



HAMPTON

PLANNING, ENGINEERING & DEVELOPMENT DEPARTMENT

Development Officer Variance Guideline

Adopted by Council March 11, 2025

1. Introduction

Development in Hampton is regulated by several by-laws. With development, a landowner may wish to deviate from the provisions of the Zoning By-law to achieve their desired objectives and must apply for a variance which is a relaxation of the by-law requirement. The Community Planning Act provides flexibility to development standards by allowing variances to prescribed standards in zoning by-laws. The authority to approve variances is given through the Community Planning Act to both the Planning Advisory Committee and the Development Officer. This document has been prepared to provide guidance to Hampton's Development Officers for evaluating a variance that is requested as part of administering a subdivision and/or development permit application, and to set a framework for using Development Officer Variances as a tool to expedite the development process.

The following guideline outlines the legislative authority for completing Development Officer Variances, types of variances to be considered by Development Officers and by the Planning Advisory Committee, and the process for completing Development Officer Variances. This process includes collecting knowledge of the area, assessing the potential for impacts on adjacent or nearby properties and documentation to be forwarded to the applicant following a decision. This guideline intends to reduce barriers to development in Hampton, while ensuring the interests of the public are considered as part of evaluating variance applications.

2. Key Definitions

1. **Development Officer** means the person appointed by the Council as the Planning Director (Planning Officer), or any person delegated authority by the Municipal Planning officer with respect to this By-Law.
2. **Planning Advisory Committee (PAC)** means the Planning Advisory Committee established under Section 3 of the Community Planning Act.
3. **Planning Advisory Committee Variance** is a reasonable variance from Section 53(2)(a) or (f) of the Community Planning Act and includes:
 - a. 53(2)(a)(i) the size and dimensions of lots and other parcels into which land may be subdivided, and the size and dimensions of land required for a particular class of use or size of building or structure,
 - b. 53(2)(a)(ii) the density of population,
 - c. 53(2)(a)(iii) the height, number of storeys, ground area, floor area and bulk of buildings and structures,
 - d. 53(2)(a)(iv) the percentage of land that may be built on, and the depth, size or area of yards, courts, parking areas and open spaces,



HAMPTON

PLANNING, ENGINEERING & DEVELOPMENT DEPARTMENT

Development Officer Variance Guideline

Adopted by Council March 11, 2025

- e. 53(2)(a)(v) the placement, location and arrangement of buildings and structures, including their setting back from the boundaries of streets and other public areas, and from rivers, streams or other bodies of water,
 - f. 53(2)(a)(vi) the design, character and appearance of buildings and structures,
 - g. 53(2)(a)(vii) the placement, height and maintenance of fences, walls, hedges, shrubs, trees and other objects,
 - h. 53(2)(a)(viii) the types, dimensions and locations of means of access of lots to streets,
 - i. 53(2)(a)(ix) the facilities to be provided and maintained for off-street parking and loading of vehicles,
 - j. 53(2)(a)(x) the size of rooms and the means of lighting and ventilating buildings,
 - k. 53(2)(a)(xi) the excavation of sand, gravel, clay, shale, limestone or other deposits for purposes of the sale or other commercial use of the material excavated
 - l. 53(2)(a)(xii) the altering of land levels for building or other purposes in so far as this may affect surface drainage,
 - m. 53(2)(a)(xiii) the location, dimensions, standards of construction and purposes of advertising signs and billboards,
 - n. 53(2)(a)(xiv) the preservation and planting of trees,
 - o. 53(2)(a)(xv) the location of buildings and structures in relation to sources of public water supply,
 - p. 53(2)(a)(xvi) subject to standards established under an Act of the Parliament of Canada or the Legislature, standards of pollution control to which permitted uses must conform; and
 - q. 53(2)(f) prescribe standards with respect to the appearance of land in a zone and require landscaping and improvements in accordance with standards prescribed in the by-law.
4. **Variance** means an exception to the standards of the Zoning By-law as prescribed by section 55 of the Community Planning Act.

3. Legislative Authority

The New Brunswick Community Planning Act provides the authority to local governments to establish by-laws to manage land use and provide land use planning services to its residents. The focus of this section is to highlight the role of the Development Officer provided by the Community Planning Act and reiterated within the Hampton Zoning By-law. The Hampton Zoning By-law (Section 2.11.3) outlines the types of applications reviewed by the Development Officer, which include a) Variances pursuant to the Community Planning Act, and b) Development Permits. Section 2.10.2 of the Hampton Zoning By-law references subsection 55(2) of the Community Planning Act (below) which gives the Development Officer authority to grant variances.



HAMPTON

PLANNING, ENGINEERING & DEVELOPMENT DEPARTMENT

Development Officer Variance Guideline

Adopted by Council March 11, 2025

1. Community Planning Act

Section 55(2) of the Community Planning Act states that subject to the terms and conditions that the Development Officer considers fit, they may permit a reasonable variance from the requirements referred to in subsections 53(2)(a)(i), (iii), (iv), (v), (vi), (vii), (viii), (ix), (xiii), and 53(2)(f) of the Community Planning Act and referenced in the list below, if the Development Officer is of the opinion that the variance is desirable for the development of a parcel of land or a building or structure and is in keeping with the general intent of the Zoning By-law and the Hampton Municipal Plan.

- 53(2)(a)(i) the size and dimensions of lots and other parcels into which land may be subdivided, and the size and dimensions of land required for a particular class of use or size of building or structure;
- 53(2)(a)(iii) the height, number of storeys, ground area, floor area and bulk of buildings and structures;
- 53(2)(a)(iv) the percentage of land that may be built on, and the depth, size or area of yards, courts, parking areas and open spaces;
- 53(2)(a)(v) the placement, location and arrangement of buildings and structures, including their setting back from the boundaries of streets and other public areas, and from rivers, streams or other bodies of water;
- 53(2)(a)(vi) the design, character and appearance of buildings and structures,
- 53(2)(a)(vii) the placement, height, and maintenance of fences, walls, hedges, shrubs, trees, and other objects;
- 53(2)(a)(viii) the types, dimensions and locations of means of access of lots to streets
- 53(2)(a)(ix) the facilities to be provided and maintained for off-street parking and loading of vehicles;
- 53(2)(a)(xiii) the location, dimensions, standards of construction and purposes of advertising signs and billboards; and 53(2) (f) prescribe standards with respect to the appearance of land in a zone and require landscaping and improvements in accordance with standards prescribed in the by-law,



HAMPTON

PLANNING, ENGINEERING & DEVELOPMENT DEPARTMENT

Development Officer Variance Guideline

Adopted by Council March 11, 2025

4. Development Officer Variance(s)

The following are categories and criteria for the Development Officer variance that may be requested:

1. A variance that is **60% and less, but greater than 35%**, that may be considered by the Development Officer if:
 - i. Feedback is solicited from the adjacent landowner(s) that share a property line and that face the subject property line across the street, that may be directly impacted from the variance and no warranted objections are raised within seven (7) days of the solicitation date, and
 - ii. If the objection is warranted and/or there is uncertainty surrounding the potential impact of the variance, the Development Officer shall not provide a determination on the request for a variance and as such, the landowner may submit the variance request to the Planning Advisory Committee for consideration.
2. A variance or multiple variances (up to 5) that is **35% and less** may be considered by the Development Officer.

Variance applications that will be considered by the Planning Advisory Committee include:

1. A variance that is **greater than 60%** of the prescribed standard shall be considered by the Planning Advisory Committee.
2. Subdivision applications that contain three or more lots, and/or three or more variance requests will not be determined by the Development Officer and review will be requested from the Planning Advisory Committee.

If there is uncertainty surrounding the potential impacts of the variance, the Development Officer shall not provide a determination on the request for a variance and refer the variance request to the Planning Advisory Committee for consideration. The Development Officer may request that the Planning Advisory Committee review a variance if the application raises any concerns with and/or poses a risk to Provincial Agencies, Utility Authorities and/or the municipality, as determined in consultation with the Department Director and/or Planning Director.

Following the Development Officer's review of the variance application, a notice of decision (template attached) shall be provided to the applicant and provide reasoning for the approval or denial of the application.



HAMPTON

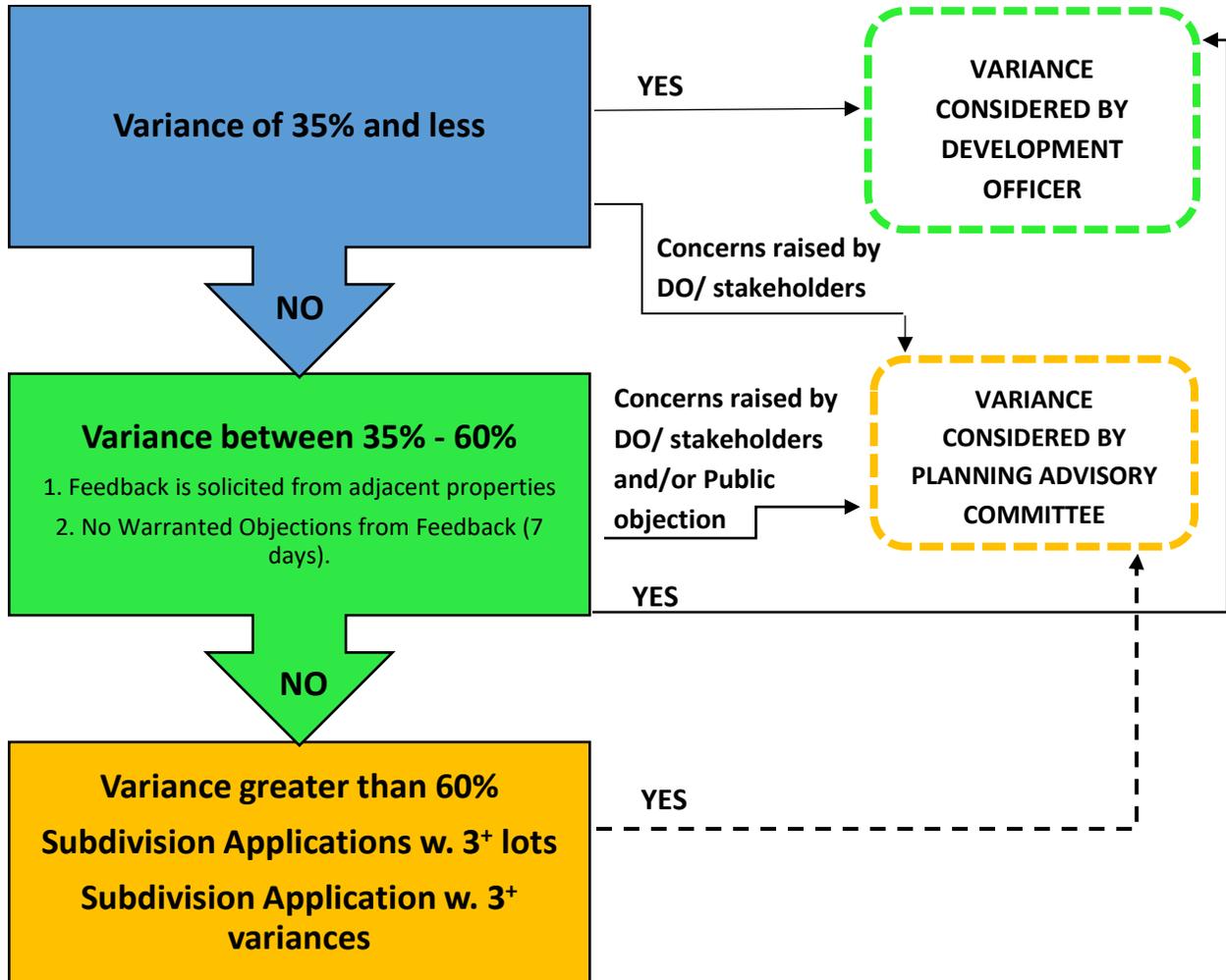
PLANNING, ENGINEERING & DEVELOPMENT DEPARTMENT

Development Officer Variance Guideline

Adopted by Council March 11, 2025

5. Development Officer Variance Flow Chart

The following is a visualization of the decision making process for Development Officer Variance with associated categories:



Note: The Development Officer may request variance application review from the Planning Advisory Committee at their discretion.



Development Officer Variance – Notice of Decision

Property Address:

Applicant:

Application Review Date:

Application Description

The application is to develop an accessory building (shed) in the rear yard. The proposed structure subceeds the permitted rear and side yard setbacks of 7.5 metres and 2.5 metres under the Hampton Zoning By-Law (HAM-2023-16) and requires two variances.

<u>Zoning By-Law Criteria</u>	<u>Requirement</u>	<u>Proposed Setbacks</u>	<u>Variance</u>
Rear Yard Setback (M)	7.5 m	6 m	1.5 m (20%)
Side Yard Setback (R1)	2.5 m	1.5 m	1 (40%)

Staff Analysis

Municipal Plan (HAM-2023-15): Residential

Zoning By Law (HAM-2023-16): One and Two Unit (R1) Residential

Summary of Application Notices: Four letters were sent to neighbouring properties and no concerns were raised.

- Summary of govt agencies contacted

Staff Recommendation: The application respects the scale, form and character of the existing neighbourhood as the lot is already developed with a one-unit dwelling and a fence. The application is desirable for the development of the property, and it not anticipated to impact neighbouring lots as the accessory building is located inside the fence surrounding the rear yard.

Under Authority provided by CPA.

Development Officer Decision: APPROVED/DENIED

Date of Decision: