



Minor Variance and Fence Variance Applications

412 Four Mile Creek Road, Niagara-on-the-Lake

For: Northern Capital Corp.

By: NPG Planning Solutions Inc.
4999 Victoria Avenue
Niagara Falls, ON L2E 4C9
T: 905 321 6743

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1.0 Introduction

NPG Planning Solutions Inc. (“NPG”) has been retained by Northern Capital Corp. to provide independent professional planning advice regarding a Minor Variance Application and a Fence Variance Application for lands municipally known as 412 Four Mile Creek Road in the Town of Niagara-on-the-Lake (“Subject Lands”). The Minor Variance and Fence Variance Applications are required to allow a day care centre and its associated play area with a perimeter fence.

The Subject Lands are an irregularly shaped corner lot at the intersection of Line 9 Road and Four Mile Creek Road, are 3,638.47 square metres in area with 39.37 metres of frontage along Line 9 Road.

2.0 Proposed Development

The proposal aims to convert a total of 341.05 square metres, being two (2) of the retail units of an existing shopping centre into a day care centre. An associated outdoor play area is proposed to be provided east of the building, in an area that was previously approved for an outdoor patio restaurant. The outdoor play area would be enclosed by a perimeter fence.

The proposed Minor Variance Application seeks a variance to permit a day care centre use on the property. A variance to the Town Fence By-law is also required as the proposed fence would exceed the permitted height in Section 5(c) of the Town By-law No. 4788-14 (“Fence By-law”). The increase in height is necessary to ensure safe use of the outdoor play area.

3.0 Description of Subject Lands and Surrounding Area

The Subject Lands currently contain a shopping centre with an area of 902.46 square metres, as well as associated parking and landscaped areas.

The Subject Lands are surrounded by low density residential and agricultural uses, as well as local commercial and service uses.

Surrounding the Subject Lands to the east across Four Mile Creek Road is a low density residential subdivision known as Canary Park. Rear lots of the dwellings abut Four Mile Creek Road. The rear yards are screened by wood board fencing, which creates a wall along the street. To the north and west are agricultural and rural residential uses. Abutting the subject lands to the south is a residential subdivision and condominium development known as Vintages at Four Mile Creek, which front onto Four Mile Creek Road. There are also a mix of commercial and service uses such as St. Davids Cold Storage, a confectionary wholesaler (St. Davids Chocolates) and a veterinary clinic to the south along Four Mile Creek Road.

4.0 Background and Policy Context

The Subject Lands were approved for Official Plan Amendment No. 77 (By-law 5099-18) and Zoning By-law Amendment 4316DI-18 in 2018 to redesignate the lands to EX-COM-5 and rezone the lands to St. Davids Community Zoning District – Village Commercial (VC-30) Site Specific Zone, respectively. The planning analysis included in Staff Report CDS-18-059 in support of the Applications for Official Plan Amendment and Zoning By-law Amendment, recognized the uses as appropriately located to add a mix of jobs and employment opportunities and provide goods and services to a growing population in St. Davids.

5.0 Required Relief from Zoning By-law and Fence By-law

To proceed with the proposed day care centre and its associated play area the following relief is needed:

Relief from Section 9.13.30.1 VC-30 Permitted Uses of Site Specific Zoning By-law No. 4316-09, as amended:

- Permit a day care centre use on the property, where a day care centre is not identified as a permitted use.

Relief from Section 5(c) of By-law 4778-14:

- Permit a fence that is approximately 1.6 metres in height along a side yard that abuts a street, whereas a height of 1 meter is permitted

6.0 Proposed Variances and Analysis of Four Tests

Section 45(1) of the *Planning Act* provides that:

The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

The Ontario Divisional Court Decision reviewed a Committee of Adjustment decision to approve an application to permit use-based Minor Variance Application¹. In that decision, it was identified that it is not helpful to determine the question of whether a variance was minor by whether a "new use" had been authorized; rather, this question was to be determined by whether the use could be described as minor in light of the by-law and the

¹ *Fred Doucette Holdings Ltd. v Waterloo (City)*, 1997 CanLII 16235 (ON SC (Div Ct)), online: CanLII <https://www.canlii.org/en/on/onsc/doc/1997/1997canlii16235/1997canlii16235.html>

other factors specified by s. 45(1). As per the following justification, we consider the Application to meet the tests under Section 45(1) of the *Planning Act*.

Section 45(3) of the *Planning Act* provides that a council that has constituted a committee of adjustment may by by-law empower the committee of adjustment to grant minor variances from the provisions of any by-law of the municipality that implements an official plan, or from such by-laws of the municipality as are specified and that implement an official plan, and when a committee of adjustment is so empowered subsection (1) applies with necessary modifications.

The following is an analysis of the Minor Variance Application and Fence Variance Application in relation to the four tests of the *Planning Act*:

6.1 Variance to Permit a Day Care Centre

1. Does the requested variance meet the general intent and purpose of the Official Plan?

The Subject Lands are designated EX-COM-5 and are located in the Built-Up Area within the Urban Area Boundary of St Davids. The community of St. Davids has experienced significant growth in recent years and is anticipated to continue doing so. The EX-COM-5 designation is subject to the requirements of the General Commercial designation of the Town Official Plan. Section 10.3.1(1) of the Town Official Plan identifies the uses that are permitted within the General Commercial designation. These uses include as follows:

Main Uses:

Retail Commercial Uses

Business Offices

Secondary Uses:

Uses permitted with a Main Use:

accessory buildings and structures

dwelling units

Uses permitted independent of a Main Use:

Service Shops

These uses are intended to be broadly interpreted. This broad interpretation is demonstrated in the Town Zoning By-law which permits uses that do not fit specifically within the narrow categories of permitted uses identified above. Examples of such uses include commercial recreation facility, hotel, medical clinic, and motel.

In determining whether the proposed use maintains the general intent and purpose of the Town Official Plan, regard should be had to broader goals, objectives and policies of the Town Official Plan, rather than to the narrowly defined list of uses. This

understanding is explicit in Section 16(1)(a) of the *Planning Act* which indicates that an Official Plan shall contain “goals, objectives and policies established primarily to manage and direct physical change...” Section 16(1)(a) contrasts with Section 34(1) which allows a municipality to restrict the use of lands.

Relevant goals, objectives and policies are identified as follows:

Section 6A – Growth Management, 3.2, I) provides that the objectives of the Town’s growth strategy are to:

Develop, compact, complete communities that include a diverse mix of land uses, a range of local employment opportunities and housing types, high quality public open spaces, and easy access to local stores and services via automobile and active transportation and provide active transportation-friendly structures and amenities.

Section 6.32.3 Special Policy Area A-3 (St. Davids), A. Objectives are to:

9. Provide for appropriately located commercial opportunities and activities to serve the needs of the St. Davids community;

Section 6.32.3 Special Policy Area A-3 (St. Davids), relevant policies relating to Community Facilities are as follows:

*2. Community Facilities include municipal buildings and facilities, schools, places of worship, social and cultural facilities, community centres, health care and agency offices, and **day care facilities**;*

3. All Community Facilities are permitted to locate in Commercial, Institutional, and Open Space and Community Facilities areas in accordance with the policies of this Section. Health care and agency offices and day care facilities are also permitted to locate in Residential areas provided that their intensity of use, building requirements and design are compatible with adjacent residential properties;

10. Community facilities shall be zoned in an appropriate Community Facilities zone category.

Section 10.2(1) of the Town Official Plan sets out the goals and objectives for commercial areas in the Town, including:

(1) To provide for an orderly distribution of commercial areas within the Urban Boundaries of the Town to meet the shopping and service needs of residents and tourists;

(2) To adequately provide for local-serving commercial areas and, where necessary, to prevent their use for tourist serving uses.

Section 10.4 of the Town Official Plan sets out the policies that apply to all the commercial designations in the Town. Of note, Section 10.4(2) provides, as follows:

General Commercial: *intended to provide the residents of the municipality with a wide range of goods and services. Tourist uses are also permitted but may be restricted in the implementing zoning by-law to specific locations so as not to detract from providing for the needs of local residents.*

Day care centres are considered to be a Community Facility, as per Section 6.32.3, 2. of the Town Official Plan. These uses are permitted to locate in commercial areas, such as the location where the Subject Lands are located.

The intent of Policy 6.32.3, 10., appears to be to ensure that such facilities are permitted in appropriate areas to reduce the potential for land use conflicts resulting from a mixing of uses. The proposed day care centre is compatible with and complements the existing commercial and surrounding residential uses.

The proposed use also works towards the achievement of complete communities by facilitating use of an existing commercial space for a day care centre. This use is necessary to serve abutting residential uses to the south and would also add a mix of jobs and employment opportunities to the local population.

For the above reasons, the requested variance meets the general intent and purpose of the Town Official Plan.

2. Does the requested variance meet the general intent and purpose of the Zoning By-law?

The Subject Lands are zoned St. Davids Community Zoning District – Village Commercial (VC-30) Site Specific Zone.

The general intent and purpose of the Zoning By-law is to maintain land use compatibility between different uses.

Specifically, regarding the VC-30 zone, the general intent and purpose of the Zoning By-law is to facilitate the development of local serving commercial uses.

Municipalities typically permit day care centres within local serving commercial areas. Examples from Niagara Region are as follows:

- St. Catharines Zoning By-law 2013-283– Permitted in C1, C2, C3, C4, C5 and C6 Zone;
- Welland Zoning By-law 2017-117 – Permitted in all commercial zones;
- Niagara Falls – Permitted as Day Nursery in Neighbourhood Commercial (NC) and General Commercial (GC) Zones; and
- City of Thorold – Permitted in Downtown Main Street (C1), Downtown Mixed Use (C2), General Commercial (C3), and Neighbourhood Commercial (C4).

In considering the above, there are no land use compatibility conflicts that would be associated with permitting a day care centre within the existing shopping centre. The proposed day care centre also meets the specific intent of the VC-30 zone which is to provide for local serving commercial uses.

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

The Application adds a needed community service to an area that is experiencing growth which would support residents in proximity to the Subject Lands. As identified above, these uses are typically permitted within commercial areas of municipalities. It is recognized that an outdoor play area is proposed to be located in proximity to Four Mile Creek Road.

Four Mile Creek is a Regional Road, per Schedule G of the Town Official Plan. This stretch of Four Mile Creek Road, however, is within the Urban Area of St. Davids and has reduced speeds to 50 kilometres an hour, which works to mitigate potential impacts regarding noise and traffic on the outdoor play area.

Furthermore, the conversion of this space from an outdoor patio restaurant is not anticipated to provide for any increased compatibility concerns from a previously existing use. In either case, the lands would be used intermittently.

4. Is the requested variance minor in nature?

The requested variance would allow a day care centre and its associated play area that is compatible with the surrounding neighbourhood character, supportive of a growing community, and is not anticipated to result in any adverse impacts on surrounding properties. For these reasons, the requested variance is minor in nature.

6.2 Variance to permit an increased fence height

1. Does the requested variance meet the general intent and purpose of the Official Plan?

Section 6.32.3 Special Policy Area A-3 (St. Davids), B. Policies, Urban Design, Policy 1. states that the Town intends to adopt urban design guidelines to ensure that the unique historic character of St. Davids is preserved and extended through careful design consideration of built form, open space, and streetscapes.

Section 7.2.8 of the St. Davids Urban Design Guidelines provides that there is a great variety of fence types found in St. Davids, as shown below: wood picket, cast iron, traditional agricultural, and living fences, hedges. They all have an approximate height of three feet, are semi-permeable, and are made of natural materials. New fences should maintain the character of existing village fences in terms of materials, visual permeability, and height.

The Subject Lands are in a newly built area, where the rear yard fences are typically taller than 1.6 metres in height. In considering the surrounding context, the proposed fence is not anticipated to impact the character of the surrounding village character.

2. Does the requested variance meet the general intent and purpose of the Fence By-law?

The general intent and purpose of the Fence By-law, with respect to height along a street is to mitigate streetscape impacts resulting from a blank wall, and to prevent traffic impacts pertaining to visual obstructions within sight triangles. The distance from the intersection of Four Mile Creek Road and Line 9, the use of permeable fencing materials, and the fact that the fence encompasses only a portion of the exterior lot lines will serve to mitigate these impacts. As such, the requested variance meets the general intent and purpose of the Fence By-law.

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

The proposed fence variance is meant to provide additional safety for the enjoyment of the outdoor play area associated with the proposed day care centre. The Subject Lands are located at the edge of the Urban Area Boundary, in an area that is characterized by new development.

In considering the surrounding context, particularly development on the east side of Four Mile Creek Road—there is a precedent of wood fence construction along the street in excess of one (1) metre in height in the bylaw, and exceeding the 1.6 metre in height proposed for the play area of the day care centre. The proposed fence is anticipated to be less visually impactful than these existing conditions due to its permeable design.

For these reasons, the proposed fence will not alter the character of the existing neighbourhood and is not expected to result in significant visual impacts. Accordingly, the requested variance is desirable for the appropriate development and use of the land

4. Is the requested variance minor in nature?

Since the proposed fence will be located outside of the existing sight triangle at the intersection of Four Mile Creek Road and Line 9 Road, and no safety, compatibility, or visual impacts are anticipated, the variance is considered to be minor in nature.

7.0 Conclusion

This Planning Brief provides the planning justification for the approval of the Minor Variances and variances from the Fence By-law requested for 412 Four Mile Creek Road.

As noted above, the Applications comply with Section 45(1) and 45(3) of the *Planning Act*, as the variances are minor in nature, desirable for the appropriate use and development of the Subject Lands and maintains the general intent and purpose of the Official Plan, Zoning By-law and Fence By-law.

Brief prepared by:



Dan Banatkiewicz, Hons. BA
Planner
NPG Planning Solutions Inc.

Brief reviewed and approved by:



Jesse Auspitz, MCIP, RPP
Principal Planner
NPG Planning Solutions Inc.

Appendix A – Proposed Site Plan

