

2024-02-01



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

PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT

Site Address: 5600 William McEwen
Legal Description: Part of Lot 3, Concession 2, Geographic Township of North Gower
File No.: D08-01-23/B-00327
Report Date: January 29, 2024
Hearing Date: February 06, 2024
Planner: Stephan Kukkonen
Official Plan Designation: Rural Transect, Agricultural Resource Area
Zoning: AG

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **requests an adjournment 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 application seeks to convey a portion of their property to the abutting property owner to the west, known municipally as 5613 Third Line Road North. The portion to be conveyed is a landlocked parcel containing an area of approximately 0.32 hectares. It also includes an existing accessory structure.

The proposed retained land has a frontage of 122 metres, a depth of 2064 metres and contains a lot area of approximately 42 hectares. A dwelling, barn, and an accessory structure will remain on the retained land.

The subject site is designated Agricultural Resource Area under the Official Plan and zoned as Agriculture under the Zoning By-law. Section 9.1.3 2) of the Official Plan contemplates lot line adjustments on lands designated as Agricultural Resource Area. Lot line adjustments in this area are only permitted for legal or technical reasons.

In this case, aerial photography shows that the accessory structure was established sometime between 1999 and 2002, more than 20 years after the lot and house at 5613 Third Line Road were created. It also shows that there is access to the accessory structure from the house located at 5613 Third Line Road North. It appears that the access was established when the structure was first erected and remains in place (according to the most recent aerial photographs in 2022). However, this access also appears to serve as the main and only readily available access for retained agricultural lands known as 5600 William McEwen. It is unclear whether there is an existing easement in place that will need to be updated, or is a new easement is required. It is also noted that the existing hydro lines appear to serve both properties and may need to be considered as well.

Further, Staff are concerned about the size of the structure itself, as it appears to be larger than 300 square metres. Some rationale should be provided as to how it will function as an appropriate accessory structure and use to the principal residential use. As such, Planning Staff request adjournment of the application for the applicant to provide more clarity regarding the existing accesses and greater rationale as to how the included structure will serve as an accessory use to the residential dwelling and how this is a legal or technical consent.

ADDITIONAL COMMENTS

Right of Way Management

The Right-of-Way Management Department has **no concerns** with the proposed consent application as there are no requested changes to private approaches. However, the Owner shall be made aware that a private approach permit is required to construct any newly created driveway/approach, or, to remove an existing private approach. The retained agricultural lands at 5600 William McEwen Dr will not have a private approach access off of Third Line Rd N should the severance be approved.

CONDITIONS

1. That the Owner(s) 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 west, known municipally as 5613 Third Line Road North, 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 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 13 meters from the existing centerline of pavement/the abutting right-of-way along William McEwen Road and 13 meters from the existing centerline of pavement/the abutting right-of-way along Third Line Road North, 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.



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