



Meeting Date: May 22, 2024

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Report No: PLA-21-2024

Subject: Applications for Official Plan Amendment (OPA 64) and Zoning By-law Amendment (ZBA-2-2024), filed by Brock Development Group on behalf of Arjang and Carol Yazdani

Recommendation:

THAT the Official Plan Amendment No. 64, filed by Brock Development Group on behalf of Arjang and Carol Yazdani, for the land legally described as Concession 6 S Pt Lot 28 (former Township of London) and known as 2312 Sunningdale Road W, Municipality of Middlesex Centre, be REFUSED;

AND THAT the Zoning By-law Amendment application, filed by Brock Development Group on behalf of Arjang and Carol Yazdani, to rezone the subject land from the 'Agricultural (A1)(t-1)' zone to a new site-specific 'Agricultural (A1-x)(t-1)' zone for the land legally described as Concession 6 S Pt Lot 28 (former Township of London) and known as 2312 Sunningdale Road W, Municipality of Middlesex Centre, be REFUSED.

Purpose:

The purpose of this report is to provide Council with a recommendation regarding an Official Plan Amendment and Zoning By-law Amendment for a property located at 2312 Sunningdale Road W which is located on the north side of Sunningdale Road W and east of Denfield Road. The property is legally described as Concession 6 S Pt Lot 28 (former Township of London).

A location map is included as Attachment 1

Background:

The purpose and effect of the Official Plan Amendment application is to re-designate the subject land from the Agricultural designation to an Agricultural Special Policy Area designation to allow an additional residential unit in an accessory building which is otherwise not permitted.

The purpose and effect of the Zoning By-law Amendment application is to rezone the property from the "Agricultural (A1)(t-1)" Zone, to a new site-specific "Agricultural exception (A1-x)(t-1)" to permit an additional residential unit within an accessory building, to locate an accessory building in the front yard, and to permit an accessory building with a maximum gross floor area of approximately 204.4 m² (2,200 ft²) or 49% of the floor area of the principal dwelling. The Zoning By-law amendment would continue to permit agricultural uses permitted in Section 5.1.1 of the Zoning By-law.

The subject land is approximately 18.2 ha (45 ac) in area and has 206 m (677 ft.) of frontage on Sunningdale Road W. The land contains a single detached dwelling and a building that was formerly the principal residence of the property. The land is used for agricultural uses including cultivation and horticulture activities (small flower farm).

The rear of the property contains a Significant Woodland which is part of the Natural Heritage System, and area regulated by the Upper Thames River Conservation Authority.

Surrounding land uses are primarily agricultural with rural residential uses. The Natural Heritage System surrounds the land to the north, west and south.

Policy Regulation:

Planning Act

Section 16(3) of the Planning Act directs that Official Plans cannot contain any policy that has the effect of prohibiting the use of:

- "(a) two residential units in a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if all buildings and structures ancillary to the detached house, semi-detached house or rowhouse cumulatively contain no more than one residential unit;
- (b) three residential units in a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units;
or
- (c) one residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if the detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units."

There are no specific clauses that address (additional) residential units on a parcel of non-urban residential land where full municipal services do not exist.

Provincial Policy Statement, 2020:

Section 3 of the Planning Act requires all decisions made under the Act “to be consistent with” the Provincial Policy Statement, 2020 (PPS). The following PPS policies are relevant to the proposed development and need to be considered when evaluating the subject applications.

Section 1.1.1 of the PPS speaks to ‘Healthy, liveable and safe communities’ and how they can be sustained. Section 1.1.1b) states that ‘accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs’.

Section 1.4 of the PPS speaks to ‘Housing’ and the requirement ‘to provide for an appropriate range and mix of housing options and densities required to meet projected requirements of current and future residents of the regional market area’.

Section 1.6.6 of the PPS outlines the hierarchy for sewage and water services. Generally, the preferred method of servicing is municipal services, however consideration can be given to private and communal services where appropriate, and where supported by appropriate studies.

Section 2.3 of the PPS speaks to prime agricultural areas and the long-term protection of these areas for agricultural use. Permitted uses within prime agricultural areas include: agricultural uses, agricultural-related uses, and on-farm diversified uses. Policy 2.3.6 of the PPS addresses non-agricultural uses in prime agricultural areas. The PPS directs that limited non-residential uses may be permitted within a prime agricultural area subject to evaluation criteria.

Middlesex County’s Official Plan

The County of Middlesex Official Plan designates the subject land as Agricultural Area. The County Plan recognizes agriculture as the predominant land use and an economic mainstay within the County. The Agricultural policies are intended to protect agricultural lands from the intrusion of land uses that are not compatible with agricultural operations.

Section 2.3.7 of the County of Middlesex Official Plan speaks to housing policies and states that, it is the policy of the County to encourage a wide variety of housing by type, size and tenure to meet projected demographic and market requirements of current and future residents of the County.

More specifically, Section 2.3.7.4 – Additional Residential Units allows for the development of additional residential units as a way to increase the diversity and stock of rental and affordable housing, to create opportunities for aging in place, and to provide homeowners with additional sources of income.

Specific to the creation of additional residential units outside of settlement areas, such uses shall be groups with the primary dwelling, shall meet Minimum Distance Separation formulae, and shall be prohibited from being severed from the property unless as part of the severance of the primary dwelling unit as a residence surplus to a farming operation.

Additionally, local municipal official plans and zoning by-laws shall address the following:

- a) the Building Code, Fire Code and all other Provincial County and Municipal standards,
- b) the provision of adequate access, including emergency access,
- c) that the additional residential unit(s) be clearly subordinate in scale and function to the primary unit, and
- d) not be permitted within hazard lands as defined and regulated by conservation authorities.

The County of Middlesex's Official Plan in Section 2.4.5 discusses the servicing hierarchy similar to those discussed in the PPS.

Middlesex Centre's Official Plan

The subject land is designated 'Agricultural' by Middlesex Centre's Official Plan. The designation permits primarily agricultural uses including a principal farm dwelling, farming related buildings, structures and uses of the land.

Section 5.2.1 of Middlesex Centre's Official Plan speaks to General Residential Policies, section 5.2.1 a) states, The Municipality will provide and encourage a wide variety of housing types, sizes and tenures to meet demographic and market requirements for the Municipality's current and future residents'.

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. As it relates to this proposal section 9.3.2 a) states, 'the principal means of sewage disposal in agricultural areas of the Municipality is the septic tank and weeping tile system. It is anticipated that such systems will continue to be the principal means of sewage disposal outside of settlements in the foreseeable future, however the consideration of alternative and improved technologies is encouraged.'

Section 9.6.1 of Middlesex Centre's Official Plan states it is policy of this Plan that the conversion of an existing principal farm dwelling to add an additional residential unit may be permitted, subject to the requirements within the existing building, and will not require an addition to facilitate the conversion.

Section 9.7 of the Municipality's Official Plan states that new garden suites will not be permitted within the Municipality. Garden Suites are temporary housing on a property over and above the primary residence.

In Section 10.1 of the Official Plan it is noted that the Plan may be amended upon consideration of all relevant issues relating to the public interest. It is further noted that the Municipality shall give consideration to the following criteria:

- a) Does the proposed amendment relate and conform to the vision for the Municipality of Middlesex Centre?
- b) Is there a demonstrated need or justification for the proposed change?
- c) Is the amendment in keeping with the Provincial and County policy?
- d) What are the effects of the proposed change on the demand for Municipal services, infrastructure, and facilities?

- e) Can the land affected by the application be adequately serviced to accommodate the proposed development? Are improvements necessary to adequately service the lands in question?
- f) What impacts will the proposed development have on surrounding land uses, traffic systems, infrastructure and servicing, settlement or Municipal character, features or structures of cultural heritage importance, and natural environment features? Can negative impacts be mitigated or eliminated?

It is noted that the adopted Official Plan (adopted May 18, 2022), as amended and approved by the County of Middlesex (approved September 26, 2023) is not in-effect. However, it provides clarity with regard to Additional Residential Units that Planning Staff have employed while evaluating site-specific requests. Proposed policies are noted below:

1. *Section 9.6.1 – Additional Residential Units*

- a) *One (1) Additional Residential Unit may be permitted within a detached accessory building or structure and up to two (2) Additional Residential Units may be permitted within the principle dwelling provided that the total number of Additional Residential Units on the parcel does not exceed two. A garden suite shall not be permitted where an existing Additional Dwelling Unit is located within a detached building or structure.*
- b) *Where partial or individual services are utilized, demonstration of adequate sewer and water servicing capacity. In accordance with the Planning Act, R.S.O. 1990, Additional Residential Units are permitted on parcels of urban residential land with full municipal water and sewage services.*
- c) *Demonstration that the Additional Residential Unit is not located within the natural heritage system, floodplain areas, or other hazardous lands.*
- d) *Demonstration that the proposal complies with the Minimum Distance Separation formulae, where applicable.*
- e) *Demonstration that the Additional Residential Unit has a floor area of 49% or less of the principal dwelling.*
- f) *Demonstration that the Additional Residential Unit is in full compliance with the Ontario Building Code and fire code, and the provision of adequate emergency access.*
- g) *Notwithstanding section 9.6.1 e), further limitations on the maximum permissible size of an additional residential unit may be identified in the Municipality's Zoning By-law.*
- h) *The Zoning By-law will establish provisions for the accommodation of Additional Residential units, including requirements for detached Additional Residential Units.*
- i) *For additional Residential Units in a detached accessory building or structure in Agricultural Areas, the unit shall be clustered with the primary dwelling to minimize the impact on agricultural land, shall meet Minimum Distance Separation formulae,*

and shall be prohibited from being severed from the property unless as part of the severance of the primary dwelling units a residence surplus to a farming operation

- j) Garden suites, granny flats, and tiny homes or trailers are considered temporary uses and evaluated in Sections 9.7 and 9.8 of this Plan.”*

Middlesex Centre’s Zoning By-law

The subject land is zoned ‘Agricultural (A1)’ in Middlesex Centre’s Zoning By-law. The current zoning permits a converted dwelling for a maximum of 2 units, although it does not permit an additional residential unit in an accessory building.

Section 4.1 of the Zoning By-law outlines standards for buildings or structures accessory to a dwelling in an Agricultural zone. The maximum height of a building accessory to a dwelling shall not exceed 6.5 m (21.3 ft) and the lot coverage and gross floor area shall not exceed the lesser of 3% of the lot coverage of 165.0 m² (1,776.05 ft²) of gross floor area for accessory buildings located on a lot with an area greater than 5,000 m² (1.25 ac). For the subject land, the maximum size is 165.0 m² (1,776.05 ft²).

A Temporary Use zone (t-1) applies to the property and will expire in July 2024. The Temporary Use Provision was sought by the applicant to allow occupation of the existing, principal dwelling while a new dwelling was constructed. The Temporary Use provision would cease upon expiration after 3 years, upon conversion of the former principal dwelling into a farm-related building (market garden/flower shop), or upon removal. The former principal dwelling is now subject to the requested Official Plan and Zoning By-law Amendment Applications.

Staff note the Zoning By-law update (approved July 5, 2023), that supports the Official Plan update, gives additional direction for Additional Residential Units. These regulations are not in-effect until the Official Plan update is in-force and in-effect, however, they are provided for information.

1. *Definitions:*

“Additional Residential Unit means a dwelling unit that is self-contained, subordinate to and located within the same building or on the same lot of a primary dwelling unit.”

2. *Section 4.2 – Additional Residential Units*

Where permitted by this By-law, additional residential units shall be in accordance with the following provisions:

“(a) In any zone that permits a single detached dwelling, semi-detached dwelling, townhouse or street townhouse dwelling, a maximum of two additional residential units shall be permitted per lot.

- (i) A maximum of two additional residential units shall be permitted within a principal dwelling provided that an additional residential*

unit in a detached accessory building is not provided on the same lot.

- (ii) A maximum of one additional residential unit shall be permitted in a detached accessory building, provided there is no more than one additional residential unit within the principal dwelling.*

(b) An additional residential unit permitted in a detached accessory building shall comply with the following provisions:

- (i) The accessory building containing the additional residential unit shall comply with the requirements for accessory buildings and structures in accordance with Section 4.1.*
- (ii) The accessory building shall not be permitted to be located within a front yard or exterior side yard.*
- (iii) A 1.2 m wide unobstructed pedestrian access shall be provided to the entrance of the additional residential unit unless access is provided directly from a street or lane.*
- (iv) The maximum height of the accessory building shall be in accordance with Section 4.1(c) of this By-law.*
- (v) Notwithstanding any other provisions of this Bylaw, no additional residential unit shall be permitted within a building that is used to keep livestock.*
- (vi) A detached additional residential unit shall not be permitted where a garden suite is existing on a lot.*
- (vii) A detached additional residential unit shall be located within 40.0 metres of the closest portion of the principal dwelling on the lot.*

b) In addition to the requirements of subsection (b), any Hamlet Residential, Agricultural or Surplus Residence zone, an additional residential unit permitted in a detached accessory building shall comply with the following provisions:

- (i) The gross floor area of the additional residential unit shall not exceed 50% of the gross floor area of the principal dwelling, or 85.0 m², whichever is less.*
- (ii) Water and wastewater services required for the additional residential unit shall be shared with the principal dwelling on the lot.*

c) An additional residential unit within the same building as the principal dwelling shall not be permitted in conjunction with a bed and breakfast establishment in the same principal dwelling.

d) Each additional residential unit shall have one additional parking space provided in addition to the minimum number of parking spaces for the principal dwelling on

the lot established in Section 4.28 of this By-law. The required parking space is permitted to be configured as a tandem parking space.

- e) *An additional residential unit or part thereof shall not be permitted within hazard lands.”*

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 and 543/06.

Staff have not received any comments from the public at the time of writing this report.

Agency Comments:

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

The Municipality’s Chief Building Official reviewed the applications and has no comments.

The Public Works and Engineering Department reviewed the applications and has no comments.

Upper Thames River Conservation Authority (UTRCA) reviewed the applications as the subject lands are regulated by UTRCA due to the presence of a wetland feature and its 30 m surrounding area of interference. UTRCA has no objection to the Zoning By-law Amendment application as the proposed location of the ARU is sufficiently setback from the wetland. A Letter of Clearance from UTRCA Regulations staff will be required prior to construction.

Analysis:

The current Middlesex Centre Official Plan does not contain policies that permit second dwelling units, secondary suites, or additional residential units in accessory buildings. However, the Planning Act and PPS authorizes municipalities to establish policies that permit additional residential units where appropriate to meet the housing needs of the community. As such, an amendment to the Official Plan is required and the following criteria should be examined:

a) Does the proposed amendment relate, and conform to the vision for the Municipality of Middlesex Centre?

The proposed amendment supports the Municipality’s vision of providing a variety of housing types for current and future residents, as well as using resources wisely in terms of utilizing available private services. The current, in-effect Official Plan does not contemplate housing stock like Additional Residential Units (ARU) unless fully contains within the principal dwelling (converted dwelling).

Proposed ARU policies within the Official Plan update are permissive of ARUs within the Agricultural area subject to criteria and further direction in the Zoning By-law.

The amended and County-approved local Official Plan update proposes policies as noted above in this staff report. Of the 10 proposed policies, the requested Official Plan Amendment application does not appear to meet 3 policies related to conformity with provisions in the Zoning By-law for ARUs and Accessory Buildings, and clustering of the ARU with the primary dwelling and other buildings when in Agricultural Areas.

Planning Staff note that policies and goals for Agricultural areas seek to protect prime agricultural land for agricultural uses for the long-term and limit non-agricultural uses including residential development. Further, new housing development should be directed towards settlement areas. The proposal does not remove land from active agricultural production, however, the land and building can be returned to agricultural use as intended by the applicant. The maintenance of a non-agricultural use within the Agricultural area is contrary to the local Official Plan.

b) Is there a demonstrated need or justification for the proposed change?

The proposal offers a rental housing option in the rural area. The intent of ARUs is to provide supplementary income to the homeowner, provide other tenures and forms of housing to residents of the municipality, and can be an option to support residents to age in-place.

Planning Staff note that local policies encourage adding dwellings to the local housing supply. New development and intensification should be directed to settlement areas.

c) Is the amendment in keeping with the Provincial and County policy?

The proposal conforms to the Provincial Policy Statement and some County policies as the proposal is contributing to a variety of housing types, accommodated by private services, which is a supported form of servicing under the PPS when full municipal services are not available.

The proposal does not appear to remove active agricultural land from production. However, it does not appear to return it to an agricultural state since there is a new principal dwelling on the property.

The proposal does not appear to conform to the County of Middlesex Official Plan where it states that ARUs outside of settlement areas shall be grouped with the primary dwelling. The building for the ARU is approximately 400+ feet from the new principal dwelling. To add, while a severance is not considered by the applicants now, the size and location of the building could result in the ARU being severed from the principal dwelling in the future.

d) What are the effects of the proposed change on the demand for Municipal services, infrastructure, and facilities?

The subject land is proposed to be serviced by private services and there is no intended increase on the demand of Municipal services.

e) Can the land affected by the application be adequately serviced to accommodate the proposed development? Are improvements necessary to adequately service the lands in question?

The applicant has indicated that there is an existing private septic system and well within proximity of the building. The function and capacity of the septic system has not been confirmed by the applicant.

f) What impacts will the proposed development have on surrounding land uses, traffic systems, infrastructure and servicing, settlement or Municipal character, features or structures of cultural heritage importance, and natural environment features? Can negative impacts be mitigated or eliminated?

The applicant provided a MDS I calculation, and has indicated that “the nearest existing facility capable of housing livestock is located” west of the subject land at Denfield Road and Sunningdale Road W. The applicant further indicated that there is no livestock currently on the property, however, it has the potential to accommodate 30 cows in the existing barn. Based on this information, the MDS I calculation requires a minimum 135 m setback. The proposed ARU appears to meet the MDS I.

It should be noted that MDS II calculations are required for new or expanding livestock facilities. The location of the ARU may limit or prevent livestock uses from expanding or establishing within proximity.

The proposed ARU will use a separate driveway away from the principal dwelling unit, but is expected to have minimal impacts on the local traffic system.

The building to contain the ARU is located away from the principal dwelling and functions separately. The building is located closer to the road than the principal dwelling and its appearance is not minimized.

The building and associated servicing is located outside of the Significant Woodland, wetland and regulated area that is located to the rear of the property.

Upon review of the applicant’s sketch and information provided in the Planning Justification Report, Planning Staff noted conflict with Section 4.1 of the Zoning By-law. Specifically, Section 4.1 regulates the lot coverage and gross floor area for structures accessory to a dwelling in an Agricultural (A1) zone. No buildings or structures on an agricultural property (larger than 5, 000 m²) shall exceed the lesser of 3% lot coverage or 165.0 m² (1, 776 ft²) of gross floor area. Further, accessory buildings must be located in the side or rear yard, and may not contain a dwelling unit.

Planning Staff note that the Zoning By-law update, which is not in-effect, regulates the maximum size of ARUs to “50% of the gross floor area of the principal dwelling, or 85.0 m², whichever is less” and “water and wastewater services required for the additional residential unit shall be shared with the principal dwelling on the lot”.

The building is less than 50% of the gross floor area of the principal dwelling at approximately 204 m². This size exceeds current and proposed regulations of the Zoning By-law. Additionally, the building is located in the front yard relative to the new principal dwelling. Planning Staff note that there is substantial distance between the two buildings and the two buildings function separately, and do not share services or access.

One of the goals of Section 4.1 – Accessory Uses is to ensure there is no change to the principal use of the land. The proposed ARU does not appear to function as an accessory use and the building does not function as accessory to the principal dwelling. Additionally, Planning Staff are concerned that the proposed ARU may be severed (surplus farm residence) in the future as it functions as an independent single detached dwelling.

Given the above, Planning Staff recommend that the requested Official Plan Amendment and Zoning By-law Amendment be refused as the applications are consistent with the Provincial Policy Statement, 2020, however, they are not in conformity with the County of Middlesex Official Plan and Middlesex Centre’s Official Plan, and Middlesex Centre’s Zoning By-law.

If Council finds that the requested amendments are appropriate from the lands, Council may adopt the Official Plan Amendment on the basis that the additional residential unit cannot be severed from the principal dwelling. Further, the Zoning By-law Amendment will only permit an additional residential unit within an accessory building located in the front yard and up to 2, 200 sq. ft. that exists on the date that Council passes the amending by-law.

This opinion is provided without the benefit of receiving comments at the public meeting from members of the public, agencies, and Council. 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 applications.

Financial Implications:

None.

Attachments:

Attachment 1 – Location Map

Attachment 2 – Planning Justification Report

Attachment 3 – Applicant’s Sketch