

REPORT TO: Committee of Adjustment

DATE OF MEETING: April 18, 2023

SUBMITTED BY: Tina Malone-Wright, Interim Manager, Development Review
519-741-2200 ext. 7765

PREPARED BY: Eric Schneider, 519-741-2200 ext. 7843

WARD(S) INVOLVED: Ward 3

DATE OF REPORT: April 5, 2023

REPORT NO.: DSD-2023-180

SUBJECT: Minor Variance Application A2023-049 – 37 Manitou Drive

RECOMMENDATION:

Zoning By-law 2019-051

That Minor Variance Application A2023-049 for 37 Manitou Drive requesting:

- i) Permission under section 45(2)(a)(ii) of the Planning Act to permit a legal non-conforming lot in the 'EMP-2' zone to be used for a Tradesperson or Contractor's Establishment;
- ii) Relief from Section 10.3, Table 10-2, of Zoning By-law 2019-051 to permit an interior side yard setback of 0.8 metres and 0.9 metres instead of the minimum required 1.5 metres for covered structures;

to facilitate and recognize the use of a legal non-conforming lot for a Tradesperson or Contractor's Establishment and the location of buildings/structures thereon, in accordance with Site Plan Application SP22/022/M/SRM, BE APPROVED.

REPORT HIGHLIGHTS:

- The purpose of this report is to review an application to legalize an existing Tradesperson or Contractor's Establishment at 37 Manitou Drive.
- There are no financial implications.
- Community engagement included a notice sign being placed on the property advising that a Committee of Adjustment application has been received, notice of the application was mailed to all property owners within 30 metres of the subject property and this report was posted to the City's website with the agenda in advance of the Committee of Adjustment meeting.
- This report supports the delivery of core services.

BACKGROUND:

The subject property is located on the west side of Manitou Drive, north of Bleams Road. The subject site does not have frontage onto Manitou Drive and is accessed by a private road.

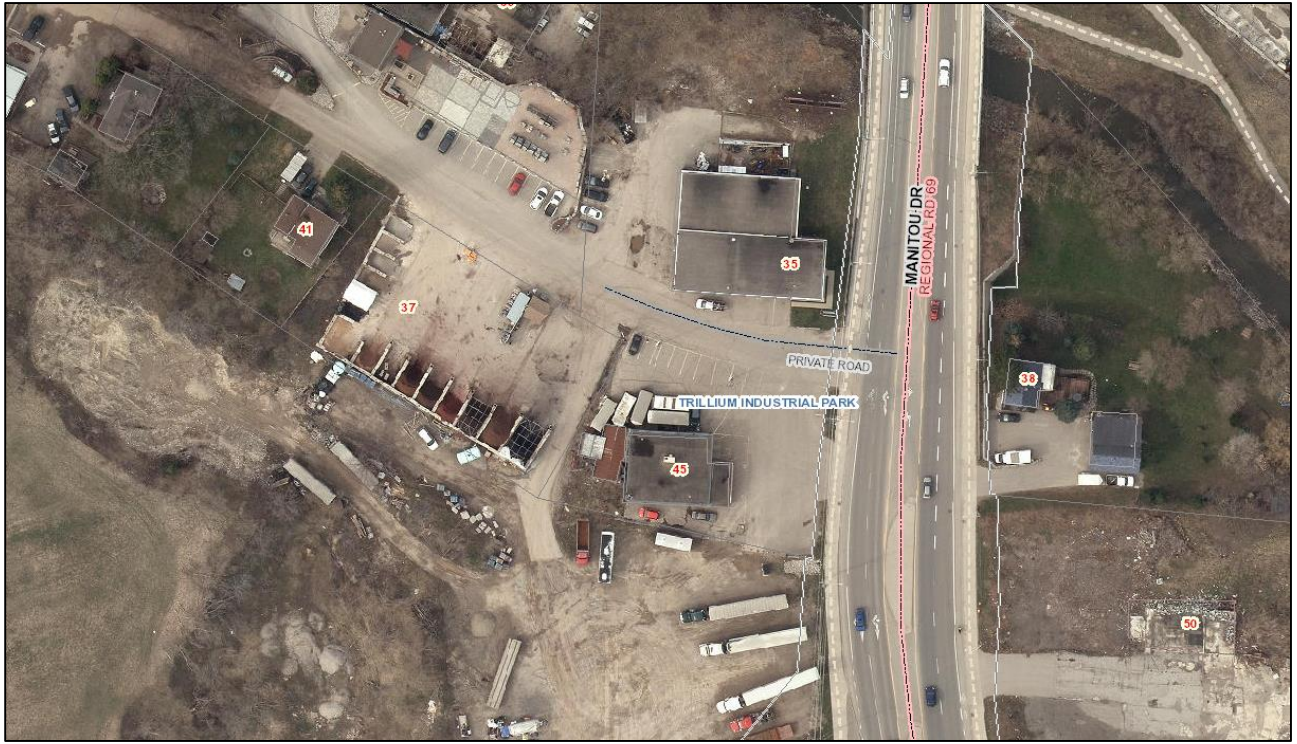


Figure 1: Location of Subject Property



Figure 2: View of Existing Covered Structure (March 17, 2023)

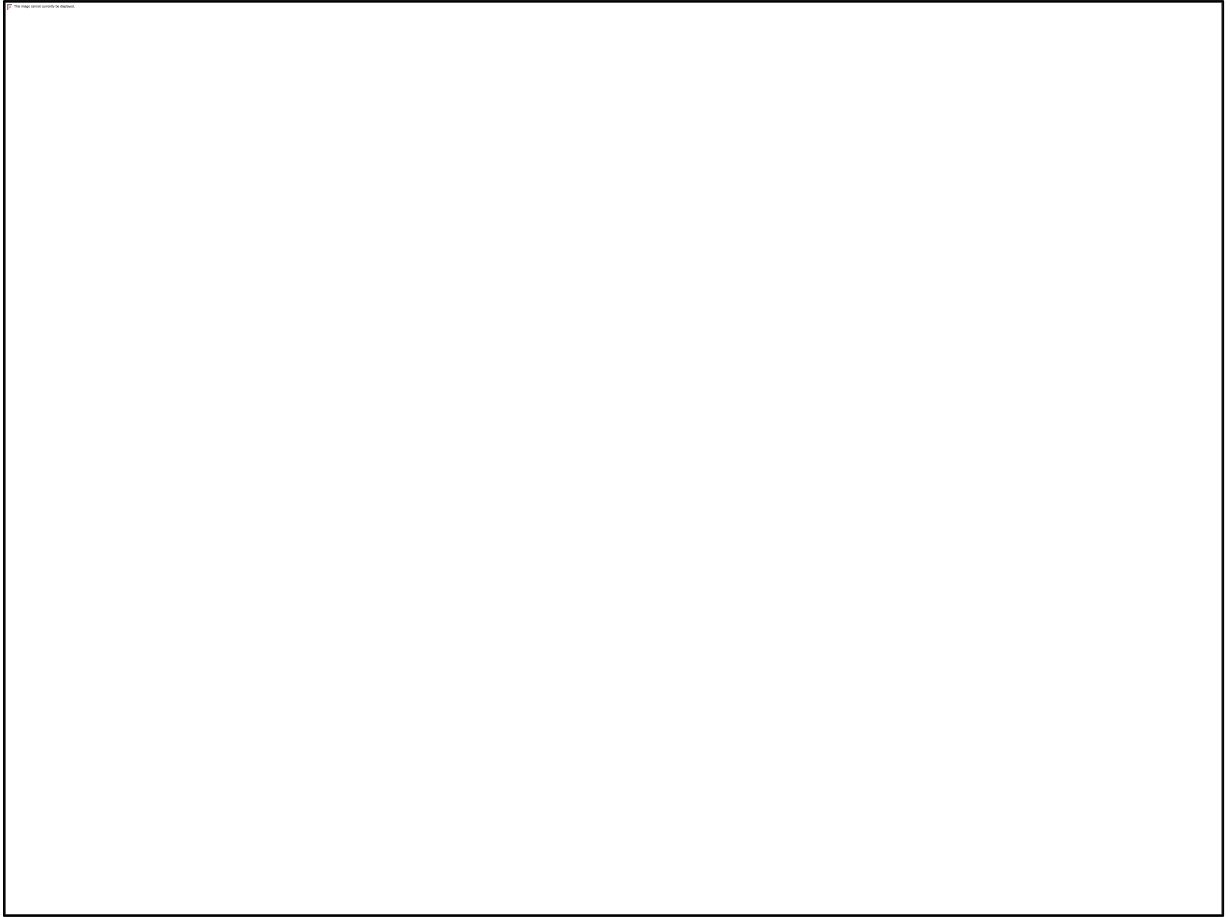


Figure 3: View of Existing Kiosk (March 17, 2023)



Figure 4: View of Laneway towards Manitou Drive (March 17, 2023)

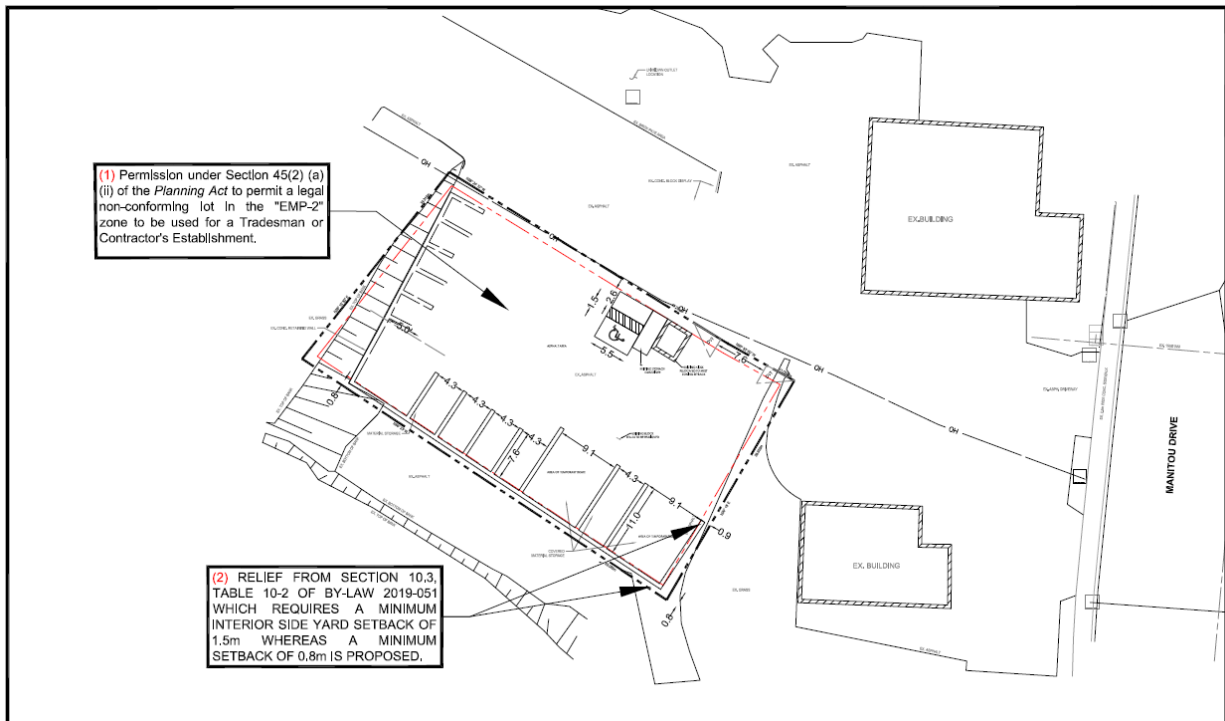


Figure 5: Site Plan Drawing

The subject property is identified as 'Industrial Employment Area' on Map 2 – Urban Structure and is designated 'General Industrial Employment' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'General Industrial Employment Zone (EMP-2)' in Zoning By-law 2019-051.

The purpose of the application is to legalize an existing Tradesperson or Contractor Establishment on the subject lands. The subject lands contained a single detached dwelling that was demolished in 2017. Since then, it has been used as a Tradesperson or Contractor Establishment for a business that distributes soil, road salt, gravels, mulch etc. While the use of Tradesperson or Contractor's Establishment is permitted in the current zoning by-law, the lot itself is considered legal non-conforming because it does not have frontage onto a public road. Access is provided from a private road.

Two canopy structures were erected to store product (see figure 2). They are located 0.8 metres and 0.9 metres from the interior side property lines rather than the required 1.5 metres. The applicant is seeking relief from the minimum side yard setback to request to keep them in situ.

Site Plan Application SP22/022/M/SRM identified the requirements for relief from the Zoning By-law and permission from the Committee of Adjustment. The site plan is currently under review.

REPORT:

Planning Comments:

Legalize the Lot

The applicant is requesting to permit the use of a Tradesperson or Contractor's Establishment on a non-conforming lot under section 45(2)(a)(ii) of the Planning Act. The lot is considered legal non-conforming because it does not have frontage onto a public road. The Committee can consider the

use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law.

Case law sets out the tests to be applied by the Committee of Adjustment in considering applications under Section 45(2)(a)(ii). It should be noted that the test to be applied is not the four-part test for minor variances under Section 45(1) but rather whether the approval of the application:

1. Is in the public interest; and

The application is in the public interest as it will allow a property/lot to be used for a General Industrial purposes. A use permitted by the Official Plan and Zoning By-law.

2. Creates unacceptable or adverse impact upon abutting properties.

The minor variance will not cause unacceptable or adverse impact on abutting properties as they are also designated and zoned 'General Industrial Employment Zone (EMP-2)' and permit similar and compatible uses.

Planning staff is supportive of the request to legalize the use of the lot for a Tradesperson or Contractor's Establishment and is satisfied that access can be provided from the private road.

Side Yard Setbacks:

In considering the four tests for the minor variances as outlined in Section 45(1) of the Planning Act, R.S.O, 1990 Chap. P 13, as amended, Planning staff offers the following comments:

General Intent of the Official Plan

The subject lands are designated 'General Industrial Employment' in the City's Official Plan. The intent of this land use designation is to provide a broad range of industrial uses, and to ensure that development and maintenance of industrial employment areas will occur within a balanced consideration of social, economic, and environmental interests, demands, and constraints. The Official Plan states that the City shall provide a municipal environment, including the necessary infrastructure, and policies that encourages the establishment, retention, and expansion of industrial employment uses. In the opinion of Planning Staff, the subject application will facilitate the retention of an industrial employment use on the subject lands and therefore meets the general intent of the Official Plan.

General Intent of the Zoning By-law

The intent of the 1.5 metre interior side yard setback regulation in the EMP-2 zone is to provide for adequate building separation and to provide for pedestrian access. The regulation is designed for a building occupied by employees (such as a factory or warehouse), in which employees could enter/exit doors leading to the side yard for access or to exit in case of a fire emergency. The buildings on the subject lands that are the subject of this application are a type of canopy structure that are not occupied by employees. Rather, they are used to cover the product (soil, road salt) from the elements. The requested reduction to interior side yard setback is not expected to affect pedestrian access to and from the building as they are open structures and are not occupied by employees. Therefore, Staff is of the opinion that the requested variances for side yard setback from 1.5 metres to 0.8 metres on the south side, and 0.9 metres on the east side meets the general intent of the Zoning By-law.

Is/Are the Effects of the Variance(s) Minor?

The canopy structures are existing and have not been known to cause adverse impacts or effects to adjacent lands. The small reduction in interior side yard setback is not expected to cause any future

adverse impacts to the use of adjacent lands, or functionality of any surrounding uses. Therefore, Staff consider the effects of the variance to be minor.

Is/Are the Variance(s) Desirable For The Appropriate Development or Use of the Land, Building and/or Structure?

The lands are zoned and designated for industrial employment, in which a Tradesperson or Contractor Establishment is permitted. The requested variance is desirable to facilitate the continued use of the lands and is considered appropriate for the use of the lands.

Environmental Planning Comments:

No Natural Heritage concerns or Tree Management concerns.

Heritage Planning Comments:

No Heritage concerns.

Building Division Comments:

The Building Division has no objections to the proposed variance.

Engineering Division Comments:

No Engineering Concerns.

Parks/Operations Division Comments:

No Parks/Operations concerns. Parks requirements will be addressed through Site Plan Application SP22/022/M/SRM

Transportation Planning Comments:

Transportation Services have no concerns with the proposed application.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City's website with the agenda in advance of the Committee of Adjustment meeting. A notice sign was placed on the property advising that a Committee of Adjustment application has been received. The sign advises interested parties to find additional information on the City's website or by emailing the Planning Division. A notice of the application was mailed to all property owners within 30 metres of the subject property.

PREVIOUS REPORTS/AUTHORITIES:

- *Planning Act*
- *Provincial Policy Statement (PPS 2020)*
- *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020*
- *Regional Official Plan*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*