

The Corporation of the City of Kawartha Lakes
Committee of Adjustment Report – 2324784 Ontario Limited
Report Number COA2018-030

Public Meeting

Meeting Date: May 17, 2018

Time: 1:00 pm

Location: Council Chambers, City Hall, 26 Francis Street, Lindsay

Ward 15 – Geographic Township of Emily

Subject: An application to sever approximately 1 hectare (2.47 acres) of residential land containing a dwelling deemed surplus to a farming operation as a result of a farm consolidation and consolidate approximately 37 hectares (91.43 acres) of agricultural land with a non-abutting agricultural operation. The property is located at 1109 Meadowview Road, geographic Township of Emily (File D03-17-027).

Author: David Harding, Planner II

Signature:

Recommendations:

RESOLVED THAT Report COA2018-030 2324784 Ontario Limited, be received;

THAT consent application D03-17-027, being an application to sever approximately 1 hectare of residential land containing a dwelling and consolidate approximately 37 hectares of agricultural land with a non-abutting agricultural operation, be DENIED.

THAT consent application D03-17-027, being an application to sever approximately 0.72 hectares of residential land containing a dwelling and consolidate approximately 37.28 hectares of agricultural land with a non-abutting agricultural operation, be GRANTED.

Conditions of provisional consent:

1. This approval applies to the amended transaction applied for subject to the following revisions:
 - a. The north lot line shall be a straight line and shall be located no more than 8.5 metres from the north wall of the building identified as “Existing Barn” on the sketch for severance prepared by MHBC dated

April 12, 2018. The north lot line shall run approximately parallel to the north wall of the barn. Condition 1(a) shall apply unless:

- i. The owner decides to fulfill condition 3(b) to demolish the barn. If the barn is demolished, the north lot line shall be a straight line and shall be located no more than 30 metres from the north wall of the building identified as “Existing House” on the sketch for severance prepared by MHBC dated April 12, 2018. The north lot line shall run approximately parallel to the north wall of the house.
 - b. The east lot line shall be a straight line and shall be located no more than 12.5 metres from the east wall of the building identified as “Existing Barn” on the sketch for severance prepared by MHBC dated April 12, 2018. The east lot line shall run approximately parallel to the east wall of the barn; and
 - c. The west lot line shall be a straight line and shall be located no more than 3 metres from the west wall of the building identified as “Existing Shed” on the sketch for severance prepared by MHBC dated April 12, 2018. The west lot line shall run approximately parallel to the west wall of the shed. Condition 1(c) shall apply unless:
 - i. The owner decides to fulfill condition 3(b) to demolish the garage. If the garage is demolished, the west lot line shall be in the location depicted on the sketch for severance prepared by MHBC dated April 12, 2018.
2. The owner shall apply for, pay the prescribed fee and obtain an amendment to the Zoning By-law respecting the lot to be severed and the lot to be retained, such that:
 - a. For the lot to be severed, that it be rezoned to a Rural Residential Type One Exception (R1-*) Zone to restrict the use of the lot to residential and residential accessory uses and, if applicable, permit the increased residential accessory building lot coverage; and the By-law be in effect. The Zoning By-law Amendment application shall be accompanied by a surveyor’s real property report that identifies the dimensions, lot coverage, and setbacks of the building(s) on the proposed severed lot; and
 - b. For the lot to be retained, that it be rezoned to an Agricultural Exception (A1-*) Zone to prohibit residential use; and the By-law be in effect.
3. The owner shall carry out or cause to be carried out one of the following two actions with respect to the two buildings identified as “Existing Barn” and “Existing Shed” on the sketch for severance prepared by MHBC dated April 12, 2018:
 - a. Apply for and obtain a change of use permit;

- b. Submit to the Secretary-Treasurer written confirmation from the Chief Building Official or his/her designate, that the building(s) has/have been satisfactorily demolished and any remnant foundation(s) completely removed.
4. Should the owner apply for a change of use permit for the barn as specified in Condition 3(a), the Chief Building Official or his/her designate shall submit to the Secretary-Treasurer written confirmation that the stalls and any water troughs within the building have been satisfactorily removed.
5. The owner submit to the Secretary-Treasurer written confirmation from the Chief Building Official or his/her designate, that the building to the northwest of the building identified as "Existing Barn" on the sketch for severance prepared by MHBC dated April 12, 2018, has been demolished and any remnant foundation completely removed.
6. The owner submit to the Secretary-Treasurer written confirmation from the Chief Building Official or his/her designate that two of the three sheds to the west/southwest of the building identified as "Existing Barn" on the sketch for severance prepared by MHBC dated April 12, 2018, are either:
 - a. Demolished and any remnant foundations completely removed; or
 - b. Have been satisfactorily relocated onto the retained agricultural lot in compliance with the Zoning By-law.
7. That the owner carry out or cause to be carried out one of the following options for one of the three sheds to the west/southwest of the building identified as "Existing Barn" on the sketch for severance prepared by MHBC dated April 12, 2018:
 - a. Apply for a change of use permit and relocate it onto the proposed severed lot in compliance with the applicable provisions of the Zoning By-law; or
 - b. Submit to the Secretary-Treasurer written confirmation from the Chief Building Official or his/her designate that it has been demolished and any remnant foundation completely removed.
8. Submit to the Secretary-Treasurer a copy of the Abandoned Well Certificate from a licensed well contractor, or other appropriately qualified person, which confirms that the existing dug well to the southeast of the building identified as "Existing Barn" on the sketch for severance prepared by MHBC dated April 12, 2018 has been abandoned in accordance with Ontario Regulation 903.
9. That the owner shall submit to the Secretary-Treasurer a copy of the Section 59 Notice from the Risk Management Official for the proposed consent.
10. Submit to the Secretary-Treasurer written confirmation from the Chief Building Official or his/her designate that the east and north lot lines of the lot to be severed have been fenced with nine (9) strand, page wire fence material.

11. Submit to the Secretary-Treasurer written confirmation from the City's Manager of Roads Operations that an entrance permit would be available for the lot to be retained.
12. The owner's solicitor shall certify that the land owner registered on title of the lands subject of this application, being 2324784 Ontario Limited, is identical to the land owner registered on the title of an additional non-abutting farm parcel with which the retained agricultural parcel is being consolidated, being PIN 284170031(LT) – 363 Lindsay Road, and that such farm parcels are operated as one farm operation
13. Submit to the Secretary-Treasurer one copy of the preliminary reference plan of survey of the lot to be severed for review and endorsement and the subsequent registered reference plan of survey.
14. Payment of all past due taxes and charges added to the tax roll, if any, at such time as the deeds are stamped.
15. Payment of the stamping fee prevailing at the time the deeds are stamped, for the review and clearance of these conditions. The current fee in effect is \$440. Payment shall be made by certified cheque, money order, or from a lawyers trust account.
16. Submit to the Secretary-Treasurer a deed in triplicate for endorsement with the certificate of consent which deed shall contain a registerable description of the parcel of land described in the decision.
17. The owner's solicitor shall provide a written undertaking to the Secretary-Treasurer confirming, pursuant to Subsection 53(43) of the Planning Act, that the deed in respect of this transaction shall be registered in the proper land registry office within six months from the date that the Secretary-Treasurer's certificate is stamped on the deed, failing which the consent shall lapse.
18. The owner's solicitor shall also undertake to provide a copy of the registered Transfer to the Secretary-Treasurer as conclusive evidence of the fulfillment of the above-noted undertaking.
19. The owner shall pay all costs associated with the preparation and registration of the required documents.
20. All of these conditions shall be fulfilled within a period of one year after the giving of the Notice of Decision, failing which, pursuant to Subsection 53(41) of the Planning Act, this consent shall be deemed to be refused.

Background:	<p>The application proposes to sever a dwelling deemed surplus to a farming operation as a result of a consolidation of farm land.</p> <p>The applicant amended the application on April 16, 2018, see “Appendix “D”, by proposing to relocate the rear lot line further north and introducing a jog in the eastern lot line. The originally proposed lot boundaries are shown in Appendices C-1 and C-2.</p> <p>Staff is supportive of the application in principle, but contends that the dwelling can be accommodated on a lot less than 1 hectare of land. One hectare is the maximum area permitted for a surplus dwelling within the City of Kawartha Lakes Official Plan. A lesser lot area is encouraged by the Provincial Policy Statement, and in this circumstance, is believed more appropriate in order to preserve as much land as possible for agricultural use. The applicant disputes this approach.</p> <p>Staff is also supportive of maintaining and repurposing some of the agricultural buildings on the lot for residential use. The applicant has not made it clear whether they wish all existing buildings on the lot to be retained. If this is the case, staff is not supportive of this request.</p> <p>This application is proceeding to the Committee of Adjustment for a decision as these two issues could not be resolved for an uncontested approval.</p>
Owner:	2324784 Ontario Limited c/o Dr. Dagmar Teubner
Applicant:	David McKay, MHBC Planning Urban Design & Landscape Architecture
Legal Description:	Part of Lot 21, Concession 2, geographic Township of Emily, City of Kawartha Lakes
Official Plan:	“Prime Agricultural” and “Environmental Protection” – City of Kawartha Lakes Official Plan
Zone:	“Agricultural (A1) Zone” – Township of Emily Zoning By-law 1996-30.
Site Size:	Severed: 1 hectare Retained: 37 hectares
Site Servicing:	Severed: Two Private Individual Wells and a Sewage System Retained: None
Existing Uses:	Agricultural
Adjacent Uses:	North: Agricultural

South: Rural Residential/Agricultural
East: Agricultural
West: Agricultural/Forest

Rationale:

Policy Conformity

Growth Plan for the Greater Golden Horseshoe, 2017 (GP)

The GP directs development to settlement areas, except where necessary for development related to the management or use of resources, resource-based recreational activities, and rural land uses that cannot be located in settlement areas.

As a dwelling surplus to a farming operation is proposed, the proposal complies with the Growth Plan as the use was originally established for an agricultural operation.

Provincial Policy Statement, 2014 (PPS)

The PPS, through policies 2.3.3 and 2.3.4 provides that agricultural uses and normal farm practices within prime agricultural areas shall be promoted and protected, and lot creation discouraged. Residential lot creation within a prime agricultural area may only be permitted for a residence surplus to a farming operation as part of a farm consolidation provided residential use is not permitted on the retained agricultural land. Condition 2 is recommended to rezone the agricultural land to preclude residential use.

Policy 2.3.4.1(c)(1) further states that where a residence surplus to a farming operation is proposed, the lot for that residence will be limited to the size needed to accommodate the necessary sewer and water services.

The proposal is consistent with the PPS provided Policy 2.3.4.1(c)(1) is followed.

City of Kawartha Lakes Official Plan

Land Use Designations: Prime Agricultural and Environmental Protection

The majority of the subject land is designated "Prime Agricultural" within the City of Kawartha Lakes Official Plan (Official Plan), with portions designated "Environmental Protection". The "Environmental Protection" portions appear to reflect the locations of watercourses. The application proposes no changes to the lands with the "Environmental Protection" designation.

The "Prime Agricultural" designation provides for the creation of a residential lot to remove a dwelling deemed surplus to a farm operation as a result of a consolidation with a non-abutting agricultural lot. In accordance with policy 15.3.5, the residential lot must not exceed 1 hectare, must be greater than 4,000 square metres and future residential development must be prohibited on the agricultural land to be consolidated. The Official Plan also requires the agricultural land to be consolidated is rezoned to prohibit residential use.

Zoning By-law Conformity

The subject property is zoned “Agricultural (A1) Zone” and “Environmental Protection (EP) Zone” within the Township of Emily Zoning By-law 1996-30.

The lot to be retained exceeds the minimum lot frontage (120 metres) and area (25 hectares) requirements of the A1 Zone by proposing about 492.4 metres and 37 hectares respectively. A zoning by-law amendment is required for the proposed retained lands within the A1 Zone to remove the potential to construct further dwellings, maintaining consistency with provincial policy and conformity with municipal policy. No changes are proposed to the lands within the EP Zone.

The A1 Zone category provides that residential lots created within the said zone are subject to the requirements of the “Rural Residential Type One (RR1) Zone” category. The lot to be severed exceeds the minimum lot frontage (38 metres) and area (2,800 square metre) requirements by proposing about 86.6 metres and 1 hectare (9,999.9 square metres) respectively. The lot configuration as proposed by staff will also comply with the RR1 Zone provisions. A total of three residential accessory buildings are permitted on a residential lot. Residential accessory buildings are restricted to a maximum lot coverage of 8% or have a footprint no greater than 225 square metres, whichever is less. As some of the agricultural buildings are proposed to be kept as residential accessory buildings on the proposed severed lot, the buildings cannot comply with the 225 square metre footprint requirement. A zoning by-law amendment is necessary to address the increased accessory building lot coverage.

Other Alternatives Considered:

Staff outlined the alternative design shown in Appendix “E” to the owner and applicant, but this proposal was not accepted.

Servicing Comments:

The lot to be severed has its two private individual wells and a sewage system.

Consultations:

Notice of this application was circulated in accordance with the requirements of the Planning Act. Comments have been received from:

Agency Comments:

Engineering and Corporate Assets Department (August 23, 2017): A condition is requested to ensure the suitability and availability of an entrance to the proposed retained agricultural lot.

Ministry of Transportation (August 25, 2017): No concerns.

Building Division – Part 8 Sewage Systems (October 31, 2017): No objection to the proposed application.

Otonabee Region Conservation Authority (October 13, 2017): No concerns.

Community Services Department (November 8, 2017): A condition to collect a 5% cash-in-lieu of parkland payment is requested.

Building Division (November 14, 2017): The owner must confirm that the accessory buildings comply with the Ontario Building Code requirements for accessory buildings. Change of use permits are required.

Public Comments:

Joyce Millen of 1140 Meadowview Road requested to be circulated on the application.

Planning Division Comments:

Staff is agreeable to retaining the existing barn (circa 1908 - MPAC), garage (1910 - MPAC), and one shed (1920/1930/1950 - MPAC) on the proposed retained lot. In order to maintain the intent of the Emily Zoning By-law and prevent storage from being the primary use on the proposed severed lot, staff asserts that the accessory building cap should remain at three. As this lot is located at the crest of a hill, some of the buildings are highly visible and contribute to the agricultural character of the surrounding area. The barn and garage are the two most prominent buildings on the lot, and therefore contribute the most to establishing the rural character of the surrounding landscape. Staff is supportive of retaining these two buildings to maintain the rural character of the area. Staff is also supportive of retaining one of the three smaller sheds on the proposed severed lot. A zoning by-law amendment would be required to increase the permitted accessory building lot coverage provision. The height of the barn would not be addressed through the amendment; it would be considered legal non-complying.

Staff disagrees with the locations of the lot lines as applied for and as amended for the following reasons:

1. The agricultural and residential uses are heavily intertwined on the subject property. With the exception of the maintained lawn around the dwelling, there is no distinct break between agricultural and residential use but rather a series of transitional areas. For this reason, the existing fencing is not an accurate guide for properly delineating a break between residential and agricultural use. New delineated boundaries are required now that the dwelling is proposed to be severed from the agricultural land.
2. Policy 2.3.4.1(c)(1) of the PPS states that the residential lot will be limited to the size needed to accommodate appropriate well and sewage services. The area proposed by the applicant substantially exceeds that which is needed to support the residence. Staff, as shown in Appendix "E", is agreeable to providing some additional land around the dwelling in order to preserve two agricultural buildings of significant character.
3. The western lot line as proposed would run close/through the wall of the building identified as the "existing garage". The western wall of this building functioned as a fence to the abutting field. A setback to this building is required to avoid encroachment issues and comply with the setback requirements of the Zoning By-law. Staff is proposing that, should the

existing garage be retained, the lot line be set back 3 metres from this building to provide sufficient spatial separation for maintenance and provide access for the property owners to maintain the hedge that runs from the south wall of the garage to Meadowview Road.

4. The eastern lot line as proposed encompasses: (1) vacant land that is of no use to the dwelling as it is not maintained as lawn, and (2) former paddock land used by the animals that were housed in the barn. As much of this land as possible should be returned to the agricultural lot for potential future use. Reducing the area of former paddock land abutting the barn will also discourage the re-establishment of an agricultural use on the proposed severed lot. Staff proposes that the east lot line be established no more than 12.5 metres away from the east wall of the barn. This would ensure the pole providing hydro service to the barn remains on the proposed severed lot.
5. The northern lot line as proposed would provide the residential lot with ownership over agricultural land that was previously used for paddocks. As much of this land as possible should be returned to the agricultural lot for potential future use. Reducing the area of former paddock land abutting the barn will also discourage the re-establishment of agricultural use on the proposed severed lot. Staff proposes that the north lot line be established no more than 8.5 metres from the north wall of the barn. The location of this rear lot line is consistent with the location originally proposed by the applicant. There are some trees immediately behind the chicken coop building that staff proposes to be demolished. These trees would be in such close proximity to the new lot line that they could be retained by the agricultural lot to assist in providing a physical delineation between the two lots.

Staff are of the opinion that payment of cash-in-lieu of parkland in this situation is not necessary, as the residential use on the lot to be created has existed since at least 1880 (MPAC) and there is no new demand for park services.

Staff notes the existence of a dug well to the immediate southeast of one of the small shed buildings, see Appendix "E". This is the second well on the property, and does not appear to be used by the dwelling. Condition 8 is recommended to ensure the well is safely decommissioned before the land is returned to agricultural use. This condition is of particular importance, as the well is located within the Fraserville Wellhead Protection Area.

Staff are in agreement with the Building Division that change of use permits are required for any of the agricultural buildings that are proposed to remain on the severed lot as residential accessory buildings. This condition has been incorporated where retaining such buildings are contemplated.

In accordance with the comments provided by Engineering and Corporate Assets Department, a condition has been included to ensure that there is access from the proposed retained lot to Meadowview Road.

Attachments:



Appendices A-F to
Report COA2018-030.

Appendix "A" – Location Map
Appendix "B" – Aerial Photo
Appendix "C" – Original Consent Sketch
Appendix "D" – Amended Consent Sketch
Appendix "E" – Staff Proposed Consent Sketch
Appendix "F" – Department and Agency Comments

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