



Meeting Date: October 27, 2021

Submitted by: Marion-Frances Cabral, Planner

Report No: PLA-82-2021

Subject: Applications for Official Plan Amendment (OPA 56) and Zoning By-law Amendment (ZBA-14-2021), filed by Logan Burnett on behalf of Robert Walker

Recommendation:

THAT Report PLA-82-2021 regarding the Official Plan Amendment No. 56 and ZBA-14-2021 for the lands known as 10432 Melrose Drive, be RECEIVED FOR INFORMATION.

Purpose:

The purpose of this report is to provide Council with information regarding an Official Plan Amendment and Zoning By-law Amendment for a property located on the north side of Melrose Drive and east of Coldstream Road.

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 lands from the Agricultural designation to an Agricultural Special Policy Area designation to allow a second detached dwelling, a home occupation in an accessory building and outdoor storage associated with the home occupation.

The purpose and effect of the Zoning By-law Amendment application is to rezone the subject lands from the Agricultural (A1) zone to a site-specific Agricultural (A1-37) zone to permit a two single detached dwelling units on the subject lands, a home occupation in a detached, accessory structure that exceeds the lesser of 25% of the total floor area of the dwelling unit or 40 m² (430 ft²). Additionally, the zoning by-law amendment would permit outdoor storage associated with the home occupation.

The subject lands are approximately 4.04 ha (10 ha) in area and is located on the north side of Melrose Drive and east of Coldstream Road.

The subject lands contain two single detached dwellings that have separate private servicing and are not located within proximity of each other. A storage barn (shed) and yard for the business 'Walker Construction' is located on the western side of the subject lands and is contains its on septic system. An auxiliary trailer storage and outdoor parking is located on the northern side of the subject lands. The subject lands are not actively farmed and contain grassed areas and a pond within proximity to the single detached dwellings and the storage barn. Regulated area and Significant Woodland is located on the eastern portion of the site. A site plan sketch of the subject lands is provided in Attachment 2.

The Owner is not proposing to construct any new buildings as a result of the applications.

As part of the application the agent identified that Walker Construction, owned by the Owner of the subject lands, has operated on the subject lands since 1998. The business provides 'excavation, paving, septic installation, haulage and demolition services' for the construction industry. Further 'Walker Construction's use of the Property is limited to the storing of materials, equipment, vehicles as well as the use of a large accessory shed at the rear of the Property for maintenance of equipment'. The agent further advised that 1-3 employees are on the subject lands on a daily basis during a workweek. An office associated with the business is located within 1 of the 2 single detached dwellings where the Owner resides.

The Owner has indicated that their residence (single detached dwelling) was constructed in 1951 and storage barn was construction in 1955. The residence was previously used as a duplex but has since been converted back to a single family home. The second single detached dwelling was constructed in 1988 and is leased. The Agent and Owner have not indicated if the second single detached dwelling is a legal non-complying building and use per sections 4.20 and 4.21 of the Zoning By-law. Additional details about the business and use of the single detached dwellings can be found in Attachment 3.

In January 2021, the Municipality provided a letter to the Owner outlining 7 issues related to compliance to the Zoning By-law, Building By-law and Site Alteration By-law. By way of the requested Official Plan and Zoning By-law amendments seek to rectify the following 5 issues: 1) Dwelling in accessory building and duplex; 2) and 3) compliance with Township of Lobo Zoning By-law 95-100 related to Home Occupations; 4) compliance with Municipality of Middlesex Centre 2005-005 related to Open Storage; and 5) compliance with Municipality of Middlesex Centre 2005-005 related to sea containers and truck boxes. The letter provided options to rectify the issues including complete removal of the buildings and/or uses, or by seeking approval from the Municipality by way of a zoning by-law amendment.

A follow-up letter was provided to the Owner in June 2021 which identified that same issues and a compliance date of August 3, 2021. The Owner and Agent provided a letter to the Municipality detailing the steps taken to address the Issues including the removal of the duplex dwelling, sea containers and truck boxes. All other planning related issues are to be addressed through the Official Plan and Zoning By-law amendments.

Policy Regulation:

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, 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 1.7 of the PPS provides direction to support the long-term economic prosperity of communities including promoting opportunities for economic development and community investment-readiness and encouraging residential uses to respond to dynamic market-based needs and provide necessary housing supply and range of housing options for a diverse workforce.

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 property as Agricultural Area. The County Plan recognizes agriculture as the predominant land use and an economic mainstay within the County. The Agricultural Areas policies are intended to protect agricultural lands from the intrusion of land uses that are not compatible with agricultural operations. Incompatible uses are frequently identifies as non-farm related residential dwellings on small lots.

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.

Section 3.3 provide land use policy direction for Agricultural Areas including permitted uses. The Official Plan recognizes that the Agricultural Area shall be preserved and strengthened to sustain the industry by limiting farm division, encouraging consolidations and directing non-agricultural uses away from the Agricultural Area. Permitted uses including up to two farm residences provided the second farm residence is a temporary residential unit, home occupation and farm related commercial and industrial uses in accordance with section 3.3.5 of the County Official Plan.

Section 3.3.5 acknowledges the importance of farm related commercial and industrial uses in Agricultural Areas. Examples include feed mills, grain drying, abattoirs, and kennels. Farm related commercial and industrial uses should be considered in the Agricultural Area if the operation cannot reasonably be located in a Settlement Area and must be in proximity to farming activities, the use complies with the Minimum Distance Separation Formula, the use does not require or generate large volumes of water, and the operation is located to minimize potential adverse impacts on adjacent residential or other sensitive land uses. Operations are subject to the site plan policies and zoning by-law of the local municipality, and must provide minimum sight distances along County or local roads.

Section 3.3.6 provides direction for home industries in Agricultural Areas. Home industries comprise a gainful occupation conducted in whole or in part in an accessory buildings (e.g. shed, farm building) by a member of the family and up to three non-family members. In order to ensure that the scale of the home industry is clearly accessory to the residential or farm use, on lots less than 1.0 ha in size, the gross floor area of the home industry shall not exceed the gross floor area of the residential unit. Home industries shall have no negative impact on the Natural System. Outside storage associated with a home industry shall be limited in scale and be screened from view from surrounding roads.

The County Official Plan does not provide direction on home occupations, however, they are recognized as a use within the Agricultural Area. A home occupation is defined as a commercial or industrial use which is carried out on the same lot as a residential or farm use but which is not the main use of (the) property. The home occupation shall be located, in the case of a farm, in buildings other than the house.

Middlesex Centre's Official Plan

As mentioned the subject property is designated 'Agricultural' by Middlesex Centre's Official Plan and contains Significant Woodland on the northwestern portion of the lands. Agricultural and agriculture-related uses, and secondary uses including home occupations are permitted in Agricultural areas. This includes all forms of farming, including a principal farm dwelling, related buildings and structures, practices and uses of land.

Notwithstanding the permitted uses in section 2.3 of the Official Plan, non-farm residences which existed prior to the establishment of Middlesex Centre on January 1, 1998 may be used, altered, reconstructed, repaired and renovated provided that the

reconstruction, repair or renovation, as the case may be, is undertaken in full compliance with all applicable law.

Non-agricultural urban uses within agricultural areas are prohibited, unless permitted in the Official Plan, in order to protect agricultural areas from interference or encroachment from conflicting land uses or uses which could reduce or negatively impact the future flexibility or efficiency of agricultural operations.

Section 2.4 provides policies for agriculturally related commercial and industrial development. These uses are directly related to agriculture, and required in close proximity to farming operations. These uses are generally encouraged to locate within settlement areas except they are essential to the functioning of agriculture or would cause conflicts in settlement area. These types of uses may include feed mills, livestock assembly yards and slaughter houses.

This section also allows for some agriculture related tourism or recreational uses to be permitted if it is determined that no negative impacts on nearby agricultural operations will result, and a determination that the use will not contribute to land use conflicts.

When considering the establishment of new agriculturally related commercial, industrial or tourism uses, or the expansion of existing uses of this type, Council will consider the following criteria:

- a) The loss of productive farm land in the accommodating of such uses, shall be discouraged. Uses will be encouraged to locate on lands of lower soil capability or lands proven to be unsuitable for farming due to lot size, shape or topography.
- b) The amount of land devoted to the use shall include only the minimum necessary to support the use and its servicing needs.
- c) The use must not require municipal sewer or water services. The method of servicing shall require approval by the appropriate regulatory bodies. Any industrial use shall be “dry” in nature.
- d) Access shall be available from a public road of reasonable construction and year round maintenance. Development is encouraged on a hard-surface, dust-free road.

Access to Provincial Highways for agriculturally related commercial and industrial development uses will be subject to the review and approval of the Ministry of Transportation (MTO). An entrance permit from the MTO will be required for the change in use of the access. The entrance permit will identify the primary land use (i.e. farmstead) with a specific secondary land use for the agriculturally related commercial or industrial use.

In addition, the MTO would not support a future severance where a property owner wishes to separate the agriculturally related commercial and industrial use from

the property where a new entrance from the highway for the new lot of record would be required.

- e) A site plan agreement shall be entered into with the Municipality. Such an agreement will require particulars relating to, at a minimum, access, traffic, drainage, and grading.
- f) Where a severance of land is necessary to accommodate such a use, the severance policies in Section 10.3 of this Plan will apply.
- g) Compliance with minimum distance separation shall be required where a proposed agriculturally related commercial or industrial use is in proximity to livestock and/or poultry operations. The Municipality may exercise discretion, through the consideration of Minor Variance applications, based on the proposed type of commercial or industrial use, and the extent of its sensitivity to agricultural activities. Input from the appropriate agencies with respect to Minor Variance request will be sought by the Municipality. This Plan recognizes that such agriculturally related commercial or industrial uses may also have negative impacts on adjacent agricultural operations. Minimum distance separation shall also be used to address impact of such uses on sensitive agricultural uses.
- h) Adequate separation distances and buffering shall be required where such uses are proposed adjacent to existing residential or other sensitive uses. Adequate visual buffering or landscaping will be required where such uses may generally impact the agricultural or rural character of the Municipality.

Section 9.2.2 provides direction to the permission of Home Occupations within or outside of settlement areas to support the changing lifestyles of residents and promote economic development.

Additionally the following policies also apply:

- a) For home occupations outside of settlement areas, the scale of the home occupation must be clearly accessory to the residential or farm use.
- b) For home occupations in settlement areas, no customer parking should be required. Only small scale signage so as to not impact the residential character of the lot and neighbourhood in question, shall be permitted
- c) Home occupations within settlement areas will be clearly subordinate to the primary residential use, and will not require alterations which interfere with the residential character of the structure. Such uses will not be permitted if they generated uncharacteristic traffic of a residential neighbourhood, or require outdoor storage of goods or materials, or will otherwise disrupt the peaceful and quiet enjoyment of other residential properties in the neighbourhood.
- d) Outside storage associated with home occupations will not be permitted.

- e) Home occupations shall not negatively impact natural areas as identified in this Plan.
- f) Home occupations may be regulated by the Municipality through the Municipal Zoning By-law or other by-law in licencing procedure.
- g) Home occupations may be regulated by the Municipality through the Municipal Zoning By-law or other by-law or licensing procedure.

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?

Middlesex Centre's Zoning By-law

The subject property is zoned 'Agricultural (A1)' in Middlesex Centre's Zoning By-law. The current zoning permits agricultural and agricultural-related uses, a single detached dwelling, a converted dwelling and home occupation.

A maximum of one single detached dwelling or one converted dwelling or one bed and breakfast establishment is permitted on each lot. Secondary or additional residential units are not currently permitted in the zoning by-law.

Section 4.10 of the zoning by-law provides additional direction for home occupations in any zone unless otherwise indicated.

- (a) A home occupation shall be secondary to a dwelling unit occupied by the owner or tenant thereof as the principal residence and location within a zone in which a home occupation is specifically listed as a permitted use;

- (b) a home occupation shall not employ more than one person who does not reside in the dwelling unit, being the site of the home occupation;
- (c) the total floor area of the dwelling unit, including basement area, used for the home occupation shall not exceed twenty-five percent (25%) of the total floor area of the dwelling unit or 40.0 m² (430 ft²), whichever is the lesser;
- (d) a home occupation shall not be permitted within an accessory building or structure in any Residential Zone or any Agricultural Zone where a single detached dwelling is the main use;
- (e) open storage shall not be permitted;
- (f) the external character of the dwelling as a residence shall not change or create a nuisance, particularly in regard to noise, odour, dust and refuse;
- (g) no parking in addition to the required parking for the dwelling unit shall be created; and,
- (h) there shall be no externally visible indications that a home occupation is being conducted within a dwelling unit, except that a sign no larger than 0.4 m² (4.3 ft²) shall be permitted.

The letters from the Municipality cite non-compliance with the former Township of Lobo Zoning By-law No 95-100.

Section 3.10 in the former Township of Lobo Zoning By-law states that no home occupation shall be permitted within any zone except in accordance with the following provisions:

- (a) A home occupation shall be secondary to a single dwelling occupied by the owner or tenant thereof as his principal residence and located within a zone in which a home occupation is specifically listed as a permitted use.
- (b) At no time shall any home occupation employ more than one person who does not reside in the dwelling to which such home occupation is secondary.
- (c) Not more than 25 per cent of the total dwelling unit area of any dwelling unit shall be used primarily for a home occupation and any area so used shall be over and above the minimum dwelling unit area required hereby for such dwelling unit
- (d) A home occupation may occur within an accessory structure in an Agricultural Zone, except where a dwelling is the main use of the lot, and within a Commercial/Industrial Zone, but not in any Residential Zone.

- (e) The home occupation shall be clearly incidental and secondary to the main residential use to which it is associated and shall not change the residential character of the dwelling.
- (f) There shall be no externally visible indications that a home occupation is being carried on within a dwelling unit, except that one sign no larger than 0.4 square metre (4.3 sq. ft) may be displayed, bearing the name and the occupation of the resident.
- (g) No home occupation shall create or become a public nuisance, particularly with regard to noise, traffic, emissions, parking or radio or television interference, nor shall any open storage be permitted in conjunction with a home occupation except in accordance with the provisions of Subsection 3.15 hereof.
- (h) None of the following uses shall be considered a home occupation unless such use is specifically permitted herein:
 - (i) an automotive use;
 - (ii) a hospital;
 - (iii) a veterinarian's clinic;
 - (iv) a restaurant;
 - (v) a refreshment room;
 - (vi) a transport terminal;
 - (vii) a salvage yard;
 - (viii) a convenience store;
 - (ix) a funeral home.

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.

Agency Comments:

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

The Municipality's Chief Building Official did not provide comments at the time of writing this report.

The Public Works and Engineering Department reviewed the applications and do not have any concerns.

Upper Thames River Conservation Authority did not provide comments at the time of writing this report.

County of Middlesex Planning Department reviewed the applications with the proponent prior to submission. Based on the description of the business provided by the applicant, County Planning staff advised the applicant that the operation on site represented an industrial use like a contractor's yard which is generally not supported in agricultural areas and uses like these are directed to nearby settlement areas. The Zoning By-law defines a Contractor's Yard or Shop as the "use of land, buildings, or structures, or portion thereof, for the purpose of storing equipment, vehicles, or material, or for performing shop work or assembly work by any building trade or other construction contractor".

County Planning also reviewed the housing policies of the Municipality and County. Generally there is support for additional residential units that are secondary and accessory to the main dwelling. Additional residential units are generally contained within the main dwelling or an accessory structure, and located within proximity to the main dwelling to share services, to avoid furthering severing of an agricultural parcel, and to avoid the consumption of additional agricultural lands.

Next Steps

Following the initial meeting outlining the intended change of the property, staff will take all comments into consideration from internal and external stakeholders and report back at a future date on the application.

Financial Implications:

None.

Strategic Plan:

This matter aligns with following strategic priorities:

- Vibrant Local Economy

Attachments:

Attachment 1 – Location Map

Attachment 2 – Site Plan sketches

Attachment 3 – Covering Letter Provided by Agent