

## Committee of Adjustment Minutes

Date: Monday, March 25, 2024  
 Time: 5:00 pm  
 Location: Tecumseh Town Hall - Council Chambers  
 917 Lesperance Road  
 Tecumseh, Ontario N8N 1W9

Present:  
 Chair, Tom Fuerth  
 Member, Lori Chadwick  
 Member, Paul Jobin  
 Member, Christopher Lanman  
 Member, Tom Marentette  
 Member, Tony Muscedere  
 Member, Doug Pitre

Also Present:  
 Manager Planning Services & Local Economic Development, Chad Jeffery  
 Secretary-Treasurer, Donna Ferris

Others:  
 Senior Planner, Enrico De Cecco  
 Manager Information Technology, David Doyon

### **A. Roll Call**

### **B. Call to Order**

The Chairperson calls the meeting to order at 5:00 p.m.

### **C. Disclosure of Pecuniary Interest**

There is no disclosure of interest made.

### **D. Minutes**

#### **1. February 26, 2024**

#### **Motion: CA-11-24**

Moved By Member Tony Muscedere

Seconded by Member Tom Marentette

**That** the minutes of the regular Committee of Adjustment meeting held February 26, 2024 **be approved**, with four minor clerical errors being corrected.

Carried

## E. Applications

### 1. Application for Consent B-02-24 Carpenters Training Centre Windsor Incorporated 2179 Fasan Drive

#### a. Sketch

Interested parties present: Joshua Bezaire, Applicant, Business Representative & Director of Carpenters Training Centre Windsor Incorporated

The purpose of the Application is to sever a vacant parcel of land (outlined in red) and identified as Part 2, 12R-29494, having an area of 2,036.5 square metres (21,920.7 square feet) and add it to the industrial property to the south, identified as Part 1, 12R-29494 resulting in a total area of 0.84 hectares (2.08 acres). The retained vacant parcel (outlined in green) and identified as Part 3, 12R-29494, having an area of 3,399.29 square metres (36,589.6 square feet), is proposed to be added to the vacant industrial property to the north, identified as Part 4, 12R-29494 resulting in a total area of 0.81 hectares (2.0 acres).

The property is designated Business Park in the Official Plan and zoned Industrial (M1-20) in Zoning By-law 85-18.

Administration/Agency Comments

#### Public Works and Engineering

- That the Applicant be required to service each individual parcel with a separate water supply to the satisfaction of the Town of Tecumseh Water Services Division prior to the severance being finalized. Separate water service connections will be required for both new parcels (Note: Permits from the Town of Tecumseh Water Services Division are required, and a Town Water Operator is to be on site during the installation of the water service.)
- That the Applicant be required to provide an engineered drainage and grading plan (prepared by a qualified professional engineer) for the severed parcel, to the satisfaction of the Town Building Official, prior to the severance being finalized.
- The Applicant should be made aware that municipal sanitary sewers are not available at the location of this severance; a private septic system will be required to the satisfaction of the Town of Tecumseh Chief Building Official.
- That the Applicant enter into, and provide the Town of Tecumseh, a written agreement for the reapportionment of the drainage assessment for the subject lands, in accordance with Section 65(2) of the Ontario Drainage Act, RSO. 1990, as amended and that the associated costs of same be borne solely by the Applicant.

- Should new access driveways be required, the Applicant, developer or future home builder, shall be required to obtain permits from the Town of Tecumseh Public Works Division to install new access driveways in accordance with Town of Tecumseh standards from Fasan Drive prior to the commencement of driveway construction within the Town's right-of-way.
- The applicant and future owners should be made aware that future property amendments may be subject to the Site Plan Control process, under which PWES will work with the owners and its consultants regarding site servicing and stormwater management. This includes, but is not necessarily limited to, submission of site servicing and grading plans, and SWM reports that capture the proposed amendments for PWES review and approval.
- The cost of all servicing requirements will be at the expense of the applicant.

### **Building Department**

- The property owner shall provide to the Building Department a septic analysis from a BCIN septic qualified contractor to confirm that the septic system is in good working order, as well as to identify the location of the septic system's dispersal bed and tank. The applicant will need to obtain an Ontario land survey that clearly identifies the location of the system so that it can be confirmed that all applicable setbacks are maintained. Note: If the property owner cannot confirm that the septic system meets Ontario Building Code requirements, or if the system is proven to be failing or non-existent, the Building Department shall issue orders.
- The landowner is responsible to ensure that all building services are contained within existing property boundaries and shall not extend beyond newly established lot lines.
- It is the responsibility of the landowner to ensure that surface water does not adversely affect neighbouring properties.

### **Fire Department**

- No comments received.

### **Essex Region Conservation Authority**

- This site is not located within a regulated area that is under the jurisdiction of the ERCA (Section 28 of the *Conservation Authorities Act*). As a result, a permit is not required from ERCA for issues related to Section 28 of the *Conservation Authorities Act*, Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the *Conservations Authorities Act*, (Ontario Regulation No. 158/06).
- No objection to application.

## Essex Powerlines

- No comments/concerns – outside of EPL service area

### Discussion

Joshua Bezaire, Applicant, Business Representative & Director of Carpenters Training Centre Windsor Incorporated appears before the Committee to discuss the Application. Tom Fuerth inquires if the Applicant is aware of the comments contained in the Planning Report with respect to their application. The Secretary-Treasurer advises that the Applicant was forwarded the Agenda containing the Planning Report on Friday, March 22, 2024. Tom Fuerth inquires about the water service being request by Public Work and Environment Services to a vacant lot. Chad Jeffery indicates that the water service is required to be installed for the severed vacant lot. Chad Jeffery further indicates that the Town's policies dictate that all severed lots must be serviced lots. Tom Fuerth questions the location of the water service without the building plan being available. Chad Jeffery indicates that the location will be determined by the Water Department and the Applicant. If a building plan is not available, they would determine the most applicable location to install the service. Tom Fuerth indicates that other municipalities enter into a severance agreement for the installation of services which is registered on title. Chad Jeffery indicates that he is familiar with that approach however the policy with the Town of Tecumseh is to ensure all newly created lot have service. However, with respect to an entrance, except for when access is over a municipal drain, where a large expense may be incurred, the Town does allow for the access driveway to be installed at a later date. Tom Fuerth raises concern with respect to the water service being installed in the absence of building plans. Chad Jeffery indicates that he can have a discussion with PWES but if it is simple enough to install a water connection and if it does not undermine the ability of placement of the building on the subject lands, believes the applicant would most likely want the service installed sooner rather than later. Chad Jeffery also points out the additional time and costs would be incurred to prepare and register an agreement on title. In addition, the condition that is being requested by PWES is a condition that the municipality has been using for some time now. Chad Jeffery indicates that he will bring back a report to the Committee with respect to servicing and servicing agreements registered on title.

Tony Muscedere is supportive of the application as having a larger lot would allow for larger developments, assist in parking as well as the installation of a septic system.

**Motion: CA-12-24**

Moved By Member Tony Muscedere

Seconded by Member Tom Marentette

**That Application for Consent B-02-24, be approved.**

Carried

Conditions

1. That at the time the conveyance is prepared for certification, a reference plan prepared by an Ontario Land Surveyor in digital format (.pdf and .dwg) with the .dwg files being in NAD 83 format (UTM Zone 17 Metric), which has been numbered, dated, signed and registered must be submitted to the Town;
2. That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year paid in full, as well as any and all arrears owing on the total parcel;
3. That the appropriate documents for the conveyance be prepared in duplicate (2) suitable for registration, all copies to have original signatures, with one copy to remain as a record with the Town;
4. That any cost in excess of the \$1,400.00 non-refundable application fee, incurred to process this application such as legal and engineering fees, appraisal reports, etc. shall be the responsibility of the applicant and shall be payable to the Town of Tecumseh where applicable, prior to final consent;
5. That the Owners enter, into and provide the Town of Tecumseh, a written agreement for the reapportionment of the drainage assessment for the subject lands, in accordance with Section 65(2) of the *Ontario Drainage Act*, R.S.O. 1990, as amended, and that the associated costs of same be borne solely by the Applicant. Apportionments for affected Municipal Drains are required and are to be assessed against the lands affected in accordance with any past, current or future drainage by-laws, until otherwise determined under the provisions of the *Drainage Act*;
6. That the Applicant provide an engineered drainage and grading plan (prepared by a qualified professional engineer) for the two, newly created enlarged lots, to the satisfaction of the Town Building Official, prior to the severance being finalized;
7. That the parcel to be retained and the parcel to be severed are to be serviced with separate water connections to the satisfaction of the Town of Tecumseh Water Department prior to this severance being finalized;
8. The property owner shall provide to the Building Department a septic analysis from a BCIN septic qualified contractor to confirm that the septic system is in good working order, as well as to identify the location of the septic system's dispersal bed and tank. The

applicant will need to obtain an Ontario land survey that clearly identifies the location of the system so that it can be confirmed that all applicable setbacks are maintained. Note: If the property owner cannot confirm that the septic system meets Ontario Building Code requirements, or if the system is proven to be failing or non-existent, the Building Department shall issue orders;

9. That subsection 50(3) or (5), as the case may be, of the Planning Act, R.S.O. 1990, as amended shall apply to any subsequent conveyance of or transaction involving Part 2, 12R-29494 which is the subject of this consent ("subject parcel") the transfer of which shall be registered in the same name as the parcel to which it is to be added to Part 1, 12R-29494 ("abutting parcel") so as to merge the two parcels (Parts 1 and Parts 2). In addition, Part 3, 12R-29494 is to merge and be consolidated with Part 4, 12R-29494. Further, that an Undertaking be provided by a solicitor licensed in Ontario to register on title an application to consolidate the subject parcel being Part 2, 12R-29494 and the abutting parcel being Part 1, 12R-29494 as well as Part 3, 12R-29494 merge and be consolidated with Part 4, 12R-29494 and to provide evidence of such registration and merger of the aforementioned to the Secretary of the Committee of Adjustment within 15 days following registration of the transfer;
10. That the above conditions be fulfilled on or before March 29, 2026 prior to this severance being finalized.

## 2. **Application for Consent B-03-24 Jamie Allen Balkwill and Corey Balkwill 4192 11th Concession Road**

### a. Sketch

Interested parties present: Jamie Balkwill, Applicant

Please note that subsequent to the mailing of the notice of application for B-03-24, a minor revision to the lot depth and frontage was requested. Please refer to updated sketch below for the current severance proposal. The proposal has been revised by extending the depth of the proposed severed lot by 5.6 metres (18.4 feet) to avoid the creation of a narrow strip of land to the rear of the lot. The frontage of the proposed lot has been marginally reduced from 45.7 metres (150 feet) to 43 metres (141 feet) in order to maintain a lot area of 0.5 hectares. It is my opinion that the intent of the proposal remains the same and it has not changed to the extent that further notification is necessary.

Accordingly, the purpose of the revised application is to sever a vacant parcel of land having a frontage of 43.0 metres (141 feet), a depth of 115.3 metres (378 feet), and a lot area of 0.5 hectares (1.24 acres) (shaded in green on the sketch below).

As a condition of consent, the retained parcel, containing a single-family dwelling and one outbuilding (shaded in red in sketch) will merge with Part

3, 12R3652 (shaded in yellow in sketch), resulting in a total lot area of 1.5 hectares (3.7 acres). To achieve this consolidation, a cancellation of consent will have to be granted by the Committee and should be made a condition of a favourable decision on the proposed severance application. No additional buildable lots will be created as a result of the proposed severance.

#### Administration/Agency Comments

#### **Public Works and Engineering**

- That the Applicant enter into, and provide the Town of Tecumseh, a written agreement for the reapportionment of the drainage assessment for the subject lands, in accordance with Section 65(2) of the Ontario Drainage Act, RSO. 1990, as amended and that the associated costs of same be borne solely by the Applicant.
- That the Applicant be required to modify any sub-surface drainage tiles that are located on the parcel to be severed to disconnect them from sub-surface drainage tiles on the parcel to be retained to the satisfaction of the Town of Tecumseh Chief Building Official, prior to the severances being finalized.
- It appears that access to the severed parcel is not currently provided over the 11<sup>th</sup> Concession Drain. As such, a new access will be required to accommodate this application and an engineering report in accordance with Ontario Drainage Act, RSO. 1990, will be required; all associated costs of same would be borne solely by the Applicant.
- The Applicant should be made aware that municipal sanitary sewers are not available at the location of this severance; a private septic system will be required to the satisfaction of the Town of Tecumseh Chief Building Official.
- That the Applicant be required to service each individual parcel with a separate water supply to the satisfaction of the Town of Tecumseh Water Services Division prior to the severance being finalized. Separate water service connections will be required for the retained and severed parcels (Note: Permits from the Town of Tecumseh Water Services Division are required, and a Town Water Operator is to be on site during the installation of the water service.)
- The cost of all servicing and permitting requirements will be at the expense of the applicant.

#### **Building Department**

- The property owner shall provide to the Building Department a septic analysis from a BCIN septic qualified contractor to confirm that the septic system is in good working order, as well as to identify the location of the septic system's dispersal bed and tank. The applicant will need to obtain an Ontario land survey that clearly identifies the

location of the system so that it can be confirmed that all applicable setbacks are maintained. Note: If the property owner cannot confirm that the septic system meets Ontario Building Code requirements, or if the system is proven to be failing or non-existent, the Building Department shall issue orders.

- The landowner is responsible to ensure that all building services are contained within existing property boundaries and shall not extend beyond newly established lot lines.
- It is the responsibility of the landowner to ensure that surface water does not adversely affect neighbouring properties.

### **County of Essex**

- The minimum setback for any proposed structures on this property must be 85 feet from the centre of the original ROW of County Road 43. Permits are necessary for any changes to existing structures, or the construction of new structures.
- We are requesting a copy of the Decision on the aforementioned applications. Should these applications be approved we are requesting a copy of the revised survey plan of the subject lands in order to update our mapping records.

### **Essex Region Conservation Authority**

- The above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the *Conservation Authorities Act* (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the 11th Concession Drain.
- ERCA has no objection to the application.

### **Discussion**

Jamie Balkwill, Applicant is present to discuss the Application. Lori Chadwick requests an explanation from Administration with respect to the which lot is being cancelled and what lot is being proposed to be severed and what the final lotting pattern will be. Chad Jeffery indicates that this is a complex application whereby the red and green areas are currently one lot and was created by consent which can be sold over and over again however Part 3 in yellow does not have Consent. What keeps it separate is that it is under different ownership from the lot that surrounds it (red). The Applicant is proposing to merge with Part 3 with the consented lot (red) and relocate it to the north of the parcel to create a better configuration and lotting pattern that no longer wraps around Part 3. To achieve this, a condition of Consent is that the Applicant obtain a Certificate of Cancellation for Part 2 (red) permitting those two parcels to merge (Part 2 and Part 3). Then the Secretary-Treasurer has authority to grant Consent for the newly created lot (green) subject to a minor variance being sought to provide relief for the oversized residential dwelling lot on agricultural lands.



The end result is that there will be two lots with a better configuration than what currently exists. Lori Chadwick inquires if the minor variance is a recommendation or a condition and will they be heard together this evening. Chad Jeffery advises that the minor variance is a condition of the approval of this Consent. The Applicant did not apply for the minor variance simultaneously in order to ensure that the Consent was approved. Lori Chadwick also inquires about the Cancellation of Consent and asked if it is being decided tonight or is the Cancellation of Consent to be added as a condition of the Consent being approved tonight. Chad Jeffery indicates that it is also a condition as there is also an application process involved. Lori Chadwick inquires from the Applicant whether or not the farm building located behind 4192 11th Concession, which contains a dwelling and one out building, will have access to the road. Jamie Balkwill indicates that he does not own the farm building located on the farm parcel behind his property. Jamie Balkwill indicates the purpose of the Application is to improve the lot configurations noting that the proposal will not affect the farm field or the barns and outbuildings. Lori Chadwick indicates that it would appear that the driveway to the farm building goes right through the property at 4192 11th Concession Road. Jamie Balkwill indicates that there is a bridge access to the farm just south of his property at 4192 11th Concession Road. Tom Fuerth inquires that if Part 3 did not receive Consent why is there a condition for a Cancellation Certificate required. Chad Jeffery indicates that Part 2 highlighted in red is the parcel with Consent for which a Cancellation will be obtained noting once again that the application is complicated. Part 3 is a separate parcel and is a legally conveyable parcel as it is in different ownership. Chad Jeffery informs the Committee that he consulted with the Applicant's solicitor as well as the Town solicitor to discuss the process in moving forward with this proposal as well as to determine whether or not Part 3 was a conveyable lot. Tom Fuerth inquires how does the Committee ensure that there are not three lots as a result of the Committee's approval. Chad Jeffery indicates that once the Cancellation of Certificate is registered of the red area, it will merge with Part 3 as a result of both parcels being under the same ownership. Once this has taken effect, the Secretary-Treasurer will then issue the Certificate of Secretary-Treasurer to create the new lot (highlighted in green). Chad Jeffery confirms for the Committee that Part 2 was severed from the farm thereby creating a lot around Part 3 which was in separate ownership. Tom Fuerth indicates that the Committee needs to ensure that the Part 2 and Part 3 merge prior to the new consent taking place. Chad Jeffery advises that is why the Certificate of Cancellation is a condition on the granting of the Consent as outlined in the report. Upon an inquiry from the Committee, Chad Jeffery confirms that the farm parcel does have an access south of the subject lands to the farm parcel including the barn.

**Motion: CA-13-24**

Moved By Member Doug Pitre

Seconded By Member Paul Jobin

**That Application for Consent B-03-24, be approved.**

Carried

Conditions

1. That at the time the conveyance is prepared for certification, a reference plan prepared by an Ontario Land Surveyor in digital format (.pdf and .dwg) with the .dwg files being in **NAD 83 format (UTM Zone 17 Metric)**, which has been numbered, dated, signed and registered must be submitted to the Town;
2. That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year paid in full, as well as any and all arrears owing on the total parcel;
3. That the appropriate documents for the conveyance be prepared in duplicate (2) suitable for registration, all copies to have original signatures, with one copy to remain as a record with the Town;
4. That any cost in excess of the \$1,400.00 non-refundable application fee, incurred to process this application such as legal and engineering fees, appraisal reports, etc. shall be the responsibility of the applicant and shall be payable to the Town of Tecumseh where applicable, prior to final consent;
5. That the Owners enter, into and provide the Town of Tecumseh, a written agreement for the reapportionment of the drainage assessment for the subject lands, in accordance with Section 65(2) of the *Ontario Drainage Act*, R.S.O. 1990, as amended, and that the associated costs of same be borne solely by the Applicant. Apportionments for affected Municipal Drains are required and are to be assessed against the lands affected in accordance with any past, current or future drainage by-laws, until otherwise determined under the provisions of the *Drainage Act*;
6. That the parcel to be retained and the parcel to be severed be serviced with separate entrances to the satisfaction of the Town's Engineer;
7. That the parcel to be retained and the parcel to be severed are to be serviced with separate water supplies to the satisfaction of the Town of Tecumseh Water Department prior to this severance being finalized;
8. That the parcel to be retained and the parcel to be severed are to be serviced with separate entrances, to the satisfaction of the Town of Tecumseh Public Works, prior to this severance being finalized;
9. The property owner shall provide to the Building Department a septic analysis from a BCIN septic qualified contractor to confirm that the septic system is in good working order, as well as to identify the

location of the septic system's dispersal bed and tank. The applicant will need to obtain an Ontario land survey that clearly identifies the location of the system so that it can be confirmed that all applicable setbacks are maintained. Note: If the property owner cannot confirm that the septic system meets Ontario Building Code requirements, or if the system is proven to be failing or non-existent, the Building Department shall issue orders;

10. That Part 2, 12R-3652 be granted a Certificate of Cancellation and that Part 3, 12R-3652 be merged with Part 2, 12R-3653;
11. That a minor variance be applied for and granted for the retained oversized non-farm related residential lot;
12. That the above conditions be fulfilled on or before March 29, 2026 prior to this severance being finalized.

### **3. Application for Minor Variance A-07-24 Robert Jones 12654 Riverside Drive**

#### **a. Sketch**

Interested parties present: Brian Chillman, Solicitor for the Applicant

The purpose of the Application is to request relief from the following subsections of 5.25.4 of Zoning By-law 1746:

1. Subsection 5.25.4 ii) which establishes that any accessory building or structure on the north side of Riverside Drive is to be no closer than 12.2 metres (40 feet) from the water's edge of Lake St. Clair; and
2. Subsection 5.25.4 iii) which establishes that only one accessory building or structure is permitted in the rear yard with a maximum ground floor area of 9.3 sq m (100.1 sq ft).

The Applicant is requesting relief to facilitate the construction of a 31.7 square metre (342 square foot) deck (with associated steps) on the north side of the dwelling that will be 8.2 metres (27 feet) from the water's edge of Lake St. Clair (when the associated steps are included). Please refer to the attached sketch below. The proposed deck will be open to the air, unenclosed and have glass railings. The floor height of the deck will be 1.09 metres (3.5 feet) and it will have 0.9 metre-high (3-foot) glass railings.

Please note that subsequent to the mailing of the notice of application for A-07-24, it was realized that a 14.3-metre (47-foot) by 2.4-metre (8-foot) deck, with an area of 34.9 square metres (376 square feet) and a height of 0.58 metres (23 inches) is also proposed to be constructed on top of an existing concrete pad along the break wall at the rear lot line of the subject property. Accordingly, relief from the provisions above, as well as relief from subsection 5.25.4 i), which establishes that an accessory structure on the north side of Riverside Drive shall not be located within 2.5 metres (8.2 feet) of a side lot line, will be required to permit the proposed deck as it is proposed to be located along the rear and side lot lines. For clarity, please

see the sketch from the ERCA permit application attached to the end of this report. Also, please note that before dealing with the variances for this deck, the Committee will need to determine whether further notification is necessary.

#### Administration/Agency Comments

##### **Public Works and Engineering**

- No concerns with application.

##### **Building Department**

- Any construction shall be subject to Ontario Building Code requirements and must comply with zoning regulations.

##### **Fire Department**

- No comments received.

##### **Essex Region Conservation Authority**

- The above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the *Conservation Authorities Act* (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the Lake St. Clair.
- We note that ERCA Permit 622 - 23, dated November 9, 2023, has been issued for this development. Please contact our office if any changes are made to the site plan from the approved ERCA permit, as a new permit may be required.
- No objection to application. ERCA Permit 622 - 23 has been issued for this development.

##### **Essex Powerlines**

- No concerns.

#### Correspondence from Residents

Correspondence from residents residing at 12710 Riverside Drive objected to the Application indicating insufficient time to review the proposal, insufficient details in the Notice of Hearing, does not consider the Application to be minor in nature, and the sight line not being maintained and at the detriment of other residents.

#### Discussion

Brian Chillman, Solicitor for the Applicant, and Robert and Doreen Jones, Applicants appear before the Committee to discuss the Application. Chad Jeffery advises that the Committee has the authority to decide whether additional notification is necessary as a result of a revision to the proposal requesting relief for a second deck that abuts the water's edge as residents

within the circulated area did not receive notification. The Chair confirms that the change is significant enough that it may warrant further notification. Chad Jeffery indicates that the Town also received notification from one of the neighbours that the initial notification did not have enough details which was prior to becoming aware that a second deck also required relief. Lori Chadwick seeks clarification from Administration as to what was originally sought and what additional relief is being requested as a result, of the second deck proposed to be constructed along the waterfront. Chad Jeffery advises that the Applicant is seeking relief to permit a deck that is 342 square feet noting that on the north side of Riverside Drive only one accessory structure in the rear yard is permitted subject to it not be greater than 100 square feet and a distance greater than 12.2 metres from the water's edge. The additional relief is for a second deck to be constructed over the concrete pad along the water's edge 23 inches in height, which also qualifies as an accessory structure, and relief for that structure includes both subsections previously noted as well as relief from the side lot lines. Tom Fuerth confirms that the Applicant is requesting relief for proposed decks and not existing decks. Chad Jeffery provides a drawing for the Committee's consideration showing a rendering of the proposed decks. Chad Jeffery advises that this drawing was part of the ERCA permits which was not received by the Planning Department at the time of application. Tom Fuerth inquires what the distance is between the two decks. Brian Chillman indicates that the bottom step of the deck directly behind the dwelling is required to 12.2 metres (40 feet) from the water's edge and the proposed northerly wall of the deck is 31 feet noting that the deck at the water's edge extends 8 feet out from the break wall. Brian Chillman further indicates there is already a concrete pad along the water's edge and it is merely a floating deck on top of the concrete. Tom Fuerth confirms there is 23 feet between the decks minus the stairs.

Lori Chadwick confirms that the deck at the break wall is defined as an accessory structure by Administration with the understanding there is an existing concrete pad, therefore needs to be reviewed under the regulations for an accessory structure and as the notification did not include the deck along the break wall she has concerns with proceeding with relief for the deck at the break wall. Lori Chadwick indicates that the modification is not merely an incorrect dimension or minor amendment but rather a larger proposal that was not outlined in the notice. Lori Chadwick believes it would be prudent to recirculate notice to have full disclosure to the residents.

Brian Chillman address the Committee advising that although it is important to provide full disclosure to the neighbouring property owners, his clients were issued a building permit for the construction of both decks on February 1, 2024 and as a result the work has been started including the purchasing of supplies and the removal of the existing concrete sidewalks and deck. These works were done on the reliance of a building permit that should not have been issued but it was and his clients relied on that. Brian Chillman further indicates that although the Notice does not indicate the second deck, the building permit did as well as the ERCA permit noting that ERCA's comments with respect to this application indicates that they have

no concerns and a permit has already been issued for this development. Brian Chillman requests that at the very least the Committee should hear the minor variance for the deck included in the notice as it was circulated and vetted through the applicable departments and authorities including the support from the Planning Department in that it meets the four tests of a minor variance in addition to the fact the development was then halted. The Applicants are agreeable to deck along the waterfront being deferred and the Committee hear the application as outlined in the Notice which is for the deck off the back of the house.

Doug Pitre inquires if the cement pad along the waterfront is new or is it existing and what is the height of the proposed deck on the house in relations to the neighbouring properties. Robert Jones advises the cement pad is existing and the deck to the east is a similar height and the property to the west has a patio. Tom Fuerth indicates that he would rather determine whether the matter is going to be heard this evening prior to questions regarding the proposal being asked.

Chad Jeffery advises that the material submitted with the minor variance application did not properly illustrate the deck at the water's edge which is why the Notice only included the deck at the back of the dwelling. Thereafter, the ERCA permit was received illustrating the deck along the water's edge being 23 inches in height. At this point, it is determined the deck along the water's edge was a structure requiring relief. Following some discussion, Administration indicates that the only way to have this matter heard for the deck abutting the house, would be to bring forward a separate application for the deck along the water's edge which would require an additional fee. Upon an inquiry from Lori Chadwick, Brian Chillman advises that his clients are willing to proceed with the minor variance as outlined in the Notice only and to make a new separate application for the deck along the water's edge.

Upon an inquiry from the Chair, Chad Jeffery advises that a variance for sight line is not required for an accessory structure on the north side of Riverside Drive.

#### **Motion: CA-14-24**

Moved by Member Paul Jobin

Seconded by Member Chris Lanman

That Application A-07-24, be permitted to proceed with the hearing as circulated in the Notice of Hearing without the amendment outlined in the Planning Report.

Carried

Brian Chillman circulates photo images of the proposed deck that was approved by the Building Department and approved by ERCA. Construction had begun removing side walks, existing deck, etc. but was halted by the Town and works have not continued since that time. Brian Chillman advises

that the Applicant's are seeking two variances. The first variance is for relief to permit a deck to be less than 12.2 metres from the water's edge noting that the wall closest to the water is 9.4 metres (31 feet) and the distance from the bottom of the stairs is 8.2 metres (27 feet). The second variance is to permit a deck having a square footage of 342 square feet rather than 100.1 square feet as required in the by-law. Brian Chillman states that the Application is minor in nature as none of the Departments have any concerns with the structure, an ERCA and building permit were issued and the Planning Report outlines the Planner's support for the application. Brian Chillman refers to the comments in the Planning Report noting that the application meets the intent of the OP which protects existing views capes as it is open to the air, unenclosed and the railing are glass. Brian Chillman indicates that the posts are also being removed to further accommodate concerns raised. Brian Chillman maintains the intent of the Zoning By-law is also maintained and concurs with the Town's Planner in regard to the fact that the structure could be much higher as structures (ie sheds) are permitted. Brian Chillman further informs the Committee that he believes the variance to be desirable, once again reiterating that the structure is 31 feet from the water's edge, open to the air, unenclosed and his client's are agreeable to a condition that glass railings be constructed as detailed in the photos provided. Brian Chillman states that he also believes the application to minor in nature, even though relief for a 342 square foot deck is being requested, the by-laws would permit a 100 square foot shed, fully enclosed and roofed on the north side of Riverside Drive. Brian Chillman maintains that his client's are seeking relief for an open aired deck that is classified as a structure and does impact any sight line or view of the water. Brian Chillman refers to correspondence received from neighbouring property owners who indicated that the Notice did not provide sufficient notification or detail, advising that those individuals live two doors down from this property. Brian Chillman provides photo renderings for the Committee's consideration noting that the deck would not impact those homeowners as there are trees and shrubs obstructing their view. Brian Chillman requests the Committee's consideration in a favourable decision as there are many decks along Riverside Drive with glass railings and the deck is certainly under the height requirement and his clients have taken measures to minimize any effect on neighbouring properties.

Daniel Hofgartner and Karen Curry attend before the Committee to express concern with the proposal. Daniel Hofgartner indicates that they have no concerns with the deck along the water's edge but only concerns with respect to the deck abutting the dwelling. Daniel Hofgartner indicates that he does not believe the application meets the four tests noting that relief from 40 feet to 27 feet from the water's edge and 342 square feet from 100 square feet is not minor. Daniel Hofgartner indicates that the application goes against the essence of maintaining sight lines on the north side of Riverside Drive, siting subsection 6.1.11 minimum rear yard depth and subsection 4.14 and 4.15 of the fencing by-law. Daniel Hofgartner feels that the deck being 43 inches in height, which extends 12 feet from the dwelling, blocks their view to the east which they have enjoyed for many years in

addition to the fact that the height is only 5 inches less than what the fence by-law on Riverside Drive indicates. The deck exceeds the sight line regulation in its entirety (all 12 feet) and a second accessory structure will be applied for at a later date. Glass railing to mitigate from sight lines is not sufficient as patio furniture, umbrellas and outdoor kitchen/bbq will be added to the top of the deck and individuals utilizing the deck will tower over their property. Daniel Hofgartner notes that the minor variance for the extension of the dwelling was previously granted on the subject property and believes a second variance should not be granted. The previous owner had a landing and stairs to a ground level patio which has now been removed. As a real estate agent, Daniel Hofgartner indicates that as a result, of the height and size of the deck, it will negatively affect the resale value of his home in addition to the loss of view and privacy. He requests the Applicant to find an alternative solution.

Doug Pitre inquires if a deck on the ground differs from what is being proposed. Chad Jeffery indicates the zoning by-law does not define a deck but generally a patio is defined as being at grade therefore the proposal qualifies as a deck. Upon an inquiry from Doug Pitre, Chad Jeffery also indicates that a patio on grade is not a structure but a composite deck on grade is not clearly defined in the by-law. Tom Marentette inquires what height/dimension would determine the difference between a patio and a deck. Chad Jeffery indicates that this is a weakness in the by-law and will be addressed in the new zoning by-law. The current by-law does not define deck or a patio, but it does exempt patios from being a structure. The dictionary definition of patio is at grade therefore anything above grade becomes a structure indicating that 43 inches is definitely a structure. Tony Muscedere inquires if there is a set back required from the main building if the deck is considered an accessory structure. Chad Jeffery indicates that a deck is exempt from that provision. Paul Jobin refers to the photo images provided by the Applicant and inquires from Administration if there are neighbouring properties with decks similar in nature/height. Chad Jeffery indicates that they do exist, and the Committee has granted relief for decks with no railings and/or glass railings and no curtains in the past however each application is to be reviewed based on its own merits and determine whether this application, in its context meets the four tests. Doug Pitre inquires about the height of the previous decks on the previous applications and is advised by Administration that a survey of deck heights has not been conducted therefore Administration cannot advise with any certainty. Tom Fuerth indicates that he does not recall the Committee considering the height of a deck in previous applications.

Brian Chillman informs the Committee that there is no variance requesting relief for height as they are not exceeding any type of height limit. Secondly, relief is not being sought for sight line. Brian Chillman indicates that his client's have made every effort to mitigate any impact for the accessory structure. Brian Chillman responds to Daniel Hofgartner comments in that the relief is not minor based on the size of the deck however, being minor is not merely a mathematical equation, it is more of impact and his clients have done everything to mitigate the impact. Brian Chillman indicates that



the only other resident providing comment, is two doors down, for which the deck does not impact at all particularly on sight line therefore concluding that the proposal is minor in nature and meets the four tests.

Daniel Hofgartner indicates that he emailed the Secretary-Treasurer before the meeting this evening with two photos. One being of the existing view and one of a rendering of the proposed view. The photos are shared with the Committee for their consideration.

Upon an inquiry from Doug Pitre, the Chair advises that the deck should be viewed with the intent that patio furniture, bbq, etc. will be utilized on the deck. Lori Chadwick inquires what is the distance from the dwelling that the deck can extend to be in compliance with the zoning by-law. Chad Jeffery informs the Committee that if the dwelling is greater than 12.2 metres back from the water's edge, then the accessory structure is required to be 12.2 metres back from the water's edge noting that the dwelling is 1.8 metres further back than the 12.2 metres, being 14 metres from the water's edge. However, if the dwelling was 6 feet further, the accessory structure could be built 14 feet into the rear yard. The by-law is recognizing that there a number of dwelling close to the water's edge and provides regulations for such situations whereby accessory structures could be construction in the backyard with a 100 square feet or less. This provision more specifically applies to accessory structures such as sheds can they can be 8.2 in height.

Lori Chadwick acknowledges that relief is not being sought for sight line but by default the maximum mass the size of accessory structures in the rear yard is to regulate mass sizing to ensure that any accessory structure in the rear yard does not unduly obstruct the views. Paul Jobin references the photos provided by the Applicant and notes the neighbour's deck to the east appears to be 2-3 feet in height from grade and request if that can be confirmed by Administration. Tom Marentette indicates he can see valid point on both sides with respect to the Application and notes that upon his visit one of the neighbours has a similar deck in both size and height but the deck to the east is quite a bit narrow in depth in its project towards the lake. Tom Marentette inquires if there is any willingness for the Applicant's to redefine the scope of the proposal.

Daniel Hofgartner indicates that they are opposed to the Applicant constructing a deck, but it is rather the height of the deck that they are opposing and loss of view to the east. The residence at 12702 Riverside Drive has a landing to come out of the house and then stairs to a lower level patio area which does not obstruct any views. They would support a deck that is much lower, being approximately two steps above ground level with patio furniture, etc. that would not obstruct their view.

Brian Chillman speaks to the reduction of the size of the deck and anything above grade level would still require a minor variance noting that in their revised drawings they have already lowered the height by 7-8 inches (1 step) therefore the 43 inches is lower by one step, which is approximately 35 inches in addition to modifying the railing to glass and removing the

posts on the railing. Brian Chillman indicates that the deck would be one step down coming out of the dwelling noting that his client's are elderly and multiple steps would be difficult. Brian Chillman provides a new drawing with the revised step down from the dwelling and modified glass railing which would also reduce the distance of the stairs from the water's edge by one step. Doug Pitre inquires if the Applicant's have three steps coming out of the dwelling to reduce the overall height of the deck which would lower the deck by approximately 24 inches. Lori Chadwick provides clarification for the Committee in that a variance for height is not being sought. The Committee is looking at gross floor area of the deck and setback from the water's edge. Understanding that scale does play roll and obstructing views or not obstructing views the Committee needs to look at the relief being sought in the application. Lori Chadwick does not believe that bartering to change the proposal to alter someone's building permit in this unfortunate situation is not the role of the Committee. Tom Fuerth indicates that when neighbouring property owners have concerns with a proposal, believes if the parties can come to a mutually satisfying solution, then it's a win for everyone. Brian Chillman advises they have removed one step from the deck height and have removed the post on the glass railings. Tony Muscedere indicates that perhaps the proposal be deferred to the next meeting with the revised deck height and the removal of the post on the glass railing together with the deck along the water's edge without having to do a new application. Tom Fuerth reiterates that it is Applicant's desire that a decision be made tonight with respect to the variances sought for the deck that abuts the dwelling. Tom Marentette inquiries if the parties can come to a mutual solution. Brian Chillman explains to the Committee, that Mr. Hofgartner has requested that the structure be lowered and as they have lowered the deck and made the railings all glass, believes that his client's are accommodating the concerns raised by the neighbouring property owners. Brian Chillman also points out that Mr. Hofgartner is not objecting to the size of the accessory structure.

Lori Chadwick is supportive of the Application as the intent of the zoning by-law for separation and building mass has been met, subject to the height being modified/lowered by one step, that the glass railings be clear and not greater than 3 feet in height, the deck remain open to the air and unenclosed and the height of the deck be no greater than the height depicted in the revised drawings provided this evening.

**Motion: CA-15-24**

Moved By Member Lori Chadwick

Seconded By Member Paul Jobin

**That** Application A-07-24, **be approved** with the following amendment:

That the deck height be reduced by one step as depicted in the revised drawings, **subject** to the following:

1. That the glass railings be no greater than 3 feet in height and be of clear glass and not tinted glass;
2. That the deck remain open to the air and unenclosed; and
3. That the deck height be no greater than the height depicted in the revised drawings.

Carried

**F. Deferrals****G. Planning Report****1. March 25, 2024****H. Unfinished Business****I. New Business**

The deadline to register for OACA is March 31, 2024. Registration for educational training offered by OACA is available online.

The next Committee of Adjustment Meeting originally scheduled for April 22, 2024 has ben changed to April 29, 2024.

**J. Adjournment****Motion: CA-16-24**

Moved By Member Doug Pitre

Seconded By Chris Lanman

**That** there being no further business, the Monday, March 25, 2024 regular meeting of the Committee of Adjustment now **adjourn** at 6:55 pm.

Carried

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Tom Fuerth, Chairperson

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Donna Ferris, Secretary-Treasurer