



**Meeting Date:** September 7, 2022

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

**Report No:** PLA-63-2022

**Subject:** Application for Zoning By-law Amendment (ZBA-09-2022) for 4847 Bells Road; Filed by JP Viramontes on behalf of Jennifer and Connie Viramontes

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**Recommendation:**

THAT Zoning By-law Amendment application (ZBA-09-2022) for a temporary use zone, filed by JP Viramontes on behalf of Jennifer and Connie Viramontes, to permit two single-detached dwellings on one property for up to three years to allow a new residence to be constructed on the land known as 4847 Bells Road, be APPROVED;

AND THAT the Owners be required to enter into a Temporary Use Agreement with the Municipality and submit a total deposit of \$10,000 to ensure the removal of the existing residence.

**Purpose:**

This report is to provide Council with a recommendation regarding a proposal to temporarily re-zone a property located northwest corner of of Bells Road and Westminster Drive. The property is legally described as Part of Lot 12, Concession 2 (geographic Township of Delaware), Municipality of Middlesex Centre.

A location map is included as Attachment 1.

**Background:**

The purpose and effect of the rezoning application is to temporarily permit two single-detached dwellings on a rural residential property for a period not to exceed three years which will continue to allow the construction of a new residence on the land. The existing residence would be removed from the land upon expiration of the three-year period or the occupancy of the new single-detached dwelling; whichever occurs first.

A sketch of the proposal is included as Attachment 2.

The Owners have been approved for a Temporary Use zone previously in 2013, 2016, and 2019 (expired August 14, 2022) for the construction of their single-family home. As a result of the Covid-19 pandemic, the Owners advised that access to and obtaining of construction materials and contractors became difficult resulting in a delay with construction. With the additional 3-year period, the Owners intend to complete the residence, and remove the existing single detached dwelling from the land.

The entire land is approximately 2.08 ha (5.1 ac) in area and currently contains a single detached dwelling (built in late 1800s), a pole barn, sheds, detached garage, and a single detached dwelling that is under construction. The lands are not actively farmed or used for agriculture, and have frontage and a single access onto Bells Road. The lands have private services (septic system and well) and are currently surrounded by agricultural lands.

### **Policy Regulation:**

The property is designated 'Agricultural Area' within the County of Middlesex Official Plan, and 'Agriculture' within the Middlesex Centre Official Plan. The land is also zoned 'Agricultural (A1)' within Middlesex Centre's Zoning By-law. As such, the policies and provisions below are applicable to the land.

### **Provincial Policy Statement, 2020 (PPS):**

Section 2.3 – Agriculture directs that prime agricultural areas shall be protected for long-term for agriculture. Permitted uses include agricultural uses, agriculture-related uses and on-farm diversified. These uses allow for farm buildings and structures including a farm residence.

### **County of Middlesex Official Plan:**

Section 3.3 – Agricultural Areas-Permitted Uses of the County Plan recognizes that Agricultural Areas shall be preserved as the agricultural industry is vital to the Middlesex economy. Permitted uses include agricultural and related uses including up to two (2) farm residences provided the second farm residence is a temporary residential unit.

### **Middlesex Centre Official Plan:**

Section 2.0 – Policies for Agricultural Areas recognizes that the agricultural land base is one of the most significant economic and community assets within the municipality. Agricultural Areas are intended to be used predominantly for agriculture and agriculture related uses including a principle farm dwelling and related buildings and structures.

Section 10.11 – Temporary Use By-laws allows Council to pass a temporary use by-law to allow a use otherwise prohibited by the Municipality's zoning by-law. The period of time which it is in effect is not to exceed three (3) years from the day of the passing of the by-law, and Council may extend this period by passing further by-laws each of which shall not exceed a period of more than three (3) years.

In enacting a temporary use by-law, Council shall have regard for the following as a minimum: (a) the compatibility of the proposed use with the surrounding land uses; (b) the adequacy of any services that may be required for the proposed use; (c) access and parking requirements; (d) traffic impacts; and (e) the conformity of the proposed use with the policies of this Plan. Temporary use by-laws shall not be passed for the purpose of permitting uses that are not in conformity with the Official Plan.

### **Middlesex Centre Zoning By-law:**

The subject land is zoned 'Agricultural (A1)' which permits a single detached dwelling among other agricultural uses. The requested amendment proposes a temporary use zone (t-1) to temporarily allow a two (2) single detached dwellings on the property for a period up to three (3) years and the 'Agricultural (A1)' zone would continue to apply to the property. The temporary zone (t-1) would continue to allow the new residence to be constructed on the land, and the existing home will be removed when the new home is occupied or at the end of the three (3) year period.

### **Consultation:**

Notice of Complete Application and Public Meeting were circulated to agencies, as well as property owners in accordance with the *Planning Act* and Ontario Regulation 545/06.

### **Public Comments:**

At the time of writing this report, no comments or concerns have been received from the public regarding this rezoning application.

### **Agency Comments:**

At the time of writing the subject report the following comments had been received:

The Municipality's Chief Building Official reviewed the application and has no objection to the requested temporary zone for an additional 3 years.

The Public Works and Engineering Department reviewed the application and has no concerns with the requested temporary use. The applicant is to submit a total deposit of \$10,000, and update an existing or enter into a new Temporary Use Agreement, as necessary, with the municipality to ensure the removal of the existing residence promptly once occupancy is provided to the new residence.

### **Analysis:**

The PPS, County Official Plan, Middlesex Centre Official Plan and Zoning By-law contain policies that permit agriculturally-related uses. This includes all forms of farming including related uses and buildings such as principal farm residences. Additionally, the Zoning By-law permit a single detached dwelling on lands zoned 'Agricultural (A1)'.

The *Planning Act* authorizes municipalities to allow temporary uses on land, buildings or structures for any purposes that is otherwise not permitted within the Zoning By-law for a period of up to three (3) years. This authorization is further communicated through policies of the Middlesex Centre Official Plan provided that the proposed use is compatible with the surrounding area; adequate services exist for the proposed use; access, traffic and parking are addressed; and that the use being proposed conforms to the Official Plan, among other items.

The effect of the zoning by-law amendment application is to replace an existing single-detached dwelling with a new single-detached dwelling. In general, the use of a dwelling as a primary residence is permitted on this property as established in the Middlesex Centre Official Plan and Zoning By-law. Additionally, the proposed new dwelling appears to meet the zoning standards of the 'Agricultural (A1)' zone. The new dwelling is approximately 232 m<sup>2</sup> (2, 497 ft<sup>2</sup>) in area and will continue to use private services such as the existing water well and new septic system. There is no anticipated increase in traffic or parking requirements for the residence as the new dwelling will be under construction, and the existing dwelling will be removed from the property.

Generally, staff would not support the continuation of a temporary use zone over a significant period of time as the use is intended to cease or be formally recognized through an amendment to the Zoning By-law. In this situation, the Owners have applied for the permission since 2013. However, the grounds for the extension appear reasonable, and it would cause undue hardship to the Owners to cease construction of a primary residence.

In 2019, the Owners were granted a Temporary Use Zoning by-law extension and were requested to enter into an agreement with the Municipality and submit a deposit of \$5,000. The Owners were advised that an updated agreement or new agreement, and an additional \$5,000 deposit (for a total of \$10,000) will be necessary.

Given the above, planning staff determined that the requested zoning by-law amendment for a temporary use zone for a period of up to three (3) years is consistent with the Provincial Policy Statement, 2020, the County of Middlesex Official Plan, Middlesex Centre's Official Plan, and Middlesex Centre's Zoning 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, Council is advised to take such information into account when considering the application.

#### **Financial Implications:**

None.

**Strategic Plan:**

This matter aligns with following strategic priorities:

- Balanced Growth

**Attachments:**

Attachment 1 – Location Map