

2023-12-08



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

**PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT**

Site Address: 5536 Downey Road  
Legal Description: Part of Lot 30, Concession 2RF, Geographic Township of Osgoode  
File No.: D08-01-23/B-00296 to D08-01-23/B-00298, D08-02-23/A-00277 & D08-02-23/A-00278  
Report Date: December 05, 2023  
Hearing Date: December 12, 2023  
Planner: Stephan Kukkonen  
Official Plan Designation: Rural Transect, Rural Countryside Designation, Natural Heritage Feature Overlay  
Zoning: RU

**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 consent. The subject applications seek to sever two 0.8 hectare lots for residential purposes. Although the proposal meets the general severance requirements detailed under Section 9.2.3 3) of the *Official Plan*, there are further considerations that require addressing.

Under Section 1.1.5 of the *Provincial Policy Statement*, all development in rural lands, including lot creation, must comply with minimum distance separation formulae. Minimum distance separation (MDS) formulae are guidelines developed by the Ontario Ministry of Food, Agriculture, and Rural Affairs (OMAFRA) to separate uses and reduce incompatibility concerns about odour from livestock facilities. These implementation guidelines are detailed in the *Minimum Distance Separation Document* prepared by OMAFRA. Guideline #41 describes how the setback distance should be applied for new

lot creation. In this case, since the proposed lots are less than 1 hectare in area, the required setbacks from the three livestock facilities identified should be measured to the lot line. Although, the applicants have provided the correct separation distance calculations, they have included little discussion about application of these setback distances in reference to guideline #41 (in the *Minimum Distance Separation Document*), and rationale for the severance location in spite not complying with the required setback.

Additionally, it should be noted that the subject site includes the presence of natural heritage features. The applicants have submitted an Environmental Impact Study (EIS) to identify and protect these features through recommended mitigation measures. The City's Environmental Planner has reviewed and accepted the recommendations prescribed by the EIS and requests that a development agreement be required as a condition to the severance. However, if the lots are moved as a result of the MDS requirements, the EIS will require revisions to address these changes accordingly.

Staff have reviewed the subject minor variance application against the "four tests" as outlined in Section 45 (1) of the *Planning Act*, R.S.O. 1990 c. P.13, as amended. Staff are not satisfied that the requested minor variances meet the "four tests". As previously mentioned, the Planning Department's outstanding concerns relate the proposed MDS setbacks.

Section 62 (2) of the *Zoning By-law* requires that new development in proximity to existing livestock facilities comply with the minimum distance separation formulae of OMAFRA. Guideline #43 (in the *Minimum Distance Separation Document*) provides guidance on the appropriateness of reducing MDS setbacks. Generally, MDS setbacks are not to be reduced except for limited site-specific circumstances including those that may mitigate environmental or public health and safety impacts or avoid natural or human-made hazards. It is the opinion of the Planning Department that this application does not include any of these site-specific circumstances.

The first minor variance application (A-00277) seeks to reduce the required separation distance from an existing livestock facility to a proposed lot line from 182 metres to 106 metres. Considering the size and location of the proposed lot, such a reduction is significant. The applicants have provided proposed building envelopes as a part of their application and the MDS required setback extends well into the building envelope for this lot. Typically, on lots greater than 1 hectare in lot area, the MDS setback can be measured to the building envelope (per Guideline #41 in the *Minimum Distance Separation Document*), however, this proposal would not meet those requirements either. Again, because the MDS setback would extend well into the proposed building envelope there is no protection afforded to the areas of the property that may be used continuously for residential and related purposes. As such, the Planning Department are not satisfied that the requested variance A-00277 can meet the "four tests".

The second minor variance application (A-00278) is similar in nature to the other minor variance and seeks to reduce the required separation distance from an existing livestock

facility of a proposed lot line from 182 metres to 135 metres. Despite being similar in nature, the context regarding this minor variance is slightly different. Unlike minor variance application A-00277, the required setback does appear to land mostly outside the proposed building envelope. Given the context of the entire property, this requested variance may be considered more reasonable, but still does not meet the 4 tests.

In considering the proposed consents and minor variances, it is the opinion of the Planning Department that the applicants should consider relocating the proposed parcels; one to the corner of Downey Road and Mitch Owens Road while maintaining access to Downey Road. This would remove the proposed parcel from the existing natural heritage features and potentially eliminate the need for a minor variance to reduce the required separation distance. The other potentially could be enlarged to the south to increase the lot area and potentially move the building envelope outside of the MDS setbacks.

## **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:

1. 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 No. 2022-280, as amended. Information regarding the appraisal process can be obtained by contacting the Planner.
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 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 has identified that there are potential thin soils and sensitive marine clays 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 homeowner.”

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

4. 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 17 meters from the existing centerline of pavement/the abutting right-of-way along Mitch Owens Road and 13 meters from the existing centerline of pavement/the abutting right-of-way along Downey 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.
5. That the Owner convey a 5 m x 5 m corner sight triangle located at the intersection of Downey Rd and Mitch Owens Rd to the City, with all costs to be borne by the Owner(s), to the satisfaction of the Surveys and Mapping Branch of the City. This area will be free of all structures, plantings, etc. and will allow a

proper sighting distance for motorists when performing turning movements within the intersection. The Committee must receive written confirmation from **City Legal Services** that the transfer of the lands to the City has been registered.

6. 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.**

7. That the Owner(s) enter into an Agreement with the City, to the satisfaction of the **Development Review Manager of the relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, to be placed on title that includes the development envelopes and mitigation measures identified in the "Environmental Impact Statement Land Severance Application

5536 Downey Road, Ottawa, Ontario” provided by GEMTEC and dated October 11, 2023.

8. 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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