

MUNICIPALITY OF MIDDLESEX CENTRECOMMITTEE OF ADJUSTMENT MINUTES

HEARING NUMBER 2/10

March 22, 2010

The second hearing of 2010 was held by the Committee of Adjustment this date at the Middlesex Centre Municipal Offices, Coldstream, Ontario at 7:00 p.m.

PRESENT

Stephen Harvey
Sharon McMillan
Ian Nielsen
Ken Nixon
Don Rows

STAFF PRESENT

Benjamin Puzanov, Planner and Secretary-Treasurer
Marc Bancroft, Senior Planner and Assistant Secretary-Treasurer

DECLARATIONS OF PECUNIARY INTEREST

There were no declarations of pecuniary interest stated by any of the members.

MINUTES

Moved by Stephen Harvey
Seconded by Ken Nixon

THAT the minutes of the February 22, 2010 Hearing of the Municipality of Middlesex Centre Committee of Adjustment, be approved.

Carried

APPLICATION NO. B-1/10 – William James Graham and Charmaine Lynn Graham, Carol Wiebe – MHBC Planning (Agent), Part of Lot 4, Concession 1, Part 1, Reference Plan 33R-1696 (geographic Township of Lobo); 22393 Komoka Road

Chair Rows read the purpose and effect of the subject application, which is to sever a 1.24 hectare (3 ac) lot from an existing 20.23 hectare (50 ac) parcel to facilitate the construction of a single-detached dwelling on the severed property. The lot to be severed would have a lot frontage of approximately 40 metres (131 ft) along Komoka Road (County Road 16), a lot depth of approximately 200 metres (656 ft) and a lot area of approximately 1.24 hectares (3 ac). The lot to be retained would have a lot frontage of approximately 167.5 metres (550 ft) along Komoka Road (County Road 16), a lot depth of approximately 597.15 metres (1,959 ft) and a lot area of approximately 18.99 hectares (46.9 acres). The lot to be severed is currently vacant. The lot to be retained contains an existing single-detached dwelling.

Carol Wiebe of MHBC Planning, agent for the applicants, was in attendance to speak to the application.

Ms. Wiebe indicated that the subject application should be considered together with the applications for Official Plan Amendment and Zoning By-law Amendment that were heard and denied by Council. Ms. Wiebe requested that the proposed consent be approved conditional on the approval of the associated Official Plan Amendment and Zoning By-law Amendment by the Ontario Municipal Board.

Ms. Wiebe stated that the Provincial Policy Statement (PPS) allows for lands to be removed

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from prime agricultural areas for the extraction of aggregate resources. Ms. Wiebe noted that due to the ponding that has occurred on the subject property following extraction, the subject property was no longer part of a prime agricultural area and as such, the policies that prohibit residential development in prime agricultural areas would not apply.

Ms. Wiebe noted that the creation of one residential lot would not negatively impact on surrounding aggregate extraction operations. Ms. Wiebe further argued that the impact of the aggregate extraction operations to the south on the proposed residential lot would be decreased as the extraction areas continue to move south towards the Thames River. Ms. Wiebe also stated that the prevailing winds in the area are from the west and northwest, which would blow the dust from the surrounding aggregate extraction operations to the east and away from the proposed residential lot.

Ms. Wiebe concluded her presentation by stating that the Committee would be saving the Municipality time and money by approving the consent conditional on the approval of the associated Official Plan Amendment and Zoning By-law Amendment by the Ontario Municipal Board.

Marc Bancroft read the correspondence from the County of Middlesex, the Upper Thames River Conservation Authority (UTRCA), the Municipal Public Works and Engineering Department and the Municipal Chief Building Official.

Mr. Bancroft indicated that according to the Ontario Ministry of Agriculture, Food and Rural Affairs, the subject property is located within a prime agricultural area and as such, the agricultural lot creation policies of the PPS apply. He added that the proposal before Committee is not for the creation of a lot for an agricultural or an agricultural-related use nor is it for a surplus dwelling severance. Mr. Bancroft also noted that the PPS explicitly prohibits the removal of land from prime agricultural areas for the purposes of residential development. As such, he was of the opinion that a severance should not be granted.

Mr. Bancroft indicated that both the Middlesex Centre Official Plan and the County of Middlesex Official Plan prohibit estate residential development. He added that both official plans also prohibit consents within 300 metres of active aggregate extraction operations; and stated that the proposed development entails the creation of a residential lot within 230 metres (755 ft) of two active aggregate extraction operations.

Mr. Bancroft concluded his presentation by stating that the Ontario Municipal Board has requested that the subject consent application be filed so that it could be heard concurrently with the applications for Official Plan Amendment and Zoning By-law Amendment; should the consent be denied by the Committee of Adjustment.

Stephen Harvey asked why the existing home on the subject property was allowed to be constructed within close proximity to the active aggregate extraction operations to the south, Mr. Bancroft indicated that the subject property is zoned Restricted Agricultural (A2), which permit one single-detached dwelling to be constructed on the lands.

Don Rows asked how the hazard regulation limit on the subject property would impact development of the lands. Mr. Bancroft indicated that the UTRCA has jurisdiction on the subject lands and are responsible for controlling development within the regulated area. He further noted that the UTRCA has indicated that they would like for the applicants to avoid fragmenting the hazard lands on the subject property; which the requested consent is proposing to do.

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Bill Graham, father of William James Graham, was also in attendance to speak to the application. Mr. Graham indicated that it is his intention to acquire the parcel proposed to be severed from his son and to build a single-detached dwelling on the property. Mr. Graham added that there are no suitable agricultural lands in the area and the soil tests that his consultants conducted on the property show that the subject property is not suitable for farming purposes. Mr. Graham further stated that the highest and best use of the subject property would be for an estate home.

Moved by Sharon McMillan
Seconded by Stephen Harvey

THAT application B-1/10, filed by William James Graham and Charmain Lynn Graham for consent to sever a parcel of land having a lot frontage of approximately 40 metres along Komoka Road (County Road 16), a lot depth of approximately 200 metres and a lot area of approximately 1.24 hectares; for a property described as Part of Lot 4, Concession 1, Part 1, Reference Plan 33R-1696 (geographic Township of Lobo), Municipality of Middlesex Centre, known municipally as 22393 Komoka Road; BE DENIED.

Carried

Reasons:

The Committee stated that the proposed consent is not in conformity with the Middlesex Centre Official Plan. The Committee also stated that the application does not comply with the applicable policies of the County of Middlesex Official Plan. It was noted by the Committee that the application does not meet the regulations of the Middlesex Centre Comprehensive Zoning By-law.

The Committee further noted that the application does not satisfy the consent policies of the Middlesex Centre Official Plan.

For the above-mentioned reasons, the application for consent was not granted.

APPLICATION NOs. B-2/10, B-3/10 and A-3/10 – Keith and Marlene Tackabury, Lots 28 and 29, Registered Plan 339 (geographic Township of London), Municipality of Middlesex Centre; 23959 Denfield Road and 23965 Denfield Road

Moved by Stephen Harvey
Seconded by Sharon McMillan

THAT Applications for Consent B-2/10 and B-3/10 and Application for Minor Variance A-3/10 be heard concurrently.

Carried

Chair Rows read the purpose and effect, which is to is to change the lot pattern of the properties known municipally as 23959 Denfield Road and 23965 Denfield Road.

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Consent Application B-2/10 pertains to the property known municipally as 23959 Denfield Road. The lot to be severed would have a lot frontage of approximately 20.12 metres (66.01 ft) along Denfield Road (County Road 20), a lot depth of approximately 38.42 metres (126.05 ft) and a lot area of approximately 773.01 square metres (8,320.6 sq ft). The lot to be retained would have a lot frontage of approximately 20.12 metres (66.01 ft) along Brookfield Street, a lot depth of approximately 38.42 metres (126.05 ft) and a lot area of approximately 773.01 square metres (8,320.6 sq ft).

Consent Application B-3/10 pertains to the property known municipally as 23965 Denfield Road. The lot to be severed would have a lot frontage of approximately 20.12 metres (66.01 ft) along Denfield Road (County Road 20), a flankage of approximately 38.42 metres (126.05 ft) along Brookfield Street and a lot area of approximately 773.01 square metres (8,320.6 sq ft). The lot to be retained would have a lot frontage of approximately 20.12 metres (66.01 ft) along Brookfield Street, a flankage of approximately 38.42 metres (126.05 ft) along Brookfield Street and a lot area of approximately 773.01 square metres (8,320.6 sq ft).

In order to reorient the two subject properties, the applicants are proposing that the lots to be severed via applications B-2/10 and B-3/10 be merged and that the lots to be retained via applications B-2/10 and B-3/10 be merged; thus creating two new lots fronting on Brookfield Street. One lot would have a lot frontage of approximately 38.41 metres (126.05 ft) along Brookfield Street, a flankage of approximately 40.24 metres (132.02 ft) along Denfield Road (County Road 20) and a lot area of approximately 1,546.02 square metres (0.38 ac). The second lot would have a lot frontage of approximately 38.41 metres (126.05 ft) along Brookfield Street, a flankage of approximately 40.24 metres (132.02 ft) along Brookfield Street and a lot area of approximately 1,546.02 square metres (0.38 ac).

Minor Variance Application A-3/10 applies to the lot to be severed via Consent Application B-3/10. As a result of the severance, the property with a flankage along Denfield Road (County Road 20) would have an existing accessory building, the detached garage, located in the front yard. As such, the owners are seeking relief from Sections 4.1(a) (ii) and 4.1 (a) (iii) of the Comprehensive Zoning By-law 2005-005, which do not permit accessory buildings to be located in the front yard.

Keith and Marlene Tackabury were in attendance to speak to the application. Mrs. Tackabury indicated that the subject property was derelict when she and her husband purchased it and they were trying to clean it up.

Mr. Puzanov read the correspondence from the County of Middlesex, the Ausable Bayfield Conservation Authority, the Municipal Public Works and Engineering Department and the Municipal Chief Building Official.

Mr. Puzanov indicated that the proposed lot realignment represents infill redevelopment in the hamlet of Denfield. The lot areas of the two proposed lots would be generally the same as they are today and would continue to be slightly smaller than neighbouring residential development within Denfield. He stated that he is of the opinion that the proposed applications represent orderly and efficient use of land as their approval would facilitate the development of a new single-detached dwelling on the proposed westerly lot. He added that if the Committee was to approve the applications for consent, he recommended that the conditions included in the report to Committee be attached to their approval.

Mr. Puzanov indicated that based on his planning analysis provided in the staff report, the proposed minor variance complies with the general intent and purpose of the Municipal Official Plan and Comprehensive Zoning By-law, is considered to be minor in nature and represents an appropriate development and use of the subject property. He stated that if

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the Committee was to approve the application for minor variance, he recommended that no conditions be attached to its approval.

Laurie and Arthur Gregory were in attendance to speak to the application. Mrs. Gregory indicated that the lot numbers for the subject property provided in the notice were those of her property and not of the subject property. Mr. Puzanov indicated that the lot numbers had been changed to reflect the correct legal description of the subject lands.

Moved by Ken Nixon
Seconded by Ian Nielsen

THAT application B-2/10, filed by Keith and Marlene Tackabury for consent to sever a parcel of land having a lot frontage of approximately 20.12 metres along Denfield Road (County Road 20), a depth of approximately 38.42 metres and a lot area of approximately 773.01 square metres; for a property described as Lot 29, Registered Plan 339 (geographic Township of London), Municipality of Middlesex Centre, known municipally as 23959 Denfield Road; BE GRANTED

Carried

Conditions:

1. That the Certificate of Consent under Section 53(42) of the Planning Act shall be given within one year of the date of the notice of the decision;
2. That the applicants provide confirmation to the satisfaction of the Municipality's Chief Building Official that the existing sewage system will be wholly contained within the lot to be comprised of the severed parcels of Consent Applications B-2/10 and B-3/10;
3. That the owners dedicate lands up to 15 metres from the centerline of County Road 20 (Denfield Road) along the severed lots of Consents B-2/10 and B-3/10 to the County of Middlesex, if the road right-of-way is not already to that width;
4. That the owners remove one existing access to County Road 20 (Denfield Road), from one of the severed lots of Consents B-2/10 and B-3/10, restore its drop curb to a standard barrier curb and restore the boulevard areas to the Satisfaction of the County of Middlesex;
5. That the applicants dedicate a sight visibility triangle at the northwest corner of the lot to be retained from Consent B-3/10 to the Municipality, to the satisfaction of the Municipality's Department of Public Works and Engineering;
6. That the existing single-detached dwelling at 23959 Denfield Road, located on the severed lot of Consent B-2/10, be connected to the Municipal water supply, to the satisfaction of the Municipality's Department of Public Works and Engineering;
7. That the applicants enter into a Severance Agreement with the Municipality, and that the Agreement be registered on title of the retained lots from Consents B-2/10 and B-3/10, which addresses among other matters, entrance location and construction, lot grading and drainage, building envelopes, connection to the Municipal water supply, septic system and 100% related contingency area, all to the satisfaction of the Municipality;
8. That Minor Variance A-3/10 be approved and in full force and effect;

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9. That all structures located on the retained lots of Consents B-2/10 and B-3/10 be removed, to the satisfaction of the Municipality of Middlesex Centre;
10. That the severed lot of Consent B-2/10 is deeded in the same name and interest as the severed lot of Consent B-3/10 and that Sections 50(3) and (5) of the Planning Act apply to any further conveyance or transaction of the subject lands;
11. That the retained lot of Consent B-2/10 is deeded in the same name and interest as the retained lot of Consent B-3/10 and that Sections 50(3) and (5) of the Planning Act apply to any further conveyance or transaction of the subject lands.

Reasons:

The Committee stated that the consent is in conformity with the Middlesex Centre Official Plan and Comprehensive Zoning By-law. The Committee also stated that the application complies with the applicable policies of the County of Middlesex Official Plan.

The Committee further noted that the subject application does not require a Plan of Subdivision. It was also noted by the Committee that the application satisfies the consent policies of the Middlesex Centre Official Plan. The Committee was also satisfied that the proposed use is generally compatible with uses in the area.

Moved by Ken Nixon
Seconded by Ian Nielsen

THAT application B-3/10, filed by Keith and Marlene Tackabury for consent to sever a parcel of land having a lot frontage of approximately 20.12 metres along Denfield Road (County Road 20), a depth of approximately 38.42 metres and a lot area of approximately 773.01 square metres; for a property described as Lot 28, Registered Plan 339 (geographic Township of London), Municipality of Middlesex Centre, known municipally as 23965 Denfield Road; BE GRANTED

Carried

Conditions

1. That the Certificate of Consent under Section 53(42) of the Planning Act shall be given within one year of the date of the notice of the decision;
2. That the applicants provide confirmation to the satisfaction of the Municipality's Chief Building Official that the existing sewage system will be wholly contained within the lot to be comprised of the severed parcels of Consent Applications B-2/10 and B-3/10;
3. That the owners dedicate lands up to 15 metres from the centerline of County Road 20 (Denfield Road) along the severed lots of Consents B-2/10 and B-3/10 to the County of Middlesex, if the road right-of-way is not already to that width;
4. That the owners remove one existing access to County Road 20 (Denfield Road), from one of the severed lots of Consents B-2/10 and B-3/10, restore its drop curb to a standard barrier curb and restore the boulevard areas to the Satisfaction of the County of Middlesex;

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5. That the applicants dedicate a sight visibility triangle at the northwest corner of the lot to be retained from Consent B-3/10 to the Municipality, to the satisfaction of the Municipality's Department of Public Works and Engineering;
6. That the existing single-detached dwelling at 23959 Denfield Road, located on the severed lot of Consent B-2/10, be connected to the Municipal water supply, to the satisfaction of the Municipality's Department of Public Works and Engineering;
7. That the applicants enter into a Severance Agreement with the Municipality, and that the Agreement be registered on title of the retained lots from Consents B-2/10 and B-3/10, which addresses among other matters, entrance location and construction, lot grading and drainage, building envelopes, connection to the Municipal water supply, septic system and 100% related contingency area, all to the satisfaction of the Municipality;
8. That Minor Variance A-3/10 be approved and in full force and effect;
9. That all structures located on the retained lots of Consents B-2/10 and B-3/10 be removed, to the satisfaction of the Municipality of Middlesex Centre;
10. That the severed lot of Consent B-2/10 is deeded in the same name and interest as the severed lot of Consent B-3/10 and that Sections 50(3) and (5) of the Planning Act apply to any further conveyance or transaction of the subject lands;
11. That the retained lot of Consent B-2/10 is deeded in the same name and interest as the retained lot of Consent B-3/10 and that Sections 50(3) and (5) of the Planning Act apply to any further conveyance or transaction of the subject lands.

Reasons:

The Committee stated that the consent is in conformity with the Middlesex Centre Official Plan. The Committee also stated that the application complies with the applicable policies of the County of Middlesex Official Plan. It was noted by the Committee that the application would meet the regulations of the Middlesex Centre Comprehensive Zoning By-law, subject to approval of minor variance A-3/10.

The Committee further noted that the subject application does not require a Plan of Subdivision. It was also noted by the Committee that the application satisfies the consent policies of the Middlesex Centre Official Plan. The Committee was also satisfied that the proposed use is generally compatible with uses in the area.

Moved by Ken Nixon
Seconded by Ian Nielsen

THAT application A-3/10, filed by Keith and Marlene Tackabury for relief from Sections 4.1(a) (ii) and 4.1 (a) (iii) of the Comprehensive Zoning By-law 2005-005, which do not permit accessory buildings to be located in the front yard; specifically to permit an existing detached garage to be located on the lot to be severed by Consent B-3/10; for a property described as Part of Lot 28 Registered Plan 339 (geographic Township of London), Municipality of Middlesex Centre, known municipally as 23965 Denfield Road; BE GRANTED

Carried

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Reasons:

The Committee was of the opinion that the extent of the variance is “minor” in nature from the provisions of the Middlesex Centre Comprehensive Zoning By-law. The Committee stated that the general intent and purpose of both the Middlesex Centre Official Plan and Zoning By-law are maintained with the granting of the minor variance application. The Committee was satisfied that the variance was desirable for the appropriate development and use of the subject property; and, that the variance was in keeping with the general development of the area.

NEXT MEETING:

Monday, April 26, 2010 at the Middlesex Centre Municipal Offices, 10227 Ilderton Road, Coldstream, at 7:00 p.m.

ADJOURNMENT:

ON MOTION DULY MADE, SECONDED AND CARRIED

IT WAS RESOLVED

THAT this meeting adjourn now at 8:15 p.m.

Chair

Secretary