

MUNICIPALITY OF MIDDLESEX CENTRE
COMMITTEE OF ADJUSTMENT MINUTES

HEARING NUMBER 3/09

May 25, 2009

The third meeting of 2009 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
Peter McClary
Geoff Rennison
Don Rows

UNAPPROVED

REGRETS

Sharon McMillan

STAFF PRESENT

Marc Bancroft, Assistant Secretary-Treasurer
Benjamin Puzanov, Planner

DECLARATIONS OF PECUNIARY INTEREST

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

APPOINTMENT OF SECRETARY-TREASURER

Moved by Peter McClary
Seconded by Geoff Rennison

THAT Benjamin Puzanov be appointed as Secretary-Treasurer of the Committee of Adjustment.

MINUTES

Moved by Stephen Harvey
Seconded by Geoff Rennison

THAT the minutes of the March 26, 2009 Hearing of the Municipality of Middlesex Centre Committee of Adjustment, be approved.

Carried

APPLICATION NOS. B-6/09 & A-8/09 – Gysbers Farms Ltd.; Part of Lots 17, 18 and 19, Concession 8 (geographic Township of Lobo); 11543 Ilderton Road

Moved by Peter McClary
Seconded by Stephen Harvey

THAT Applications for Consent B-6/09 and Minor Variance A-8/09 be heard concurrently.

Carried

Chair Rows read the purpose and effect of the subject applications. The first application pertains to the creation of two new farm lots. The second application pertains to a minor variance in order to recognize the reduced lot area of the easterly lot to be retained from the aforementioned severance.

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Mr. Bill Gysbers was in attendance to represent his company and did not have anything to add to Chair Rows' description of the application.

Marc Bancroft read the correspondence from the County of Middlesex, Ausable Bayfield Conservation Authority, St. Clair Region Conservation Authority, the Municipal Public Works and Engineering Department, the Municipal Deputy Chief Building Official and neighbouring property owners.

Mr. Bancroft indicated that he is supportive of the consent application as the severance proposal conforms to the Provincial Policy Statement, the County of Middlesex Official Plan and the Middlesex Centre Official Plan. He also added that the severance proposal meets the Middlesex Centre Comprehensive Zoning By-law subject to the approval of the minor variance request to recognize the reduced lot area of the easterly retained farm parcel. Mr. Bancroft also indicated that he supports the variance application as the evaluation criteria for a minor variance, according to the Planning Act and the Middlesex Centre Official Plan, have been met.

Conditions of the severance recommended by Mr. Bancroft included the following: issuance of the certificate of consent within 1 year of the notice of decision; \$1,000 cash-in-lieu of parkland dedication; that Minor Variance A-8/09 be approved and in full force and effect; that the applicant be required to inform the Provincial Ministry having jurisdiction with respect to the proposed change in ownership as it relates to the current Nutrient Management Plan for the lot to be severed and that the Municipality receive confirmation from the said Ministry in this respect; and that the applicant provide a road widening dedication of up to 18 metres from the centreline of County Road 16 (Ilderton Road) along the frontage of the lot to be severed to the County of Middlesex.

Mr. Bancroft recommended that Minor Variance application A-8/09 be approved without conditions.

Ms. Wendy Lenders of 24465 Bear Creek Road was present to speak to the applications. Ms. Lenders indicated that the applicant was seeking to re-establish the former lot pattern on the subject property and noted that this application may not be required, citing the "once a severance, always a severance" rule. Ms. Lenders also inquired about the potential uses that could be carried out on the property should the severance be approved.

Mr. Bancroft indicated that the applicant sought a legal opinion and was informed by his solicitor that a consent application was required in order to sever the subject property. Mr. Bancroft also noted that the subject property is currently being used as an agricultural operation and that the main use of the subject lands will remain agricultural should the severance be granted by the Committee.

There were no other members of the public present to speak to the application.

Moved by Stephen Harvey
Seconded by Peter McClary

THAT application B-6/09, filed by Gysbers Farms Ltd. for consent to sever a parcel of land having a lot frontage of approximately 603 metres on Ilderton Road (County Road 16), and a lot area of approximately 40.5 hectares; for a property described as the north half of Lot 18, Concession 8, (geographic Township of Lobo) Municipality of Middlesex Centre; BE GRANTED.

Carried

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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 applicant pay \$1,000.00 cash-in-lieu of parkland dedication to the Municipality.
3. That Minor Variance A-8/09 be approved and in full force and effect.
4. That the applicant be required to inform the Provincial Ministry having jurisdiction with respect to the proposed change in ownership as it relates to the current Nutrient Management Plan for the lot to be severed and that the Municipality receive confirmation from the said Ministry in this respect.
5. That the applicant provide a road widening dedication of up to 18 metres from the centreline of County Road 16 (Ilderton Road) along the frontage of the lot to be severed to the County of Middlesex.

Reasons:

The Committee stated that the general intent and purpose of the Middlesex Centre Official Plan would be maintained if the consent is granted. 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 is in conformity with the Middlesex Centre Comprehensive Zoning By-law.

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 general consent policies of the Middlesex Centre Official Plan. The Committee was also satisfied that the concerns of circulated agencies were adequately addressed and that the proposed use is generally compatible with uses in the area. It was noted that the application satisfied the Official Plan with regards to farm parcel size being sufficient to provide a flexible and viable farm operation.

Moved by Stephen Harvey
Seconded by Peter McClary

THAT application A-8/09, filed by Gysbers Farms Ltd. for relief from the minimum lot area requirement of the Agricultural (A1) Zone pursuant to Section 5.1.2 of the Municipality of Middlesex Centre Comprehensive Zoning By-law No. 2005-005; which requires a minimum lot area of 40 hectares whereas the easterly lot to be retained of Application for Consent B-6/09 would have a lot area of 37.6 hectares; for a property described as the Part of Lot 19, Concession 8 (geographic Township of Lobo) Municipality of Middlesex Centre; BE GRANTED.

Carried

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

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and use of the subject property; and, that the variance was in keeping with the general development of the area. It was also noted that the variance would not have detrimental effect on adjacent or surrounding land uses and that there were valid reasons why the Zoning By-law requirement cannot be met.

APPLICATION NO. A-6/09 – A and M Sod Supply Ltd.; Peter Macaulay (Agent); Part of Block 16, Registered Plan 33M-399 (geographic Township of Delaware); Southwest corner of Harris Road and Martin Road

Chair Rows read the purpose and effect of the subject application to satisfy one of the conditions of Application for Consent B-16/08 to sever and convey a 0.15 hectare (0.37 ac) parcel of land as a lot addition to the adjacent residential lot to the north, located at 136 Harris Road. He noted that relief is being sought from Section 23.1.2 of the Zoning By-law, which requires that the lot area of the subject property remain as it lawfully existed on the day of the passing of the Zoning By-law, being May 4, 2005. The parcel to be retained of Application for Consent B-16/08 will have a lot area of 10.37 hectares (25.62 ac). As such, the applicant is requesting a reduction in the lot area requirement from 10.52 hectares (25.99 ac) to 10.37 hectares (25.62 ac).

The applicant and agent were not in attendance to speak on behalf of the application. There were no other members of the public present to speak to the application.

Benjamin Puzanov read the correspondence from the County of Middlesex, the Upper Thames River Conservation Authority, the Municipal Public Works and Engineering Department and the Municipal Deputy Chief Building Official.

Mr. Puzanov indicated that he supports the variance application as the evaluation criteria for a minor variance, according to the Planning Act and the Middlesex Centre Official Plan, have been met.

Moved by Stephen Harvey
Seconded by Geoff Rennison

THAT application A-6/09, filed by A and M Sod Supply Ltd. for relief from the lot area requirement of the Existing Use (EU) zone pursuant to Section 23.1.2 of the Middlesex Centre Comprehensive Zoning By-law No. 2005-005, which requires that the lot area of the subject property remain as it lawfully existed on the day of the passing of the Zoning By-law, being May 4, 2005; whereas the parcel to be retained of application for Consent B-16/08 will have a reduced lot area of 10.37 hectares; for a property described as Part of Block 16, Registered Plan 33M-399 (geographic Township of Delaware), Municipality of Middlesex Centre; BE GRANTED.

Carried

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. It was also noted that the variance would not have detrimental effect on adjacent or surrounding land uses and that there were valid reasons why the Zoning By-law requirement cannot be met.

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APPLICATION NO. A-7/09 – Ross Elmer Jackson; Marjorie Jackson (Agent); Part of Lot 7, Concession 1, Parts 2 to 8, Reference Plan 33R-11314 (geographic Township of Delaware); 3802 and 3828 Springer Road

Chair Rows read the purpose and effect of the subject application for permission to construct a garage addition to a legal non-conforming single detached dwelling that was destroyed by fire and will be rebuilt.

Marjorie Jackson, the applicant's agent and wife, and her son, Mike Jackson, were in attendance and did not have any comments to the application. There were no other members of the public present that wished to speak to the application.

Benjamin Puzanov read the correspondence from the County of Middlesex, the Municipal Public Works and Engineering Department and the Municipal Deputy Chief Building Official. Mr. Puzanov also read correspondence from Richard C. McKerlie of 3829 Springer Road, who supported the application.

Mr. Puzanov indicated that he supports the variance application as the evaluation criteria for a minor variance, according to the Planning Act and the Middlesex Centre Official Plan, have been met.

Moved by Geoff Rennison
Seconded by Peter McClary

THAT application A-7/09, filed by Ross Elmer Jackson for an expansion of a legal non-conforming use in order to attach a garage to a single-detached dwelling that is to be rebuilt after being destroyed by fire; as the subject property contained two single-detached dwellings, with both houses being legal non-conforming uses; with the subject dwelling recently destroyed by fire and being rebuilt under Section 4.16 of the Middlesex Centre Comprehensive Zoning By-law No. 2005-005, which permits the dwelling to be rebuilt to the same basic dimensions and on the same basic site as the original dwelling provided that a building permit is issued within three years of the date of destruction; for a property described as Part of Lot 7, Concession 1, Parts 2 to 8, Reference Plan 33R-11314 (geographic Township of Delaware), Municipality of Middlesex Centre; BE GRANTED.

Carried

Reasons:

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 proposal. The Committee was satisfied that the proposal was in keeping with general development in the area, desirable for the appropriate development and use of the subject property and that it would not have a detrimental effect on adjacent or surrounding land uses. It was also noted that the effect of the proposed variance can be considered minor because the number of legal non-conforming uses on the subject property will not change with the addition of an attached garage to the dwelling at 3828 Springer Road. The Committee also noted that there are valid reasons why the Zoning By-law requirement cannot be met and that the application for enlargement of the legal non-conforming building satisfies the Official Plan.

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APPLICATION NO. B-2/09 – Benjamin Lawton; Steve Ross (agent); Part of Lot 13, Concession 4 (geographic Township of Lobo); 23170 Nairn Road, Lobo

Chair Rows read the purpose and effect of the subject application to sever a parcel from the original 0.52 hectare (1.3 ac) lot. The proposed severed parcel would have approximately 30 metres (98 ft) of frontage on Nairn Road (County Road 17), an irregular depth and a lot area of approximately 2,236 square metres (0.55 ac). The parcel to be retained would have approximately 48 metres (157 ft) of frontage also on Nairn Road (County Road 17), a depth of approximately 58 metres (192 ft) and a lot area of approximately 2,807 square metres (0.69 acres).

Steve Ross, the applicant's agent, was in attendance, as were Alan Clarkson of 23152 Nairn Road, Wayne Williams of 23163 Nairn Road and Carroll and Arnold Reicheld of 23195 Nairn Road.

Marc Bancroft read the correspondence from the Planner and Engineer of the County of Middlesex, the Municipal Public Works and Engineering Department and the Municipal Deputy Chief Building Official.

Mr. Bancroft indicated that he is supportive of the consent application as the severance proposal conforms to the Provincial Policy Statement, the County of Middlesex Official Plan and the Middlesex Centre Official Plan. He also added that the severance proposal meets the requirements of the Middlesex Centre Comprehensive Zoning By-law.

Conditions of the severance recommended by Mr. Bancroft included the following: that the applicant remove the dwelling unit located within the existing accessory building on the lot to be severed to the satisfaction of the Municipality which would include non-load bearing partition walls, residential sized water heater, furnace, laundry facilities, kitchen and washroom facilities; that the applicant have a development plan undertaken by a qualified engineer for both the lots to be severed and retained, which addresses, amongst other matters, building and sewage envelopes, contingency areas, water supplies, lot grading and drainage, shared entrance location, new driveway extension for the lot to be retained, the municipal drain, and the location of wells and sewage systems on neighbouring lands, all to the satisfaction of the Municipality; that the applicant pay a \$1,000 cash-in-lieu of parkland dedication to the Municipality; that the applicant enter into a Severance Agreement with the Municipality, and that the Agreement be registered on title to the subject land, which addressed, amongst other matters, building and sewage envelopes, contingency areas, water supplies, lot grading and drainage, shared entrance location, new driveway extension for the lot to be retained, the municipal drain, and the location of wells and sewage systems on neighbouring lands, all to the satisfaction of the Municipality; that a Zoning By-law Amendment/Temporary Use By-law be approved and in full force and effect to allow the existing accessory building located on the lot to be severed to remain for a period not to exceed 3 years in the absence of a single detached dwelling not being erected thereon within the said 3 years and that prohibits the existing accessory building from containing a dwelling unit; that the applicant dedicate lands up to 18 metres from the centreline of construction of County Road 17 (Nairn Road) to the County of Middlesex if the right-of-way is not already to that width; and 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.

Mr. Ross indicated that the proposal conformed with the Municipality's policies for infill development and stated that he agreed with all but one of Mr. Bancroft's recommended conditions. Mr. Ross noted that, in his opinion, the property does not need to be rezoned as a condition of the severance because the detached garage that is to remain on the severed parcel is accessory to the proposed residential use of the property, regardless of whether or not there is an existing dwelling on the lot.

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Alan Clarkson of 23152 Nairn Road expressed concerns with the future, undetermined location of the septic system on the property as well as the impact that this infill development will have on an abutting municipal drain. Chair Rows explained that these issues will be addressed as part of the conditions of the severance and a building permit for a new single-detached dwelling will not be issued until these matters are resolved to the satisfaction of the Municipality and the consent is finalized.

Carroll and Arnold Reicheld of 23195 Nairn Road noted that they did not receive proper notice of the original, January 29, 2009 meeting and that they have not had adequate time to review the proposal.

Mr. Bancroft noted that the notice requirements under the Planning Act had been fulfilled when the first notice was sent out and a second notice was not necessary for a deferred application. Mr. Bancroft apologized for the original mailing error but added that because of that, the Reichelds were given proper notice of this second meeting.

Ms. Reicheld questioned why the Committee was even considering this application as the applicant did not know where the well and septic system would be located on the property and how he would address potential drainage issues on the new lot. Chair Rows explained that the applicant would like to be certain that the Municipality would approve this potential severance before he invests additional time and money into engineering studies.

Peter McClary asked Mr. Ross why his client has a problem with applying for a three year temporary use by-law. Mr. Ross explained that his client did not wish to go through another public meeting process and that his client was unsure of how quickly he would remove the detached garage because it has sentimental value to him. Vice Chair Harvey asked whether or not the severed lot would be sold given the fact that the applicant has a sentimental garage on the property. Mr. Ross confirmed that his client's plan is to sell the lot.

Wayne Williams of 23163 Nairn Road expressed support for the requirement of a temporary use by-law as a condition of the severance.

Vice Chair Harvey asked staff whether or not the temporary use by-law could be extended after the initial three year period. Mr. Bancroft indicated that it can be extended only once, for a maximum of three years.

Geoff Rennison asked staff whether the temporary use by-law would permit the applicant to continue using the illegal dwelling unit located in the garage. Mr. Bancroft indicated that it would not and that the dwelling unit will be removed as per the direction of the Municipality's Deputy Chief Building Official.

Moved by Stephen Harvey
Seconded by Peter McClary

THAT application B-2/09 as amended, filed by Benjamin Lawton for consent to sever a parcel of land having a lot frontage of approximately 30 metres on Nairn Road (County Road 17), and a lot area of approximately 0.22 hectares; and for consent permitting an easement/right-of-way for an entrance driveway with a width of approximately 7 metres, a length of approximately 7 metres and an area of approximately 49 square metres on the lot to be retained; for a property described as Part of Lot 13, Concession 4, (geographic Township of Lobo) Municipality of Middlesex Centre; BE GRANTED.

Carried

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Conditions:

1. That the applicant remove the dwelling unit located within the existing accessory building on the lot to be severed to the satisfaction of the Municipality which would include non-load bearing partition walls, residential sized water heater, furnace, laundry facilities, kitchen and washroom facilities.
2. That the applicant have a development plan undertaken by a qualified engineer for both the lots to be severed and retained, which addresses, amongst other matters, building and sewage envelopes, contingency areas, water supplies, lot grading and drainage, shared entrance location, new driveway extension for the lot to be retained, the municipal drain, and the location of wells and sewage systems on neighbouring lands, all to the satisfaction of the Municipality.
3. That the applicant pay a \$1,000 cash-in-lieu of parkland dedication to the Municipality.
4. That the applicant enter into a Severance Agreement with the Municipality, and that the Agreement be registered on title to the subject land, which addressed, amongst other matters, building and sewage envelopes, contingency areas, water supplies, lot grading and drainage, shared entrance location, new driveway extension for the lot to be retained, the municipal drain, and the location of wells and sewage systems on neighbouring lands, all to the satisfaction of the Municipality.
5. That a Zoning By-law Amendment/Temporary Use By-law be approved and in full force and effect to allow the existing accessory building located on the lot to be severed to remain for a period not to exceed 3 years in the absence of a single detached dwelling not being erected thereon within the said 3 years and that prohibits the existing accessory building from containing a dwelling unit.
6. That the applicant dedicate lands up to 18 metres from the centreline of construction of County Road 17 (Nairn Road) to the County of Middlesex if the right-of-way is not already to that width.
7. 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.

Reasons:

The Committee stated that the general intent and purpose of the Middlesex Centre Official Plan would be maintained if the consent is granted. 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 is in conformity with the Middlesex Centre Comprehensive Zoning By-law.

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 general consent policies of the Middlesex Centre Official Plan. The Committee noted that the application satisfied the requirements of the Official Plan with regards to infilling in a hamlet area. The Committee was also satisfied that the concerns of circulated agencies were adequately addressed and that the proposed use is generally compatible with uses in the area.

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NEXT MEETING: **Monday, July 27, 2009 at the Municipality of Middlesex**
Centre Offices, Coldstream, at 7:00 p.m.

ADJOURNMENT:

ON MOTION DULY MADE, SECONDED AND CARRIED

IT WAS RESOLVED

THAT this meeting adjourn now at 8:40 p.m.

Chair

Secretary