

MEMORANDUM



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Page 1 of 8

To: Karine Pelletier, Clerk-Treasurer
Township of McGarry

Date: July 2, 2024

JLR No.: 28717-000

CC:

From: Marilyn Cameron, Planner, J.L. Richards & Associates Ltd.

Re: Zoning By-law Amendment – 1-24th Street, North Virginiatown, McGarry

PROPERTY DESCRIPTION

The subject property is legally described as Lots 314, 315, and 316, Plan M168TIM; PCLS 7768 SEC CST & PCL 8733 SEC CST in the Township of McGarry in the District of Timiskaming. The property is known municipally as 1-24th Street (formerly 50 Government Road), North Virginiatown, in the Township of McGarry. The subject property has a lot area of +/-1,924 square metres and a lot frontage of +/-38.5 metres of frontage on the closed Government Road.

APPLICATION

An amendment to Zoning By-law 2011-08 has been initiated to rezone the subject property from the "Institutional" (I) Zone to a "General Residential Exception Two Zone" (R1-2) Zone in order to permit:

- residential and home occupation uses of the existing church building;
- a reduced rear yard setback of 1.5 metres and a reduced exterior side yard setback of 3 m;
- encroachment of 1.5 metres into the into the exterior side yard for proposed heat pumps and the existing porch and staircase;
- encroachment of the existing boiler shed 1.5 metres into the rear yard and 0.5 m into the exterior side yard; and,
- the home-based business to be operated by a non-occupant of the dwelling and employ the occupant of the dwelling.

RECOMMENDATION

The proposed Zoning By-law Amendment is consistent with the intent and policies of the Provincial Policy Statement (PPS), conforms with or does not conflict with the Growth Plan for Northern Ontario and conforms with the Township of McGarry Official Plan. As such, we recommend this application for approval.

BACKGROUND

The Township of McGarry (Township) has requested J.L. Richard's & Associates Limited's professional opinion regarding an application to amend Zoning By-law 2011-08 Pursuant to Section 34 of the Planning Act for lands located at 1 24th Street in North Virginiatown (the subject property). The application proposes to change the zoning from Institutional (I) to General Residential Exception Two Zone (R1-2) to permit residential and accessory home occupation uses of the existing church building; to permit a reduced exterior side yard setback of 3 metres, and reduced rear yard setback of 1.5 m; and to permit encroachment of 1.5 metres into the exterior side yard for proposed heat pumps and to recognize a porch and staircase at above grade entrance of the existing building, and encroachment of 1.5 metres into the rear yard setback and 0.5 metres

into the exterior side yard setback to recognize the existing boiler shed, and to permit a home-based business which is operated by a non-occupant of the dwelling.

The Township recently adopted a new Comprehensive Zoning By-law, 2024-17, to take effect once the Township's new Official Plan comes into effect. To ensure that the decision of Council regarding the subject application is carried forward when the new Zoning By-law takes effect, an amendment to the new Zoning By-law 2024-17 for the requested exceptions has also been prepared.

The subject property currently has an existing church building of approximately 372 square meters that is proposed to remain. An accessory boiler shed currently sits adjacent to the north wall of the church and is proposed to be removed. A large landing and staircase project out from south wall of the building. The east wall of the building includes two entrances, one with covered landing and staircase and the second at grade level with an eave covering. The subject property and existing structures are not currently in use.

The applicant proposes to use the existing building for a residence and home occupation. The existing entrances with eaves, stairways, and landings are proposed to remain.

The subject property is designated as Residential Area within the Official Plan. The subject property is Zoned Institutional (I) in the Zoning By-law.

The application requests a zoning amendment to rezone the subject property to General Residential (R1) and obtain a special exception zoning to permit residential and home occupation uses within the R1 zone, and to permit exceptions to the requirements of the R1 Zone for yard setbacks and encroachments.



Figure 1. Subject Property

ANALYSIS

Provincial Policy Statement (PPS), 2020

Section 1 of the PPS deals with Building Strong Healthy Communities and encourages *healthy, liveable and safe communities* through a variety of means, including accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential, multi-unit house, etc.) and other uses to meet long-term needs, and avoid development and land use patterns which may cause environmental or public health and safety concerns.

The subject property is located in the Settlement Area of the Township. Section 1.1.3.3 promotes the accommodation of a significant supply and range of housing options through intensification and redevelopment in the urban settlement areas.

Section 1.6.6.1 promotes growth in a manner that utilizes existing municipal sewage and water services. Further, Section 1.6.6.2 states that within settlement areas with existing municipal sewage and water services, intensification and redevelopment should be promoted wherever feasible to optimize use of these services.

The proposed amendment to allow the reuse of a vacant building for residential and home occupation uses provides an additional housing option in the Township without requiring additional municipal services. It is our opinion that the proposed amendment is consistent with the PPS.

Growth Plan for Northern Ontario (GPNO)

The Planning Act requires that planning decisions shall conform with or not conflict with provincial plans such as the GPNO. 3.4.2 of the GPNO speaks to a Healthy Population which can be supported and promoted by communities providing a diverse mix of land uses and housing types.

Further, Section 4.2, which deals with Long Range Planning for All Communities, encourages communities to implement policies that achieve a range of accommodation to support the diverse needs of all residents.

The policies of the GPNO support a diverse range of housing types. The proposed application would transform an under-used building into requested housing. Therefore, we are of the opinion that the application conforms with or does not conflict with the GPNO.

Township of McGarry Official Plan (2011)

The subject property is designated Residential Area in the Township's Official Plan (OP). The Residential Area designation permits a full range of housing types and densities appropriate to a small, urban-centred community. This includes single dwellings. Accessory uses, including "home-based businesses" (also known as home occupations), are permitted.

The proposed would see the conversion of an existing church building into a single detached dwelling. The applicants propose to use a portion of the building for a home occupation.

Section 6.3.2.7 states that land development should occur in a contiguous and compact fashion on existing lots of record. The proposed would see existing underutilized lot be converted for residential uses. 6.3.3.5 further permits intensification and redevelopment of non-residential buildings for residential purposes.

The proposed conversion of an underused lot and church building to a residence will increase housing in the Township without requiring expansion of the residential area, built boundary, nor municipal services.

Section 6.3.2.2 requires that the lot shall be serviced with municipal water and sewer and stormwater, and waste disposal services with adequate capacity for the proposed use. The property meets the above-noted criteria and the proposed residential use would not impact the capacity of services and infrastructure.

Section 6.3.2.3 provides planning principles for the Residential Area and indicates that the lot frontage and area must be adequate for the intended use, with lot frontage on a public road. The subject property is sufficiently sized for the proposed use. The lot is located at the intersection of two public streets, 24th Street and (now closed) Government Road. Lot frontage will be further determined by the Zoning By-law and discussed below.

Section 6.3.2.9 states that home-based businesses may be permitted provided that the use is legal, clearly secondary to the residential use, has adequate parking, and does not create a nuisance to neighbours. The subject property has a large, paved surface for parking for the previous church use.

The proposed home-based business would include a law office and is proposed to occupy no larger than approximately 46 square metres (500 square feet).

Section 9.5.2 requires that development within an Abandoned Mine Information System (AMIS) Zone or within 1 km of a mine hazard, except lands within the three town sites outside of the AMIS Zone, requires review to determine the need for further geotechnical evaluation. The subject lands are within North Virginiatown and outside of the AMIS Zone and further review is not required.

The subject amendment conforms with the Township of McGarry Official Plan.

Township of McGarry New Official Plan (Pending Approval)

In April 2024, the Township of McGarry adopted a new Official Plan. This Official Plan is currently under approval by the Ministry of Municipal Affairs and Housing and not yet in effect.

On Schedule A of the new Official Plan, the subject lands are designated Residential, which permits a range of housing types and densities in addition to other facilities and services which support the residential environment.

The subject amendment conforms with the Township of McGarry's new Official Plan.

Township of McGarry Zoning By-law 2011-08

The subject property is zoned Institutional (I) Zone. The I Zone does not permit residential uses. The application proposes to rezone the subject property to General Residential (R1). The R1 Zone permits a range of residential uses, including converted dwellings.

Section 5.5.2(b) sets requirements for converted dwellings. These include:

	5.5.2(b) Requirement	Existing Lot	Compliance
Lot area (min)	600 m ²	+/- 1925 m ²	Yes
Frontage (min)	20 m	+/- 38.5 m	Yes
Front yard (min)	6 m	+/- 13.8 m	Yes
Rear yard (min)	6 m	+/- 1.5 m	NO
Interior side (min)	1 m	+/- 21.5 m	Yes
Exterior side (min)	4 m	+/- 3 m	NO

Building height (max)	10 m	+/- 7 m (23.1 ft to midpoint)	Yes
Lot coverage (max)	40% (main building)	19% (+/- 372 m ²)	Yes

The subject property is currently deficient in the required setbacks for the rear yard (1.5 metres where 6 is required) and the exterior side yard (3 metres where 4 is required). The application proposes no change to the location of the existing church building on the property. As such, the application requests a special exception to the R1 Zone to recognize the existing building's reduced yard setbacks.

Within all Zones, Section 4.24 permits certain accessory features and structures to encroach into specified required yards. Canopies over 2.13 metres (7 feet) are permitted in any yard to encroach up to 2 metres. The eastern wall of the church building contains an entrance at grade level with a canopy extending +/-1.5 metres from the building. There is a second existing canopy above an entrance at the rear western wall of the building. The applicant states that the existing canopies are above 2.13 metres in height. These canopies are therefore within the permitted encroachment of the by-law.

Under Section 4.24 porches are permitted to extend into only the front and rear yards up to 3 metres. Exterior staircases are permitted to encroach 1 metre into an exterior side yard. A second entrance along the eastern wall of the building contains an unenclosed porch with an awning and a staircase extending +/-1.5 metres into the exterior side yard. The application requests special exception to recognize the existing encroachment of the porch and staircase in the exterior side yard.

The subject property currently contains an existing boiler shed at the rear of the existing building, which encroaches into the rear yard setback by +/-1.5 metres and the exterior side yard setback by +/- 0.5 metres. A shed is not a permitted structure or feature under Section 4.24 and is not permitted to encroach into any yard. As such, the application requests special exception to recognize the existing boiler shed.

In addition, per Section 4.24, heat pumps are permitted to encroach 1 metre within a side yard. Along the eastern wall of the building, two heat pumps are proposed to project +/-1.5 metres from the wall of the building into the exterior side yard. The proposed location of the heat pumps is near to the existing boiler shed and sited in such a way to prevent further encroachment into the rear yard setback and on the neighbouring property to the north. The application requests a special exception to permit two heat pumps to encroach up to 1.5 metres into the exterior side yard.

Section 4.14 of the by-law permits professional and consulting services as a home-based businesses accessory to any residential use. Subsection (c) further sets the following applicable requirements that a home-based business:

- be clearly secondary to the use of the dwelling unit and be located within the dwelling unit;
- consist of no more than two home-based business per dwelling unit;
- be no more than 25% of the gross floor area of the dwelling up to a maximum of 50 square metres;
- be operated by the owner/occupant of the dwelling unit, and employ no more than one non-household member working on-site;
- Include no outdoor storage or display which indicate any use other than residential;
- have no advertising other than one sign with a maximum area of one square metre, which may be attached to a wall or freestanding, and which may be illuminated only so much as adjacent properties are not impacted by glare;
- does not create excess traffic or traffic hazards;
- not create outside waste associated with the business;
- does not receive clients or deliveries between the hours of 9:00 pm and 7:00 am;
- not create or become a nuisance to the public; and,

- that the business is legal and has obtained any necessary permits or licenses from the municipality or other applicable jurisdictions.

The singular proposed occupation is an established law practice. The gross floor area of the church building, including a main floor, basement, and loft is +/-807.2 square metres. The home occupation is proposed to be no greater than 46 square metres (500 square feet), or approximately 6% of the dwelling's gross floor area. The business is not anticipated to receive clients outside of typical working hours nor to increase traffic or create traffic hazards. There is no expected nuisance, outdoor waste, or negative impact to the neighbourhood or the public of the proposed home occupation. There is currently no proposed outside storage nor signage for the building. Should the applicant decide to place signage or storage on the property, it would be subject to the requirements of Section 4.14(c). Thus, the proposed home-based business complies with all but one provision of Section 4.14.

The business is owned and operated by a non-resident of the dwelling and employs a second employee who proposes to reside in the building. The proposed resident and employee of the business is a family relative and colleague of the business operator. As the proposed home-based business is an established business which currently also operates outside of McGarry, it is understood that the operator intends to continue permanently residing elsewhere than the subject lands. As such, the application requests exception to the provisions of Section 4.14.(c)(v) which require the business operator to reside in the dwelling.

Township of McGarry Zoning By-law 2024-17

The Township of McGarry has recently adopted Zoning By-law 2024-17 which will take effect at the time that the Township's Official Plan takes full force and effect. Although By-law 2024-17 is not yet in effect, we recommend that the Township adopt an amendment to this by-law, to ensure consistency between the two by-laws at the time at which the new Zoning by-law takes effect.

Under Zoning By-law 2024-17, the subject property is zoned Institutional (I) Zone. The I Zone does not permit residential dwellings.

The application proposes to rezone the subject property to General Residential (R1). The R1 Zone permits a range of residential uses, including converted dwellings. The R1 Zone also permits home based businesses, which are referred to as home occupations.

Section 8.3 of the Zoning By-law outlines the requirements of the R1 zone, which are the same as with Zoning By-law 2011-08 above. The subject property is compliant in regard to lot area, lot frontage, front and interior side yard setbacks, building height, and lot coverage. As described previously, the subject property is deficient in the required setbacks for the rear yard (1.5 metres where 6 is required) and the exterior side yard (3 metres where 4 is required). As such, the application requests special exception to the R1 Zone to recognize the existing yard setbacks.

In all zones, home occupations are permitted subject to the provisions of Section 4.12. This includes the following applicable requirements that home occupations:

- be no more than 25% of the total floor area of the dwelling;
- be conducted by no more than two people, one of whom must be a resident of the dwelling;
- have no advertising other than unilluminated plate or sign with a maximum area of one square metre;
- maintain the residential character of the dwelling;
- not create or become a nuisance to the public;
- host no open storage or outdoor materials, machinery, or instruments used for the occupation which is not compatible with a residential area.

As previously described, the proposed home-based business is compliant in regard to maximum floor area, advertising and signage, and nuisance, or lack thereof, to the public. As a former church building, the proposed dwelling currently presents minimal residential character, however, it is compatible with the surrounding residential area. The proposed is also complaint in regard to the number of employees proposed and number of employees proposed to reside in the dwelling unit. There is currently no proposed outside storage nor signage for the building. Should the applicant decide to place signage or storage on the property, it would be subject to the requirements of Section 4.12.

Under Section 4.31, structures or features may be permitted to encroach into required yard setbacks. These are similar to those of section 4.24 in Zoning By-law 2011-08. As described above, canopies higher than 2.13 metre above established grade are permitted to encroach into any yard, and as such the existing canopies at the rear western and western walls of the building are compliant.

Under Section 4.31 porches are permitted in front and rear yards up to 3 metres. Staircases are permitted to encroach into exterior side yards up to 1 metre. The existing porch and staircase along the eastern wall of the building encroach +/-1.5 metres into the exterior side yard. The application requests special exception to recognize the encroachments of the porch and staircase which extend further than permitted and in yards not permitted.

The existing boiler shed on the property, which encroaches into the rear yard setback by +/-1.5 metres and the exterior side yard setback by +/- 0.5 metres, is not a permitted structure or feature under Section 4.31. As such, the application requests special exception to recognize the encroachment of the existing boiler shed.

In addition, the Zoning By-law in Section 4.1 (a) states that accessory uses and structures be located on the same lot as the main use. Along the rear of the building, the existing boiler shed projects +/-2 metres from the northern wall. This encroaches +/-0.5 metres into the exterior side yard setback, +/-1.5 metres into the rear yard setback and +/- 0.5 metres across the neighbouring property. The existence of the boiler shed in its current location prior to the date of the in-effect Zoning By-law means it is thus considered legal non-complying. The application requests recognition of the existing structure's encroachment into the rear and exterior side yards.

Per Section 4.31, heat pumps are not permitted within an exterior side yard. As described above, the two proposed heat pumps would encroach +/-1.5 metres into the exterior side yard. The application requests special exception to permit two heat pumps to encroach up to 1.5 metres into the exterior side yard.

RECOMMENDATION

The application is consistent with the PPS, conforms to or does not conflict with the GPNO and conforms to the OP of the Township of McGarry. The subject application is recommended for approval.

Should you have any questions regarding the above, or if additional information is required, please do not hesitate to contact the undersigned.


J.L. RICHARDS & ASSOCIATES LIMITED

Prepared by:



Marilyn Cameron, MAP, MSc
Planner

Reviewed by:



David Welwood, RPP, MCIP
Senior Planner

MC:dw

Attachments:

1. Application and Sketch
2. Public Notice
3. Draft By-law to Amend 2011-08
4. Draft By-law to Amend 2024-17