

THE MUNICIPALITY OF LAMBTON SHORES

Report COA 43-2021

Committee Meeting Date: October 27, 2021

TO: Chair Robinson and Members of Committee of Adjustment

FROM: Will Nywening, Senior Planner

RE: Consent Applications B-21/2021 and B-22/2021
Plan 4, Lot 28 (GB)
8381 Defore Drive
Velma MacLachlan (Agent: Kim and Dana MacLachlan)

RECOMMENDATION:

That **Consent Application B-21/2021**, respecting lands known as 8381 Defore Drive, requesting permission to sever a 0.8 ha parcel containing a house, leaving 9.9 ha of retained farmland, and that **Consent Application B-22/2021**, respecting lands adjacent to 8381 Defore Drive, requesting permission to sever a 0.2 ha parcel containing a detached garage, leaving 12.6 ha of retained farmland, both **be APPROVED**, subject to the following conditions:

1. That the Owner submit to the Municipality two copies of a reference plan showing the severed lots or submit a written description which is acceptable to the County of Lambton Registrar;
2. That any municipal taxes and local improvements including interest and penalties thereon that may be owing and payable with respect to the lands be paid to date;
3. That Section 50(3) of the *Planning Act* apply to both applications, meaning the stipulated (merging) consent certificate is to be used to finalize the consents;
4. That the severed parcels from both applications be registered in the same name and interest as and merged with each other and their PIN numbers consolidated;
5. That the retained parcels from both applications be registered in the same name and interest as and merged with each other and their PIN numbers consolidated (but a separate name and interest to the severed parcels);
6. That the applicants convey a road allowance to Municipal standards to the satisfaction of the Municipality for the extension of Defore Drive and the provision of lot frontage to the resultant parcels;
7. That the applicants enter into an agreement with and to the satisfaction of the Municipality respecting matters relevant to the severance, including the dedication of public highways and the construction of a cul-de-sac;
8. That the applicant apply for and obtain a rezoning to change the zoning on the severed parcels to residential with special allowance for

- accessory building size and also to prohibit a dwelling on the resultant farm parcel;
9. That the applicants pay a cash-in-lieu fee of \$1000.00 for parkland dedication; and
 10. That the drainage assessment be reapportioned, if applicable.
-

Application

The applications would result in the realignment of two abutting parcels, isolating existing buildings onto a new residential lot and leaving the balance of the lands as a single, vacant farm parcel.

With application B-21/2021, the applicant seeks consent to sever a 0.8 ha (2acre) parcel containing the existing house known as 8381 Defore Drive, resulting in a retained farm parcel of 9.9 ha (24.5 acres). With application B-22/2021, the applicant seeks consent to sever a 0.2 ha (0.5 acre) parcel containing a detached accessory building, resulting in a retained farm parcel of 12.6 ha (31 acres). In this respect the applicants intend to merge the severed parcels from both applications, resulting in a 2.5 acre (1 ha) residential lot containing the house and accessory building, and also to merge the retained farm parcels, resulting in a single 55.5 acre (22.5 ha) farm parcel.

Comments

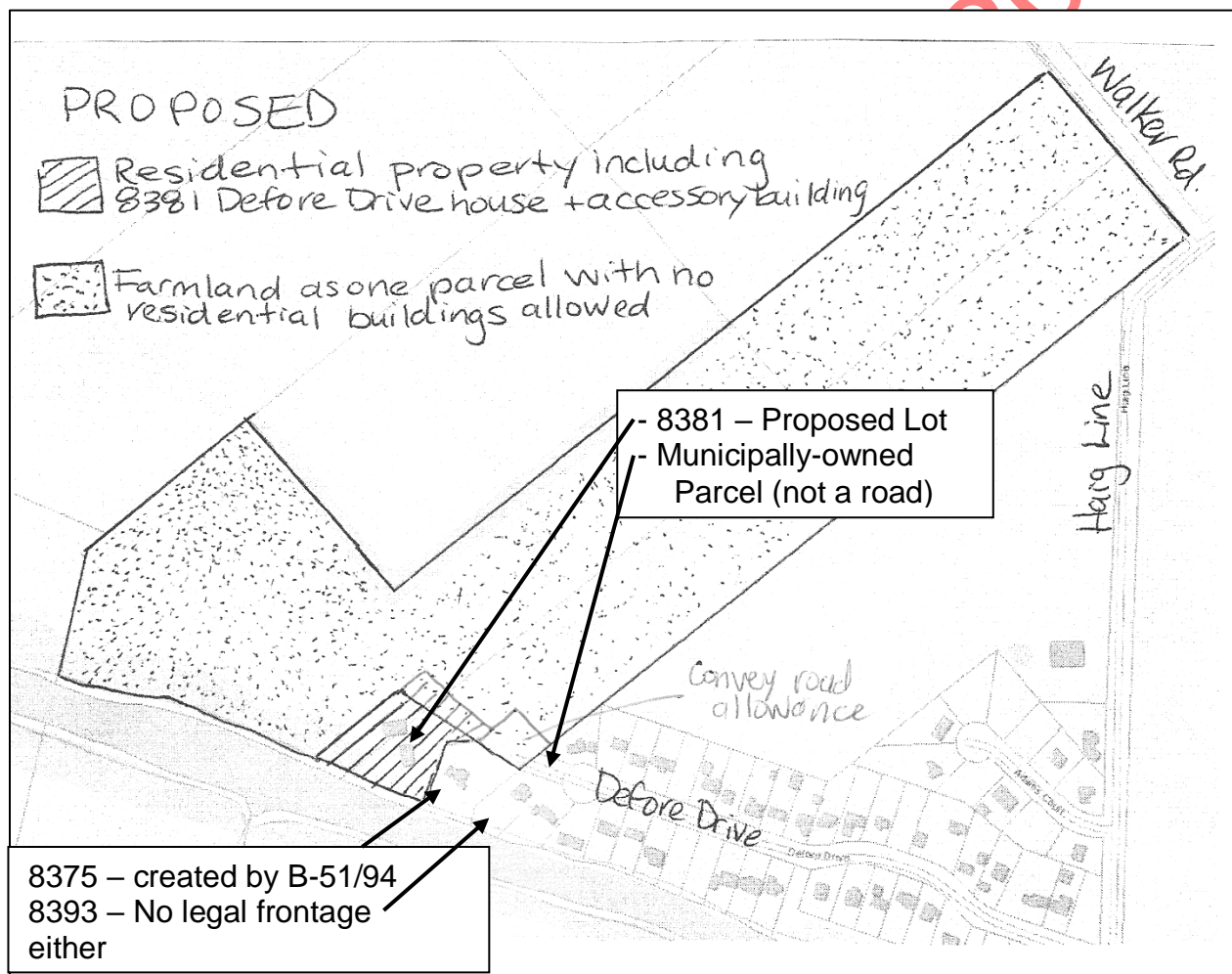
The Lambton Shores Official Plan designates the subject lands “Agricultural”, “Thedford Marsh”, and “General Regulation Area”. The latter designation reflects the fact that the entire property and broader Marsh area are within a flood plain and regulated by the Ausable Bayfield Conservation Authority. The abutting residential area is designated “Residential - Special Policy Area”, reflecting the location of an existing residential community in a flood fringe area.

In Zoning By-law 1 of 2003, the properties are zoned “Agricultural-2.1 (A2-1)”, a zone specific to the Thedford Marsh containing minimum elevation requirements and permitting a dwelling only if it is a “farm dwelling”. The abutting residential subdivision is zoned “Residential-5 (R5)” and permits single detached dwellings.

Policy Basis: These parcels are located on an agricultural parcel and are within the Official Plan and Zoning By-law’s “agricultural” designations. The Agricultural policies permit surplus farm dwelling severances, and the applicants propose to sell the remnant farm parcel to a local farmer, which would generally meet the requirement. Although outside the residential designation, the house is a physical continuation of the abutting residential subdivision and the proposed severance recognizes an established residential use. The proposal does not result in an increase in the number of parcels and has the effect of consolidating two “undersized” farm parcels into 22.5 ha (55.5 acres), which is closer to the Official Plan’s 40 ha (100 acre) minimum lot size for the Thedford Marsh. Normally, we would require that the applicant have a specific farmer

and an agreement of purchase and sale in place. Given the nature of the existing use, the proximity of the residential area/designation, and the similarity to a surplus farm dwelling severance, Staff is supportive of allowing the application to proceed under the applicable severance policies, provided a house is prohibited on the retained farmland, as required by Provincial policy for surplus farm dwelling severances.

ABCA: The entirety of the lands are within the flood fringe area associated with the Thedford Marsh and the Ausable Cut and are regulated by the ABCA. The ABCA has provided written comments indicating no natural hazard or heritage concerns. They note that normally, the ABCA does not support new lots within hazard areas, but that they can support this application as there is no net increase in the number of lots.



Previous Consent: The agents to the application reside at 8375 Defore Drive, which was severed from the subject lands via a pre-amalgamation, 1994 consent (B-51/94). The conditions of that consent included entering into an agreement and conveying a 66 feet wide road allowance to construct a “turn-a-round circle”. Although the agreement was entered into and the consent finalized, the road extension was never conveyed or constructed.

Access: The current situation is that the house on the subject lands (8381), the agents' house (8375), and a third house (8393 Defore Drive – the municipal addressing is out of sequence) do not have frontage on a public street. The agents' house crosses the subject lands to get to Defore Drive without any easement. All three houses must cross a parcel at the end of Defore Drive that is owned by the Municipality but not actually dedicated as a road.

In order to correct the existing situation and allow the proposed severance, Community Services Staff have indicated that the applicants must convey a road allowance with sufficient dimensions to allow extension of Defore Drive and a cul-de-sac with proper radius and boulevard. The municipal parcel at the end of Defore Drive must also be dedicated as a public highway by by-law. Design and construction of the cul-de-sac and registration of the road dedication by-law would be at the applicant's expense, in order to provide legal frontage and access to municipal services. A development agreement to address these matters should be a condition of consent.

The road extension would provide the three noted houses and the resultant farm parcel with legal frontage to Defore Drive. The resultant farm parcel also has access to Haig Line and Walker Road and there appears to be access from one end of the farm to the other via bridges over the bisecting McLachlan-Teetzel Drain.

Miscellaneous: The lands are bisected by the McLachlan-Teetzel Drain and presumably assessed into them. The drainage assessment of the realigned parcels will need to be reapportioned.

It has been practice of the committee to impose cash-in-lieu of parkland dedication as a condition of consent for surplus farm dwellings, so this has been noted in the recommended conditions of consent.

County Building Services has provided written comments respecting private sewage disposal. They are satisfied with the condition of the existing septic system and advise that the lot sizes of the resultant parcels meet ministry reasonable use guidelines for private sewage disposal.

Technicalities: In order for the two pieces making up the new residential lot to merge, as intended, the "stipulated" consent certificate (merging stamp) will need to be used on the severed lots in each application. Also, the severed lots will need to be registered in the same name and interest. As remnant parcels of the severance, the farm parcels will merge into one farm parcel, as desired, simply by being registered in the same name and interest. The applicants need to be careful not to register the residential lot and resultant farm parcel in the same name or everything will merge on title. Appropriate conditions of approval in this respect are included in the recommendation at the beginning of the report.

Rezoning: Staff recommends that the new residential lot be rezoned to residential with special provisions for an oversized accessory building and that the resultant farm parcel

be rezoned to prohibit a dwelling. This requirement is noted in the recommended conditions of consent.

The A2-1 Zone permits only “farm” dwellings. The proposed severances would place the existing house on a residential lot such that it no longer a farm dwelling, creating non-conformity with the permitted uses of the A2-1 Zone. This and the fact the proposed 1 ha (2.5 acre) lot does not meet the A2-1 Zone’s 3 ha (7.4 acre) minimum lot area, necessitate a rezoning to residential.

The same R5 Zone as applies to the adjacent residential area will be appropriate with a special provision for an oversized accessory building. The existing detached accessory building is 1200 square feet plus lean-tos that result in a total area of 2460sf. This is substantially larger than the 1000sf permitted in residential zones, but the building is existing and too integrated with the residential use to be retained by the farm. (The detached building actually straddles the lot line between the two existing farm parcels). In Staff’s opinion it is appropriate to allow this building to remain with the residential lot as an existing situation.

The A2-1 Zone is appropriate for the resultant farm parcel other than the need to prohibit a dwelling on the farm portion. The 22.5 ha (55.5 acre) farm meets the 3 ha (7.4 acre) minimum lot size of the A2-1 Zone and is closer to the 40 ha (100 acre) minimum in the Official Plan than the current parcels. Note the minimum lot size in the A2-1 Zone has not been updated since the adoption of the more recent Official Plan.

Summary: The proposed applications do not neatly fit within the existing land use policies of the Official Plan, but it is Staff’s opinion that given the existing use, the similarity to a surplus farm dwelling severance, and the connection with the existing residential area, the severance is appropriate within the context of existing severance policies. In Staff’s opinion, the applications as presented represent good planning and Staff can support their approval subject to the applicants obtaining a rezoning, entering into an agreement with the Municipality to extend Defore Drive to provide frontage to all parcels, and such other conditions of approval as noted in the recommendations section at the beginning of this report.