



**Meeting Date:** June 15, 2022

**Submitted by:** Marion-Frances Cabral, Planner

**Report No:** PLA-41-2022

**Subject:** Application for Minor Variance (File No. A-13/2022)

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**Recommendation:**

THAT Minor Variance Application A-13/2022, filed by Alan and Marion Wood, in order to replace a legal non-conforming and permit 2 single detached dwellings on the property, whereas the Zoning By-law permits 1 single detached dwelling or a converted dwelling; for a property legally known as Concession 6 N Pt Lot 5, in the Municipality of Middlesex Centre, County of Middlesex, and municipally known as 23752 Komoka Road, be GRANTED;

AND THAT the reasons for granting Minor Variance Application A-13/2022 include:

- The request complies with the general intent and purpose of Middlesex Centre's Official Plan;
- The request complies with the general intent and purpose of Middlesex Centre's Comprehensive Zoning By-law;
- The request is minor in nature; and
- The request represents appropriate development on the subject property.

**Purpose:**

The purpose of this report is to provide the Committee of Adjustment with a recommendation regarding a minor variance for a property located on the east corner of Komoka Road and Sinclair Drive. A location map is included as Attachment 1.

**Background:**

The purpose and effect of the Application for Minor Variance is to permit the continuation of a legal non-conforming and 2 single detached dwellings on the subject lands, to replace an existing non-conforming residential use. The subject property historically has contained a 2 single detached dwellings that were constructed in 1890 and 1953. The current zoning of the property is the Agricultural (A1) Zone, which only permits 1 single detached dwelling or a converted dwelling.

As an existing non-conforming use, Section 4.20 of the Zoning By-law allows existing permitted uses to continue to be used until such time as the use ceases. Additionally, it only permits the existing dwelling and does not contemplate any expansions or replacements.

The applicant's intention is to replace the dwelling to remain on the family farm. The existing dwelling is a two-storey farmhouse which needs a significant renovation to become age-friendly. The applicant advised that due to the age and design of the farm house is not suitable for renovation and the replacement house would be more accessible. The proposed house exceeds the footprint of the existing house since it is 1 storey in height, however, it would be built within proximity to the existing home. No additional agricultural lands would be removed as a result of the proposed dwelling. Should the Committee of Adjustment grant the minor variance the applicant would apply for a temporary use zone to reside in the existing house while the new house is under construction. The existing house would be removed from the lands.

The proposal is summarized as follows:

| Requirements   | Relief Requested   |
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| <p>Section 4.20 – <u>Non Conforming Uses</u> states: Nothing in this By-law shall apply:</p> <p>(a) to prevent the use of any land, building or structure for any purpose prohibited in this By-law if such land, building or structure was lawfully used for such purpose on the date of the passing of the By-law, so long as it continues to be used for that purpose; and</p> <p>(b) to prevent the erection or use for a purpose prohibited in this By-law of any building or structure for which a permit has been issued under the <u>Building Code Act</u> prior to the date of the passing of the By-law, so long as the building or structure when erected is used and continues to be used for purposes for which it was erected and provided the permit has not been revoked under such Act.</p> | <p>Continue to permit a non-conforming use in order to replace an existing building (dwelling)</p> |

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| <p>Section 5.1.1 – <u>Permitted Uses</u> within the Agricultural (A1) zone states:</p> <p>No land shall be used and no buildings or structures shall be erected, used, or altered in the Agricultural (A1) zone except for the following (<i>list reduced</i>):</p> <p>...</p> <p>Converted dwelling</p> <p>...</p> <p>Single detached dwelling</p> <p>...</p> | <p>Permit 2 single detached dwellings</p> |
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The subject property is located north of Komoka and is surrounded by agricultural and rural residential properties. It is designated Agricultural in the Middlesex Centre and County Official Plan.

**Analysis:**

Section 45(1) of the Planning Act authorizes the Committee of Adjustment to grant relief from the Comprehensive Zoning By-law requirements if a request is deemed to be desirable for the appropriate development or use of the land, building, or structure; the requested relief is minor; and the general intent and purpose of both the Official Plan and Comprehensive Zoning By-law are maintained. Further, Section 45(2) of the Planning Act authorizes the Committee of Adjustment to permit the use of land, buildings or structures if it is of the opinion of the Committee that the use conforms to the uses permitted in the by-law.

Section 10.6 of the Municipal Official Plan addresses legal non-conforming uses and offers the following policy direction:

“Legal non-conforming uses within the Municipality are uses which were lawfully established and legally existing prior to the passing of the Municipality’s Comprehensive Zoning By-laws, but are not permitted in the new Zoning By-law. All alterations, expansions or changes in use require approval by Municipal Council or its Committee of Adjustment.

The Committee of Adjustment may grant permission for an addition, expansion or change in use where appropriate. Municipal Council or its Committee of Adjustment shall use the following criteria to assess such proposals:

- I. The proposed addition, expansions or change in use will not increase the non-conforming nature of the use or property.

- II. The proposed addition, expansion or change in use shall be in an appropriate proportion to the size of the existing use.
- III. The proposed addition, expansion or change in use shall have a minimal impact on surrounding built environment with respect to noise, vibration, fumes, smoke, dust, odours, lighting and traffic generation. No extension or enlargement of a non-conforming use shall be approved if one or more of the above nuisance factors are created or increased so as to add to the incompatibility of the non-conforming use.
- IV. The addition, expansion or change in use shall include the protection of surrounding uses through the provision of landscaping, buffering, or screening, appropriate setbacks for buildings and structures, or other measures which improve compatibility with surrounding land uses.
- V. Traffic and parking conditions shall not be adversely affected by the proposed addition, expansion or change in use. Appropriately designed ingress and egress points and improvements to site conditions shall be considered to promote maximum safety for pedestrian and vehicular traffic, particularly in proximity to intersections.
- VI. The site shall include adequate provisions for off street parking and loading facilities.
- VII. Services such as water, sewage disposal, storm drainage and roads that may be necessary to service the expanded or altered use must be adequate.

Section 10.9 provides the following policies with respect to minor variance applications:

- I. The proposal is compatible with the surrounding neighbourhood;
- II. The proposal is in keeping with the general intent and purpose of the Comprehensive Zoning By-law;
- III. The proposal is in keeping with the general intent and purpose of the Official Plan;
- IV. The proposal is appropriate and desirable use of land; and
- V. The variance is generally minor in nature. The interpretation of what is minor is not necessarily based on the extent by which the by-law is varied. Rather, it is based on whether the effect of the variance could be considered minor.
- VI. There are valid reasons as to why the by-law cannot or should not be complied with, and that reasonable alternatives that comply with the by-law have been considered.

Planning has reviewed the proposed minor variances in relation to the four Planning Act tests as listed above. The analysis has been broken up below which takes into consideration each variance against the four tests.

Is the variance considered minor in nature? YES

The interpretation of what is minor cannot solely be based on the extent to which the zoning by-law is varied. Rather it is based on whether the impact of the variance can be considered minor. In review of the proposed minor variance, staff have reviewed whether to consider the variance minor based on the location, the context of development on the lands, and the existing characteristics of the surrounding lands. The requested variance is considered minor since it recognizes an existing use of the lands and does not fundamentally change the primary use of the lands, the character of the community, and is not anticipated to have any negative impacts on the surrounding lands.

Is the variance an appropriate use of the land? YES

Generally, non-agricultural development is limited on agricultural lands to avoid adverse impacts on surrounding agricultural operations and to ensure the long-term protection of active agricultural land. The requested variance would permit the replacement of a farm house that would be located within proximity to the existing dwelling and building cluster and would not remove agricultural lands from production. Further, existing private servicing would be suitable to the operation of the replacement farm house. Therefore, the proposed variance would represent an appropriate use of the land.

Does the variance maintain the intent of the Official Plan? YES

The subject property is designated Agricultural by Middlesex Centre's Official Plan. Agricultural areas generally permit a principal farm dwelling. Further, notwithstanding the permitted uses set out in section 2.3 of the Official Plan, non-farm residences which existed prior to the establishment of the Middlesex Centre on January 1, 1998 may be used, altered, reconstructed, repaired and renovated provided that the reconstruction, repair or renovation, as the case may be, is undertaken in full compliance with all applicable law. The recently adopted Official Plan update also includes policies to permit additional residential units within accessory buildings. Within agricultural areas, the clustering of buildings is encouraged to minimize the impact on agricultural land and co-locate services, where possible.

The replacement/reconstruction of the farm house is intended to be the principal dwelling. The current converted dwelling policies and proposed additional residential unit policies would permit a secondary dwelling unit on the property which is consistent with the existing use of the lands. The replacement of the existing farm house would not further impact agricultural operations or surrounding land uses. As such, the proposed replacement of the non-complying residential use would conform to the general intent and purpose of the Official Plan.

Does the variance maintain the intent of the Zoning By-law? YES

The general intent and purpose of the Comprehensive Zoning By-law as it relates to the development of buildings or structures on agricultural lands is to limit the amount of land consumed or removed from active agricultural operations. While the replacement farm house is larger in area it will not further remove lands from agricultural use. The proposed farm house will continue to be the principal farm house on the land and comply with provisions in the zoning by-law. Planning staff is satisfied that the proposed use would not detract from the main use (agriculture) on the lands. As such Planning Staff are satisfied that the general intent and purpose of the Zoning By-law would be maintained.

Planning staff is satisfied that the above items have been met and that a minor variance for the continuation of a legal non-conforming use and permission for 2 single detached dwellings can be supported. As mentioned previously, should the Committee of Adjustment grant the minor variance the applicant would apply for a temporary use zoning by-law to permit the construction of the replacement farm-house while residing in the existing dwelling. The existing dwelling will then be removed from the lands upon completion.

Given the above, Planning staff is satisfied that the requested minor variance can be supported. Planning staff recommend that the subject application be approved, as the proposal meets the four test of a minor variance of the Planning Act and that the proposed use conforms to the uses permitted in the By-law.

This opinion is provided prior to the public meeting and without the benefit of potentially receiving all comments from agencies or members of the public. Should new information arise regarding this proposal prior to or at the public meeting, the committee is advised to take such information into account when considering the application.

**Financial Implications:**

**Consultation:**

Notice of the application has been circulated to agencies, as well as property owners in accordance to the requirements of the Planning Act.

**Public Comments:**

At the time of writing the subject report, no comments or concerns had been received from the public regarding this proposal.

**Agency Comments:**

The following comments were received at the time of writing this report;

The Municipality of Middlesex Centre's Director of Building and Planning, as well as the Director of Public Works and Engineering did not comment on the subject application.

The Middlesex County Engineer did not provide comments at the time of writing this report. However, the applicant has been advised that no new accesses will be provided onto Komoka Road and that any new buildings or structures will need to comply with the County's setback requirements.

St. Clair Region Conservation Authority has reviewed the subject property and has no concerns with the proposed application.

**Strategic Plan:**

This matter aligns with following strategic priorities:

- Balanced Growth

**Attachments:**

Attachment 1 – Location Map

Attachment 2 – Applicant's Sketch