



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: May 24, 2024
Author's Phone: 519 736-5408 ext. 2134	Date to Committee: June 5, 2024
Author's E-mail: jmastronardi@amherstburg.ca	Resolution #:

To: Chair and Members of the Committee of Adjustment

Subject: B/13/24 & A/15/24, 6081 County Road 18, Brian Renaud, c/o Alexander Sharma, Agent

1. **RECOMMENDATION:**

It is recommended that:

1. Subject to the Committee's consideration of written and oral submissions at the public meeting that application B/13/24 **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/15/24 **BE APPROVED**.

2. **PROPOSAL:**

Purpose of Consent Application B/13/24: The applicant is proposing to sever a parcel of land being 54.9 m (180 ft) ± width by 22.9 m (75 ft) ± depth with an area of 0.126 ha (0.31 ac) ± and contains an existing accessory structure for the purposes of a lot addition to merge with 6061 County Road 18. The remaining parcel being 481.3 m ± frontage by an irregular depth with an area of 19.13 ha ± is vacant agricultural lands.

Purpose of Minor Variance Application A/15/24: 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 0.126 ha ± lot addition from an existing 19.256 ha hectare parcel the retained farm parcel will have an area of 19.13 hectares ±. Therefore, the amount of relief requested is 20.87 hectares.

The subject property is designated Agricultural in the Town's Official Plan and zoned Special Provision Agricultural (A-36) 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: Special Provision Agricultural (A-36) Zone

Existing Use: Agricultural and Rural Residential

Neighbouring Uses: Agricultural and Rural Residential

Access: County Road 18

TECHNICAL INFORMATION

Property Size of Entire Parcel: 19.256 ha

Proposed Size of Severed Parcel B/13/24: 0.126 ha

Proposed Size of Retained Parcel: 19.13 ha

Existing structures Retained Parcel: Vacant Farmland

Proposed Structures: No New Structures Proposed

Existing structures Severed Parcel: Existing 40' x 56' Accessory Structure

Proposed Structures: No New Structures Proposed

Proposed Lot Area: 19.13 ha

Required Lot Area: 40 ha

Relief requested: 20.87 ha

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 resulting in a parcel with an area of 0.312 ha (0.77 ac). The lot addition is requested for additional amenity space which includes an existing accessory structure which is not needed for farm use.

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 policies 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 accessory structure 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 0.312 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 Special Provision Agricultural (A-36) 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 (ZBL), 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 0.126 ha lot addition from an existing 19.256 hectare parcel the retained farm parcel will have an area of 19.13 hectares. Therefore,

the amount of relief requested is 20.87 hectares in lot area.

According to MPAC's records the existing accessory structure was built in 1990. Section 1(16) of the ZBL discusses non-conforming building locations stating; "Notwithstanding any other aspect of this By-law, any lot, and the location thereon of any building, or structure thereto, which existed on or before *January 1, 2006*, shall be deemed to comply with the relevant regulations for setback, building line, front yard, side yard, rear yard, and lot coverage." The existing setbacks of the accessory structure are deemed to comply with the ZBL. However, reviewing the aerial photography it appears the accessory building was built with zero setback from 6061 County Rd 18. The lot addition will result in the accessory structure having an adequate rear yard setback, exceeding the required 3 m.

The severed parcel is zoned A-36. The intent of the A-36 Zone is to restrict any further residential development on the farm parcel, i.e. dwelling units, that will limit intensive agricultural uses and remove additional farmland out of production. The proposed severed parcel contains an existing accessory structure, built in 1990, which is not needed by the farmer. Through a review of the aerials the majority of the severed lands have historically not been farmed. A change in the mapping from A-36 to A is proposed for the lot addition lands through a housekeeping Zoning By-law Amendment or through the rewrite of the ZBL this winter.

2006 Aerial:



The proposed lot addition will square out the parcel fabric and provide adequate land mass for the consolidated parcel to grade the entire parcel as to not drain onto the adjacent farmland.

The severed and retained lots will maintain existing accesses from County Road 18.

In the opinion of the author of this report the proposed consent for lot addition and minor variance application 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. 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. 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.

The Chief Building Official noted that the septic system servicing the house at 6081 County Road 18 is located on the east side of the existing dwelling. Access to the rear yard will only be permitted on the west side of the dwelling. The building permit site plan shows a 23 ft clearance between the house and the property line on the west side of the parcel allowing ample access to the rear yard. It should also be noted that the vehicle access door to the accessory structure on the propose severed parcel is on the west side of the building.

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/13/24 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 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.
8. Surface water and subsurface drainage tiles and water shall be redirected around the severed parcel to the satisfaction of the municipality.
9. The applicant shall submit a tiling plan of the entire parcel satisfactory to the municipality.
10. 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.
11. 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/15/24 be approved** to grant relief of 20.87 hectares in lot area as a result of consent application B/13/24 to permit a lot area of 19.13 hectares, a 0.126 ha decrease from the current 19.256 ha parcel.

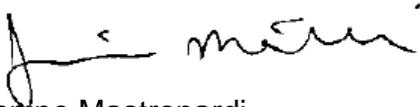
9. CONCLUSION:

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,



Jarine Mastronardi
Secretary-Treasurer Committee of Adjustment

Report Approval Details

Document Title:	B-13-24 and A-15-24- 6081 County Rd 18- Brian Renaud, c.o Alexander Sharma, Agent.docx
Attachments:	
Final Approval Date:	May 21, 2024

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

Chris Aspila