



**Meeting Date:** January 24, 2024

**Prepared By:** Marion-Frances Cabral, Planner

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

**Report No:** PLA-2-2024

**Subject:** Application for Minor Variance (File No. A-25/2023)

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**Recommendation:**

THAT Minor Variance Application A-25/2023, filed by Judith Ann Russell and Richard Dennis Russell, in order to expand a legal non-conforming use by rebuilding a structure lost to fire and increasing its size by approximately 228 m<sup>2</sup> (2,454 ft<sup>2</sup>), and locating it approximately 40 m north of the previous building for a property legally known as Concession 3 Part lot 11 RP 33R15225 Parts 6 to 10, Municipality of Middlesex Centre, County of Middlesex, and municipally known as 4605 Woodhull Road, be GRANTED subject to the following conditions:

THAT a site plan agreement has been entered into with the Corporation for the lands as a result of the expansion and relocation of an existing building or use on the land prior to any development on the land;

AND THAT prior to development on the land the Owner shall obtain any required permits from the Ministry of Transportation;

AND FURTHER THAT the reasons for granting Minor Variance Application A-25/2023 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 west side of Woodhull Road and on the north side of Highway 402. A location map is included as Attachment 1 and a sketch of the site provided by the Applicant is included as Attachment 2.

**Background:**

The purpose and effect of the Application for Minor Variance is to seek relief from the Middlesex Centre Comprehensive Zoning By-law as it relates to rebuilding a building or structure that was lost by fire, and increasing the size of a non-conforming use. The applicant seeks to locate the new building approximately 40 m north of the previous building, and increase the size of the building from 785.7 m<sup>2</sup> to approximately 1, 013.4 m<sup>2</sup>.

The owner proposes to rebuild and expand the structure related to the excavating business. The proposed building would consolidate operations, the office space and storage space into a single building. The applicant advised that a new septic system will be installed to service the new building, and that a connection to the existing well will be installed.

The existing use was initially permitted in 2001 when Middlesex Centre Council approved the amendment to the Township of Delaware Zoning By-law to permit an excavating business on the property within a site-specific "AG-5" zone. In 2007 the applicant was granted a minor variance (File A-7/07) to expand the legal non-conforming use for an office addition.

As an existing non-conforming use, Section 4.20 of the Zoning By-law allows existing uses to continue to be used until such time as the use ceases. Additionally, Section 4.14 allows the replacement of a structure or building that was destroyed by fire or other natural causes in the same basic dimensions and on the same basic site within 3 years from the date of destruction.

**Consultation:**

Notice of the applications have 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.

## **Staff and Agency Comments:**

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

The Municipality's Chief Building Official reviewed the application and has indicated no objection to the proposal. However, the applicant will need to obtain site plan approval for the existing and proposed buildings and use of the land.

The Director of Public Works and Engineering reviewed the application and has indicated no objection to the proposal related to engineering matters. However, although this "rebuild" is due to a fire the proposed size is more than a 25% increase for a use that is already non-conforming. It also appears to be proposed north of the existing area in what looks to be partially on farmed land leaving the area of the previous building available to be part of the contractor's yard.

The Director also notes that site plan approval must be obtained prior to any new development of the land.

The Lower Thames Valley Conservation Authority reviewed the application and has indicated no objection to the proposal, and note that the proposed building and septic tank are not located within the regulated area.

The Ministry of Transportation reviewed the application and provided the following comments: The application has been considered in accordance with the *Public Transportation and Highway Improvement Act (PTHIA)*, MTO's Highway Corridor Management Manual (HCMM) and all related guidelines and policies. MTO has no objection to the minor variance application, however the following outlines MTO comments on the site as a whole:

Highway 402 along the subject property is a Class 1A – Freeway, and is designated as a Controlled Access Highway. All requirements in accordance with this classification and designation shall apply.

The owner should be aware that the property falls within MTO's Permit Control Area (PCA). MTO Permits are required before any demolition, grading, construction or alteration to the site commences. In accordance with the Ontario Building Code and the *PTHIA*, Municipal permits may not be issued until such time as all other applicable requirements (i.e.: MTO permits/approvals) are satisfied. As a condition of MTO permit(s) MTO will require the following for review and approval:

These comments are based on information received to date, and are subject to change upon new or updated documents being provided.

## **Building and Land Use Permit**

MTO Building and Land Use (BLU) Permit(s) are required for the proposed works.

As a condition of MTO permits, the following will be required for MTO review and acceptance:

- The applicant will be required to submit acceptable Site Plan, and Grading & Drainage Plan(s) for MTO review and acceptance. These plans shall clearly identify all structures/works on the site. MTO requires all buildings, structures and features integral to the site to be located a minimum of 14 metres from all existing MTO property limits, drive aisles and stormwater management facilities.
- Stockpiles and retaining walls must be setback a minimum of 14 m.
- Drive aisle's which are integral to the site must be setback 14m from the MTO property limit.
- MTO will require any existing stockpiles and / or retaining walls within setback, to be removed from the MTO setback.
- MTO will require an existing conditions plan for review. This plan must include any culverts, catch basins, and/or closed storm water systems.
- MTO will require the owner to submit a Storm Water Management Report (SWMR) along with the above-noted grading/drainage plans for the site as a whole, for MTO review and approval. MTO Stormwater Management Requirements for Land Development Proposals can be obtained from the following website:  
<https://www.library.mto.gov.on.ca/SydneyPLUS/TechPubs/Portal/tp/tdViews.aspx?lang=en-US>

MTO notes what appears to be a CSP pipe out letting into the Highway property limit. It is also evident grading (and stockpiling) on the site has taken place over the last several years. MTO does not have record that permits were obtained for these works.

## **Sign permits**

- Any signage, temporary or permanent, which would be visible from Highway 402 will require a MTO Sign permit prior to installation.

## **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.

The subject property is designated Agricultural by Middlesex Centre's Official Plan and zoned 'Agriculture (A1)' in the Comprehensive Zoning By-law. The primary purpose of the Agricultural designation is to support agricultural uses and activities. It does permit non-agriculturally related industrial or commercial uses that remove land from active agricultural production.

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.

**The proposed building and its expanded size increases the non-conforming nature of the property by consuming land vacant of development. Planning Staff note that the current property is undersized for an agricultural parcel and the land available for typical agricultural uses would be less than 3 ha.**

- II. The proposed addition, expansion or change in use shall be in an appropriate proportion to the size of the existing use.

**The applicant provided staff with confirmation that the new building will consolidate storage area, office area and working space related to the excavating business. The expansion of the building will allow some work to occur inside the building whereas it was completed in outdoor areas around the site.**

- 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.

**The proposed expansion of the legal non-conforming is not anticipated to increase nuisances such as smoke, traffic generation or noise and vibration.**

- 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.

**The Municipality requests that the applicant undertake the site plan approval process prior to any development on the lands. The site plan agreement will address buffering and fencing, and other mitigation methods to improve compatibility with surrounding rural residential and agricultural properties.**

- 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.

**Planning Staff do not expect that the expansion of the non-conforming use will result in changes to traffic on Woodhull Road nor impact pedestrian safety in the area. The dedicated parking spaces are expected to increase as a result of the building expansion at the rate establishing in the Zoning By-law.**

- VI. The site shall include adequate provisions for off street parking and loading facilities.

**As mentioned previously, the site plan agreement will address technical on-site matters including loading, storage, parking and driveway conditions, and ingress/egress points.**

- 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.

**A new individual private septic system and a new connection to an existing well will be installed to service the new building.**

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 Staff acknowledge that the proposed use does not conform to the permitted uses and goals of the Agricultural area within the Middlesex Centre Official Plan and the proposed building expansion represents an increase of almost 30% compared to the previous building, and an increase in lot coverage of 0.2%. However, the use was previously permitted and established on the property, and constitutes as a legal-non conforming use. Further, it is not expected for the expansion and relocation of the building to result in adverse impacts to abutting properties, traffic or servicing.

Planning Staff advise that the use of the land has steadily increased over the last 20 years as identified through aerial imagery. This includes outdoor storage and stockpiles of gravel and sand in proximity to the Highway 402. Planning Staff are not aware that an existing site plan agreement exists for the property and operations on the property have not been reviewed comprehensively especially as it relates to outdoor storage, servicing, and buffering. As such, Planning Staff recommend that a Site Plan Agreement be entered into with Municipality prior to the development of new building that is increased in size and relocated on the property. The Site Plan Agreement is also intended to incorporate measures to reduce the impact of the existing use and proposed development on surrounding properties.

Staff is satisfied that the above items have been met and that a minor variance for the expansion of a legal non-conforming use can be supported subject to conditions.

**Financial Implications:**

None.

**Strategic Plan:**

This matter aligns with following strategic priorities:

- Vibrant Local Economy

**Attachments:**

Attachment 1 – Location Map

Attachment 2 – Applicant’s Sketch