



**Meeting Date:** October 27, 2021

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

**Report No:** PLA-90-2021

**Subject:** Application for Minor Variance (File No. A-34/2021)

---

**Recommendation:**

THAT Minor Variance Application A-34/2021, filed by Thomas Weishar, on behalf of Reinier and Debra Janssen, for relief from the Comprehensive Zoning By-law, in order to establish a reduced Minimum Distance Separation I for a new single detached dwelling from an existing livestock facility at 78.72 metres, whereas Middlesex Centre Comprehensive Zoning By-law based on Minimum Distance Separation I calculations would require a minimum of 181 metres to a new single detached dwelling, for a property legally described as Part of Lot 5, Concession 13, in the Municipality of Middlesex Centre, County of Middlesex, be GRANTED;

AND THAT the reasons for granting Minor Variance Application A-34/2021:

- 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 the Application for Minor Variance is to provide a recommendation to Committee with respect to the requested relief from the Middlesex Centre Comprehensive Zoning By-law 2005-005 as it relates to Minimum Distance Separation I provisions.

**Background:**

The subject land consists of an existing undersized agricultural parcel traditionally severed for residential purposes. The land contains an existing residential dwelling and accessory building, which are proposed to be removed from the lands. It has a frontage of approximately 53.3 metres (175 feet) along Poplar Hill Road and an area of

approximately 0.43 hectares (1.06 ac). It maintains access to Poplar Hill Road and is surrounded by agricultural lands and traditionally severed residential properties. It is located on the north east side of Poplar Hill Road, on the north east corner of the intersection at Poplar Hill Road and Fernhill Drive. The subject land abuts an existing undersized agricultural parcel at 9985 Fernhill Drive, which maintains a livestock barn.

A location map is included as attachment 1 to this report.

The applicant is seeking relief from section 5.2.3 of the Middlesex Centre Comprehensive Zoning By-law, which states that the construction of a single unit dwelling shall not be permitted except in accordance with Minimum Distance Separation (MDS I). As per MDS I, the applicant is requesting a reduced MDS I setback of 78.72 metres, whereas they require a minimum setback distance of 181 metres from an existing livestock barn located on the abutting property to the north, that being 9985 Fernhill Drive. The requested reduction would permit the construction of a single detached dwelling towards the rear portion of the lot. A plan is attached to this notice depicting the requested reduction. The reduction is summarized as follows:

MDS I Requirement	Required Setback	Requested Setback
Single Unit Dwelling must meet MDS I	181 metres (593.8 feet)	78.72 metres (258.2 feet)

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 I setbacks should not be reduced except in limited site specific circumstances that meet the intent of this MDS Document. Examples include circumstances that mitigate environmental or public health and safety impacts, or avoid natural or human-made

hazards. 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 formal comments or concerns were 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 Minimum Distance Separation (MDS I) requirements has been presented by the applicant as necessary to demolish and rebuild a new residence on the land that is setback from the existing residence on the corner of Poplar Hill Road and Fernhill Drive.

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 I setback from 181 metres exclusively from the property to the north, to 78.72 metres. The subject land and adjacent lands are unique in that they represent several undersized agricultural parcels of land, each with their own single detached dwelling, and an associated agricultural use to the north. The proposed setback reduction for a new dwelling is considered minor as it would not limit the existing livestock operation on the property to the north as any expansion would not be permitted due to the existence of neighbouring homes. Based on the above, staff do not anticipate any adverse impacts to surrounding lands 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 and their associated accessory residential uses are permitted in the 'Agricultural (A1) Zone'. The proposed reduction to an MDS I setback would permit the applicant to construct a permitted use in an appropriate location on the land.

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 single detached dwelling 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 I setbacks is to limit the potential conflict between new sensitive land uses in proximity to existing livestock facilities. Generally, agricultural uses and their associated residential dwellings are permitted in the Agricultural (A1) Zone. The proposal to construct a new home on the undersized agricultural parcel does not comply with MDS I setbacks. However staff do not anticipate any adverse impacts of the requested variance as the new owners will be aware of the existing livestock uses. Additionally, based on the existing MDS I requirement for the livestock operation at 181 metres, no future expansion would be permitted on the lands to the north as they do not currently meet MDS setback requirements. Therefore there is no additional constraint to the livestock operation and a reduction would not hinder future expansions given that it currently does not comply. 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 owner to the north.

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

This Planning Report relates to Objective 2.3 – Promote designs and concepts that reflect a “small-community feel” in new development by matching existing development patterns within the pre-existing residential character.

**Attachments:**

1. Location Map
2. Site Plan