Hearing Date: September 9, 2021  
Owner: Mariusz and Slawomira Kasinska  
Agent: N/A  
Official Plan Designation: Low Density Residential and Significant Natural Areas  
Zoning Designation: Urban Reserve (UR) Zone

**By-Law Requirements:** The By-law requires that no accessory building or structure shall be located closer to any lot line than one-half building height [being 2.6 metres] or 7.5 metres, whichever is greater.

**Request:** The applicant is seeking relief from the By-Law requirements to permit a minimum left side yard setback of 1.47 metres for the existing accessory structure (detached garage/shed).

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## Staff Recommendation

### Approval with Condition

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## Recommended Condition

### Planning Services

1. That the variance apply only to the existing, single-storey accessory building as shown on the Public Notice sketch.
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## Comments

### Planning Services

The front portion of the subject property is designated "Low Density Residential" and the rear portion of the subject property is designated "Significant Natural Areas and Natural Areas" in the Official Plan. The "Low Density Residential" land use designation permits a range of residential uses including a single detached dwelling and accessory structures. The applicant is proposing to maintain the existing, single-storey accessory structure (detached garage/shed) located in the rear yard and within the portion of the property designated as "Low Density Residential".

Inspection of current and historical aerial imagery reveals that the existing accessory structure, renovated to its current condition in 2006, is larger and closer to the western lot line than it was immediately before the renovation. Further, the imagery reveals that trees that appear to be part of a Significant Woodland were removed/injured to accommodate the enlarged structure. As such, the enlargement of the structure toward the western lot line (the subject of the variance application) and into the Significant Woodland is unlikely to have been supported based on 2006 Official Plan policy. However, given that 15 years has passed, it is not reasonable to seek conformance with that policy.

Due to the past tree removals/injury, the existing accessory structure is located just outside of the Natural Heritage System as defined in current Official Plan policy. This policy indicates that an Environmental Impact Study is required for proposed development on adjacent lands and indicates that it should recommend an appropriate buffer for redevelopment applications. However, as the structure has been in its current location for 15 years, it is appropriate to waive that requirement.

Based on the discussion above, the requested variance does not conflict with the general intent and purpose of the Official Plan.

The subject property is zoned "Urban Reserve" (UR) according to Zoning By-law (1995)-14864, as amended. The property is developed with a single detached residential dwelling which is considered to be a legal non-conforming use in the "Urban Reserve" Zone. The applicant is proposing to maintain the existing, single-storey accessory structure (detached garage/shed) located in the rear yard. The applicant has requested a variance to Section 11.2.3.4 of Zoning By-law (1995)-14864, as amended, to permit a minimum left side yard setback of 1.47 metres for the existing accessory structure (detached garage/shed), whereas the Zoning By-law does not permit an accessory building or structure to be located closer to any lot line than one-half of the building height (being 2.6 metres) or 7.5 metres, whichever is greater.

The general intent and purpose of the 7.5 metre or one-half the building height setback for an accessory building or structure in the UR Zone is intended to ensure adequate separation between an accessory building or structure to one of the permitted uses (ie. barn). The property is developed with a legal non-conforming single detached dwelling. Accessory buildings or structures to residential dwellings do not require greater setbacks as would be required for non-residential uses. If this property was in a residential zone, the requirement for an accessory building or structure would be 0.6 metres. The general intent of the Zoning By-law in requiring setbacks for accessory structures is to provide adequate separation between buildings on adjacent properties, provide access for maintenance and to allow proper lot drainage. A setback of 1.47 metres for an accessory building that serves a residential use meets the general intent and purpose of the Zoning By-law.

The accessory building was built in the 1960's and used as an old barn by previous owners. The applicant has indicated that the accessory structure was repaired/renovated in 2006 and it has remained in its original location. From the air photos it appears that the accessory building has been enlarged but part of it has remained in its original location. The original accessory building would have had

legal non-complying status; however, since the accessory building was enlarged, the legal non-complying status was lost and a variance is now required. The existing accessory building is located in the rear yard and does not appear to negatively affect the adjacent property in terms of privacy and still allows room for access and maintenance of the structure. The requested variance is considered to be desirable for the appropriate development of the lands and is also considered to be minor in nature.

For the applicant's information, inspection of aerial imagery also appears to display other tree removals/injury on the property over the years. The applicant should be made aware that the City's Private Tree By-law applies to their property and that injury or destruction of regulated trees on their property requires a permit from the City.

The requested variance is considered to conform to the general intent and purpose of the Official Plan and Zoning By-law, is considered to be desirable for the appropriate development of the lands and is considered to be minor in nature.

Staff recommend approval of the variance, subject to the condition noted above.

### **Engineering Services**

Engineering has no concerns with the applicant's request of seeking relief from the By-law requirements to permit a reduced left side yard setback.

We agree with recommendations made by the Planning and Building staff.

### **Building Services**

Providing that the condition recommended by Planning Staff is imposed, Building Services does not object to this application.

An application for a building permit has been received.

### **Comments from the Public**

None

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### **Contact Information**

**Committee of Adjustment:** City Hall, 1 Carden Street, Guelph ON N1H 3A1

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