



Meeting Date: April 28, 2021

Submitted by: Dan FitzGerald MPI RPP

Report No: PLA-38-2021

Subject: Application for Minor Variance (File No. A-9/2021)

Recommendation:

THAT Minor Variance Application A-9/2021, filed by Mike Brennan, on behalf of John and Ted Brennan, for relief from the Comprehensive Zoning By-law in order to establish a reduced interior side yard setback of 9.1 (30 feet), whereas the Middlesex Centre Comprehensive Zoning By-law based on Minimum Distance Separation calculations would require a minimum of 19 metres (62.3 feet), and reduce a front yard setback to 179.8 metres, whereas Middlesex Centre Comprehensive Zoning By-law based on Minimum Distance Separation calculations would require a minimum of 186 metres (610 feet), for a property legally described as Part of Lots 22 and 23, Concession 7 South, Part 2 on reference plan 33R13184, in the Municipality of Middlesex Centre, County of Middlesex and municipally known as 13570 Medway Road, be GRANTED,

AND THAT the reasons for granting Minor Variance Application A-9/2021:

- 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 and effect of the Application for Minor Variance is to seek relief from the Middlesex Centre Comprehensive Zoning By-law 2005-005 to permit the construction of a 2,787 square metre (9,143 square foot) dairy barn intended to house dairy cows. More specifically, the applicant is seeking relief from Section 5.2.1 (a) which states that a new livestock barn shall conform with Minimum Distance Separation II formula (MDS II), for properties located in the Agricultural (A1) zone.

A location map is included as Attachment 1.

Background:

The subject lands currently comprise of an area of approximately 35.2 ha (87 ac) and are known municipally as 13570 Medway Road. The subject lands contain existing livestock facilities and a single detached dwelling. A small portion of the lands to the rear of the property are regulated by the Upper Thames River Conservation Authority and also contains a small portion of a natural heritage feature located primarily on the neighbouring parcel.

The subject lands are located on the north side of Medway Road, west of the intersection of Medway Road and Wonderland Road North. A key map illustrating the subject lands and the proposed location of the dairy cattle barn is attached to this report.

The applicant is proposing to construct a 2,787 square metre (9,143 square foot) dairy barn intended to house dairy cows. As a note, the applicant has indicated that the manure storage is proposed to meet the required Minimum Distance Separation (MDS II) requirement.

The surrounding lands are predominantly agricultural in nature, with a limited amount of single detached residential dwellings being located in the area of the subject lands. The MDS Guidelines require setbacks to be calculated between new or expanding livestock facilities and single detached residential dwellings, in order to minimize the impacts of the new or increased number of nutrients produced by the livestock on the surrounding dwellings. The following relief from the following MDS II setback requirements have been requested between the proposed dairy barn and the closest neighbouring dwelling as summarized below:

| MDS II Requirement | Required Setback | Requested Setback |
|--|-------------------------|--------------------------|
| dwelling on a separate lot (13528 Medway Road) | 186 metre (610 feet) | 179.8 m (590 feet) |
| Interior side yard setback (13570 Medway Road) | 19 metre (62.3 feet) | 9.1 metre (30 feet) |

In discussion with the applicant, the proposed location of the new dairy cattle barn is preferred as opposed to the required setback location due to existing land topography. As described by the applicant, a large amount of fill would be required if the barn were to be setback further adding a substantial cost to the construction of the facility. The applicant has also indicated that constructing the livestock barn in the preferred location would be less impactful to the existing drainage system on the farm land, in addition to not requiring an extension of existing driveways or new locations. As such the applicant has advised that the proposed location would result in operational efficiencies. The applicant has also noted that the house in which the setback is requested to be reduced is under their family's ownership and that no conflict should occur.

The property is designated 'Agricultural Area' in the Middlesex County Official Plan, 'Agricultural' in the Middlesex Centre Official Plan, and zoned Agricultural (A1) Zone in the Middlesex Centre Comprehensive Zoning By-law.

Policy and Regulation Background:

Section 2.3.3.3 of the Provincial Policy Statement (PPS) states that new land uses, including the creation of lots, and new or expanding livestock facilities shall comply with the Minimum Distance Separation formulae.

Section #42 of the Minimum Distance Separation (MDS) document states that the direction of prevailing wind, surrounding topography, and presence of trees, berms or other screening are not part of, and are not intended to affect, the calculation of MDS setbacks. However, these or other similar elements could be considered in applications to vary or reduce MDS setbacks, where appropriate, and in accordance with Implementation Guideline #43.

Section #43 of the Minimum Distance Separation (MDS) document states that MDS II setbacks should not be reduced except in limited site specific circumstances that meet the intent of the MDS document. Examples include circumstances that mitigate environmental or public health and safety impacts, avoid natural or human-made hazards, or the practicality or expansion of existing facilities which did not meet the setbacks previously. The intent of the MDS document is to reduce odor conflicts by separating incompatible uses.

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.

Agency Comments:

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

Enbridge Pipelines does not have any assets in the area.

The Municipality's Chief Building Official has reviewed the application and has indicated no objection to the proposal.

Development Review Coordinator has reviewed the application and has indicated no objection to the proposal.

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. Planning staff is of the opinion that the proposal satisfies the aforementioned Planning Act tests.

In addition to the above, Section 10.9 of Middlesex Centre's Official Plan must also be satisfied in order for a minor variance to be granted. 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.

As previously noted, the subject land is designated 'Agricultural Area' according to the County of Middlesex and 'Agricultural' Middlesex Centre Official Plan. The lot is zoned 'Agricultural (A1) Zone' by Middlesex Centre's Comprehensive Zoning By-law. Staff note that the applicants request for a minor variance to reduce the interior side yard setback and front yard setback in relationship to Minimum Distance Separation (MDS II) requirements has been presented by the applicant as necessary generally to reduce impacts to agricultural crop land, to reduce the impact on the topography of the lands, and to create efficiencies in the operation.

Planning has reviewed the proposed minor variances in relation to the four Planning Act tests as listed above. The analysis has been broken up below which takes into consideration each variance against the four tests.

Is the variance considered minor in nature? YES

The interpretation of what is minor is not necessarily based on the extent to which the zoning by-law is varied. Rather it is based on whether the impact of the variance can be considered minor. In review of the proposed minor variances, staff have reviewed whether to consider the variance minor based on the location, the context of development on the lands, and the existing characteristics of the neighbourhood. The reduction as proposed by the applicant seeks to reduce the MDS II setback from 186 metres to 179.8 metres,

which is a reduction of 3.3 percent. The subject lands are located in a rural area with very few residential dwellings in the area. The dwelling which would not meet the required MDS II setback has not raised an objection to the proposed application. Based on the above, staff do not anticipate any adverse impacts to surrounding sensitive uses and are of the opinion that the variance can be considered minor.

Is the variance an appropriate use of the land? YES

The variance can be considered an appropriate use of the land as agricultural uses are permitted in the 'Agricultural (A1) Zone'. The applicant is proposing to expand a current dairy operation with the construction of a new barn to accommodate an increased amount of livestock.

Does the variance maintain the intent of the Official Plan? YES

The intent of the Official Plan through the Agricultural designation is primarily to secure agricultural land and protect them from development. They also permit associated residential uses as well as accessory uses to residential dwelling. The proposed construction of a livestock facility meets the intent of agricultural uses permitted in the Official Plan. Therefore Planning Staff find that the subject proposal would maintain the general intent and purpose of the Municipal Official Plan.

Does the variance maintain the intent of the Zoning By-law? YES

The general intent and purpose of the Comprehensive Zoning By-law as it relates to Minimum Distance Separation II setbacks is to limit the potential impact of establishing new or expanding existing livestock operation on abutting residential uses. Generally, agricultural uses, which include the establishment of livestock operations, are permitted in the Agricultural (A1) Zone. The proposal does not comply with MDS II setbacks however, staff do not anticipate any adverse impacts of the requested variance due to the location of the proposed expansion and minimal request to decrease the required setback. As such, planning staff are satisfied that the general intent and purpose of the Zoning By-law would be maintained as staff do not anticipate a negative impact to abutting property owners as no impacts or objections have been raised at this time.

Given the above, Planning Staff is satisfied that the proposed minor variance can be supported. Planning Staff recommend that the subject application be approved, as the proposal meets the four test of a minor variance of the Planning Act.

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 committee 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
- Vibrant Local Economy

Attachments:

1. Location Map
2. Proposed Site Plan