



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: Sarah French	Report Date: January 30, 2025
Author's Phone: 519 736-5408 ext. 2125	Date to Committee: February 5, 2025
Author's E-mail: sfrench@amherstburg.ca	Resolution #:

To: Chair and Members of the Committee of Adjustment

Subject: B-04-25 and A-03-25, 5010 County Road 18, Robert Marc Knight c/o Amanda Camlis

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/04/25 **BE APPROVED** subject to the recommended conditions.
2. Subject to the Committee's consideration of written and oral submissions at the public meeting that application A/03/25 **BE APPROVED**.

2. PROPOSAL:

Purpose of Consent Application B/04/25: The applicant is proposing to sever a parcel of land being 63.4 m ± frontage by 63.4 m ± depth with an area of 0.4035 ha ± which includes a single detached dwelling and two accessory structures which are surplus to the needs of the farming operation. The remaining parcel being an irregular frontage by an irregular depth with an area of 21.05 ha ± is vacant agricultural land with one accessory structure.

Purpose of Minor Variance Application A/03/25: 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 0.4035 ha ± surplus dwelling from an existing 21.45 ha hectare parcel the retained farm parcel will have an area of 21.05 hectares ±. Therefore, the amount of relief requested is 18.95 hectares.

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:

The applicant, Robert Marc Knight, acquired two parcels of land in 2024. The parcels had two separate roll numbers, 372963000004200, the 1-acre parcel with the existing dwelling, and 372963000004001, the 52.03-acre farm parcel with the existing accessory structure. According to communication with MPAC, these two parcels have merged into one roll number, 372963000004200, resulting in a 53.03-acre parcel. The applicant is requesting that the original 1-acre parcel be severed as a surplus dwelling and that the farmland be rezoned so that no new dwelling can be built.

Communication with the applicant's legal counsel occurred on November 26, 2024 where their legal counsel indicated a surplus dwelling severance would be required to separate the lots. Through further research and communication with MPAC, administration confirmed that the lots had merged and agreed with the applicant's legal counsel that a surplus dwelling severance would result in the appropriate severing of the 1 acre parcel. The applicant's legal counsel advised on January 30, 2025 of the opinion that these lots were always 1 lot with separate roll numbers for tax purposes based on the information available to them.

The applicant is a registered farmer with the Ontario Farm Association and has interest from the current renter of the dwelling to purchase the dwelling and associated accessory structures and property.

It should be noted that the accessory structure on the farm parcel does not meet Minimum Distance Separation requirements to house livestock. It is unknown if the building is capable of housing livestock, however many buildings can be renovated without building permits in order to house livestock. Due to the proximity of the farm building in relation to the dwellings at 5231 Concession 5 S, 5090 County Road 18 and the proposed surplus dwelling, it is recommended that the property be re-zoned so that no livestock can be housed within the existing structure. This will not limit the farmer from building a livestock facility that complies with Minimum Distance Separation, should he want to house livestock on the property in the future.

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: House: County Road 18
Farm: Concession 5 S

TECHNICAL INFORMATION

Property Size of Entire Parcel:	21.45 ha
Proposed Size of Severed Parcel B/04/25:	0.4035 ha
Proposed Size of Retained Parcel:	21.05 ha

Proposed Lot Area Subsequent to the Consent: 21.5 ha

Required Lot Area: 40 ha

Relief requested: 18.95 ha

5. PLANNING ANALYSIS:

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

1. PLANNING ACT REQUIREMENTS

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 orderly development of safe and healthy communities;

No new buildings are being proposed and the existing buildings are compatible with the area.

When reviewing this 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.

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 surplus dwelling severance where the farm house and accessory structures are not required by the farming operation.

2. PROVINCIAL PLANNING STATEMENT

“Legislative Authority

The Provincial Planning Statement is a policy statement issued under the authority of section 3 of the Planning Act and came into effect on October 20, 2024. The Provincial Planning Statement applies to all decisions in respect of the exercise of any authority that affects a planning matter made on or after October 20, 2024.

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.

Comments, submissions or advice that affect a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government shall be consistent with the Provincial Planning Statement.”

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. These policy directives include 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 4.3.3 being Lot Creation and Lot Adjustments in the Agricultural areas, specifically 4.3.3.1(c) provides that “*one new residential lot per farm consolidation for a residence surplus to an agricultural operation, provided that:*

- 1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and*
- 2. the planning authority ensures that new dwellings and additional residential units are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new dwellings or additional residential units are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches that achieve the same objective;”.* The Town accomplishes this objective through rezoning such that no new dwelling is permitted and restriction registered on the title of the property preventing residential development.

The requested consent application conforms to the Provincial Policy Statement.

3. COUNTY OF ESSEX OFFICIAL PLAN:

The subject property is designated Agricultural in the County of Essex Official Plan. The agricultural goals and policies are provided in Section 3.3 of the Official Plan. Section 3.3.3 (f) provides for lot creation in the Agricultural area where there is a dwelling that is rendered surplus to a farming operation, and the severance complies with the Provincial Policy Statement and the policies in the local Official Plan.

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 Amherstburg's Official Plan.

The proposed lot is surplus to the needs of the farm operation. The applicant will be required to provide confirmation from a certified designer that the private septic system is adequate and the proposed lot will not impact its operation. The lot severed for the non-farm use will neither create nor add additional dwelling units. The house was built in 1940 and is habitable.

The requested consent would appear to conform with relevant policies of the Official Plan, Sections 3.2.1 and 3.2.2 being the Agricultural Goals and Policies and Section 6.1.2 being the Land Severance policies of the Plan. The Official Plan requires that the remnant parcel be rezoned to ensure that no new dwelling units shall be permitted and also the requirement for no new additional dwelling units to be registered against the title of the property.

Section 3.2.2(14)(b) provides for Minimum Distance Separation requirements. Due to the location of the existing farm structure on the remnant farm parcel, it is recommended that the required re-zoning include a provision stating that no livestock will be permitted within the existing structure. This provision will provide for an application that is in conformity with the Minimum Distance Separation requirements. This will not limit the farmer from building a livestock facility that complies with Minimum Distance Separation, should he want to house livestock on the property in the future.

The variance appears 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 surplus dwelling severances.

In the opinion of the author of this report the proposed severance and minor variance conform to the intent of the Official Plan.

5. COMPREHENSIVE ZONING BY-LAW 1999-52:

The subject property is zoned Agricultural (A) Zone in Bylaw 1999-52, as amended. The A Zone allows for all uses permitted in Subsection 26(2) being the Agricultural (A) Zone provisions. The consent is not in contravention to the Zoning Bylaw.

The applicant will be required as a condition of severance to complete a Zoning By-Law Amendment for the retained parcel from A to A-36 to restrict future development on the retained parcel. It is also recommended that the rezoning include a provision to restrict the existing accessory structure on the retained parcel from housing livestock in its current location, due to its existing proximity to nearby dwellings. This provision will not limit the farmer from building a livestock facility that complies with Minimum Distance Separation, should he want to house livestock on the property in the future.

The proposed lot sizes, the location of buildings and structures as well as the intended land uses for the severed and retained parcels appear to comply with the zone requirements for the Agricultural Zone. The farmer of the retained farm parcel has indicated that the existing accessory structures on the proposed surplus dwelling parcel have no use to them.

The intended land use of the retained parcel appears to comply with the Agricultural zone provisions. A minor variance is being applied for at the same time for the proposed lot area of the retained farm parcel subsequent to the surplus dwelling severance. The Zoning By-law requires a minimum lot area of 40 hectares and the retained parcel would have a total lot area of 21.05 hectares, resulting in the need for relief of 18.95 hectares.

In the opinion of the author of this report the proposed severance and minor variance maintain the intent of the Zoning By-law.

6. APPROPRIATE DEVELOPMENT

The proposed variances do not change the use of the land for Agricultural purposes, there are no new buildings or structures being proposed at this time and therefore can be considered appropriate. Any new buildings or structures on the severed and 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 land area.

The requested variance can 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/04/25 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; an electronic and paper 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. 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.
5. That the retained farmland to be rezoned to ensure that no new dwelling units shall be permitted and the requirement for this non-development be registered against the title of the property. Additionally, that the rezoning restrict livestock within the existing accessory structure, at its current location, on the retained farmland.
6. That the applicant obtain a report from an independent qualified person that the existing private septic system serving the surplus dwelling does not cross the property lines, that the system is in working order and that the operation will not be affected by the severance, to the satisfaction of the municipality.

7. That a grade design demonstrating that the severed parcel will maintain its own surface water be submitted and implemented to the satisfaction of the municipality.
8. 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/03/25 be approved to grant relief of 18.95 ha to permit a retained farm parcel with an area of 21.05 ha.

9. CONCLUSION:

In the opinion of the author of this report the request for a surplus dwelling severance is in conformity with Section 6.1.2 of Amherstburg's Official Plan and is consistent with the Provincial Policy Statement.

In the opinion of the author of this report and from a planning perspective:

- 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.



Sarah French
Secretary-Treasurer

Report Approval Details

Document Title:	B-04-25 and A-03-25, 5010 County Road 18, Robert Marc Knight.docx
Attachments:	<ul style="list-style-type: none">- A-03-25 Application_Redacted-RM.pdf- B-04-25 Application_Redacted-RM.pdf- B-04-25 and A-03-25- Notice- 5010 county rd 18-RM.pdf- B-04-25 and A-03-25 Aerial Map-RM.pdf- B-04-25 and A-03-25 Sketch of surplus lot-RM.pdf- Summary of Correspondence Received on B-04-25-RM.pdf- B-04-25-A-03-25 PowerPoint-RM.pdf
Final Approval Date:	Jan 30, 2025

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

Chris Aspila