



Meeting Date: September 7, 2022

Submitted by: Dan FitzGerald MPI RPP MCIP, Planner II

Report No: PLA-62-2022

Subject: Consent Application (B-8/2022), 15675 Nine Mile Road

Recommendation:

THAT Consent Application B-8/2022, filed by Gloria and Robert Castelo, on behalf of Michael and Walter Moir, in order to sever and convey as a lot addition a 800 square metres (0.19 acres) parcel of land from a property legally described as Part of Lot 5, London Concession 8, and added to a lot legally described as Part of Lot 5, London Concession 8, Part 1 on Reference Plan 33R20597, in the County of Middlesex, Municipality of Middlesex Centre; be DENIED;

AND THAT the reasons for denying Consent Application B-8/2022 include:

- The proposal is not consistent with the Provincial Policy Statement;
- The proposal does not conform to the County of Middlesex Official Plan and the Middlesex Centre Official Plan.

Purpose:

The purpose of this report is to provide Council with a recommendation in regards to an application to sever a parcel of land for lot addition purposes, to be merged with an abutting lot known municipally as 15675 Nine Mile Road.

A location map is included as Attachment 1.

Background:

The purpose and effect of the Application for Consent (File No.: B-8/2022) is to convey a parcel of land for lot addition purposes having an area of approximately 800 square metres (0.19 acres) to be merged with an abutting lot known municipally as 15675 Nine Mile Road. The lot addition would add to an existing lot with an area of approximately 1.18 acres (0.48 hectares), making the combined lot area approximately 1.38 acres (0.56 hectares). The lands that would be receiving the lot addition contain a single detached dwelling, an accessory building, and is serviced by private septic and well services. The land to be retained, which is a remnant parcel from a former surplus dwelling consent file

number B-19/2019, would be approximately 99.18 acres (40.14 hectares) and contain agricultural land.

The subject property to receive the lot addition currently contains an existing single detached dwelling and accessory building. The property is serviced by private services, in the form of a septic system and well. The property is surrounded by agricultural uses and has access onto a municipally owned road.

The proposal is summarized below:

	'Lands to be severed and conveyed'	'Lands to be retained' 15675 Nine Mile Road
Lot Frontage	0 metres	80 metres (existing)
Lot Depth	10 metres	70 metres
Lot Area	800 square metres	40.14 (99 acres)

A sketch of the proposal is included as Attachment 2.

These lands were previously subject to Zoning By-law amendment application ZBA-01/2022, in which the owners sought permission to temporarily live in the existing dwelling while a new dwelling is being constructed on the lands. The owners of the surplus residence lands have included a cover letter which includes reasoning for the request to include the additional lands to their residential lot. As indicated in the letter, the reasoning is due to the location of a septic bed, placement of the new home, grading of the new home to the rear property line, and distance from chemicals being sprayed during the normal farm practices. A copy of the letter is included as Attachment 3.

Policy Regulation:

The subject land is designated 'Agricultural Area' according to the County of Middlesex Official Plan and 'Agriculture' by the Middlesex Centre Official Plan. The retained lands and lands that would be severed and merged is zoned Agricultural No Residence (A3) Zone, and the receiving lands are zoned Surplus Residence (SR) Zone by Middlesex Centre's Comprehensive Zoning By-law.

Provincial Policy Statement (PPS)

According to Section 3 of the Planning Act, as amended, decisions made by planning authorities "shall be consistent with" the PPS.

Section 2.3.1 of the PPS notes that *Prime agricultural areas* shall be protected for long-term use for agriculture.

Section 2.3.4.1 policies of the PPS notes that lot creation in *prime agricultural areas* is discouraged and may only be permitted for:

- a) agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;

b) agriculture-related uses, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services;

c) a residence surplus to a farming operation as a result of farm consolidation, provided that:

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; and

d) infrastructure, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way.

Section 2.3.4.2 notes that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons.

Section 2.3.4.3 notes that the creation of new residential lots in prime agricultural areas shall not be permitted, except in accordance with policy 2.3.4.1(c).

Further, section 2.3.5.1 notes that Planning authorities may only exclude land from prime agricultural areas for expansions of or identification of settlement areas in accordance with policy 1.1.3.8.

County of Middlesex Official Plan:

The principal policies of the County of Middlesex's Official Plan that are applicable to the proposed development include:

Section 2.2.2.2 notes that consents in the Agricultural Area shall only occur in conformity with the policies of Section 4.5.3.4.

Section 4.5.3.4 (b) consents involving minor boundary adjustments shall be considered provided that non-viable farm parcels are not created and agricultural activities are not adversely affected.

Middlesex Centre's Official Plan

The principal policies of Middlesex Centre's Official Plan that are applicable to the proposed development include:

Section 10.3.2.1 notes that severances within agricultural areas will be prohibited, except under the following specific circumstances:

- a) Severances relating to minor boundary adjustments may be considered. Such severances must not create non-viable farm parcels, and must not adversely affect agricultural activities.

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's Public Works and Engineering Department has reviewed the subject application and if approved, recommend that as a condition of the subject application a drainage reassessment be required if necessary.

The Municipality's Chief Building Official has reviewed the subject application and has no comments.

Analysis:

The Provincial Policy Statement (PPS), County Official Plan and Municipality's Official Plan permit minor boundary adjustments so long as they are required for legal or technical reasons and they do not adversely impact agricultural activities.

In discussion with the applicant, it was noted that the requested lot addition was for the purpose of creating a larger rural residential lot due to development constraints for the placement of a new dwelling on the lands. Due to the location of an existing dwelling to be demolished, a septic bed and lot layout, the applicants have placed their home as far back on the existing property as possible, being 10 metres from the rear lot line. As identified, the decision to place the home in this location has led to rear yard grading concerns by the applicant to the rear property line, and concern exists with the rear of the dwelling being located in close proximity to normal farming practices (i.e. the spraying of chemicals).

Planning Staff have reviewed the applicant's proposal to sever a portion of agricultural land for the purpose of a lot addition against the PPS, County Official Plan and local Official Plan. Based on my review of the applicable policies, I am of the opinion that the proposal is not consistent with the Provincial Policy Statement, does not meet the intent of the County Official Plan or the local Official Plan, and would not meet the intent of the Zoning By-law, based on the following reasons:

- The applicant's lands were created through a consent to sever a surplus dwelling as a result of a farm consolidation, at which time the lands were deemed to be of sufficient size to accommodate the surplus residence and associated private services. It is my opinion that the preferred nature of development on the Surplus Residence (SR) Zoned lands, not legal or technical reasons, are the justifications provided for the request to increase of the parcel size.
- The County of Middlesex Official Plan and Municipality of Middlesex Centre's Official Plan only permit minor boundary adjustments when they are technically or legally justified. In my opinion, the applicant has not provided technical or legal justification for the increase in size to the Surplus Residence (SR) Zone lands.
- The applicant has indicated the increase in lot area is to provide a greater setback from normal farm practices. As a condition of the original severance, a Severance Agreement was entered into, and registered on title, to inform current and future owners of normal farm practices occurring within the area. Prior to purchasing the lands, the applicant should have reasonably been aware of said agricultural practices occurring in close proximity to the existing dwelling, or any future development proposed on the lands.
- In review of the proposed new single detached dwelling, I am of the opinion that sufficient space exists on the lands to locate a new dwelling farther away from the rear lot line than as proposed on the site plan. Further, the applicant maintains the option of removing the existing dwelling and placing the home further forward on the lands, moving the proposed development away from the rear property line as desired.
- The lands associated with the boundary adjustment are prime agricultural lands utilized for crop production. As stated in the County and local Official Plans, minor boundary adjustments must not adversely affect agricultural activities. Since the proposed lands would result in the loss of prime agricultural lands that would affect agricultural activities, Planning Staff do not support the proposed consent.

Given the above, planning staff are recommending that the subject application be denied for the aforementioned reasons.

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.

Attachments:

1. Location Map
2. Proposed Severance Sketch and Plan
3. Applicant's Letter