



**CONSENT & MINOR VARIANCE APPLICATION
COMMENTS TO THE COMMITTEE OF ADJUSTMENT
PANEL 3**

PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT

Site Address: 5729 Bank Street
Legal Description: Part of Lot 2, Concession 5, Former Township of Osgoode
File No.: D08-01-21/B-00460 and D08-02-21/A-00385
Report Date: May 31, 2023
Hearing Date: June 6, 2023
Planner: Jack Graham
Official Plan Designation: Rural Countryside
Zoning: RU – Rural Countryside Zone

Committee of Adjustment
Received | Reçu le
2023-06-01

City of Ottawa | Ville d'Ottawa
Comité de dérogation

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **requests an adjournment sine die** of the application.

DISCUSSION AND RATIONALE

Section 53 (12) of the *Planning Act*, R.S.O. 1990, c .P.13, as amended, permits the criteria for the subdivision of land listed in Section 51 (24) to be considered when determining whether provisional consent may be granted by a committee of adjustment. With respect to the criteria listed in Section 51 (24), staff have concerns with the proposed consent as it does not meet the intent of the Official Plan policies related to rural severances and cannot comply with zoning as all variances required do not meet the 4 tests.

Staff are not satisfied that the requested minor variance meets the “four tests” as outlined in Section 45 (1) of the *Planning Act*, R.S.O. 1990 c. P.13, as amended, specifically being minor in nature and conforming with the general intent of the Official Plan.

The subject property is designated as Rural Countryside in the Official Plan and zoned as RU – Rural Countryside zone. The applicant wishes to sever the lands into two separate parcels to create one new lot. The severed land contains an existing dwelling. In conjunction with the severance, several variances have been requested, including a reduced setback to a Mineral Extraction Zone, reduced Minimum Distance Separation (MDS) and reduced lot width.

Severance

The Official Plan requires that severances in the Rural Countryside designation be of a minimum size of 0.8 hectares for the severed lands, and a minimum size of 10 hectares for the retained lands. The current proposal complies with this requirement. However, due to an error in the Official Plan (soon to be corrected via a City-initiated Official Plan Amendment), the severance policy also has several other requirements that were intended only for infill severances. Due to this error, the Planning department cannot support this severance.

Official Plan Section 9.2.3, Policy 3 e) states that any rural severance shall observe the required setbacks from, and not impact lands identified for mineral aggregates and shall meet policies related to mineral extraction reserves and operations. The subject site is opposite to lands zoned as ME2 – Mineral Extraction Zone, Subzone 2.

Official Plan Section 9.2.2, Policy 3 states that development proposed within 1km of a village boundary will be reviewed to ensure that it shall not impede the expansion of the settlement area. The proposed severance is in keeping with adjacent patterns of development and will not likely impede the expansion of the settlement area.

The subject site contains Natural Heritage Features including unevaluated wetlands. Official Plan Section 5.6.4.1, Policy 4 states that development or site alteration proposed in or adjacent to natural heritage features shall be supported by an Environmental Impact Statement (EIS) prepared in accordance with the City's guidelines. The applicant has not provided an EIS.

Several Official Plan policies are not conformed to in this proposal, and therefore staff cannot support the proposal as-is.

Variance – Mineral Extraction Zone Setback

The zoning for the subject site directly abuts two properties zoned as ME2 – Mineral Extraction Zone, Subzone 2, at 5742 Bank Street and 5752 Bank Street. Section 67 of the Zoning By-law (2008-250) states that any new building in an RU zone consisting of a dwelling shall not be built any closer than 150 metres to an ME2 zone. While it would be possible to build outside of this setback on the retained lands, it would interfere with the natural heritage features on site. As no EIS was provided with the application, this variance cannot be supported. Engineering staff requested that a Mineral Resource Impact Statement be prepared and submitted to the City to demonstrate that the proposal will not have a negative impact on any future aggregate operations. As this variance does not comply with the general intent of the Official Plan, it does not meet the four tests.

Variance – Minimum Distance Separation

There is an existing barn on the retained lands, 50.6 metres away from the existing dwelling. The applicant provided MDS calculations stating that the required distance would be 168 metres between the dwelling and the barn. Section 62 of the Zoning By-law states that new development in proximity to existing livestock operations must comply with the minimum distance separation formulae. Development includes lot creation. This variance is not minor in nature and therefore does not meet the four tests.

Variance – Lot width

Staff have no concerns with varying the lot width from 50 metres to 48.9 metres.

Summary

In conclusion, the Planning department cannot support the application as submitted. The proposal does not conform with Official Plan policies, and several requirements must be addressed in order to receive staff support. It is recommended that the application be adjourned sine die, as the necessary changes to the application would justify recirculation.

CONDITIONS

If approved, the Planning, Real Estate and Economic Development Department requests that the Committee of Adjustment impose the following conditions on the application:

1. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

“The City of Ottawa does not guarantee the quality or quantity of the groundwater. If, at some future date, the quality or the quantity of the groundwater becomes deficient, the City of Ottawa bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the homeowner.”

The Committee requires a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title.

2. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the Rural Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

“The City of Ottawa has identified that there are potential organic soils within the area that may require site specific detailed geotechnical engineering solutions to allow for development, the City of Ottawa bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the home owner.”

The Committee requires a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title

3. That the Owner acknowledges and agrees to convey to the City, at no cost to the City, an unencumbered road widening across the complete frontage of the lands, measuring 15 meters from the existing centerline of pavement/the abutting right-of-way along Bank Street, pursuant to Section 50.1(25)(c) of the Planning Act and Schedule C16 of the City's new Official Plan. The exact widening must be determined by legal survey. The Owner shall provide a reference plan for registration, indicating the widening, to the City Surveyor for review and approval prior to its deposit in the Land Registry Office. Such reference plan must be tied to the Horizontal Control Network in accordance with the municipal requirements and guidelines for referencing legal surveys. The Owner(s) must provide to the City Surveyor a copy of the Committee of Adjustment Decision and a draft Reference Plan that sets out the required widening. The Committee requires written confirmation from City Legal Services that the transfer of the widening to the City has been registered. All costs shall be borne by the Owner.
4. That the Owners provide a Mineral Resource Impact Assessment Report, to the satisfaction of the **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, demonstrating that the existing mineral aggregate operation, and potential future expansion of the operation in depth or extent, will not be affected by the development. The report must include a review of the impact of the development upon the current mineral extraction or future expansion. The report shall be prepared in accordance with the Province of Ontario's Aggregate Resource Policies and Procedures and the City of Ottawa Official Plan.
5. That the Owners provide a report, to the satisfaction of the City of Ottawa, demonstrating the adequacy of the aquifer with respect to quality and quantity to support the proposed development, failing which the Owners construct a new well on the severed lot and provide a report, to the satisfaction of the City of Ottawa, to demonstrate the adequacy of the aquifer with respect to quality and quantity to support the proposed development. The report must include a septic impact assessment to evaluate the water quality impact of the on-site septic system on the receiving aquifer.

The Owners' report must demonstrate the following to the City of Ottawa:

- That the construction of any new well on the severed parcel is in accordance with the Ministry of the Environment, Conservation and Parks
- That the quality of the water meets the Ministry of the Environment, Conservation and Parks Regulations, Standards, Guidelines and Objectives;
- That the quantity of water meets all the Ministry of the Environment, Conservation and Parks requirements.
- That the septic impact assessment meets the Ministry of the Environment, Conservation and Parks requirements.

A qualified Professional Engineer or Professional Geoscientist must prepare the report. It is the Owner's responsibility to coordinate the person drilling a new well, if required, and the professional noted herein in order to properly satisfy this condition.

If the accepted report recommends specific mitigation measures or design requirements, the Owners shall enter into a Development Agreement with the City, at the expense of the Owners, which is to be registered on the title of the property, which includes those recommendations. In instances where the subject site has sensitive soils, the drilling of a well or the conveyance of a 30-centimetre reserve may be required. Both the report and any required Development Agreement shall be prepared to the satisfaction of **Development Review Manager of the Rural Branch within Planning, Real Estate and Economic Development Department, or his/her designate.**

6. That the Owner(s) prepares and submits an Environmental Impact Study (EIS) to the satisfaction of the **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate.** If the accepted report recommends specific mitigation measures or other requirements, the Owner shall enter into a Development Agreement with the City, at the expense of the Owner(s) and to the satisfaction of the **General Manager of the Planning, Infrastructure and Economic Development Department, or his/her designate,** which is to be registered on the title of the property, which includes those recommendations.
7. That the Owner(s) provide evidence that payment has been made to the City of Ottawa for cash-in-lieu of the conveyance of land for park or other public recreational purposes, plus applicable appraisal costs. The value of land otherwise required to be conveyed shall be determined by the City of Ottawa in accordance with the provisions of By-law 2022-280, as amended. Information regarding the appraisal process can be obtained by contacting the Planner.
8. That the Owner(s) provide evidence that the barn in operation has been decommissioned to the satisfaction of the **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate.**



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