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Report No: PLA-4-2024

Subject: Amendment to Consent Conditions – B-22-2021

Recommendation:

THAT Consent Application B-22/2021, filed by Husam Almadani, on behalf of 13322068 Canada Inc, in order to sever a residential lot with a frontage of approximately 27.7 metres (90.8 feet) on Railway Ave and an area of approximately 848.5 square metres (0.2 acres), and the retained parcel a frontage of approximately 27.7 metres (90.8 feet) on Railway Ave with an area of 848.5 square metres (0.2 acres), on a property legally described as Part of Lot 6, Concession 2, in the County of Middlesex, Municipality of Middlesex Centre, and municipally known as 165 Railway Ave; be GRANTED.

AND THAT Consent B-22/2021 be subject to the following conditions:

1. That the Certificate of Consent under Section 53(42) of the *Planning Act* shall be given within two years of the date of the notice of the decision. The request for the Certificate of Consent shall be accompanied by a written submission that details how each of the conditions of severance has been fulfilled.
2. That the fee for the Certificate of Consent be paid in accordance with the Municipality's Fees and Charges By-law.
3. That a draft reference plan be prepared by an Ontario Land Surveyor for the purposes of facilitating the transaction of Consent B-22/2021 and that this plan be approved by the Municipality prior to being deposited with the Land Registry Office.
4. That the Owners' solicitor provide a Transfer in Preparation to the Municipality, together with a deposited reference plan and a Schedule describing the land to be transferred, for the purposes of the issuance of a Certificate of Consent.

5. That the Owners' solicitor submit an undertaking in a form satisfactory to the Municipality to register an electronic transfer of title consistent with the Consent decision.
6. That any outstanding property taxes for the severed and retained lots of Consent B-22/2021 be paid in full.
7. That the Owner enter into a Development Agreement with the Municipality, and that the Agreement be registered against the title of the subject land, to address among other matters: all financial, legal, planning and engineering matters including but not limited to payment of the Municipality's engineering, legal and planning review costs, entrance locations and construction, works within the road allowance, lot grading and drainage plans, and building envelopes, all to the satisfaction of the Municipality.
8. That the owner install separate water and sanitary service connections to the severed parcel prior to consent being granted to the satisfaction of the Municipality.
9. That if necessary, the owner relocate the existing water and sanitary services to be wholly contained on the retained lands to the satisfaction of the municipality.
10. That the Owner provide a lot grading plan for the severed lands showing a proposed building envelope and grading information to the satisfaction of the Municipality.
11. The Owner be required to complete a Stormwater Management Report to the satisfaction of the Municipality.
12. That the Owner be required to pay fifty percent (50%) of future road upgrades as determined by the Director of Public Works and Engineering.
13. That the Owners pay \$1,100 cash-in-lieu of parkland dedication for the proposed lot of Consent B-22/2021.
14. That the Owner successfully apply for a receive a minor variance to reduce the minimum lot size requirement as per the UR1-3 Zone for the severed and retained lands.
15. That the Owner be required to install a crash wall as per the requirements of CN Rail, prior to the issuance of a certificate of consent.

AND FURTHER THAT the reasons for granting Consent application B-22/2021 include:

1. The proposal is consistent with the Provincial Policy Statement;
2. The proposal conforms to the County of Middlesex Official Plan and the Middlesex Centre Official Plan; and
3. The proposal can comply with the Middlesex Centre Comprehensive Zoning By-law.

Purpose:

The purpose of this report is to provide Council with a recommendation regarding a proposal to create a new residential lot along Railway Avenue in Komoka.

A location map is included as Attachment 1.

Background:

The purpose and effect of the consent application is to create a new residential lot for the purpose of constructing one single-detached dwelling. The owner of the lands is proposing to sever the lands in half, resulting in a severed and retained lot with a frontage of 27.7 metres (90.8 feet) on Railway Ave, and each with an area of approximately 848.5 square metres (0.2 acres).

As Council may recall, the application came before Council for a decision on January 24th, 2022. Upon review of the application and working towards condition clearance, the applicant provided a noise and vibration study to CN Rail for review. Upon review of the study, the applicant is now required to install a crash wall at the back of the property as per CN engineered design standards to ensure any future dwelling would be protected in such situation of a derailment. Given the significant requirements introduced by CN Rail, the Municipality felt it was appropriate to issuance a new notice of decision including the requirement to construct the crash wall, prior to the issuance of a certificate of consent.

Analysis:

Policy Regulation:

The subject property is located within a Settlement Area according to the County of Middlesex Official Plan and is designated Residential by the Middlesex Centre Official Plan. The land is zoned Urban Residential First Density Exception (UR1-3).

Provincial Policy Statement (PPS):

Section 3 of the Planning Act requires all decisions made under the Act “to be consistent with” the Provincial Policy Statement (PPS). The following PPS policies are relevant to the proposed development and need to be considered when evaluating the subject applications.

Section 1.1.3 of the PPS speaks to Settlement Areas, which identifies settlement areas as the focus of growth and development. Section 1.1.3.3 of the PPS states, 'Planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.'

Section 1.1.3.4 speaks to 'appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety.'

Section 1.6 of the PPS speaks to servicing. The PPS has a hierarchy for services, where municipal services are the preferred form of servicing. Section 1.6.6.1a) states 'Planning for sewage and water services shall accommodate forecasted growth in a manner that promotes the efficient use and optimization of existing municipal sewage services and municipal water services'.

County of Middlesex Official Plan:

The County of Middlesex Official Plan speaks to settlement areas in section 2.3.8. This section states 'urban areas and community areas shall be the focus for future growth including residential, commercial and industrial development'. The County Official Plan also has a similar servicing hierarchy as the PPS, and prefers full municipal services within urban areas.

Section 4.5.3.3 of the County Official Plan speaks to Settlement Areas and promotes infilling development in built-up areas, where the proposed lots are compatible with the lot area, frontage and density patterns of the surrounding area and the application represents orderly and efficient use of land, and its approval would not hinder future development of the retained lands.

Middlesex Centre Official Plan:

Middlesex Centre's Official Plan designates the subject lands as 'Residential'. Within this designation residential dwellings are permitted in a variety of forms, including single detached dwellings.

Section 9.3 of the Local Official Plan speaks to municipal infrastructure and servicing policies. These policies have a similar hierarchy as the PPS and the County Official Plan.

Section 10.3 of Middlesex Centre's Official Plan speaks to lot creation and states,

- a) Severances shall only be granted if a plan of subdivision is not necessary for the proper and orderly development of the land. Plans of subdivision will not be required where three or fewer new lots are proposed to be created, or where circumstances exist where a plan of subdivision is not considered by the Municipality to be necessary. Where more than three new lots are proposed to be created, the Municipality may exercise flexibility in determining whether a plan of subdivision process is required for the orderly development of the land. Notwithstanding the above, in all cases where the creation or extension of municipal streets and/or services is proposed, a plan of subdivision process will be required.
- b) Where individual wells and septic systems are proposed, lot areas must be of a size and configuration to accommodate an appropriate septic system, sewage envelope and contingency area. For a conventional septic system, a storage envelope consists of the area occupied by the tile bed and mantle. The size of the storage envelope will vary depending on the projected water use of the anticipated use and the soils and slope of the subject site. The contingency area will be equal in size to the tile bed and sewage mantel.
- c) All lots must front on and have access to an existing public road maintained on a year round basis and at a reasonable standard of construction. Direct access to and from County or Provincial roads will be limited in accordance with the policies and regulations established by the agencies having jurisdiction over these roads.
- d) An adequate and potable water supply must be available for any proposed lots created by consent. An exception to this policy may be made if it can be shown that the purpose for which the lot(s) in question is to be used does not require a water supply.
- e) All lots created by severance must be suitable or capable of being made suitable to support a sewage disposal system.
- f) Severances may be permitted for the purposes of making a lot boundary correction provided that such corrections are minor in nature.

Public Consultation:

CN Rail: It is noted that the proposed setback for the development of 9.16 metres does not meet the minimum required setback of 30 metres from the railway corridor. Given the size of the subject lot, the 30 metre setback may not be feasible. As per the FCM/RAC Guidelines for New Development in Proximity to Railway Operations, where the standard berm and setback are not technically or practically feasible, due for example, to site conditions or constraints, then a Development Viability Assessment should be undertaken by the proponent to evaluate the conditions specific to the site, determine its suitability for development, and suggest alternative safety measures such as crash walls or crash berms. CN recommends that the municipality consider the viability of the subject site for residential use through a Development Viability Assessment.

Alternatively, CN may consider a reduced setback from the railway property line, provided that it can be clearly demonstrated that any adverse impacts created by such a reduction in setback will be adequately addressed, as to not adversely affect safety and livability for future occupants. Given the project's location and site conditions, the proponent may wish to consider implementing a crash wall instead of an earth berm with a much larger footprint. Crash walls are concrete structures that are designed to provide the equivalent resistance in the case of a train derailment as the standard berm, particularly in terms of its energy absorptive characteristics. The design of crash walls is dependent on variables such as train speed, weight, and the angle of impact, which will vary from case to case. I've attached the crash wall specifications that railways refer to for adjacent development proposals. Please note that CN requires a third party peer review by AECOM of the crash wall design, at the proponent's expense.

Analysis:

The Provincial Policy Statement, County Official Plan and the Municipality's Official Plan generally permit lot creation within Settlement Areas, subject to servicing and compatibility.

The proposed lot fabric for the consent has not changed from the original application. Rather the only change is based on the requirement to install a crash wall. Given the complexity of the requirement, Planning in consultation with the Municipality determined that the conditions should be amended to reflect the new requirement.

Given the above, planning staff are recommending that the subject applications be approved with the new condition included.

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 Council is advised to take such information into account when considering the application.

Financial Implications:

None.

Attachments:

1. Location Map
2. Proposed Severance Sketch
3. Noise and Vibration Study