

2023-09-15



**CONSENT APPLICATION
COMMENTS TO THE COMMITTEE OF ADJUSTMENT
PANEL 3**

PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT

Site Address: 4085 Dunning Road
Legal Description: Part of Lot 14, Concession 14, Geographic Township of Cumberland
File No.: D08-01-23/B-00195
Report Date: September 14, 2023
Hearing Date: September 19, 2023
Planner: Jack Graham
Official Plan Designation: Agricultural Resource Area
Zoning: AG – Agricultural Zone

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **recommends refusal 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.

The subject site is designated as Agricultural Resource Area and zoned as AG – Agricultural Zone. The purpose of this designation and zone is to preserve farmland. The applicant wishes to adjust the lot line between 4085 and 4095 Dunning Road, to transfer ~1630 square metres of land to 4085 Dunning Road, a residential property zoned as RR5[15r] – Rural Residential Zone, Subzone 5, Exception 15r. The resultant lot would be split-zoned between AG and RR5, and would create a lot that does not conform with the AG zone, and as such would require rezoning.

Lands designated in the Official Plan as Agricultural Resource Area are to be zoned as AG. Removal of subject lands from the Agricultural Resource Area designation would require an Official Plan Amendment (OPA). OPAs that remove land from this designation are to be supported by a Land Evaluation and Area Review study that determines that the

land in question is not prime agricultural area. OPAs where the review area is less than 250 hectares are only accepted if agreed to by the City.

The *Provincial Policy Statement (PPS)* Policy 2.3.4.2 states that lot adjustments may be permitted in prime agricultural areas for *legal or technical reasons*. The PPS defines *legal or technical reasons* 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.*
(emphasis added)

PPS Policy 2.3.1 states that prime agricultural areas shall be protected for long-term use for agriculture.

The applicant states that the proposed adjustment is minor in nature. It is staff's position that the adjustment is not minor. The applicant is seeking to increase the lot size of the receiving lot by 65%, adding 1630 square metres of prime agricultural land to the residential lot. The increase is substantial and not in accordance with the policies of the PPS, the Official Plan, and the Zoning By-law. The proposal is not in alignment with Provincial and municipal policies, and therefore staff are recommending refusal of the application.

Should the Committee approve the application, the following conditions are requested.

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(s) obtain a Zoning By-law Amendment, satisfactory to the **Development Review Manager of the Relevant Branch within Planning, Infrastructure and Economic Development Department, or his/her designate**, to be confirmed in writing from the Department to the Committee, to rezone the lands zoned as AG to RR5.
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 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.

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 of Dunning Road, 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 Owner file with the Secretary-Treasurer of the Committee of Adjustment the following:
 - (a) A copy of the Reference Plan and/or legal description of the severed lands and the deed or Instrument conveying the severed lands to the owners of the abutting property to the west, known municipally as 4095 Dunning Road, so that no new lot is being created, in accordance with paragraph (b) below;
 - (b) A Certificate of Official attached to the deed/transfer required by paragraph (a) above containing the following endorsement:

"The lands to be severed are for the purpose of a lot addition only to the abutting lands owned by *(insert name)* described as PIN *(insert property identification number)* being Part(s) *(insert numbers)* on Plan *(insert plan number)*, not for the creation of a new lot, and any subsequent transfer, charge or other transaction involving the lands to be severed shall be subject to compliance with Section 50(3) or Section 50(5) of the Planning Act, as applicable. Neither the lands to be severed nor the abutting lands are to be transferred, charged or otherwise re-conveyed in the future without the other parcel unless a further consent is obtained. The Owner shall cause the lands to be severed to be consolidated on title with the abutting lands and for this condition to be entered on the parcel register for the consolidated parcel as a restriction";

- (c) An Undertaking from a solicitor authorized to practice law in the Province of Ontario, and in good standing with the Law Society of Upper Canada, as follows:

“In consideration of, and notwithstanding the issuance of the Certificate under Section 50(12) of the Planning Act in respect to the subject Application for Consent, I undertake on behalf of the Owner, within **30 days** of the registration on title of the transfer document containing the endorsement set out in the Certificate of Official issued by the Committee of Adjustment, to file an Application to Consolidate Parcels including the severed land (Part of PIN *(insert number)* and the abutting land (PIN *insert number*). This PIN consolidation is intended to reinforce the Planning Act stipulation in the condition outlined above that both parcels have merged on Title and cannot be conveyed separately in the future. I further undertake to forward a copy of the registered Application to Consolidate Parcels and a copy of the Consolidated Parcel abstract page(s) to the Committee office within 21 days of the registration of the Application to Consolidate Parcels”.

- (d) Where the parcel consolidation stipulated in paragraph (b) and the solicitor’s Undertaking in paragraph (c) above cannot be reasonably completed because the parcels of land to be merged have different estate qualifiers, an Application to Annex Restrictive Covenant under Section 118 of the *Land Titles Act* must be registered on the Title of both the severed lands and on the abutting parcel that is to be merged. The Covenant, which is to be to the satisfaction of the Secretary-Treasurer of the Committee, shall advise all future purchasers that the parcels must be dealt with together and not separately, and contain wording set out below or similar wording acceptable to the Secretary-Treasurer of the Committee:

“These lands have been merged and may not be dealt with separately, without applying for a Consent of the Committee of Adjustment”.

In lieu of the Undertaking provided in paragraph (c), a replacement Undertaking by the solicitor must be filed undertaking on behalf of the Owner to register the Restrictive Covenant on both property Titles within 30 days of the registration of the transfer document containing the endorsement of the Certificate of Official issued by the Committee of Adjustment for this application and to file a copy of the registered Restrictive Covenant with the Committee within 21 days of the registration of the document.



Jack Graham
Planner I, Development Review, Rural
Planning, Real Estate and Economic
Development Department



Adam Brown
Manager, Development Review, Rural
Planning, Real Estate and Economic
Development Department