



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF DEVELOPMENT SERVICES

MISSION STATEMENT: Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.

Author's Name: Janine Mastronardi	Report Date: April 25, 2024
Author's Phone: 519 736-5408 ext. 2134	Date to Committee: May 1, 2024
Author's E-mail: jmastronardi@amherstburg.ca	Resolution #:

To: Chair and Members of the Committee of Adjustment

Subject: B/11/24 & A/14/24, 4686 Alma Street, 1830011 Ontario Ltd., c/o Chad Mailloux, Agent

1. **RECOMMENDATION:**

1. It is recommended that: Subject to the Committee's consideration of written and oral submissions at the public meeting that application B/11/24 **BE APPROVED** subject to the recommended conditions; and
2. Subject to the Committee's consideration of written and oral submissions at the public meeting that application A/14/24 **BE APPROVED**.

2. **PROPOSAL:**

Purpose of Consent Application B/11/24: The applicant is proposing to sever an L-shaped parcel of land being 9.144 m (30 ft) ± frontage by 82.3 m (270 ft) ± depth with an area of 0.23 ha (0.57 ac) ± and contains part of an existing detached garage, the septic system servicing the house at 4610 Alma and grass and treed area. The remaining parcel being 504.46 m ± frontage by an irregular depth with an area of 32.95 ha ± is agricultural land which contains six (6) agricultural structures and several grain bins.

Purpose of Minor Variance Application A/14/24: The applicant is requesting relief from Zoning By-law 1999-52, as amended, Section 26(3)(a)(i) which requires a minimum lot area of 40 hectares in an Agricultural (A) Zone. Subsequent to a severance of a 0.23 ha ± lot addition from an existing 33.18 ha hectare parcel the retained farm parcel will have an area of 32.95 hectares ±. Therefore, the amount of relief requested is 7.05 hectares.

The applicant is also requesting relief from Zoning By-law 1999-52, as amended, Section 26(3)(d)(ii) which requires a minimum interior side yard setback of 15 m for non-residential uses. Subsequent to a consent an existing agricultural structure will have an interior side

yard setback of 12.2 m. The structure previously was a livestock facility but has since been decommissioned. Therefore, the amount of relief requested is 2.8 m in interior side yard setback.

The subject property is designated Agricultural in the Town's Official Plan and zoned Agricultural (A) Zone in the Town's Zoning By-law, 1999-52, as amended.

3. BACKGROUND:

N/A

4. PLANNING INFORMATION:

Official Plan designation: Agricultural

By-law No. 1999-52: Agricultural (A) Zone

Existing Use: Agricultural and Rural Residential

Neighbouring Uses: Agricultural and Rural Residential

Access: Alma Street

TECHNICAL INFORMATION

Property Size of Entire Parcel: 33.18 ha

Proposed Size of Severed Parcel B/01/24: 0.23 ha

Proposed Size of Retained Parcel: 32.95 ha

Existing structures Retained Parcel: 6 agricultural structures and several grain bins

Proposed Structures: No New Structures Proposed

Existing structures Severed Parcel: Part of a detached garage and septic system

Proposed Structures: No New Structures Proposed

Proposed Lot Area: 32.95 ha

Required Lot Area: 40 ha

Relief requested: 7.05 ha

Proposed Interior Side Yard Setback: 12.2 m

Required Interior Side Yard Setback: 15 m

Relief requested:

2.8 m

5. PLANNING ANALYSIS:

In the review of the subject application, a number of points have been reviewed:

1. PLANNING ACT (R.S.O. 1990)

The purposes of the Planning Act are;

- “ (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
- (b) to provide for a land use planning system led by provincial policy;
- (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
- (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
- (e) to encourage co-operation and co-ordination among various interests;
- (f) to recognize the decision-making authority and accountability of municipal councils in planning. 1994, c. 23, s”

The proposal is consistent with Section 2 of the Planning Act which requires that the Committee of Adjustment have regard to matters of provincial interest including (the following are excerpts from Section 2 of the Planning Act that apply to this development):

- the protection of the agricultural resources of the Province;
- the appropriate location of growth and development;

When considering the severance application, under Section 53 of the Planning Act, R.S.O. 1990, as amended, the Committee may consider an application for consent if they are satisfied that a plan of subdivision is not necessary for orderly development of the land. In this case, the applicant is applying for a lot addition to merge with the adjacent property. The severance will not create a new building lot. A plan of subdivision is not necessary.

When considering the minor variance application, the Committee must consider the four tests as outlined in Section 45(1) of the Planning Act, R.S.O. 1990, as amended, which states that the Committee be of the opinion that the variance:

- a) maintains the general intent and purpose of the Official Plan;
- b) maintains the general intent and purpose of the Zoning By-law;
- c) is desirable for the appropriate development or use of the land, building or structures; and
- d) is minor in nature.

The application must meet all of the above tests.

2. PROVINCIAL POLICY STATEMENT:

The Planning Act R.S.O 1990, C.P.13, requires that the Council of a local Municipality and Committees of a local Municipality shall have regard to matters of Provincial interest in carrying out applications such as a severance application. Items of Provincial interest are outlined in the Provincial Policy Statement (PPS) issued by the Ministry of Municipal Affairs and Housing.

“Part II: Legislative Authority

The Provincial Policy Statement is issued under the authority of Section 3 of the Planning Act and came into effect on May 1, 2020. In respect of the exercise of any authority that affects a planning matter, Section 3 of the Planning Act requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the Act.”

The PPS provides for appropriate development while protecting resources of provincial interest, public health and safety and the quality of the natural and built environment. They include such issues as the protection of ecological and natural systems, providing cost-effective and orderly development, the protection and enhancement of the quality and quantity of ground water and surface water and the function of sensitive ground water recharge/discharge areas, aquifers and headwaters to name a few.

Section 2.3.4 being Lot Creation and Lot Adjustments in the Agricultural areas, specifically 2.3.4.2 provides that “lot adjustments in *prime agricultural areas* may be permitted for *legal or technical reasons*.”

Legal or technical reasons is defined in the PPS as, “severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.”

No new lot is being created. The proposed lot addition is proposed to be merged with an existing rural residential lot. The lot addition is required for the detached garage and septic system that is servicing the existing house at 4610 Alma to be all on one parcel.

In the opinion of the author of this report the requested consent is consistent with the Provincial Policy Statement.

3. COUNTY OF ESSEX OFFICIAL PLAN:

The subject lands are located within the Agricultural area in the County of Essex Official Plan. Section 3.3 of the County Plan sets out the policy directives within the designation. Section 3.3.3.4 set out the polices with respect to lot creation in the agricultural area. Subsection (e) permits lot adjustments for legal or technical reasons, such as for easements, corrections of deeds, quit claims, and minor boundary adjustments, which do

not result in the creation of a new lot are also permitted. The proposed consent is for a lot addition and will not result in the creation of a new building lot.

The minor variance would provide for relief from the minimum lot size of agricultural lands as per section 3.3.2 (f) of the County Official Plan.

4. TOWN OF AMHERSTBURG OFFICIAL PLAN:

The subject property is designated Agricultural in the Town's Official Plan.

The requested consent conforms with the relevant policies of the Official Plan specifically Section 3.2.2 being the Land Severance policies applicable in the Agricultural designation.

The applicant has identified that the severed parcel is for a lot addition, to merge with an existing rural residential lot. The consolidated parcel will provide an adequate lot size to accommodate the existing house, existing detached garage, septic system and outdoor amenity space. The retained parcel will remain as agricultural land. The proposed severance is consistent with the above noted policies; therefore, is deemed to be in conformity with the Official Plan.

After the proposed severed parcel merges with the existing rural residential parcel the resulting undersized lot parcel size will be 0.55 ha. Looking to Section 6.1.2(10) which states, "In areas designated in whole or in part as "Agricultural", or "Natural Environment", or "Wetland", minor boundary adjustments may be permitted that could have the effect of creating a lot of less than 40 hectares, conditional on one of the parcels being added to an adjacent property and the existing dwelling remaining on the remnant parcel so that no new building lots have been created. Generally, the remnant lot must be either a viable farm parcel size or follow the policy of the surplus farm unit and be generally less than one (1) hectare in size."

A concurrent minor variance application has been submitted for the retained parcel lot area to maintain the intent of the Official Plan. The current minimum agricultural lot size was imposed by OMAFRA during the last review and OMB settlement of the Town's Official Plan in 2010. The County had initiated a regional agricultural lot size study to determine a consistent approach for the region for the minimum agricultural parcel size. In August of 2017, Council supported the outcome of the Agricultural Lot Size study which requires a minimum of 40 hectares for new agricultural severances which is not intended to include undersized lots.

In my opinion the proposed severance and proposed minor variance is consistent with the above noted policies; therefore, is deemed to be in conformity with the Official Plan.

5. COMPREHENSIVE ZONING BY-LAW 1999-52:

The subject property is zoned Agricultural (A) in Bylaw 1999-52, as amended. The lot addition will not result in the creation of any new building lots. Section 26(2) permits a range of agricultural uses in the A Zone including a single detached dwelling including a

dwelling on an undersized lot in accordance with Subsection 26(3)(j) with no minimum or maximum lot areas or lot frontages provided.

The applicant is requesting relief from Zoning By-law 1999-52, as amended, Section 26(3)(a)(i) which requires a minimum lot area of 40 hectares in an Agricultural (A) Zone. Subsequent to a severance of a 0.23 ha lot addition from an existing 33.18 hectare parcel the retained farm parcel will have an area of 32.95 hectares. Therefore, the amount of relief requested is 7.05 hectares in lot area.

The applicant is also requesting relief from Zoning By-law 1999-52, as amended, Section 26(3)(d)(ii) which requires a minimum interior side yard setback of 15 m for non-residential uses. Subsequent to a consent an existing agricultural structure will have an interior side yard setback of 12.2 m. The structure previously was a livestock facility but has since been decommissioned and cannot be used for livestock without upgrades to the facility and MDS setback consideration. The agricultural structure setback from the existing dwelling at 4610 Alma will not change as a result of the alteration of the lot lines. Therefore, the amount of relief requested is 2.8 m in interior side yard setback.

The severed and retained lots will maintain existing accesses from Alma Street.

In the opinion of the author of this report the proposed consent for lot addition and minor variance applications maintain the intent of the Zoning By-Law 1999-52, as amended.

6. APPROPRIATE DEVELOPMENT

The proposed variance does not appear to change the use of the retained land for agricultural purposes. The severed lands are proposed to provide for the existing detached garage and septic system for the house at 4610 Alma to all be on the same parcel of land. The agricultural building on the retained parcel, detached garage, septic system and house are all existing. Therefore, in my opinion the minor variance request can be considered appropriate. Any new uses, buildings or structures on the severed or retained lands would be required to comply with the Zoning By-law 1999-52, as amended.

7. MINOR IN NATURE

No precise definition for what constitutes “minor” exists. Rather, it is a culmination of the review of the Official Plan, Zoning By-law and attempts to address the “big picture” for what the proposed development represents. Each application must be assessed on its own set of circumstances.

The variance requested is a minor change from the current lot area for the retained parcel and a minor variance from the required interior side yard setback for an existing structure. Therefore in my opinion the requested variance may be considered minor in nature.

8. ENVIRONMENTAL CONSIDERATIONS

There are no physical hazards associated with the property.

6. AGENCY COMMENTS:

See attached.

7. RISK ANALYSIS:

As with all Committee of Adjustment decisions there is a risk that the decision is appealed. As a result of changes in Bill 23, decisions by a CoA can no longer be appealed by a third party. Decisions which are to support or refuse the consent or minor variance request, can only be appealed by the applicant, the Municipality, the Minister, a specified person or any public body. In the case of a consent decision the appeal must be filed within 20 days after the giving of notice of the decision of the committee, whereas for a minor variance an appeal must be filed within 20 days of the making of the decision of the committee. It is important to note that a tied vote is deemed to be a decision to deny the consent or minor variance request. If there is an appeal to the OLT the Town will incur costs.

8. RECOMMENDATIONS:

Based on the foregoing and subject to the Committee's consideration of written and oral submissions at the public meeting it is recommended that application **B/01/24 be approved subject to the following conditions:**

1. That a Reference Plan of the subject property satisfactory to the municipality be deposited in the Registry Office; a copy to be provided to the municipality.
2. The applicant to submit to the municipality the deed acceptable for registration in order that consent may be attached and a copy be provided to the municipality.
3. That all property taxes be paid in full.
4. Subsection 3 of Section 50 of the Planning Act applies to any subsequent conveyance or transaction of or in relation to the parcels of land being the subject of the consent (severed and retained parcels).
5. That prior to the stamping of deeds the owner is to provide satisfactory evidence that the adjacent parcel is under consolidation relative to the parcels which are the subject of the consent.
6. That a minor variance be obtained from the provisions of Bylaw 1999-52, as amended, Section 26(3)(a)(i) which requires a minimum lot area of 40 hectares in an Agricultural (A) Zone regarding the retained farm parcel.
7. That a minor variance be obtained from the provisions of Bylaw 1999-52, as amended, Section 26(3)(d)(ii) which requires a minimum interior side yard setback of 15 metres for non-residential uses in an Agricultural (A) Zone regarding the

existing agricultural building 12.2 m from the proposed new property line.

8. That the applicant obtain a report from an independent qualified person that the existing private septic system serving the retained parcel does not cross the property lines, that the systems are in working order and that its operation will not be affected by the severance, to the satisfaction of the municipality.
9. That a grade design demonstrating that the severed (resulting consolidated parcel) will maintain its own surface water be submitted and implemented to the satisfaction of the municipality.
10. Surface water and subsurface drainage tiles and water shall be redirected around the severed parcel to the satisfaction of the municipality.
11. The applicant shall submit a tiling plan of the entire parcel satisfactory to the municipality.
12. The applicant/owners shall enter into a 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 provide the Town of Amherstburg, a signed agreement and that any associated cost of same be borne solely by the applicant. The reapportionment for any affected Municipal Drains be required and are to be assessed against the affected lands in accordance with any past, current or future drainage bylaws, until such time as otherwise determined under the provisions of the Drainage Act.
13. This consent will be deemed to be refused in accordance with the Planning Act if the above noted conditions are not met within two years from the date of this notice.

NOTE: All conditions are subject to the approval of The Town of the Amherstburg, but at no cost to the municipality.

That subject to Committee consideration of written and oral comments received at the meeting, it is recommended that Application **A/14/24 be approved** to grant relief of;

- 7.05 hectares in lot area as a result of consent application B/11/24 to permit a lot area of 32.95 hectares, a 0.23 ha decrease from the current 33.18 ha parcel, and
- 2.8 m in interior side yard setback as a result of consent application B/11/24 to permit an existing agricultural structure to have a 12.2 m setback from the new property line.

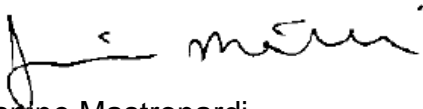
9. CONCLUSION:

The requested consent is in conformity with Sections 6.1.2 and 6.1.2(6) of Amherstburg's Official Plan and is consistent with the Provincial Policy Statement.

In the opinion of the author of this report;

- 1) The requested variance conforms with the intent of the relevant Official Plan policies.
- 2) The proposed variance maintains the intent of Comprehensive Zoning By-law 1999-52, as amended.
- 3) The proposed variance does not change the use of the land for agricultural purposes and therefore can be considered appropriate.
- 4) The requested variance is minor in nature.
- 5) The proposed variance would not have a negative impact on the environment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Janine Mastronardi', written in a cursive style.

Janine Mastronardi
Secretary-Treasurer Committee of Adjustment

Report Approval Details

Document Title:	B-11-24 and A-14-24- 4686 Alma- 1830011 Ontario Ltd, c.o Chad Mailloux, Agent.docx
Attachments:	- B-11-24 and A-14-24- Report Attachments-RM.pdf
Final Approval Date:	Apr 26, 2024

This report and all of its attachments were approved and signed as outlined below:

Chris Aspila