

2023-12-08



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

PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT

Site Address: 6079 McVagh Road & 6105 McVagh Road
Legal Description: Part of Lot 26 and 27, Concession 8, Geographic Township of Cumberland
File No.: D08-01-23/B-00279 - B-00280 & D08-01-23/B-00276
Report Date: November 30, 2023
Hearing Date: December 12, 2023
Planner: Stephan Kukkonen
Official Plan Designation: Rural Transect, Agricultural Resource Area
Zoning: AG2

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **requests an adjournment of** the applications as submitted.

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 consents.

Applications D08-01-23/B-00279 – B-00280 proposes to convey a portion of land to the neighbouring property known as 6105 McVagh Road, then to subdivide the remaining land to create one new lot for a surplus farmhouse dwelling.

These subject lands are designated as Agricultural Resource Area under the Official Plan and are to be protected for long-term use for agricultural production by limiting development that compromises the productivity of these lands. Agricultural lands are afforded this protection through the requirements of Section 2.3 in the *Provincial Policy Statement*. As a result, there are limited development opportunities for lot creation within agricultural lands. Although Section 2.3.4.1 of the *Provincial Policy Statement* does permit lot creation for surplus farmhouse dwellings, the following criteria must be met:

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 residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective.

The protections for agricultural lands described in the *Provincial Policy Statement* are further reinforced in the City's *Official Plan* under Section 9.1.3. Specifically, Section 9.1.3 3) provides the necessary criteria to promote acceptable lot creation within these lands. Lot creation must meet all of the following criteria as follows:

- a) The new lot contains an existing habitable dwelling made surplus through farm consolidation;
- b) As a condition of severance, the retained lands are zoned to prohibit residential uses;
- c) The severed lot is of a size that minimizes the loss of agricultural land;
- d) The new lot can be adequately serviced;
- e) Where the new lot may only contain buildings or structures including a dwelling unit that are accessory or secondary to the principal residential use; and
- f) Where only one lot may be created.

Although this application (D08-01-23/B-00279 – B-00280, 6079 McVagh Road) does contemplate the protection of agricultural lands by meeting most of the above criteria, the Planning Department is concerned about the proposed size of the severed lands. This proposal would sever a surplus farmhouse dwelling on a lot that is approximately 3.37 hectares. Based on the proposed size of the severance, it is clear that the application does not align with the requirements of the *Provincial Policy Statement* which requires the new lot to be limited to a minimum size needed to accommodate the use and appropriate sewage and water services. Similarly, it would not meet criterion c) of the *Official Plan* as described above.

The following figure displays a more reasonable approach which would protect approximately 2 hectares for future agricultural use, while still providing enough land for the surplus farmhouse dwelling and their proposed hobby farm accessory use. It should be noted that the Planning Department had provided a similar sketch and comments resulting from the review of an early inquiry about the subject lands. Additionally, the area shown in the sketch appears to have been actively farmed as recently as 2011, according to the aerial photography (shown below in *Figure 2*) and could return to this use in the future.



Figure 1. Area of Agricultural Land that could be protected if conveyed to 6105 McVagh Road.

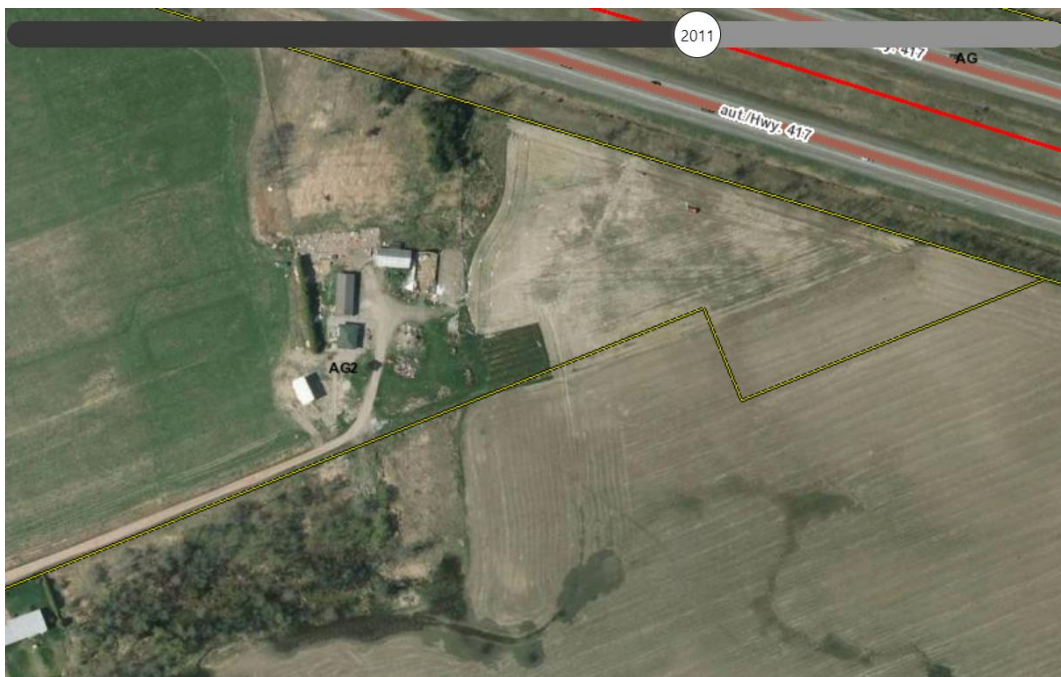


Figure 2. Aerial photograph of subject lands in 2011 showing active farming.

Ultimately, the Planning Department has concerns with the amount of agricultural land that is included in the surplus farmhouse dwelling severance. Although the application

proposes to convey approximately 0.7 ha of agricultural land to the adjacent property, the Planning Department believes this would still result in a significant loss of land that was recently used agriculturally.

Application D08-01-23/B-00276 proposes a similar surplus farmhouse dwelling severance on the lot known municipally as 6105 McVagh Road. The proposed severance would sever approximately 0.59 hectares of land containing the existing dwelling. The Planning Department believes that the size of the severed lands for this application is more appropriate. However, since D08-01-23/B-00279 – B-00280, & D08-01-23/B-00276 are effectively joint applications, it is recommended that the applicants revise the proposal to application D08-01-23/B-00279 – B-00280 to address the Planning Department's concerns before proceeding.

ADDITIONAL COMMENTS

The Right-of-Way Management Department

No concerns with the proposed consent/minor variance application. However, the Owner shall be made aware that a private approach permit is required to construct any newly created driveway/approach.

CONDITIONS

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

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1. 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 land and the deed or Instrument conveying the severed land to the owner of the abutting property to the east, known municipally as 23 Bachman Terrace, 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.

2. That the Owner(s) satisfy the **Chief Building Official, or designate**, by providing design drawings or other documentation prepared by a qualified designer, that as a result of the proposed severance the existing buildings on Part 7 on Draft 4R PLAN shall comply with the Ontario Building Code, O. Reg. 332/12 as amended, in regards to the limiting distance along the proposed property line between Parts 7 & 8. If necessary, a building permit shall be obtained from Building Code Services for any required alterations.

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3. That the Owner(s) satisfy the **Chief Building Official, or designate**, by providing design drawings or other documentation prepared by a qualified designer, that as a result of the proposed severance the existing buildings on Part 7 on Draft 4R PLAN shall comply with the Ontario Building Code, O. Reg. 332/12 as amended, in regards to the limiting distance along the proposed property lines between Part 1 and lands to be retained (including Part 4/5 on neighbouring lands). If necessary, a building permit shall be obtained from Building Code Services for any required alterations.

D08-01-23/B-00279 – B-00280 (6079 McVagh Road) & D08-01-23/B-00276 (6105 McVagh Road)

4. 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.

5. That the Owner(s) obtain a Zoning By-law Amendment, satisfactory to the **General Manager of the Planning, Infrastructure and Economic Development Department, or his/her designate**, to be confirmed in writing from the Department to the Committee, that re-zones the retained lands to prohibit residential development, with all levels of appeal exhausted.
6. That the Owner(s) provide a copy of a legally binding agreement of purchase and sale or a letter indicating the current owner is a licensed farmer, satisfactory to the **General Manager of the Planning, Infrastructure and Economic Development Department, or his/her designate**, to be confirmed in writing from the Department to the Committee, that demonstrates that the newly created lot is being sold.
7. That the Owner(s) provide evidence to the satisfaction of both the **Chief Building Official and Development Review Manager, Planning, Real Estate and Economic Development Department, or designates**, that both severed and retained parcels have their own independent water, sanitary and storm connection as appropriate, and that these services do not cross the proposed severance line and are connected directly to City infrastructure. Further, the Owner(s) shall comply with 7.1.5.4(1) of the Ontario Building Code, O. Reg. 332/12 as amended. If necessary, a plumbing permit shall be obtained from Building Code Services for any required alterations.



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