

Committee of Adjustment

Report to:	Members of the Committee of Adjustment
From:	Vanessa Reusser, MCIP, RPP Manager of Development Review Planning & Development Services <u>vreusser@cobourg.ca</u>
Report Number:	A-06-23
Meeting Date:	February 20, 2024
Subject:	Application for Minor Variance 111 Hibernia Street Application No. A-06-23

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1. Recommendation:

THAT Minor Variance Application A-06-23 for 111 Hibernia Street to increase the maximum permitted number of dwelling units from 172 units for the elderly and disabled and 32 hostel dwelling units to a maximum of 400 dwelling units, regardless of type; to increase the permitted maximum height from four (4) storeys to five (5) storeys; to decrease the landscaped open space from the existing 65% to 42%; and, to increase the maximum net density of 100 units per net hectare to 150 units per net hectare be approved, subject to the following conditions to be satisfied during the required Site Plan Control application:

- a) The completion of a Shadow Impact Study to determine shadow impacts to surrounding lands including any necessary adjustments to site and building design to the satisfaction of the Planning Department.
- b) The completion of a comprehensive downstream sanitary capacity study which will include all known future development to the satisfaction of the Municipal Engineering Department. The Owner shall be 100% responsible

for any identified works to facilitate this development and such works shall be included in the future development agreement.

- c) The submission of a survey with geodetic elevations prepared by an Ontario Land Surveyor (OLS) or Professional Engineer (P. Eng.) demonstrating all new habitable development is located outside the floodplain to the satisfaction of the GRCA.
- d) The submission of a Functional Servicing Report prepared by a Professional Engineering (P. Eng.) in accordance with GRCA's Technical and Engineering Guidelines for Stormwater Management Submissions addressing stormwater management to the satisfaction of the GRCA and the Municipal Engineering Department.
- e) The submission of any other technical reports and drawings identified during the Town of Cobourg's preconsultation process.
- f) Entering into a development agreement including the submission of all securities, deposits and payments to the satisfaction of the Manager of Development Review.
- g) All conditions are subject to the approval of the Town of Cobourg, but no cost to the Municipality.

2. Executive Summary:

The purpose of this report is to provide a recommendation for a minor variance application for 111 Hibernia Street, known as Legion Village (the Subject Property). The application seeks relief from the following provisions:

- Section 11.2.2.3(i) to increase the maximum permitted number of dwelling units from 172 units for the elderly and disabled and 32 hostel dwelling units to a maximum of 400 dwelling units, regardless of type;
- Section 11.2.2.3(iii) to increase the permitted maximum height from four (4) storeys to five (5) storeys;
- Section 11.2.2.3(iii) to decrease the landscaped open space from the existing 65% to 42%; and,
- Section 11.1.7(i) to increase the maximum net density of 100 units per net hectare to 150 units per net hectare.

Planning Staff recommend approval of the requested variances, subject to the proposed conditions.

Although the Committee has the right to render a decision on each individual variance, Staff have recommended approval of all variances since, based on the restrictive nature of the site-specific zoning, the property would not be able to develop further without all the requested variances.

3. Background

The Planning Department has received a minor variance application from Michael Eden on behalf of Branch 133 Legion Village Inc. which proposes two (2) additions to Legion Village. Refer to **Attachment 1 – Context Map** and **Attachment 2 – Conceptual Site Plan and Architectural Drawings**.

The conceptual plans include demolishing the existing one-storey building fronting Durham Street and constructing 2 five-storey additions to the existing four-storey building. The existing Legion Village has 167 apartment units and 32 assisted living units (formerly called "hostel units") for a total of 199 units on the Subject Property. As per the site statistics chart on the Site Plan in **Attachment 2**, the proposed development consists of 367 units on the Subject Property. However, since the proposal is conceptual at this time and is subject to a future Pre-Consultation Meeting with the Development Review Team and a formal Site Plan Control application, the application requests a maximum of 400 units to allow for flexibility when designing the site and unit mix.

The Subject Property is designated "High Density Residential Area" in the Town of Cobourg Official Plan and zoned "High Density Residential 5 Exception 2 (R5-2)" in Comprehensive Zoning By-law No. 85-2003.

Adjacent land uses consist of:

- North: 5-storey mixed use Legion Condominium building known as Harbour Breeze, and residential uses
- East: residential, open space, and Cobourg Marina
- South: Town-owned open space and environmental constraint lands including the Ecology Garden and Lake Ontario
- West: residential and Town owned open space

The Subject Property has frontage along two public streets, Hibernia Street to the east and Durham Street to the west. There are existing accesses to the site from both streets. The Property is located adjacent to the West Heritage Conversation District. Through the future Pre-Consultation process, Heritage Staff will review the proposal and determine the required reports/studies related to heritage (i.e., Cultural Heritage Impact Assessment). The Subject Property is also partially located within the Ganaraska Region Conservation Authority (GRCA) Regulation Area.

4. Discussion:

There are four (4) tests under the *Planning Act* to be reviewed when considering a minor variance application:

- Does the application maintain the general purpose and intent of the Official Plan?
- Does the application maintain the general purpose and intent of the Zoning By-law?
- Is the application desirable for the appropriate development or use of the land, building, or structure?
- Is the application minor in nature?

Maintain the General Purpose and Intent of the Official Plan

The Subject Property is designated "High Density Residential Area" in the Town of Cobourg Official Plan, 2018. The High Density Residential Area permits medium and high density residential uses, including townhouses, stacked townhouses, low-rise apartments, and high-rise apartments.

As per Section 3.5.3.1, established high density residential areas are areas where potential development and/or redevelopment is limited; however, applications for new development are evaluated based on their ability to maintain the following elements:

- the scale of development with respect to height and massing of buildings;
- nature of the streetscape as defined by such elements as landscaped areas, and the relationship between the public street, front yards and primary entrances to building;
- relationship between the rear wall of buildings and rear yard open spaces;
- design and siting of buildings in relation to abutting properties, including lands in the Residential Area designation, to ensure that there will be no significant negative impacts with respect to privacy and shadowing and appropriate buffering can be provided;
- retention of the existing street pattern; and,
- any proposed redevelopment shall take into consideration adjacent uses including low density development, as well as adjacent development across a street.

The adjacent lands to the west are within the Harbour Area Secondary Plan where the lands are designated Marina Area on the southern portion and High Density Residential / Hotel Area on the main portion of the abutting lands. These lands are intended to be high density and have been built accordingly with heights ranging from two and three storeys (condominiums in and around Maria's Quay) to four storeys (Harbourwalk Condominium). Further, the lands to the immediate north contain the five-storey Legion Condominium building (Harbour Breeze Condominium). As such, it does not appear to be uncommon to have higher densities and additional storeys in the immediate surrounding area.

To address comments received regarding views as well as policies for privacy and shadowing impacts, Staff recommend a condition of a Shadow Impact Study. A Shadow Impact Study is a common request for buildings with heights of five storeys in Cobourg as part of a Site Plan Control application. The Study can be submitted as part of the future Site Plan application and can be incorporated into the Urban, Landscape and Sustainable Design Study that will also be required. The Shadow Impact Study will compare the as-of-right zoning height of four storeys to the proposed height of five storeys.

Staff have no concerns with buffering as the conceptual additions are within the required setbacks and could be relocated based on any significant impacts as a result of the Shadow Impact Study. The final proposal will need to comply with zoning provisions including setbacks, parking, etc. The conceptual site plan appears to make logical sense for building additions on the wings of the existing building and takes into consideration the existing two and three storey buildings across the street by locating the additions appropriately set back from the street. The primary entrance to the site and buildings are proposed to remain along Hibernia Street, with two additional entrances to the building proposed as shown on the conceptual Site Plan included as **Attachment 2**.

Hibernia Street is a collector road as identified on Schedule "E" Transportation Plan. Section 6.2.2 Table 3 notes arterial and collector roads are designed to serve development with densities supportive of transit and active transportation modes which are encouraged to locate along these roads. The Subject Property is in proximity to the downtown core, marina, and parks, with sidewalks along most if not all streets leading to these areas which promotes walkability and active transportation.

Through the future Site Plan application, a Landscape Plan will be required. Staff will work with the applicant to enhance the landscaping along the streetscapes along Hibernia Street and Durham Street as well as at the primary entrance. Staff have no concerns with the requested reduction in landscaped open space as the application proposes increased density on site while maintaining an appropriate balance of remaining landscaped open space and amenity space for residents. The Subject Property is also adjacent to the waterfront boardwalk, acting as additional amenity space for residents.

The proposed variances would align with the Design Principles noted in Section 2.7 including encouraging compact development; promoting development on underutilized land; promoting sustainable development through minimizing land consumption; and, providing a variety of housing for aging-in-place in the same neighbourhood.

Section 3.5.3.3 notes the maximum density in the High Density Residential designation is 100 units per net hectare, whereas the proposal is to increase the maximum density to 150 units per net hectare. As Official Plans are updated, municipalities tend to be moving away from regulating maximum densities and letting the built form and zoning provisions, such as height, setbacks, lot coverage, dictate the appropriate density for individual sites. Staff are of the opinion the High Density Residential designation is the most appropriate designation for high density developments to locate. The site is also large enough to accommodate the

increased built form, while complying with the maximum lot coverage, among other zoning provisions.

Section 3.5.3.4 speaks to the minimum height being three storeys and the maximum height being six storeys in this designation. The application requests an increase from four to five storeys, which is within the height limit of the Official Plan.

As per Section 7.2.2, all new development shall be serviced by the municipal water supply and distribution system and the developer shall be responsible for the installation of such works subject to appropriate approvals. Municipal Engineering Staff have requested Condition B in relation to servicing studies.

In consideration of the above, Planning Staff are of the opinion the minor variances maintain the general intent and purpose of the Official Plan, subject to the proposed conditions.

Maintain the Purpose & Intent of the Zoning By-law

The Subject Property is zoned "High Density Residential 5 Exception 2 (R5-2) Zone" in Comprehensive Zoning By-law No. 85-2003. The R5 Zone permits apartment dwellings, including apartments for seniors.

The Subject Property underwent a site-specific Zoning By-law Amendment to create the R5-2 Zone which placed the specific regulations on the property. The combination of the site-specific provisions has tightly restricted the site from developing any further from what exists today. As such, the applicant is requesting variances to these provisions to allow flexibility to support an expansion.

Section 11.2.2.3(iii) states the permitted maximum height in the R5-2 Zone is four storeys, whereas the application seeks to increase the height to five storeys. The intent of the maximum height provision is to ensure adjacent buildings are compatible and do not have significant shadowing impacts to each other. This provision does not mean that all adjacent buildings are required to be the same height, but rather buildings need to complement each other through the placement and shape of buildings and gradual increases in height. The requested Shadow Impact Study will ensure the proposed additions do not have significant shadowing impacts on adjacent properties and the siting of the additions on the property may be relocated as a result. The proposed additional storey appears to be compatible with the surrounding buildings in the area, which range from two to five storeys. The site is currently underdeveloped, and the height increase appears to be appropriate in this area given the other existing four and five storey buildings in the area.

Further, the parent R5 Zone permits a maximum height of six (6) storeys, which the applicant is not proposing to meet or exceed. As per the conceptual site plan submitted, not all the areas of the building are proposed to be five storeys in height which will result in a variety of heights on site. There is also an existing one-storey

building on site which staff understand is used as a dining area/kitchen facility. Although the site plan is conceptual at this time, adding an additional storey on an existing building requires structural engineering review to ensure it was built to accommodate the extra weight, among other things, which can be costly.

Section 11.2.2.3(iii) notes the landscaped open space in the R5-2 Zone cannot be reduced to less than existing. The existing landscaped open space is 65% whereas the application seeks to reduce it to 42%. The intent of the minimum landscaped open space requirement on lots is to ensure adequate green space on site which can contribute toward amenity areas as well as ensure the site is not overdeveloped. In this case, Section 11.2.2.3 of the Zoning By-law restricts the landscaped open space to no less than what is currently existing on site. The submitted site plan shows the existing landscaped open space is 65% whereas the proposed variance requests 42%. The parent R5 Zone requires a minimum of 35% landscaped open space. Since the proposal is more than the parent R5 Zone minimum requirement, Staff have no concerns with the proposed variance to decrease the landscaped open space to 42%. A balance must be struck between development and green space, among other items. With the proposed 42%, there will still be an abundance of landscaped open space on the property. Through the Site Plan process, a Landscape Plan will be required where landscaping will be enhanced in retained and new landscaping areas.

Section 11.2.2.3(i) notes the maximum permitted number of dwelling units is 172 units for the elderly and disabled and 32 hostel dwelling units whereas the application seeks a maximum of 400 dwelling units, regardless of type. Additionally, Section 11.1.7(i) notes the maximum net density is 100 units per net hectare whereas the application seeks to increase it to 150 units per net hectare. The unit types available are assisted living units, 1-bedroom, or 2-bedroom units. The conceptual site plan illustrates a total of 367 units. The applicant is requesting up to 400 units to allow flexibility to meet demand.

The chart below details the breakdown of existing vs. proposed unit types and percentage of overall units.

	Existing Unit	Breakdown	Proposed U	nit Breakdown
	Number of Units	Percentage	Number of Units	Percentage
Assisted Units	32	~16%	51	~14%
1 Bed Units	163	~82%	299	~81%
2 Bed Units	4	~2%	17	~5%
Total No. of Units	199		367	

Table 1: Existing vs. Proposed Unit Breakdown

As shown in Table 1, one-bedroom units currently make up approximately 80% of the units while two-bedroom units are less than 5%. The applicant is requesting an increase of 400 dwelling units regardless of type to allow the possibility of having 400 one-bedroom units since these units are currently the most desired. Legion Village is a senior's apartment and retirement residence with the intention of providing support services to its residents to accommodate aging-in-place where there may be a need for increased assisted living units as well. The rationale for removing the maximums of each unit is to allow flexibility when the applicant develops the property based on demand. Additionally, a one-bedroom unit does not pose much of a difference than an assisted living unit in terms of land use impacts. Staff are supportive of allowing the flexibility of aging-in-place units within the Legion Village.

The purpose of maximum density provisions is to limit the number of units and in turn, the number of residents living in a certain area (usually measured in acres or hectares). An important consideration when considering increased density is servicing, where Municipal Engineering Staff have requested a condition in this regard. The Town's Zoning By-law has not been updated since 2003 to explore where higher densities may be appropriate in the Town. As such, Planning Staff turn to the Official Plan as a guiding document for where higher densities may be appropriate. Since this site is designated and zoned High Density Residential, Staff are of the opinion it is likely one of the most appropriate locations for increased density. The increase in density will allow more units and residents into the existing Legion Village community where economies of scale for service offerings would be utilized and enhanced. Staff have no concerns with the increased net density as well as increased unit count, subject to the proposed conditions.

It is not uncommon for variances for increased density to be accompanied by requests for reduced parking. However, that is not the case with the proposal as the site can accommodate the increased parking spaces on site. Section 6.1 notes the parking requirements for a senior's apartment or retirement home is 0.5 spaces per dwelling unit or bed. The proposed site plan accommodates 250 parking spaces, which is above the required 200 spaces for the proposed 400 units. Staff will work with the applicant to see if all the proposed parking spaces are required or if there are opportunities for increased landscaping.

Based on a zoning review of the conceptual site plan, the proposal complies with all other regulations of the R5-2 Zone and parent R5 Zone, such as setbacks, lot coverage, and parking. When a formal Site Plan application is submitted, staff will ensure the proposal complies with zoning.

In consideration of the above, Planning Staff are of the opinion the proposed variances are in keeping with the general intent and purpose of the Zoning By-law, subject to the proposed conditions.

Desirable for the Appropriate Development or Use of Land, Building or Structure

The proposal represents an opportunity to develop underutilized lands within the urban serviced area of the Town. The proposed variances are considered desirable for the appropriate development of the land and would assist in appropriately developing a high-density residential piece of land. The site is considered walkable since it is within proximity to the Downtown Core, waterfront and additional green spaces and amenities spaces. Intensification is encouraged throughout the Town where appropriate.

The use is already permitted on the site with an abundance of lot area to develop while complying with other zone provisions. Staff are of the opinion that the character of the area and respecting adjacent development can be reviewed and approved through a careful site plan review exercise. Adjacent developments are medium and high density consisting of buildings up to five stories in height. The requested Shadow Impact Study would help with the placement of the proposed additions on site if they would create significant shadowing impacts on neighbouring units. The proposal appears to be an appropriate intensification project in the high-density residential designation and zone. Through the future Site Plan process, there will be an important emphasis on building locations, parking locations and landscaping to ensure the site is attractive.

In addition, Staff are aware of the provincial need for seniors' housing and retirement homes (among other aging-in-place facilities). The wait time for seniors entering retirement homes and other related facilities has increased over the years due to the aging population and the increased demand. If the variances are approved, Legion Village would substantially increase the number of available units within Cobourg for senior residents.

In consideration of the above, Planning Staff are of the opinion the proposed minor variances are desirable for the appropriate development of the underutilized property, subject to the proposed conditions.

Minor in Nature

While the number and scope of the minor variances may appear major on the surface Staff provide the following analysis as justification that the requested variances, when considered through comprehensive planning lens, are minor in nature:

• The proposed variance could double the unit yield however Staff are of the opinion that this increase is minor in nature as any unit increase must satisfy the technical requirements included in the recommended conditions.

Therefore Staff are satisfied that as the application proceeds through the required Site Plan control process, all technical requirements can be duly considered; the site is of a sufficient size to accommodate the increase, while at the same time satisfying parking and other by-law requirements, as varied. The high unit yield is also a product of the site introducing a number of small 1 bedroom units – ie this built form would generate less units if there were more 2 and 3 bedroom units that we see on most apartment and high density sites;

- According to their conceptual site plan, a portion of the development will maintain a height of four (4) storeys, while other areas may reach five (5) and will be confirmed during the site plan review process. The increase of 1 storey on a portion of the site, provided technical conditions are satisfied, can be considered minor in nature;
- The decrease in landscaped open space from the existing 65% to 42% can be considered minor in nature as there lacks any justification to maintain such a significant landscaped open space rate on the site. The reduced landscaped open space on site is minimal when compared to the surrounding open space and waterfront lands. As previously mentioned, the landscaped open space on the site would still exceed the parent R5 Zone minimum requirement of 35%. Any final reduction will be justified through stormwater management analysis (assessing imperviousness) and ensuring the site has sufficient landscaped areas to provide good landscape design, outdoor areas for resident enjoyment and sustainable development measures which are all site plan review considerations;
- The increase to the maximum net density of 100 units per net hectare to 150 units per net hectare can also be considered minor in nature. While this is a 50% increase in density – density should not be looked at in isolation. Density impacts are not just a factor of unit yield but Planning Staff also consider height, unit mix and site context. In consideration of all aspects of this proposed site development – the increased density can be considered minor in nature.

In their entirety, Staff are of the opinion the proposed variances are minor in nature given that the development will maintain the character of the neighbourhood, does not appear to have significant impacts on neighbouring lands, demand will dictate the built unit mix, and much needed seniors housing and aging-in-place facilities will be provided to the community. Through varying the site-specific zoning provisions, it will allow the property to develop underutilized lands and maximize the site's development capabilities.

There have been no major technical impediments raised that cannot be addressed through comprehensive and detailed site plan review exercise. It is important to reiterate that if the technical conditions cannot be satisfactorily fulfilled that the requested minor variances would not have any status.

Conclusion

- 1. The minor variance application maintains the general intent and purpose of the Town of Cobourg Official Plan.
- 2. The minor variance application maintains the general intent and purpose of the Comprehensive Zoning By-law No. 085-2003.
- 3. The minor variance application is generally desirable for the appropriate development of the land.
- 4. The minor variance application appears to be minor in nature.
- 5. Staff have no concerns with the proposed minor variance application and recommend approval, subject to the proposed conditions.

5. Financial Impact and Budget

There are no anticipated negative financial implications to the Municipality as a result of the minor variance application. The requisite application fee and deposit of \$1,850.00 were paid for the applications.

6. Relationship to Council's Strategic Plan Priorities 2023 to 2027 and beyond:

⊠ Thriving Community

The recommendation in this report aligns with the strategic priorities of the Council-approved 2023-2027 Strategic Plan. Specifically, this minor variance application will assist in creating a Thriving Community since the applicant is proposing 2 five-storey additions that will increase the number of units available within the Legion Village community.

- □ Service Excellence
- Sustainability

Density and height increases are linked with urban sustainability in that they can provide efficiency with which municipal services can be provided as well as preserve the natural environment by utilizing less land.

7. Public Engagement:

Section 45 (5) of the *Planning Act*, R.S.O 1990, c.P. 13, as amended, prescribes statutory notice requirements for minor variance applications. The *Planning Act* requires that at least ten (10) days before the day of the hearing, notice shall be given by:

- i. Personal service or ordinary service mail to every landowner within a 60metre radius of the area to which the application applies; and,
- ii. Notice sign posted on the subject lands.

The statutory notice requirements of the *Planning Act* have been fulfilled for this application.

Prior to the issuance of this report, the Planning Department has received public comments regarding:

1. Concerns with views being impacted for the Harbour Breeze Condominiums at 135 Orr Street.

To address this comment, Staff have recommended a condition be added for a Shadow Impact Study, which would be a requirement through the future Site Plan Control process.

2. Concerns regarding removing a portion of the Ecology Garden.

Although the submitted conceptual site plan (**Attachment 2**) shows a portion of the Ecology Garden being converted into parking, the applicant has advised it is not their intention to remove the Ecology Garden from their lands and the plans provided are conceptual at this time. Staff will work with the applicant through the Site Plan Approval process to find a suitable location for the parking spaces shown in the Ecology Garden area.

3. Clarification on the meaning of "hostel dwelling units".

"Hostel dwelling units" refers to those units without kitchen/cooking facilities. Residents within the hostel dwelling units are able to use the meal services provided on site. The modern term used in relation to retirement/ senior's housing is "Assisted Living Units".

Comments from Departments/Agencies

The Engineering Department has requested the following condition:

"The Owner/Applicant prepares comprehensive downstream sanitary capacity studies which will include all known future development to the satisfaction of the Municipal Engineering Department."

The Parks and Forestry Department expressed concerns with reducing the landscaped open space on the property but will work with the applicant through the future Site Plan process to enhance the remaining landscaped areas on site through the required Landscape Plan.

Lakefront Utility Inc. (LUI) notes electrical servicing is already provided to the Subject Property. Should the property require service upgrade for the proposal, it is the responsibility of the owner to contact LUI.

Ganaraska Region Conservation Authority (GRCA) notes the subject property is regulated by the GRCA. A permit may be required for development (eg: construction, fill placement, site grading etc.) within GRCA's regulated area. The subject property is located adjacent to Lake Ontario and is therefore subject to the Lake Ontario Shoreline flooding and erosion hazard. In this regard, our primary concerns are related to ensuring that all new development is located outside of the hazards associated with the lake, including the 100-year erosion limit, the 100-year flood limit, wave uprush and stability hazards associated with the slope. The development proposed appears to be outside the erosion and dynamic beach hazard lands identified in GRCA's Lake Ontario Shoreline Management Plan. On this basis, GRCA has no objection to the approval of the minor variance application subject to the following conditions:

"A survey with geodetic elevations prepared by an Ontario Land Surveyor (OLS) or Professional Engineer (P. Eng.) will be required for GRCA permitting or future *Planning Act* applications. It appears the subject property may be close to and/or contain the floodplain associated with Lake Ontario. All new habitable development must be located outside the floodplain."

"A Functional Servicing Report prepared by a Professional Engineer (P. Eng.) is prepared consistent with GRCA's Technical and Engineering Guidelines for Stormwater Management Submissions addressing stormwater management. This can be submitted in a future *Planning Act* application."

The following departments and agencies have no concerns with this proposal:

- Northumberland County Planning Department
- Northumberland County Public Works and Inspection Services

8. Attachments:

Attachment 1 – Context Map Attachment 2 – Conceptual Site Plan & Architectural Drawings

Attachment 1 – Context Map







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