



**Meeting Date:** October 27, 2021

**Submitted by:** Dan FitzGerald MPI MCIP RPP

**Report No:** PLA-88-2021

**Subject:** Application for a Minor Variance (A-32/2021); 21462 Clarke Road

**Recommendation:**

THAT Minor Variance Application A-32/2021, filed by Zelinka Priamo Ltd. (Matt Campbell), on behalf of Try Recycling (S/L) Inc, for relief from the Comprehensive Zoning By-law in order to permit an interpretation of a defined use, that being a Recycling Facility, to permit organics recycling, including materials such as food waste, in addition to those products currently included in the definition, for a property legally described as Part of Lot 4, Concession 6 North, in the Township of Middlesex Centre, County of Middlesex, and municipally known as 21462 Clarke Road, be GRANTED, subject to the following conditions:

THAT the interpretation applied to the term 'organics' shall not include the recycling of biosolids (e.g. sanitary waste) and / or deadstock.

AND THAT the reasons for granting Minor Variance Application A-32/2021:

- 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 of this report is to provide the Committee of Adjustment with a recommendation regarding a minor variance for a property located on the the east side of Clarke Road, south of the intersection at Clarke Road and Medway Road, and municipally known as 21462 Clarke Road.

A location map is included as Attachment 1.

## Background:

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 an interpretation of an existing defined use, that being a Recycling Facility. The applicant/owner are seeking permission to permit organics to be included under the Recycling Facility definition. The intent for the Minor Variance, as stated by the applicant, is to allow for a broader, but similar, range of materials to be recycled on the subject lands, which would include materials such as food waste, from domestic (e.g. green bin) and industrial, commercial, and/or institutional sources (e.g. food processing facilities, restaurants), in addition to materials that are currently recycled onsite. The applicant notes that biosolids (e.g. sanitary waste) and deadstock are not included in the range of materials being sought to recycle under the term organics. The proposed amendment to the definition is summarized as follows:

<b>Zoning By-Law Definition</b>	<b>Proposed Amendment</b>
<b>RECYCLING FACILITY</b> means a facility, operating by valid license from the Corporation and a Certificate of Approval by the appropriate Provincial or other public approval agency, where the use of scrap material, generally being metal cans, glass bottles, plastic containers, fabrics and domestic yard waste are separated into recoverable resources for reuse.	<b>RECYCLING FACILITY</b> means a facility, operating by valid license from the Corporation and a Certificate of Approval by the appropriate Provincial or other public approval agency, where the use of scrap material, generally being metal cans, glass bottles, plastic containers, fabrics, <b>organics</b> , and domestic yard waste are separated into recoverable resources for reuse.

The subject property consists of an existing recycling facility operation known as Try Recycle, which breaks down common yard and construction waste to recycled products. They contain an area that is regulated by the Upper Thames River Conservation Authority. The abutting lands to the east are currently owned and operated by Try Recycling as an additional Recycling Facility site, primarily for construction waste. Lands to the south are located within the City of London's jurisdiction and are generally used for resource extraction. Lands to the immediate west are used for both industrial purposes and agricultural lands in crop production. Lands to the north consist of agricultural land in crop production.

A sketch of the proposal is included as Attachment 2.

## Consultation:

Notice of the application has 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;

**Bell** has no concerns with the subject application.

**Enbridge Gas Inc** has service lines running within the area which may or may not be affected by the proposed minor variance.

Should the proposed minor variance impact these services, it may be necessary to terminate the gas service and relocate the line according to the new property boundaries. Any Service relocation required due to a severance would be at the cost of the property owner. Also, should future gas service be required to either the severed or retained parcel, a request for gas service needs to be submitted to the District Office.

**Hydro One** notes to be advised that Hydro One Networks Inc. (“HONI”) has completed a preliminary review of the above noted minor variance application. As the subject property is abutting and/or bisected by a HONI high voltage transmission corridor (the “transmission corridor”), HONI has no objection in principle to the proposed minor variance, provided HONI’s easement rights are protected and maintained.

Please be advised that any placement of permanent structures, facilities or landscaping within the transmission corridor is prohibited without the prior written approval of HONI.

If in the future the owner proceeds with a site plan, plan of subdivision and/or plan of condominium application, the owner must make arrangements satisfactory to HONI for lot grading and drainage, and any proposed uses on the transmission corridor. The costs of any relocations or revisions to HONI facilities which are necessary to accommodate this proposal will become the responsibility of the developer.

**Middlesex Centre Chief Building Official** no comments at this time.

**Middlesex Centre Public Works and Engineering Department** no comment.

## **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.

Further, Section 45(2) (b) states that where the uses of land, buildings or structures permitted in the by-law are defined in general terms, the Committee may permit the use of any land, building or structure for any purpose that, in the opinion of the Committee, conforms with the uses permitted in the by-law. Planning Staff have utilized Section 45 (2)(b) to formulate their opinion regarding the requested minor variance.

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.

The subject land is designated Agricultural Area in the County of Middlesex Official Plan and Parks and Recreation in the Middlesex Centre Official Plan. The lands are also identified as an Aggregate Resource Area and are subject to the policies of Special Policy Area #11 in the local Official Plan. The lands are zoned a site specific Extractive Industrial Exception (M4-1) Zone by Middlesex Centre's Comprehensive Zoning By-law.

The applicant has applied to permit an interpretation of an approved use to include the term 'organics' to the list of identified items currently included in the Recycling Facility use definition.

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. I am of the opinion that an interpretation to the existing defined use to include organics is considered minor as it would be considered a natural extension of the current use. Additionally, the existing definition includes the recycling of yard waste materials, which similarly is an organic matter. Any proposal moving forward will be subject to MECP approvals and site plan review. As such, I am of the opinion that the proposal is considered minor and that any nuisance will be required to be mitigated through the aforementioned approvals processes.

Is the variance an appropriate and desirable use of the land? YES

As previously noted, the use 'Recycling Facility' is a permitted use on the lands. Further defining and broadening the definition to include organics is considered appropriate and desirable to provide clarity and direction to the owners, municipality, and neighbouring land owners. Additionally, any concerns from a noise, dust, and odour perspective will be mitigated through subsequent MECP and Municipal approvals.

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

The lands are within the 'Parks and Recreation' land use designation and subject to 'Special Policy Area #11' policies in the Municipal Official Plan. Special Policy Area # 11 permits the lands to be used for a licensed extractive operation in addition to a recycling operation. The intent of the designation is to ensure that development of the lands is done so in a safe and mitigated manner through the requirements for MECP approvals and Site Plan Agreements. The proposed variance only seeks to further define the use Recycling Facility, which is not limited in scope in the Official Plan. Given that the special policy area speaks to recycling operations on the lands, and does not limit the types of materials, I am of the opinion that the intent of the Official Plan is maintained.

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

As previously noted, the lands are zone a site specific Extractive Industrial – Exception (M4-1) Zone in the local Zoning By-law. The 'Recycling Facility' definition included as a permitted use in the zone, makes reference to a wide range of materials, including organic materials to be recycled in the form of domestic yard waste. The definition, however, does not include similar organic materials such as food waste. Staff note that the prescriptive definition is likely the result of concern raised for odour related to the organics recycling process. An extension of organics, as such, may not be appropriate in every scenario moving forward. However it should be considered on a site by site basis to determine if, in the opinion of staff, the site is considered an appropriate candidate for the extension of such activity to the existing definition. As noted in the application, any nuisance potentially created by the site would be required to be mitigated through the requirement of MECP approvals and ongoing monitoring of the site. Additionally, a Site Plan Agreement will

provide the municipality the opportunity to further scrutinize an application for organics waste recycling onsite.

In review of the proposal, the existing definition and the Official Plan, I am of the opinion that the inclusion of the term 'organics', with an exclusion for biosolids and deadstock, is considered an appropriate extension of the recycling facility definition on this site. As such, an interpretation of the existing definition to include the term 'organics' is considered to meet the intent of the Zoning By-law, as there are no anticipated impacts to neighbouring land owners.

Given the above, planning staff are recommending that the subject application be approved.

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

**Financial Implications:**

None.

**Strategic Plan:**

This matter aligns with following strategic priorities:

- Vibrant Local Economy

This Planning Report relates to Objective 3.2 – Ensure that appropriate sites are available for commercial and industrial businesses by facilitating additional economic opportunities for an existing business.

**Attachments:**

1. Location Map
2. Site Area Sketch