

**The Corporation of the Town of Essex**  
**Minutes of Regular Committee of Adjustment Meeting**  
**Tuesday January 21<sup>st</sup>, 2020**

A regular meeting of the Town of Essex Committee of Adjustment was held on Tuesday, January 21<sup>st</sup>, 2020 at 4:00 PM in the Council Chambers at the Municipal Building at 33 Talbot Street South, Essex, Ontario

**1. Roll Call:**

Members Present	Percy Dufour, Chair Brian Gray, Vice Chair Phil Pocock Ray Beneteau
Also Present	Rita Jabbour, Secretary Treasurer/Manager, Planning Services Sarah Aubin, Planning Assistant
Regrets:	Dan Boudreau

**2. Declaration of Conflict of Interest**

None

**3. Adoption of Published Agenda**

**3.1** That the published agenda for the January 21<sup>st</sup>, 2020 meeting of the Committee of Adjustment be adopted as circulated.

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(COA-2020-01-01)** That the published agenda for January 21<sup>st</sup>, 2020 meeting of the Committee of Adjustment be adopted as circulated.

**“carried”**

**4. Adoption of Minutes**

**4.1** That the minutes of the December 17<sup>th</sup>, 2019 Committee of Adjustment meeting be adopted as circulated.

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(COA-2020-01-02)** That the Regular Minutes from the Committee of Adjustment Meeting of December 17<sup>th</sup>, 2019 be adopted.

**“carried”**

## 5. Reports / Applications

### 5.1 Rita Jabbour, Planner RE:

#### **Application B-01-20 Burstyn Farms Limited. (Agent: David Burstyn), 2995 County Road 12 (Colchester North, Ward 2)**

A consent application has been received by the Town of Essex Committee of Adjustment for the subject lands located at 2995 County Rd 12 in the former township of Colchester North. The applicants are proposing to sever a  $\pm 1.5$  acre grassed parcel from the existing  $\pm 65.5$  acre agricultural lot. The retained agricultural lot is proposed to have an area of  $\pm 64$  acres. The applicant is proposing this consent for the purpose of a lot addition. The severed parcel is proposed to be merged with the lands located directly to the East and known municipally as 11139 County Road 23.

**Note: An application for consent has also been received for the subject lands (File Number: A-01-20). The public notice for the minor variance application has been included with this notice.**

#### **5.1.1 Public Presentations (if any)**

##### **Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the agricultural lands located at 2995 County Road 12 in the former township of Colchester North. The subject property is designated "Agricultural" under the Town of Essex Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a  $\pm 1.5$  acre grassed parcel from the existing  $\pm 65.5$  acre agricultural lot. The applicants are proposing this consent for the purpose of a lot addition. The severed parcel is proposed to be merged with the lands located directly to the East and known municipally as 11139 County Road 23. The severed parcel is vacant and does not form part of the farming operation. No new buildings are proposed to be constructed on the severed parcel.

The retained parcel will continue to be used for agricultural purposes. The proposed severance will not adversely impact the existing farming operation as the severed parcel is not actively farmed. Access to the retained parcel will continue to be by way of County Road 12 via an existing access bridge. The proposed severance will have no adverse impact on access to the retained lot.

#### Proposal Conformity with Town of Essex Official Plan Policies

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should have regard to:

- a) the proposal's consistency with Provincial legislation, policies and guidelines:  
the Provincial Policy Statement (PPS) states that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. Legal or technical reasons include minor boundary adjustments which do not result in the creation of a new lot. As a condition of this consent, the applicants will be responsible for submitting evidence that indicates the severed parcel will be consolidated with the property at 11139 County Road 23;
- b) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:  
Section 6.4 of the Town of Essex Official Plan states that consents should only be granted for lot adjustments or minor boundary changes provided both parcels comply with the provisions of the implementing zoning bylaw or such variances granted through the Committee of Adjustment and the consent is granted in accordance with section 50(3) of the Planning Act. The applicant has submitted for a variance to accommodate the reduction in lot area for the retained parcel.  
  
Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. Comments were also received from the County of Essex. They note that the applicants will be required to comply with County Road regulations to provide for the protection of highways and the installation of entranceways, and to regulate the location of building and structures on land adjacent to County Roads, should they choose to make any changes to existing entrances and structures, or construct new entrances or structures in the future. Otherwise, they did not state any explicit concerns with the applications. No other comments were received from circulated public authorities or agencies;
- c) The continuation of an orderly development pattern:  
The lot addition is not irregular in shape;
- d) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
Water supply, sanitary sewage treatment and stormwater management is not required as the proposal will not result in the creation of a new vacant buildable lot.

#### Requirement for Minor Variance

The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or the existing lot size. As a result of the proposed severance, the lot area for the retained farm parcel will be reduced from +65.5 acres, the existing lot size, to +64

acres. As such, a variance to accommodate a reduction in lot area for the retained farm parcel is required.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- a) The general intent of this Plan and the Zoning Bylaw are maintained:  
The main use of the retained farm parcel will remain agricultural.
- b) The variance(s) is minor and desirable for the appropriate use of the land:  
No agricultural land will be taken out of production as a result of this severance. The variance will not impact ingress or egress to the retained parcel.
- c) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:  
Agricultural lot sizes vary greatly in the agricultural district.
- d) The variance deals with circumstances particular to the site and development:  
The variance is necessary to accommodate an application for consent to facilitate a lot addition.

#### Public Comment

As a result of the giving of public notice, no written correspondences have been received from members of the public as of Thursday January 16, 2020.

#### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:
  - a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
  - b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
  - c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
  - d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
  - e) That the severed parcel be consolidated with the lands located at 11139 County Road 23. In accordance with Subsection 3 of Section 50 of the Planning Act, the applicant shall submit to the Secretary-Treasurer satisfactory evidence that the transferee of the severed portion of

the property and the owner of the abutting property are identical, together with an undertaking from the applicant's solicitor to consolidate the severed portion and the abutting into one parcel. Within thirty days of the issuance of the certificate of consent to sever, the applicant shall provide evidence to the Secretary-Treasurer that an application to consolidate parcels has been filed with the Land Registry Office.

f) That all of the above conditions be fulfilled on or before January 21, 2021.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

Portions of the above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the West Townline Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

Upon our review, we advise that these applications are consistent with the natural hazard policies of the PPS.

**WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

**PLANNING ADVISORY SERVICE TO MUNICIPALITIES - NATURAL HERITAGE POLICIES OF THE PPS**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the PPS. The comments in this section do not necessarily represent the provincial position and are advisory in nature for the consideration of the Municipality as the planning authority. The subject property is not within or adjacent to any natural heritage feature that may meet the criteria for significance as defined by the Provincial Policy Statement (PPS). Based on our review, we have no objection to the application with respect to natural heritage policies.

**FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

**Kristoffer Balallo, Engineering Technician, County of Essex wrote:**

Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering related only. This application has not been reviewed from a planning perspective. The subject lands have frontage on County Road No. 12. The Applicant will be required to comply with the following County Road regulations:

County By-Law Number 2481 - A By-Law to Provide for the Protection of Highways and to Provide for the Installation of Entrance Ways.

County By-Law Number 2480 - A By-Law of the Corporation of the County of Essex to Regulate the Location of Buildings and Structures on Land Adjacent to County Roads.

The minimum setback for any proposed structures on this property must be 85 feet from the centre of the original ROW of County Road No. 12. Permits are necessary for any changes to existing entrances and structures, or the construction of new entrances or structures.

We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.

**Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(CAO-2020-01-03)** That application B-01-20 be granted to sever a +1.5 acre grassed parcel from the existing +65.5 acre agricultural lot subject to the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
  - b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
  - c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
  - d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
  - e) That the severed parcel be consolidated with the lands located at 11139 County Road 23.
- In accordance with Subsection 3 of Section 50 of the Planning Act, the applicant shall submit to the Secretary-Treasurer satisfactory evidence that the transferee of the severed portion of

the property and the owner of the abutting property are identical, together with an undertaking from the applicant's solicitor to consolidate the severed portion and the abutting into one parcel. Within thirty days of the issuance of the certificate of consent to sever, the applicant shall provide evidence to the Secretary-Treasurer that an application to consolidate parcels has been filed with the Land Registry Office.

f) That all of the above conditions be fulfilled on or before January 21, 2021.

**"Carried"**

**Reasons:** The Application is in keeping with subsection 2.3.4 of the Provincial Policy Statement (PPS) respecting lot creation and lot adjustments in prime agricultural areas and subsections 6.4 and 6.5 of the Town of Essex Official Plan policies respecting consents and consents in areas designated "Agricultural".

**5.2 Rita Jabbour, Planner RE:**

**Application A-01-20 Burstyn Farms Limited. (Agent: David Burstyn),  
2995 County Road 12 (Colchester North, Ward 2)**

A consent application for minor variance has been received by the Town of Essex Committee of Adjustment for the lands located at 2995 County Rd 12 in the former township of Colchester North. As a result of a proposed severance for lot addition, the lot area for the severed and retained parcel will be reduced from  $\pm 65.5$  acres to  $\pm 1.5$  acres and  $\pm 64$  acres, respectively. The minimum lot area for lots within Agricultural District 1.1 (A1.1) is 40 hectares (100 acres) or as existing.

**Note: An application for consent has also been received for the subject lands (File Number: B-01-20). The public notice for the consent application has been included with this notice.**

**5.2.1 Public Presentations (if any)**

**Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the agricultural lands located at 2995 County Road 12 in the former township of Colchester North. The subject property is designated "Agricultural" under the Town of Essex Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a  $\pm 1.5$  acre grassed parcel from the existing  $\pm 65.5$  acre agricultural lot. The applicants are proposing this consent for the purpose of a lot addition. The severed parcel is proposed to be merged with the lands located directly to the East and known municipally as 11139 County Road 23. The severed parcel is vacant and does not form

part of the farming operation. No new buildings are proposed to be constructed on the severed parcel.

The retained parcel will continue to be used for agricultural purposes. The proposed severance will not adversely impact the existing farming operation as the severed parcel is not actively farmed. Access to the retained parcel will continue to be by way of County Road 12 via an existing access bridge. The proposed severance will have no adverse impact on access to the retained lot.

#### Proposal Conformity with Town of Essex Official Plan Policies

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should have regard to:

- e) the proposal's consistency with Provincial legislation, policies and guidelines:  
the Provincial Policy Statement (PPS) states that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. Legal or technical reasons include minor boundary adjustments which do not result in the creation of a new lot. As a condition of this consent, the applicants will be responsible for submitting evidence that indicates the severed parcel will be consolidated with the property at 11139 County Road 23;
- f) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:  
Section 6.4 of the Town of Essex Official Plan states that consents should only be granted for lot adjustments or minor boundary changes provided both parcels comply with the provisions of the implementing zoning bylaw or such variances granted through the Committee of Adjustment and the consent is granted in accordance with section 50(3) of the Planning Act. The applicant has submitted for a variance to accommodate the reduction in lot area for the retained parcel.

Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. Comments were also received from the County of Essex. They note that the applicants will be required to comply with County Road regulations to provide for the protection of highways and the installation of entranceways, and to regulate the location of building and structures on land adjacent to County Roads, should they choose to make any changes to existing entrances and structures, or construct new entrances or structures in the future. Otherwise, they did not state any explicit concerns with the applications. No other comments were received from circulated public authorities or agencies;

- g) The continuation of an orderly development pattern:  
The lot addition is not irregular in shape;



- h) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
Water supply, sanitary sewage treatment and stormwater management is not required as the proposal will not result in the creation of a new vacant buildable lot.

#### Requirement for Minor Variance

The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or the existing lot size. As a result of the proposed severance, the lot area for the retained farm parcel will be reduced from +65.5 acres, the existing lot size, to +64 acres. As such, a variance to accommodate a reduction in lot area for the retained farm parcel is required.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- e) The general intent of this Plan and the Zoning Bylaw are maintained:  
The main use of the retained farm parcel will remain agricultural.
- f) The variance(s) is minor and desirable for the appropriate use of the land:  
No agricultural land will be taken out of production as a result of this severance. The variance will not impact ingress or egress to the retained parcel.
- g) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:  
Agricultural lot sizes vary greatly in the agricultural district.
- h) The variance deals with circumstances particular to the site and development:  
The variance is necessary to accommodate an application for consent to facilitate a lot addition.

#### Public Comment

As a result of the giving of public notice, no written correspondences have been received from members of the public as of Thursday January 16, 2020.

#### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:
  - a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
  - b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

- c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
- d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
- e) That the severed parcel be consolidated with the lands located at 11139 County Road 23. In accordance with Subsection 3 of Section 50 of the Planning Act, the applicant shall submit to the Secretary-Treasurer satisfactory evidence that the transferee of the severed portion of the property and the owner of the abutting property are identical, together with an undertaking from the applicant's solicitor to consolidate the severed portion and the abutting into one parcel. Within thirty days of the issuance of the certificate of consent to sever, the applicant shall provide evidence to the Secretary-Treasurer that an application to consolidate parcels has been filed with the Land Registry Office.
- f) That all of the above conditions be fulfilled on or before January 21, 2021.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

Portions of the above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the West Townline Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

Upon our review, we advise that these applications are consistent with the natural hazard policies of the PPS.

**WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

**PLANNING ADVISORY SERVICE TO MUNICIPALITIES - NATURAL HERITAGE POLICIES OF THE PPS**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the PPS. The comments in this section do not necessarily represent the provincial position and are advisory in nature for the consideration of the Municipality as the planning authority. The subject property is not within or adjacent to any natural heritage feature that may meet the criteria for significance as defined by the Provincial Policy Statement (PPS). Based on our review, we have no objection to the application with respect to natural heritage policies.

### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Kristoffer Balallo, Engineering Technician, County of Essex wrote:**

Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering related only. This application has not been reviewed from a planning perspective. The subject lands have frontage on County Road No. 12. The Applicant will be required to comply with the following County Road regulations:

County By-Law Number 2481 - A By-Law to Provide for the Protection of Highways and to Provide for the Installation of Entrance Ways.

County By-Law Number 2480 - A By-Law of the Corporation of the County of Essex to Regulate the Location of Buildings and Structures on Land Adjacent to County Roads.

The minimum setback for any proposed structures on this property must be 85 feet from the centre of the original ROW of County Road No. 12. Permits are necessary for any changes to existing entrances and structures, or the construction of new entrances or structures.

We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter

#### **Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application

Moved by: Phil Pocock

Seconded by: Brian Gray

**(CAO-2020-01-04)** That application A-01-20 be granted to accommodate a lot area of  $\pm 64$  acres for the retained farm lot.

#### **“Carried”**

#### **Reasons:**

The Application **is** in keeping with the general intent and purpose of the Town of Essex Zoning Bylaw and the prescribed criteria for Minor Variances under subsection 9.8 of the Town of Essex Official Plan:

- a) the general intent of this Plan and the Zoning By-law are maintained;
- b) the variance(s) is minor and desirable for the appropriate use of the land;

c) the variance is compatible with the established character of the neighbourhood, traffic and parking patterns;

d) the variance deals with circumstances particular to the site and development

### **5.3 Rita Jabbour, Planner RE:**

#### **Application B-02-20 Burstyn Farms Limited. (Agent: David Burstyn), 2995 County Road 12 (Colchester North, Ward 2)**

A consent application has been received by the Town of Essex Committee of Adjustment for the lands located at 2995 County Rd 12 in the former township of Colchester North. The applicant is proposing to sever a  $\pm 2$  acre surplus dwelling lot from the existing  $\pm 65.5$  acre agricultural lot. The retained parcel is proposed to have an area of  $\pm 63.5$  acres and will continue to be used for agricultural purposes. The residence has been rendered surplus as a result of farm consolidation.

**Note: An application for minor variance has also been received for the subject lands (File Number: A-02-20). The public notice for the minor variance application has been included with this notice.**

#### **5.3.1 Public Presentations (if any)**

##### **Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 2995 County Road 12 in the former township of Colchester North. The subject property is designated "Agricultural" under the Town's Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037. The applicants are proposing to sever a +2 acre surplus dwelling lot parcel from the existing +65.5 acre agricultural lot. The severed parcel will be occupied by the existing single detached dwelling, two (2) accessory structures and accompanying infrastructure (i.e. water service connection, septic system and Access Bridge). The retained parcel is proposed to have an area of +63.5 acres and will continue to be used for agricultural purposes.

Access to the severed parcel will be by way of County Road 12 via the existing access bridge. Access to the retained parcel will continue to be way of County Road 12 via a second existing access bridge.

Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent because the residence has been rendered surplus to the farming operation. The Provincial Policy Statement (PPS) defines a residence surplus to a farming operation as an existing habitable farm residence that is rendered surplus as a result of farm consolidation. Farm consolidation is defined as the acquisition of additional farm parcels to be operated as one farm operation. In addition to the subject parcel, the applicant, Burstyn Farms Limited (David Burstyn), owns one (1) other agricultural property totalling fifty-five acres (55) just north of the subject property.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", one (1) lot creating consent will be permitted for a surplus dwelling on the condition that:

a) No new dwelling will be permitted on the retained farm parcel;

A restricted development layer will be applied to the property upon provisional consent approval on the Town's Geographic Information System (GIS).

b) the size of the surplus dwelling lot should not be greater than one (1) hectare, however, the choice of consolidating outbuildings with the surplus dwelling will also be considered when the size and boundaries of the surplus dwelling lot are determined and approved by consent; the size of the proposed surplus dwelling lot will not exceed one (1) hectare.

c) the lot to be created has provision for sewage disposal, a potable water supply and stormwater management systems satisfactory to the Town and other statutory approval authority having jurisdiction;

The surplus dwelling lot has access to municipal water and is serviced by the Thompson Drain. The applicant will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate;

d) the severed dwelling lot will satisfy Minimum Distance Separation 1 (MDS 1) provisions of the Official Plan; the lot to be severed contains an existing dwelling. No additional dwellings will be permitted on this lot. Therefore, no livestock facilities will be impacted by the proposed development.

e) the severed dwelling lot has frontage on a public road; the severed dwelling lot has frontage on County Road 12, a public road which is owned and assumed by the County of Essex.

f) the surplus dwelling is in habitable condition, as determined by the Town or certified by a qualified building inspector.

No objections to the application were received from the Building Department.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should also have regard to:

a) the proposal's consistency with Provincial legislation, policies and guidelines:

The PPS discourages lot creation in prime agricultural areas but permits them for a residence surplus to a farming operation as a result of farm consolidation, provided that:

1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and

2. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance;

b) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:

Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. Comments were also received from the County of Essex. They note that the applicants will be required to comply with County Road regulations to provide for the protection of highways and the installation of entranceways, and to regulate the location of building and structures on land adjacent to County Roads, should they choose to make any changes to existing entrances and structures, or construct new entrances or structures in the future. Otherwise, they did not state any explicit concerns with the applications. No other comments were received from circulated public authorities or agencies.

c) The continuation of an orderly development pattern:

The surplus dwelling lot is not of a configuration that would hinder the agricultural operation.

d) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:

The surplus dwelling lot has access to municipal water and is serviced by the Thompson Drain. The applicants will be required to obtain satisfactory confirmation that the septic system(s) meets Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate.

#### Requirement for Minor Variance

As a result of the proposed severance, the lot area for the severed and retained lots will decrease in size from +65.5 acres, the existing lot area, to +2 acres and 63 acres, respectively. The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or as existing.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

a)The general intent of this Plan and the Zoning Bylaw are maintained:

Severances for surplus dwellings are permitted in the agricultural district and in accordance with the policies found under section 2.3.4.1 c) of the Town of Essex Official Plan. The main use of the retained parcel will continue to be agricultural. Construction of a new dwelling will not be permitted on the retained farm parcel;

b)The variance(s) is minor and desirable for the appropriate use of the land:

Lot areas in the agricultural district vary greatly. Additionally, no agricultural land will be taken out of production;

c) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:

The dwelling and accompanying infrastructure are existing and there will be a prohibition against the construction of any new dwelling on the retained agricultural land. Thus, no new entrances or buildings that would impact traffic patterns or neighbouring lots are proposed to be constructed;

d)The variance deals with circumstances particular to the site and development:

The variance is necessary in order to accommodate a surplus dwelling application.

#### Public Comment

As a result of the giving of public notice, no phone calls or written correspondence objecting to the severance have been received from members of the public as of Thursday January 16, 2020.

#### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;

b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

c)That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full

to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;

d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;

e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;

f) That all of the above conditions be fulfilled on or before January 21, 2021.

2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot area for the severed and retained parcel.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

Portions of the above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the West Townline Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

Upon our review, we advise that these applications are consistent with the natural hazard policies of the PPS.

**WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

**PLANNING ADVISORY SERVICE TO MUNICIPALITIES - NATURAL HERITAGE POLICIES OF THE PPS**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the PPS. The comments in this section do not necessarily represent the



provincial position and are advisory in nature for the consideration of the Municipality as the planning authority.

The subject property is not within or adjacent to any natural heritage feature that may meet the criteria for significance as defined by the Provincial Policy Statement (PPS). Based on our review, we have no objection to the application with respect to natural heritage policies.

#### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Kristoffer Balallo, Engineering Technician, County of Essex wrote:**

Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering related only. This application has not been reviewed from a planning perspective. The subject lands have frontage on County Road No. 12. The Applicant will be required to comply with the following County Road regulations:

County By-Law Number 2481 - A By-Law to Provide for the Protection of Highways and to Provide for the Installation of Entrance Ways.

County By-Law Number 2480 - A By-Law of the Corporation of the County of Essex to Regulate the Location of Buildings and Structures on Land Adjacent to County Roads.

The minimum setback for any proposed structures on this property must be 85 feet from the centre of the original ROW of County Road No. 12. Permits are necessary for any changes to existing entrances and structures, or the construction of new entrances or structures.

We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.

#### **Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application

Brian Gray would like it to be noted that the retained parcel will have an area of  $\pm 62$  acres not the noted  $\pm 63.5$  acre agricultural lot, due to the previous approval of severance application B-01-20.

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(CAO-2020-01-05)** That application B-02-20 be granted to sever a +2 acre surplus dwelling lot from the existing +64 acre agricultural lot subject to the following conditions:

a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;

b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;

d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;

e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;

f) That all of the above conditions be fulfilled on or before January 21, 2021

**“Carried”**

**Reason:** The Application is in keeping with subsection 2.3.4 of the Provincial Policy Statement (PPS) respecting lot creation and lot adjustments in prime agricultural areas and subsections 6.4 and 6.5 of the Town of Essex Official Plan policies respecting consents and consents in areas designated “Agricultural”.

**5.4 Rita Jabbour, Planner RE:**

**Application A-02-20 Burstyn Farms Limited. (Agent: David Burstyn),  
2995 County Road 12 (Colchester North, Ward 2)**

An application for minor variance has been received by the Town of Essex Committee of Adjustment for the lands located at 2995 County Rd 12 in the former township of Colchester North. As a result of a proposed surplus dwelling severance, the lot area for the severed and retained parcel will be reduced from  $\pm 65.5$  acres to  $\pm 2$  acres and  $\pm 63$  acres, respectively. The minimum lot area for lots within Agricultural District 1.1 (A1.1) is 40 hectares (100 acres) or as existing.

**Note: An application for consent has also been received for the subject lands (File Number: B-02-20). The public notice for the consent application has been included with this notice.**

**5.4.1 Public Presentations (if any)**

**Rita Jabbour, Planner wrote:**

Official Plan Designation: “Agricultural”

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 2995 County Road 12 in the former township of Colchester North. The subject property is designated "Agricultural" under the Town's Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037. The applicants are proposing to sever a +2 acre surplus dwelling lot parcel from the existing +65.5 acre agricultural lot. The severed parcel will be occupied by the existing single detached dwelling, two (2) accessory structures and accompanying infrastructure (i.e. water service connection, septic system and Access Bridge). The retained parcel is proposed to have an area of +63.5 acres and will continue to be used for agricultural purposes.

Access to the severed parcel will be by way of County Road 12 via the existing access bridge. Access to the retained parcel will continue to be way of County Road 12 via a second existing access bridge.

Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent because the residence has been rendered surplus to the farming operation. The Provincial Policy Statement (PPS) defines a residence surplus to a farming operation as an existing habitable farm residence that is rendered surplus as a result of farm consolidation. Farm consolidation is defined as the acquisition of additional farm parcels to be operated as one farm operation. In addition to the subject parcel, the applicant, Burstyn Farms Limited (David Burstyn), owns one (1) other agricultural property totalling fifty-five acres (55) just north of the subject property.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", one (1) lot creating consent will be permitted for a surplus dwelling on the condition that:

a) No new dwelling will be permitted on the retained farm parcel;

A restricted development layer will be applied to the property upon provisional consent approval on the Town's Geographic Information System (GIS).

b) the size of the surplus dwelling lot should not be greater than one (1) hectare, however, the choice of consolidating outbuildings with the surplus dwelling will also be considered when the size and boundaries of the surplus dwelling lot are determined and approved by consent; the size of the proposed surplus dwelling lot will not exceed one (1) hectare.

c) the lot to be created has provision for sewage disposal, a potable water supply and stormwater management systems satisfactory to the Town and other statutory approval authority having jurisdiction;

The surplus dwelling lot has access to municipal water and is serviced by the Thompson Drain. The applicant will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate;

d) the severed dwelling lot will satisfy Minimum Distance Separation 1 (MDS 1) provisions of the Official Plan; the lot to be severed contains an existing dwelling. No additional dwellings will be permitted on this lot. Therefore, no livestock facilities will be impacted by the proposed development.

e) the severed dwelling lot has frontage on a public road; the severed dwelling lot has frontage on County Road 12, a public road which is owned and assumed by the County of Essex.

f) the surplus dwelling is in habitable condition, as determined by the Town or certified by a qualified building inspector.

No objections to the application were received from the Building Department.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should also have regard to:

a) the proposal's consistency with Provincial legislation, policies and guidelines:

The PPS discourages lot creation in prime agricultural areas but permits them for a residence surplus to a farming operation as a result of farm consolidation, provided that:

1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and

2. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance;

b) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:

Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. Comments were also received from the County of Essex. They note that the applicants will be required to comply with County Road regulations to provide for the protection of highways and the installation of entranceways, and to regulate the location of building and structures on land adjacent to County Roads, should they choose to make any changes to existing entrances and structures, or construct new entrances or structures in the future. Otherwise, they did not state any explicit concerns with the applications. No other comments were received from circulated public authorities or agencies.

c) The continuation of an orderly development pattern:

The surplus dwelling lot is not of a configuration that would hinder the agricultural operation.

d) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:

The surplus dwelling lot has access to municipal water and is serviced by the Thompson Drain. The applicants will be required to obtain satisfactory confirmation that the septic system(s) meets Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate.

#### Requirement for Minor Variance

As a result of the proposed severance, the lot area for the severed and retained lots will decrease in size from +65.5 acres, the existing lot area, to +2 acres and 63 acres, respectively. The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or as existing.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

a)The general intent of this Plan and the Zoning Bylaw are maintained:

Severances for surplus dwellings are permitted in the agricultural district and in accordance with the policies found under section 2.3.4.1 c) of the Town of Essex Official Plan. The main use of the retained parcel will continue to be agricultural. Construction of a new dwelling will not be permitted on the retained farm parcel;

b)The variance(s) is minor and desirable for the appropriate use of the land:

Lot areas in the agricultural district vary greatly. Additionally, no agricultural land will be taken out of production;

c) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:

The dwelling and accompanying infrastructure are existing and there will be a prohibition against the construction of any new dwelling on the retained agricultural land. Thus, no new entrances or buildings that would impact traffic patterns or neighbouring lots are proposed to be constructed;

d)The variance deals with circumstances particular to the site and development:

The variance is necessary in order to accommodate a surplus dwelling application.

#### Public Comment

As a result of the giving of public notice, no phone calls or written correspondence objecting to the severance have been received from members of the public as of Thursday January 16, 2020.

**Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;

b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;

d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;

e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;

f) That all of the above conditions be fulfilled on or before January 21, 2021.

2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot area for the severed and retained parcel.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

Portions of the above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the West Townline Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

Upon our review, we advise that these applications are consistent with the natural hazard policies of the PPS.

#### **WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

#### **PLANNING ADVISORY SERVICE TO MUNICIPALITIES - NATURAL HERITAGE POLICIES OF THE PPS**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the PPS. The comments in this section do not necessarily represent the provincial position and are advisory in nature for the consideration of the Municipality as the planning authority.

The subject property is not within or adjacent to any natural heritage feature that may meet the criteria for significance as defined by the Provincial Policy Statement (PPS). Based on our review, we have no objection to the application with respect to natural heritage policies.

#### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Kristoffer Balallo, Engineering Technician, County of Essex wrote:**

Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering related only. This application has not been reviewed from a planning perspective. The subject lands have frontage on County Road No. 12. The Applicant will be required to comply with the following County Road regulations:

County By-Law Number 2481 - A By-Law to Provide for the Protection of Highways and to Provide for the Installation of Entrance Ways.

County By-Law Number 2480 - A By-Law of the Corporation of the County of Essex to Regulate the Location of Buildings and Structures on Land Adjacent to County Roads.

The minimum setback for any proposed structures on this property must be 85 feet from the centre of the original ROW of County Road No. 12. Permits are necessary for any changes to existing entrances and structures, or the construction of new entrances or structures.

We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.

**Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(CAO-2020-01-06)** That application A-02-20 be granted to accommodate a lot area of +2 acres and +62 acres for the severed and retained parcels, respectively.

**“Carried”**

**Reasons:** The Application is in keeping with the general intent and purpose of the Town of Essex Zoning Bylaw and the prescribed criteria for Minor Variances under subsection 9.8 of the Town of Essex Official Plan:

- a) the general intent of this Plan and the Zoning By-law are maintained;
- b) the variance(s) is minor and desirable for the appropriate use of the land;
- c) the variance is compatible with the established character of the neighbourhood, traffic and parking patterns;
- d) the variance deals with circumstances particular to the site and development

**5.5 Rita Jabbour, Planner RE:**

**Application B-03-20 Carolyn & Robert Meunier (Agent: Joe DaSilva), 3724 3<sup>rd</sup> Concession (Colchester South, Ward 3)**

A consent application has been received by the Town of Essex Committee of Adjustment for the lands located at 3724 3<sup>rd</sup> Concession in the former township of Colchester South. The applicants are proposing to sever a ±1.1 acre surplus dwelling lot from the existing ±50.5 acre agricultural lot. The retained parcel is proposed to have an area of ±49.4 acres and will continue to be used for agricultural purposes. The residence has been rendered surplus as a result of farm consolidation.

**Note: An application for minor variance has also been received for the subject lands (File Number: A-03-20). The public notice for the minor variance application has been included with this notice.**

**5.5.1 Public Presentations (if any)**

**Rita Jabbour, Planner wrote:**

Official Plan Designation: “Agricultural”

Zoning: Agricultural District 1.1 (A1.1) – General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 3724 3<sup>rd</sup> Concession Road in the former township of Colchester South. The subject property is designated “Agricultural” under the Town’s Official Plan and zoned Agricultural District 1.1



(A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a +1.1 acre surplus dwelling lot parcel from the existing +50.5 acre agricultural lot. The severed parcel will be occupied by the existing single detached dwelling, one (1) outbuilding and accompanying infrastructure (i.e. water service connection, septic system and Access Bridge). The retained parcel is proposed to have an area of +49.4 acres and will continue to be used for agricultural purposes.

Access to the severed parcel will be by way of the 3<sup>rd</sup> Concession Road via the existing access area. Access to the retained parcel will be by way of the 4<sup>th</sup> Concession Road via an existing access bridge.

#### Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent because the residence has been rendered surplus to the farming operation. The Provincial Policy Statement (PPS) defines a *residence surplus to a farming operation* as an existing habitable farm residence that is rendered surplus as a result of farm consolidation. Farm consolidation is defined as the acquisition of additional farm parcels to be operated as one farm operation. In addition to the subject parcel, the applicant/agent, Jose Dasilva, owns three (3) other agricultural properties totalling eighty-seven (87) acres within the Town of Essex.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", one (1) lot creating consent will be permitted for a surplus dwelling on the condition that:

- a) No new dwelling will be permitted on the retained farm parcel;  
A restricted development layer will be applied to the property upon provisional consent approval on the Town's Geographic Information System (GIS).
- b) the size of the surplus dwelling lot should not be greater than one (1) hectare, however, the choice of consolidating outbuildings with the surplus dwelling will also be considered when the size and boundaries of the surplus dwelling lot are determined and approved by consent;  
the size of the proposed surplus dwelling lot will not exceed one (1) hectare.
- c) the lot to be created has provision for sewage disposal, a potable water supply and stormwater management systems satisfactory to the Town and other statutory approval authority having jurisdiction;

The surplus dwelling lot has access to municipal water. The applicant will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate;

- d) the severed dwelling lot will satisfy Minimum Distance Separation 1 (MDS 1) provisions of the Official Plan;  
the lot to be severed contains an existing dwelling. No additional dwellings will be permitted on this lot. Therefore, no livestock facilities will be impacted by the proposed development.
- e) the severed dwelling lot has frontage on a public road;  
the severed dwelling lot has frontage on 3<sup>rd</sup> Concession Road, a public road which is owned and assumed by the Town of Essex.
- f) the surplus dwelling is in habitable condition, as determined by the Town or certified by a qualified building inspector.

No objections to the application were received from the Building Department.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should also have regard to:

- a) the proposal's consistency with Provincial legislation, policies and guidelines:  
The PPS discourages lot creation in *prime agricultural areas* but permits them for a *residence surplus to a farming operation* as a result of farm consolidation, provided that:
  1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*; and
  2. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance;
- b) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:  
Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. No other comments were received from circulated public authorities or agencies.
- c) The continuation of an orderly development pattern:  
The surplus dwelling lot is not irregular in shape.
- d) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
The surplus dwelling lot has access to municipal water. The applicants will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate.

#### Requirement for Minor Variance

As a result of the proposed severance, the width of the severed lot will be reduced to 135, and the lot area for the severed and retained parcels will be reduced from +50.5 acres, the existing lot area, to +1.1 acres and +49.4 acres, respectively. The minimum lot width for lots within Agricultural District 1.1 (A1.1) is 60 metres (200 feet). The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or as existing.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- a) The general intent of this Plan and the Zoning Bylaw are maintained:

Severances for surplus dwellings are permitted in the agricultural district and in accordance with the policies found under section 2.3.4.1 c) of the Town of Essex Official Plan. The main use of the retained parcel will continue to be agricultural. Construction of a new dwelling will not be permitted on the retained farm parcel;

- b) The variance(s) is minor and desirable for the appropriate use of the land:

Lot areas and lot widths in the agricultural district vary greatly. Additionally, no agricultural land will be taken out of production;

- c) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:

The dwelling and accompanying infrastructure are existing and there will be a prohibition against the construction of any new dwelling on the retained agricultural land. Thus, no new entrances or buildings that would impact traffic patterns or neighbouring lots are proposed to be constructed;

- d) The variance deals with circumstances particular to the site and development:

The variance is necessary in order to accommodate a surplus dwelling application.

### Public Comment

As a result of the giving of public notice, one (1) phone call was received from a neighbour who had concerns about the state of the property. No complaints had been received by the By-law Enforcement Officer concerning the property as of Monday January 6, 2020. No further comments were received from members of the public.

### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
- b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

- c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
  - d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
  - e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;
  - f) That all of the above conditions be fulfilled on or before January 21, 2021.
2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot width for the severed parcel and lot area for the severed and retained parcel.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

A portion of the above noted retained lands is subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act

(Ontario Regulation No. 158/06). This portion of the property falls within the regulated area of the Lockhart Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration (within the vicinity of the Lockhart Drain or other activities affected by Section 28 of the Conservation Authorities Act.

Upon our review, we can advise that these applications are consistent with the natural hazard policies of the PPS.

**WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

**PLANNING ADVISORY SERVICE TO MUNICIPALITIES - NATURAL HERITAGE POLICIES OF THE PPS**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the

PPS. The comments in this section do not necessarily represent the provincial position and are advisory in nature for the consideration of the Municipality as the planning authority.

The subject property is not within or adjacent to any natural heritage feature that may meet the criteria for significance as defined by the Provincial Policy Statement (PPS). Based on our review, we have no objection to the application with respect to natural heritage policies.

#### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application.

Joe Gorski, 8 Laird Ave, states that there are accessory structures in between the proposed lot line. He questions if the buildings will be demolished by the applicant.

Joe DaSilva, Agent, advises that the two accessory structures will be demolished.

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(CAO-2020-01-07)** That the two (2) accessory structures between the retained and severed parcel be demolished and placed as a conditions of consent.

**“Carried”**

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(CAO-2020-01-08)** That application B-03-20 be granted to sever a  $\pm 1.1$  acre surplus dwelling lot from the existing  $\pm 50.5$  acre agricultural lot subject to the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
- b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
- c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
- d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
- e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;
- f) That the two (2) accessory structures between the retained and severed parcel be demolished.
- g) That all of the above conditions be fulfilled on or before January 21, 2021.

**"Carried"**

**Reasons:** The Application is in keeping with subsection 2.3.4 of the Provincial Policy Statement (PPS) respecting lot creation and lot adjustments in prime agricultural areas and subsections 6.4 and 6.5 of the Town of Essex Official Plan policies respecting consents and consents in areas designated "Agricultural".

**5.6 Rita Jabbour, Planner RE:**

**Application A-03-20 Carolyn & Robert Meunier (Agent: Joe DaSilva),  
3724 3<sup>rd</sup> Concession (Colchester South, Ward 3)**

An application for minor variance has been received by the Town of Essex Committee of Adjustment for the lands located at 3724 3<sup>rd</sup> Concession in the former township of Colchester South. As a result of a proposed surplus dwelling severance, the width of the severed lot will be reduced to 135 feet. The lot area of the severed and retained parcels will be reduced from  $\pm 50.5$  acres to  $\pm 1.1$  acres and  $\pm 49.4$  acres, respectively. The minimum lot width for

lots within Agricultural District 1.1 (A1.1) is 60 metres (200 feet). The minimum lot area for lots within Agricultural District 1.1 is 40 hectares (100 acres) or as existing.

**Note: An application for consent has also been received for the subject lands (File Number: B-03-20). The public notice for the consent application has been included with this notice.**

#### 5.6.1 Public Presentations (if any)

**Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) – General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 3724 3<sup>rd</sup> Concession Road in the former township of Colchester South. The subject property is designated "Agricultural" under the Town's Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a +1.1 acre surplus dwelling lot parcel from the existing +50.5 acre agricultural lot. The severed parcel will be occupied by the existing single detached dwelling, one (1) outbuilding and accompanying infrastructure (i.e. water service connection, septic system and Access Bridge). The retained parcel is proposed to have an area of +49.4 acres and will continue to be used for agricultural purposes.

Access to the severed parcel will be by way of the 3<sup>rd</sup> Concession Road via the existing access area. Access to the retained parcel will be by way of the 4<sup>th</sup> Concession Road via an existing access bridge.

#### Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent because the residence has been rendered surplus to the farming operation. The Provincial Policy Statement (PPS) defines a *residence surplus to a farming operation* as an existing habitable farm residence that is rendered surplus as a result of farm consolidation. Farm consolidation is defined as the acquisition of additional farm parcels to be operated as one farm operation. In addition to the subject parcel, the applicant/agent, Jose Dasilva, owns three (3) other agricultural properties totalling eighty-seven (87) acres within the Town of Essex.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", one (1) lot creating consent will be permitted for a surplus dwelling on the condition that:

- g) No new dwelling will be permitted on the retained farm parcel;

A restricted development layer will be applied to the property upon provisional consent approval on the Town's Geographic Information System (GIS).

- h) the size of the surplus dwelling lot should not be greater than one (1) hectare, however, the choice of consolidating outbuildings with the surplus dwelling will also be considered when the size and boundaries of the surplus dwelling lot are determined and approved by consent;  
the size of the proposed surplus dwelling lot will not exceed one (1) hectare.
- i) the lot to be created has provision for sewage disposal, a potable water supply and stormwater management systems satisfactory to the Town and other statutory approval authority having jurisdiction;

The surplus dwelling lot has access to municipal water. The applicant will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate;

- j) the severed dwelling lot will satisfy Minimum Distance Separation 1 (MDS 1) provisions of the Official Plan;  
the lot to be severed contains an existing dwelling. No additional dwellings will be permitted on this lot. Therefore, no livestock facilities will be impacted by the proposed development.
- k) the severed dwelling lot has frontage on a public road;  
the severed dwelling lot has frontage on 3<sup>rd</sup> Concession Road, a public road which is owned and assumed by the Town of Essex.
- l) the surplus dwelling is in habitable condition, as determined by the Town or certified by a qualified building inspector.

No objections to the application were received from the Building Department.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should also have regard to:

- e) the proposal's consistency with Provincial legislation, policies and guidelines:  
The PPS discourages lot creation in *prime agricultural areas* but permits them for a *residence surplus to a farming operation* as a result of farm consolidation, provided that:
  - 3. the new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*; and
  - 4. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance;
- f) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:



Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. No other comments were received from circulated public authorities or agencies.

g) The continuation of an orderly development pattern:

The surplus dwelling lot is not irregular in shape.

h) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:

The surplus dwelling lot has access to municipal water. The applicants will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate.

#### Requirement for Minor Variance

As a result of the proposed severance, the width of the severed lot will be reduced to 135, and the lot area for the severed and retained parcels will be reduced from +50.5 acres, the existing lot area, to +1.1 acres and +49.4 acres, respectively. The minimum lot width for lots within Agricultural District 1.1 (A1.1) is 60 metres (200 feet). The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or as existing.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

e) The general intent of this Plan and the Zoning Bylaw are maintained:

Severances for surplus dwellings are permitted in the agricultural district and in accordance with the policies found under section 2.3.4.1 c) of the Town of Essex Official Plan. The main use of the retained parcel will continue to be agricultural. Construction of a new dwelling will not be permitted on the retained farm parcel;

f) The variance(s) is minor and desirable for the appropriate use of the land:

Lot areas and lot widths in the agricultural district vary greatly. Additionally, no agricultural land will be taken out of production;

g) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:

The dwelling and accompanying infrastructure are existing and there will be a prohibition against the construction of any new dwelling on the retained agricultural land. Thus, no new entrances or buildings that would impact traffic patterns or neighbouring lots are proposed to be constructed;

h) The variance deals with circumstances particular to the site and development:

The variance is necessary in order to accommodate a surplus dwelling application.

#### Public Comment

As a result of the giving of public notice, one (1) phone call was received from a neighbour who had concerns about the state of the property. No complaints had been received by the By-law Enforcement Officer concerning the property as of Monday January 6, 2020. No further comments were received from members of the public.

**Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:
  - a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
  - b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
  - c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
  - d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
  - e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;
  - f) That all of the above conditions be fulfilled on or before January 21, 2021.
2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot width for the severed parcel and lot area for the severed and retained parcel.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA),**  
**wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

A portion of the above noted retained lands is subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act

(Ontario Regulation No. 158/06). This portion of the property falls within the regulated area of the Lockhart Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration (within the vicinity of the Lockhart Drain or other activities affected by Section 28 of the Conservation Authorities Act.

Upon our review, we can advise that these applications are consistent with the natural hazard policies of the PPS.

#### **WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

#### **PLANNING ADVISORY SERVICE TO MUNICIPALITIES - NATURAL HERITAGE POLICIES OF THE PPS**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the

PPS. The comments in this section do not necessarily represent the provincial position and are advisory in nature for the consideration of the Municipality as the planning authority.

The subject property is not within or adjacent to any natural heritage feature that may meet the criteria for significance as defined by the Provincial Policy Statement (PPS). Based on our review, we have no objection to the application with respect to natural heritage policies.

#### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application

Moved by: Phil Pocock

Seconded by: Brian Gray

**(CAO-2020-01-09)** That application A-03-20 be granted to accommodate a lot width of 135 feet for the severed lot, and a lot area of +1.1 acres and +49.4 acres for the severed and retained parcels, respectively.

#### **“Carried”**

**Reasons:** The Application is in keeping with the general intent and purpose of the Town of Essex Zoning Bylaw and the prescribed criteria for Minor Variances under subsection 9.8 of the Town of Essex Official Plan:

a) the general intent of this Plan and the Zoning By-law are maintained;

- b) the variance(s) is minor and desirable for the appropriate use of the land;
- c) the variance is compatible with the established character of the neighbourhood, traffic and parking patterns;
- d) the variance deals with circumstances particular to the site and development

**5.7 Rita Jabbour, Planner RE:**

**Application B-04-20 2442747 Ontario Limited, 1241 South Malden Road (Colchester North, Ward 2)**

A consent application has been received by the Town of Essex Committee of Adjustment for the lands located at 1241 South Malden Road in the former township of Colchester North. The applicants are proposing to sever a  $\pm 20.5$  acre agricultural parcel from the existing  $\pm 30.5$  acre agricultural lot for the purpose of developing a vineyard and winery. The retained parcel is proposed to have an area of  $\pm 10$  acres and will continue to be used for agricultural purposes. The applicants are proposing this consent for the purpose of a farm split

**Note: An application for minor variance has also been received for the subject lands (File Number: A-04-20). The public notice for the minor variance application has been included with this notice.**

**5.7.1 Public Presentations (if any)**

**Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 1241 South Malden Road in the former township of Colchester North. The subject property is designated "Agricultural" under the Town's Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037. The subject property also has supplementary permitted uses that include a health studio, spa and a retreat, consisting of a main building and ancillary outbuildings, including buildings for the overnight accommodation of persons on a short term basis, church, church hall; day nursery, medical clinic, residential care facility and a private park .

The applicants are proposing to sever a  $+20.5$  acre parcel from the existing  $+30.5$  acre lot for the purposes of developing a vineyard and winery. The severed parcel will be occupied by four (4) existing cottages, one (1) accessory building and the accompanying infrastructure (i.e. water service connection, septic system and access bridge). A site plan for the vineyard and winery has been provided:



The retained parcel is proposed to have an area of +10 acres. The retained parcel is currently vacant but is proposed to be used for a future maple farm brewery.

Access to the severed parcel will be by way of South Malden Road via an existing access bridge. Access to the retained parcel will be by way of South Malden Road. The applicants are proposing to install a new access area to serve the retained parcel.

Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent for the purpose of a farm split to accommodate an *agricultural use* (vineyard) and *agricultural related use* (winery and brewery). The Provincial Policy Statement (PPS) permits lot creation in prime agricultural areas for agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations.

The PPS permits lot creation in prime agricultural areas for *agricultural related uses* provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*.

The PPS defines an *agricultural use* as the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.

The PPS defines *agricultural-related uses* as those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", generally the Town discourages the subdivision of viable farm lots in order to maintain a strong agricultural economy in the region and to limit consents for non-agricultural purposes. The division of farm lots to create lots of less than 40 hectares will be discouraged within the Agricultural designation, unless it can be demonstrated that the division will not result in loss of farm viability and operating efficiency. For that reason, the Committee of Adjustment must be satisfied that there is a demonstrated need for such consent.

A winery in combination with a vineyard, and a brewery in combination with an agricultural operation, are permitted general agricultural uses under the A1.1 zoning district and may have a minimum lot area of 4 hectares (10 acres). The subject property was previously utilized as a spa and retreat centre. It was not utilized for agricultural purposes. Therefore the proposed severance will not result in loss of farm viability and operating efficiency; it will enhance the viability of the farm by allowing for two (2) agricultural uses (brewery and winery). This consent is not for non-agricultural purposes.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should have regard to:

- a) the proposal's consistency with Provincial legislation, policies and guidelines:  
The Provincial Policy Statement (PPS) permits lot creation in prime agricultural areas for agricultural uses and agricultural-related uses.
- b) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:  
The proposed severance will not result in loss of farm viability and operating efficiency; it will enhance the viability of the farm by allowing for two (2) agricultural uses (brewery and winery).

Comments were received from the Essex Region Conservation Authority (ERCA). They have recommended that the Committee **defer** the application for consent and minor variance until such time the applicant has had an opportunity to provide the Town of Essex with the requested studies to be consistent with the natural hazard and natural heritage policies of the PPS and the Town of Essex Official Plan.

ERCA notes that the subject property contains a natural heritage feature that is identified as meeting the criteria for significant woodland, significant valley land, and significant wildlife habitat under the Provincial Policy Statement (PPS, 2014) and may support habitat of endangered and threatened species. They also note concern that portions of the proposed severed lot fall within a natural hazard area that is susceptible to flooding from the McLean Drain watercourse. They state that a Site Hazard Characterization Study is necessary to determine the limits of the floodway zone and prohibit the prohibited hazard land area. They note that the required

demonstration of no negative impact, in accordance with the relevant PPS policies outlined above, is most effectively accomplished through the completion of an Environmental Impact Assessment (EIA).

An EIA was not requested of the applicant prior to submission of the application. A Site Hazard Characterization Study is not an identifies support study under the Official Plan although the Plan notes the submission of such other studies deemed necessary to properly evaluate the desirability and impacts of the proposed development.

In accordance with section 5.3 of the Town of Essex Official Plan, lands with a “Natural Heritage Overlay” are areas that maintain their underlying land use designation, but have been identified as being an Area of Natural and Scientific Interest (ANSI), Regionally Significant Woodland, Significant Woodland, Significant Wildlife Habitat or Significant Valley land. Nothing in the Official Plan is intended to limit the ability of existing agricultural uses to continue on lands within the Natural Environment Overlay or on adjacent lands. New agricultural uses that require approval under the Planning Act, however, will be permitted within a Natural Environmental Overlay or on adjacent lands, if it has been demonstrated to the satisfaction of the municipality, in consultation with ERCA, that there will be no negative impact on the natural heritage features or their ecological functions.

The applicant is proposing to reuse the existing buildings for the winery and Bed and Breakfast. No new buildings are proposed to be constructed in the area of the natural heritage feature. The natural heritage feature contains a system of trails. The applicants are proposing to maintain these trails for the enjoyment of their patrons. Trail use activities by the property owner or with the permission of the property owner are permitted in all areas, in accordance with Federal and Provincial regulations, in areas of natural heritage, as noted in the Official Plan. It is not in the interest of the applicants to disturb the feature. Any future proposal for a brewery on the retained parcel may be subject to an Environmental Impact Assessment (EIA) through the site plan control process.

Bylaw 1037 contains provisions with respects to forest clear cutting. In accordance with section 8.4, forest clear-cutting or the use of any land for high-grading or other commercial timbering activities, except in accordance with a Sustainable Forest Management Plan satisfactory to the Municipality and the Ministry of Natural Resources, is prohibited. As noted in ERCA’s correspondence, it is the proponent’s responsibility to exercise due diligence in ensuring that all issues related to the provincial Endangered Species Act and its regulations have been addressed. Section 8.4, in combination with the applicants’ site plan and proposal and responsibility under the Endangered Species Act, were deemed to be an adequate demonstration of no negative impact. Should the Committee deem it necessary, a conservation easement to protect the natural heritage feature may be made a condition of the consent.

The presence of a floodplain is not identified on the Town of Essex Zoning maps. As is discussed, no new structures are proposed to be built on the severed lands. As noted in ERCA's correspondence, the applicants will be responsible for obtaining a clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the *Conservation Authorities Act*. No further comments were received from circulated agencies.

- c) The continuation of an orderly development pattern;
- d) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
The subject property has access to a municipally owned and operated piped water supply and is serviced by the McLean and Graveline Drain. The retained and severed parcels are of an adequate size for the provision of private sanitary sewage treatment systems.

#### Requirement for Minor Variance

The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or the existing lot size. As a result of the proposed severance, the lot area for the severed and retained farm parcel will be reduced from +30.5 acres, the existing lot size, to +20.5 acres and +10 acres, respectively. As such, a variance to accommodate a reduction in lot area for the severed and retained farm parcel is required.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- i) The general intent of this Plan and the Zoning Bylaw are maintained:  
The main use of the severed and retained farm parcels will remain agricultural.
- j) The variance(s) is minor and desirable for the appropriate use of the land:  
The proposed lot area for both the severed and retained lots meet and exceed the minimum lot area requirements for the proposed use.
- k) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:  
Agricultural lot sizes vary greatly in the agricultural district.
- l) The variance deals with circumstances particular to the site and development:  
The variances are necessary to accommodate an application for consent to facilitate the creation of new agricultural lot. The subject parcel was already under sized and underutilized as an agricultural lot.

#### Public Comment

As a result of the giving of public notice, no written correspondences have been received from members of the public as of Thursday January 16, 2020.



**Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
- b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
- c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
- d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
- e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;
- f) That all of the above conditions be fulfilled on or before January 21, 2021.

2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot area for the severed and retained parcel.

**Additional comments resulting from circulation:**

**Mike Nelson, Watershed Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

We have reviewed these circulations and understand that the intent of the consent application is to create a new lot that will continue to allow agriculture uses, and create the ability to construct a new dwelling on the retained farm parcel. There is concern that portions of the proposed severed lot fall within a natural hazard area that is susceptible to flooding from the McLean Drain watercourse. The Natural Hazard Section 3.1 of the PPS states, "Development shall generally be directed to areas outside of: b) hazardous lands

adjacent to river, stream, which are impacted by flooding hazards and erosion hazards" and further states, "Development and site alteration shall not be permitted within: "d) a floodway regardless of whether the area of inundation contains high points of land not subject to flooding". The PPS definition of "development" includes the creation of a new lots. As there are concerns that portions of the severed and retained lands lie within a natural hazard, a Site Hazard Characterization Study is necessary to determine the limits of the floodway zone and the prohibited hazard land area to determine whether this application is consistent with the natural hazard policies of the PPS. We ask that the Committee defer this application until this study can be completed and submitted to the Town and ERCA by the applicant in support of the application. It is the opinion of ERCA that this study is a required supporting study for this application for consent.

Further, we advise that the southwest portions of the above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The property owner will be required to obtain a Permit or a Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

#### **NATURAL HERITAGE POLICIES OF THE PPS, 2014**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the

PPS. The comments in this section do not necessarily represent the provincial position and are advisory in nature for the consideration of the Municipality as the planning authority.

The subject property contains a natural heritage feature that is identified as meeting the criteria for significant woodland, significant valleyland, and significant wildlife habitat under the Provincial Policy Statement (PPS, 2014).

Section 2.1.5 of the PPS, 2014 states - Development and site alterations shall not be permitted in significant woodland... and significant valleyland... and significant wildlife habitat...unless it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

The required demonstration of no negative impact, in accordance with the relevant PPS policies outlined above, is most effectively accomplished through the completion of an Environmental Impact Assessment (EIA).

This natural heritage feature is identified in the Town of Essex Official Plan, as being subject to Section 5.3 "Natural Heritage Overlay" policies, which states b) the preservation of the natural heritage feature is encouraged. Development and site alteration may only occur within the "Natural Heritage Overlay" if it has been demonstrated to the satisfaction of the municipality that there will be no negative impacts on the natural features or their ecological functions. This application was not accompanied by an Environmental Impact Assessment as is required by the Town's Official Plan policies. Therefore we advise the Town that this

application is premature, and ask the Committee to defer this application until such time that the applicants can submit an EIA study to the Town and ERCA for review. We would encourage the applicant to contact our office to discuss the Terms of Reference for the Environmental Impact Assessment. It should also be noted that the feature has not been evaluated to determine other types of significance per provincial standards. For example, this feature is located in the valley of the McLean drain and it should be evaluated for its potential significance as a Provincially Significant Wetland using the provincial Ontario Wetland Evaluation System guideline.

Our information also indicates that the subject property may support habitat of endangered species and threatened species. As per Section 2.1.7 of the PPS – “Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.” It is the proponent’s responsibility to exercise due diligence in ensuring that all issues related to the provincial Endangered Species Act and its regulations have been addressed. Please find attached a "Client's Guide to Preliminary Screening for Species at Risk" that outlines the process for contacting the Ministry of the Environment, Conservation and Parks, Species at Risk Branch, Permissions and Compliance regarding the provincial Endangered Species Act. We would recommend that you initiate a species at risk screening as outlined in the "Client's Guide to Preliminary Screening for Species at Risk". The most up to date version of this guide should be obtained from the Ministry by e-mailing them at SAROntario@ontario.ca. Further, we would recommend that you provide your communications with and from the Ministry of the Environment, Conservation and Park to the respective contact with the Municipality. Per direction from the Ministry of the Environment, Conservation and Parks, the proponent remains responsible to ensure their correspondence with staff from the province is shared with the respective Municipal staff, including confirmed details related to site plans and designs.

#### **FINAL RECOMMENDATION**

We recommend the Committee defer these applications until such time that the applicant has had an opportunity to provide the Town of Essex with the requested studies to be consistent with the natural hazard and natural heritage policies of the PPS and the Town of Essex Official Plan.

#### **Discussion:**

Rita Jabbour, Secretary-Treasurer/ Manager of Planning Services, explains the nature of the application.

Jordan Goure, Applicant, advises the members that the severed parcel would be used for a winery in the woods, a retreat for tourists to relax, a picnic area and for walking trails in the woodlot.

He states that the retained parcel will be used for a maple tree farm, as they currently own Brew Microbrewery in Windsor, Ontario.

Ray Beneteau asks the applicant why the property cannot remain as one parcel.

Jordan advises that the subject parcel will be utilized by two separate companies and for legal purposes a split is required.

Phil Pocock asks where the vineyard will be placed on the severed property.

Jordan Goure advises that it will be in the front portion of the property near the existing pond.

Zsolt Marczinko, 1225 South Malden Road, states that he is against the proposal as he is concerned about increased traffic and noise.

Robert Clozza, 7046 Britton Side Rd, states that he would accept the severance and proposed use but request that poppers are not used to scare away the birds. He states netting would be ideal.

Jordan Goure states that they are only utilizing five (5) of the seven (7) acres in front of the pond for the vineyard, therefore poppers will not be required.

Phil Pittao, 7938 County Rd 18, questions if the woodlot on the severed parcel will be used as the winery.

Jordan Goure states that there will be a section of the woodlot that will be used for the winery.

Casey Martin, 0 Briton Side Road, states that he has concerns with the drainage in the area. He advises that there is a low waterline that runs behind the subject property and has concerns with capacity.

He states that he also has concerns with the use of poppers to scare the birds from the vineyard, and also suggests netting be used.

He continues to state that he does not want to see the woodlot cleared.

Rita Jabbour advises that the applicant would need to seek permission from the Ministry of Natural Resources before clearing the woodlot but that it would be up to the applicant to seek this permission.

**Casey Martin** advises that his woodlot is next to the subject properties. He advises that proper signage and lot lines would be required as he hunts during certain times and the applicants are wanting to use the woodlot as a trail walking area. He advises that boundaries will be required to ensure everyone's safety.

Corinne Chiasson, Resource Planner at the Essex Region Conservation Authority (ERCA), states that ERCA would like the application to be deferred based on a hazard assessment and natural heritage. She states that there is a very low lying valley in the rear portion of the subject property and therefore an unknown hazard at this time. She continues to state that the Natural Heritage area would require an Environment Impact Assessment (EIA) which should be completed prior to the acceptance of the severance to determine environmental impacts.

Joshua Goure, applicant, advises that no structures will be erected within the retained or severed parcel therefore no EIA would be required.

Jordan states that the cost of the assessment would be on the applicant to have ERCA study the area. The study can cost upwards of \$10,000.00. He advises that no structure or change will transpire to either properties.

Lynette Bain of Tourism Windsor-Essex, states that they support the application and believes that it would bring tourism to the Colchester area.

Percy Dufour, Chair, states that applications that come before the Committee of Adjustment for a farm split have the structures or businesses in place prior to applying for the severance. He states that the Committee cannot approve an application on speculation.

Moved by: Phil Pocock

Seconded by: Brian Gray

Opposed: Ray Beneteau

Opposed: Percy Dufour

**(CAO-2020-01-10)** That application B-04-20 be approved to sever a +20.5 acre agricultural lot for the purpose of developing a vineyard and winery.

**"Defeated"**

Moved by: Ray Beneteau

Seconded by: Percy Dufour

Opposed: Phil Pocock

**(CAO-2020-01-11)** That application B-04-20 be denied to sever a +20.5 acre agricultural lot for the purpose of developing a vineyard and winery.

**"Carried"**

**Reasons for Decision:** The Application is **not** in keeping with subsection 2.3.4 of the Provincial Policy Statement (PPS) respecting lot creation and lot adjustments in prime agricultural areas and subsections 6.4 and 6.5 of the Town of Essex Official Plan policies respecting consents and consents in areas designated "Agricultural".

## **5.8 Rita Jabbour, Planner RE:**

### **Application A-04-20 2442747 Ontario Limited, 1241 South Malden Road (Colchester North, Ward 2)**

An application for minor variance has been received by the Town of Essex Committee of Adjustment for the lands located at 1241 South Malden Road in the former township of Colchester North. As a result of a proposed severance for farm split, the lot area for the severed and retained parcel will be reduced from  $\pm 30.5$  acres to  $\pm 20.5$  acres and  $\pm 10$  acres, respectively. The minimum lot area for lots within Agricultural District 1.1 (A1.1) is 40 hectares (100 acres) or as existing.

**Note: An application for consent has also been received for the subject lands (File Number: B-04-20). The public notice for the consent application has been included with this notice.**

### 5.8.1 Public Presentations (if any)

**Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 1241 South Malden Road in the former township of Colchester North. The subject property is designated "Agricultural" under the Town's Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037. The subject property also has supplementary permitted uses that include a health studio, spa and a retreat, consisting of a main building and ancillary outbuildings, including buildings for the overnight accommodation of persons on a short term basis, church, church hall; day nursery, medical clinic, residential care facility and a private park .

The applicants are proposing to sever a +20.5 acre parcel from the existing +30.5 acre lot for the purposes of developing a vineyard and winery. The severed parcel will be occupied by four (4) existing cottages, one (1) accessory building and the accompanying infrastructure (i.e. water service connection, septic system and access bridge). A site plan for the vineyard and winery has been provided:



The retained parcel is proposed to have an area of +10 acres. The retained parcel is currently vacant but is proposed to be used for a future maple farm brewery.

Access to the severed parcel will be by way of South Malden Road via an existing access bridge. Access to the retained parcel will be by way of South Malden Road. The applicants are proposing to install a new access area to serve the retained parcel.

#### Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent for the purpose of a farm split to accommodate an *agricultural use* (vineyard) and *agricultural related use* (winery and brewery). The Provincial Policy Statement (PPS) permits lot creation in prime agricultural areas for agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations.

The PPS permits lot creation in prime agricultural areas for *agricultural related uses* provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*.

The PPS defines an *agricultural use* as the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.

The PPS defines *agricultural-related uses* as those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", generally the Town discourages the subdivision of viable farm lots in order to maintain a strong agricultural economy in the region and to limit consents for non-agricultural purposes. The division of farm lots to create lots of less than 40 hectares will be discouraged within the Agricultural designation, unless it can be demonstrated that the division will not result in loss of farm viability and operating efficiency. For that reason, the Committee of Adjustment must be satisfied that there is a demonstrated need for such consent.

A winery in combination with a vineyard, and a brewery in combination with an agricultural operation, are permitted general agricultural uses under the A1.1 zoning district and may have a minimum lot area of 4 hectares (10 acres). The subject property was previously utilized as a spa and retreat centre. It was not utilized for agricultural purposes. Therefore the proposed severance will not result in loss of farm viability and operating efficiency; it will enhance the viability of the farm by allowing for two (2) agricultural uses (brewery and winery). This consent is not for non-agricultural purposes.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should have regard to:

- e) the proposal's consistency with Provincial legislation, policies and guidelines:

The Provincial Policy Statement (PPS) permits lot creation in prime agricultural areas for agricultural uses and agricultural-related uses.

- f) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:

The proposed severance will not result in loss of farm viability and operating efficiency; it will enhance the viability of the farm by allowing for two (2) agricultural uses (brewery and winery).

Comments were received from the Essex Region Conservation Authority (ERCA). They have recommended that the Committee **defer** the application for consent and minor variance until such time the applicant has had an opportunity to provide the Town of Essex with the requested studies to be consistent with the natural hazard and natural heritage policies of the PPS and the Town of Essex Official Plan.

ERCA notes that the subject property contains a natural heritage feature that is identified as meeting the criteria for significant woodland, significant valley land, and significant wildlife habitat under the Provincial Policy Statement (PPS, 2014) and may support habitat of endangered and threatened species. They also note concern that portions of the proposed severed lot fall within a natural hazard area that is susceptible to flooding from the McLean Drain watercourse. They state that a Site Hazard Characterization Study is necessary to determine the limits of the floodway zone and prohibit the prohibited hazard land area. They note that the required demonstration of no negative impact, in accordance with the relevant PPS policies outlined above, is most effectively accomplished through the completion of an Environmental Impact Assessment (EIA).

An EIA was not requested of the applicant prior to submission of the application. A Site Hazard Characterization Study is not an identified support study under the Official Plan although the Plan notes the submission of such other studies deemed necessary to properly evaluate the desirability and impacts of the proposed development.

In accordance with section 5.3 of the Town of Essex Official Plan, lands with a "Natural Heritage Overlay" are areas that maintain their underlying land use designation, but have been identified as being an Area of Natural and Scientific Interest (ANSI), Regionally Significant Woodland, Significant Woodland, Significant Wildlife Habitat or Significant Valley land. Nothing in the Official Plan is intended to limit the ability of existing agricultural uses to continue on lands within the Natural Environment Overlay or on adjacent lands. New agricultural uses that require approval under the Planning Act, however, will be permitted within a Natural Environment Overlay or on adjacent lands, if it has been demonstrated to the satisfaction of the municipality, in consultation with ERCA, that there will be no negative impact on the natural heritage features or their ecological functions.



The applicant is proposing to reuse the existing buildings for the winery and Bed and Breakfast. No new buildings are proposed to be constructed in the area of the natural heritage feature. The natural heritage feature contains a system of trails. The applicants are proposing to maintain these trails for the enjoyment of their patrons. Trail use activities by the property owner or with the permission of the property owner are permitted in all areas, in accordance with Federal and Provincial regulations, in areas of natural heritage, as noted in the Official Plan. It is not in the interest of the applicants to disturb the feature. Any future proposal for a brewery on the retained parcel may be subject to an Environmental Impact Assessment (EIA) through the site plan control process.

Bylaw 1037 contains provisions with respects to forest clear cutting. In accordance with section 8.4, forest clear-cutting or the use of any land for high-grading or other commercial timbering activities, except in accordance with a Sustainable Forest Management Plan satisfactory to the Municipality and the Ministry of Natural Resources, is prohibited. As noted in ERCA's correspondence, it is the proponent's responsibility to exercise due diligence in ensuring that all issues related to the provincial Endangered Species Act and its regulations have been addressed. Section 8.4, in combination with the applicants' site plan and proposal and responsibility under the Endangered Species Act, were deemed to be an adequate demonstration of no negative impact. Should the Committee deem it necessary, a conservation easement to protect the natural heritage feature may be made a condition of the consent.

The presence of a floodplain is not identified on the Town of Essex Zoning maps. As is discussed, no new structures are proposed to be built on the severed lands. As noted in ERCA's correspondence, the applicants will be responsible for obtaining a clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the *Conservation Authorities Act*. No further comments were received from circulated agencies.

- g) The continuation of an orderly development pattern;
- h) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
The subject property has access to a municipally owned and operated piped water supply and is serviced by the McLean and Graveline Drain. The retained and severed parcels are of an adequate size for the provision of private sanitary sewage treatment systems.

#### Requirement for Minor Variance

The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or the existing lot size. As a result of the proposed severance, the lot area

for the severed and retained farm parcel will be reduced from +30.5 acres, the existing lot size, to +20.5 acres and +10 acres, respectively. As such, a variance to accommodate a reduction in lot area for the severed and retained farm parcel is required.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

m) The general intent of this Plan and the Zoning Bylaw are maintained:

The main use of the severed and retained farm parcels will remain agricultural.

n) The variance(s) is minor and desirable for the appropriate use of the land:

The proposed lot area for both the severed and retained lots meet and exceed the minimum lot area requirements for the proposed use.

o) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:

Agricultural lot sizes vary greatly in the agricultural district.

p) The variance deals with circumstances particular to the site and development:

The variances are necessary to accommodate an application for consent to facilitate the creation of new agricultural lot. The subject parcel was already under sized and underutilized as an agricultural lot.

## Public Comment

As a result of the giving of public notice, no written correspondences have been received from members of the public as of Thursday January 16, 2020.

### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;

b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;

d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;

e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;

f) That all of the above conditions be fulfilled on or before January 21, 2021.

2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot area for the severed and retained parcel.

### **Additional comments resulting from circulation:**

**Mike Nelson, Watershed Planner, Essex Region Conservation Authority (ERCA), wrote:**

### **DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

We have reviewed these circulations and understand that the intent of the consent application is to create a new lot that will continue to allow agriculture uses, and create the

ability to construct a new dwelling on the retained farm parcel. There is concern that portions of the proposed severed lot fall within a natural hazard area that is susceptible to flooding from the McLean Drain watercourse. The Natural Hazard Section 3.1 of the PPS states, "Development shall generally be directed to areas outside of: b) hazardous lands adjacent to river, stream, which are impacted by flooding hazards and erosion hazards" and further states, "Development and site alteration shall not be permitted within: "d) a floodway regardless of whether the area of inundation contains high points of land not subject to flooding". The PPS definition of "development" includes the creation of a new lots. As there are concerns that portions of the severed and retained lands lie within a natural hazard, a Site Hazard Characterization Study is necessary to determine the limits of the floodway zone and the prohibited hazard land area to determine whether this application is consistent with the natural hazard policies of the PPS. We ask that the Committee defer this application until this study can be completed and submitted to the Town and ERCA by the applicant in support of the application. It is the opinion of ERCA that this study is a required supporting study for this application for consent.

Further, we advise that the southwest portions of the above noted lands are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The property owner will be required to obtain a Permit or a Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

#### **NATURAL HERITAGE POLICIES OF THE PPS, 2014**

The following comments are provided from our perspective as a service provider to the Municipality on matters related to natural heritage and natural heritage systems as outlined in Section 2.1 of the

PPS. The comments in this section do not necessarily represent the provincial position and are advisory in nature for the consideration of the Municipality as the planning authority.

The subject property contains a natural heritage feature that is identified as meeting the criteria for significant woodland, significant valleyland, and significant wildlife habitat under the Provincial Policy Statement (PPS, 2014).

Section 2.1.5 of the PPS, 2014 states - Development and site alterations shall not be permitted in significant woodland... and significant valleyland... and significant wildlife habitat...unless it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

The required demonstration of no negative impact, in accordance with the relevant PPS policies outlined above, is most effectively accomplished through the completion of an Environmental Impact Assessment (EIA).

This natural heritage feature is identified in the Town of Essex Official Plan, as being subject to Section 5.3 "Natural Heritage Overlay" policies, which states b) the preservation of the natural heritage feature is encouraged. Development and site alteration may only occur

within the "Natural Heritage Overlay" if it has been demonstrated to the satisfaction of the municipality that there will be no negative impacts on the natural features or their ecological functions. This application was not accompanied by an Environmental Impact Assessment as is required by the Town's Official Plan policies. Therefore we advise the Town that this application is premature, and ask the Committee to defer this application until such time that the applicants can submit an EIA study to the Town and ERCA for review. We would encourage the applicant to contact our office to discuss the Terms of Reference for the Environmental Impact Assessment. It should also be noted that the feature has not been evaluated to determine other types of significance per provincial standards. For example, this feature is located in the valley of the McLean drain and it should be evaluated for its potential significance as a Provincially Significant Wetland using the provincial Ontario Wetland Evaluation System guideline.

Our information also indicates that the subject property may support habitat of endangered species and threatened species. As per Section 2.1.7 of the PPS – "Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements." It is the proponent's responsibility to exercise due diligence in ensuring that all issues related to the provincial Endangered Species Act and its regulations have been addressed. Please find attached a "Client's Guide to Preliminary Screening for Species at Risk" that outlines the process for contacting the Ministry of the Environment, Conservation and Parks, Species at Risk Branch, Permissions and Compliance regarding the provincial Endangered Species Act. We would recommend that you initiate a species at risk screening as outlined in the "Client's Guide to Preliminary Screening for Species at Risk". The most up to date version of this guide should be obtained from the Ministry by e-mailing them at SAROntario@ontario.ca. Further, we would recommend that you provide your communications with and from the Ministry of the Environment, Conservation and Park to the respective contact with the Municipality. Per direction from the Ministry of the Environment, Conservation and Parks, the proponent remains responsible to ensure their correspondence with staff from the province is shared with the respective Municipal staff, including confirmed details related to site plans and designs.

#### **FINAL RECOMMENDATION**

We recommend the Committee defer these applications until such time that the applicant has had an opportunity to provide the Town of Essex with the requested studies to be consistent with the natural hazard and natural heritage policies of the PPS and the Town of Essex Official Plan.

#### **Discussion:**

Rita Jabbour, Manager of Planning, explains the nature of the application

Moved by: Ray Beneteau

Seconded by: Brain Gray

Opposed: Phil Pocock

**(CAO-2020-01-12)** That application A-04-20 be denied to accommodate a lot area of +20.5 acres and +10 acres for the severed and retained parcel, respectively.

**“Carried”**

**Reasons:**

The Application is **not** in keeping with the general intent and purpose of the Town of Essex Zoning Bylaw and the prescribed criteria for Minor Variances under subsection 9.8 of the Town of Essex Official Plan:

- a) the general intent of this Plan and the Zoning By-law are maintained;
- b) the variance(s) is minor and desirable for the appropriate use of the land;
- c) the variance is compatible with the established character of the neighbourhood, traffic and parking patterns;
- d) the variance deals with circumstances particular to the site and development

**5.9 Rita Jabbour, Planner RE:**

**Application B-05-20 Marianne Vlodarchyk (Agent: Kenneth Newman),  
7458 County Road 18 (Colchester North, Ward 2)**

A consent application has been received by the Town of Essex Committee of Adjustment for the lands located at 7458 County Road 18 in the former township of Colchester North. The applicants are proposing to sever a ±3.17 acre surplus dwelling lot from the existing ±74.17 acre agricultural lot. The retained parcel is proposed to have an area of ±71 acres and will continue to be used for agricultural purposes. The residence has been rendered surplus as a result of farm consolidation.

**Note: An application for minor variance has also been received for the subject lands (File Number: A-05-20). The public notice for the minor variance application has been included with this notice.**

**5.9.1 Public Presentations (if any)**

**Rita Jabbour, Planner wrote:**

Official Plan Designation: “Agricultural”

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 7458 County Road 18 in the former township of Colchester North. The subject property is designated “Agricultural” under the Town’s Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a +3.17 acre surplus dwelling lot parcel from the existing +74.17 acre farm lot. The severed parcel will be occupied by an existing single

detached dwelling, two (2) outbuildings and accompanying infrastructure (i.e. water service connection, septic system and access bridge). The retained parcel is proposed to have an area of +71 acres and will continue to be used for agricultural purposes.

Access to the severed parcel will be by way of County Road 18 via the existing access bridge. Access to the retained parcel will continue to be way of County Road 18 via a second existing access bridge along the westerly side lot line.

#### Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent because the residence has been rendered surplus to the farming operation. The Provincial Policy Statement (PPS) defines a *residence surplus to a farming operation* as an existing habitable farm residence that is rendered surplus as a result of farm consolidation. Farm consolidation is defined as the acquisition of additional farm parcels to be operated as one farm operation. In addition to the subject parcel, the applicant/agent (Kenneth Newman) owns two (2) other agricultural operations totalling ninety (90) acres.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", one (1) lot creating consent will be permitted for a surplus dwelling on the condition that:

- a) No new dwelling will be permitted on the retained farm parcel;  
A restricted development layer will be applied to the property upon provisional consent approval on the Town's Geographic Information System (GIS).
- b) the size of the surplus dwelling lot should not be greater than one (1) hectare, however, the choice of consolidating outbuildings with the surplus dwelling will also be considered when the size and boundaries of the surplus dwelling lot are determined and approved by consent;  
the size of the proposed surplus dwelling lot is greater than one (1) hectare because the applicants have chosen to consolidate the outbuildings with the surplus dwelling.
- c) the lot to be created has provision for sewage disposal, a potable water supply and stormwater management systems satisfactory to the Town and other statutory approval authority having jurisdiction;

The surplus dwelling lot has access to municipal water and is serviced by the South Townline Drain. The applicants will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate;

- d) the severed dwelling lot will satisfy Minimum Distance Separation 1 (MDS 1) provisions of the Official Plan;

the lot to be severed contains an existing dwelling. No additional dwellings will be permitted on this lot. Therefore, no livestock facilities will be impacted by the proposed development.

- e) the severed dwelling lot has frontage on a public road;  
the severed dwelling lot has frontage on County Road 18, a public road which is owned and assumed by the County of Essex.
- f) the surplus dwelling is in habitable condition, as determined by the Town or certified by a qualified building inspector.

No objections to the application were received from the Building Department.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should also have regard to:

- i) the proposal's consistency with Provincial legislation, policies and guidelines:  
The PPS discourages lot creation in *prime agricultural areas* but permits them for a *residence surplus to a farming operation* as a result of farm consolidation, provided that:
  - 5. the new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*; and
  - 6. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance;
- j) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:  
Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. Comments were also received from the County of Essex. They note that the applicants will be required to comply with County Road regulations to provide for the protection of highways and the installation of entranceways, and to regulate the location of building and structures on land adjacent to County Roads, should they choose to make any changes to existing entrances and structures, or construct new entrances or structures in the future. Otherwise, they did not state any explicit concerns with the applications. No other comments were received from circulated public authorities or agencies
- k) The continuation of an orderly development pattern:  
The surplus dwelling lot is not irregular in shape.
- l) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
The surplus dwelling lot has access to municipal water and is serviced by the South Townline Drain. The applicants will be required to obtain satisfactory confirmation



that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate

#### Requirement for Minor Variance

As a result of the proposed severance, the width of the severed lot will be reduced to 184 feet, and the lot area for the severed and retained lots will decrease in size from +74.17 acres, the existing lot area, to +3.17 acres and 71 acres, respectively. The minimum lot width for lots within Agricultural District 1.1 (A1.1) is 60 metres (200 feet). The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or as existing.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- i) The general intent of this Plan and the Zoning Bylaw are maintained:  
Severances for surplus dwellings are permitted in the agricultural district and in accordance with the policies found under section 2.3.4.1 c) of the Town of Essex Official Plan. The main use of the retained parcel will continue to be agricultural. Construction of a new dwelling will not be permitted on the retained farm parcel;
- j) The variance(s) is minor and desirable for the appropriate use of the land:  
Lot widths and lot areas in the agricultural district vary greatly. Additionally, no agricultural land will be taken out of production;
- k) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:  
The dwelling and accompanying infrastructure are existing and there will be a prohibition against the construction of any new dwelling on the retained agricultural land. Thus, no new entrances or buildings that would impact traffic patterns or neighbouring lots are proposed to be constructed;
- l) The variance deals with circumstances particular to the site and development:  
The variance is necessary in order to accommodate a surplus dwelling application.

#### Public Comment

As a result of the giving of public notice, no phone calls or written correspondence objecting to the severance have been received from members of the public as of Thursday January 16, 2020.

#### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;

b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;

d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;

e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;

f) That all of the above conditions be fulfilled on or before January 21, 2021.

2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot width for the severed parcel and the minimum lot area for the severed and retained parcel.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

We have reviewed this application with regards to the natural hazard policies of the PPS and have no objections.

The most southern portion of the above noted lands is subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the South Townline Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

**WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management.

**SECTION 1.6.6.7 Stormwater Management (PPS, 2014)**

Our office has reviewed the proposal and has no concerns relating to stormwater management.

#### **NATURAL HERITAGE POLICIES OF THE PPS, 2014**

The subject property contains a natural heritage feature that is identified as a significant woodland, significant valleyland, significant wildlife habitat under the Provincial Policy Statement (PPS, 2014).

Section 2.1.5 of the PPS, 2014 states - Development and site alterations shall not be permitted in significant woodland... and significant valleyland... and significant wildlife habitat unless it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

Based on our review of the subject application, we recommend to the Municipality that an Environmental Impact Assessment is not required in this case. The extents of the proposed surplus dwelling lot will be located well over 120 metres from the identified natural heritage feature, and we understand that the retained farm lands will be subject to a rezoning that will prohibit future dwellings. Based on these circumstances, no negative impacts are anticipated. We can advise the Municipality that this application is consistent with the natural heritage policies of the PPS 2014.

#### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Kristoffer Balallo, Engineering Technician, County of Essex wrote:**

Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering related only. This application has not been reviewed from a planning perspective. The subject lands have frontage on County Road No. 18. The Applicant will be required to comply with the following County Road regulations:

County By-Law Number 2481 - A By-Law to Provide for the Protection of Highways and to Provide for the Installation of Entrance Ways.

County By-Law Number 2480 - A By-Law of the Corporation of the County of Essex to Regulate the Location of Buildings and Structures on Land Adjacent to County Roads.

The minimum setback for any proposed structures on this property must be 110 feet from the centre of the original ROW of County Road No. 18 due to the presence of the South Townline Drain. Permits are necessary for any changes to existing entrances and structures, or the construction of new entrances or structures.

We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.

#### **Discussion:**

Rita Jabbour, Manager of Planning, explains the nature of the application

Moved by: Ray Beneteau

Seconded by: Brian Gray

**(CAO-2020-01-13)** That application B-05-20 be granted to sever a +3.17 acre surplus dwelling lot from the existing +74.17 acre agricultural lot subject to the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
- b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
- c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
- d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
- e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;
- f) That all of the above conditions be fulfilled on or before January 21, 2021.

**“Carried”**

**Reasons:** The Application **is** in keeping with subsection 2.3.4 of the Provincial Policy Statement (PPS) respecting lot creation and lot adjustments in prime agricultural areas and subsections 6.4 and 6.5 of the Town of Essex Official Plan policies respecting consents and consents in areas designated “Agricultural”.

**5.10 Rita Jabbour, Planner RE:**

**Application A-05-20 Marianne Vlodarchyk (Agent: Kenneth Newman),  
7458 County Road 18 (Colchester North, Ward 2)**

An application for minor variance has been received by the Town of Essex Committee of Adjustment for the lands located at 7458 County Road 18 in the former township of Colchester North. As a result of a proposed surplus dwelling lot severance, the width of the severed lot will be reduced to 184 feet. The lot area of the severed and retained parcels will be reduced from ±74.17 acres to ±3.17 acres and ±71 acres, respectively. The minimum lot width for lots within Agricultural District 1.1 (A1.1) is 60 metres (200 feet). The minimum lot area for lots within Agricultural District 1.1 is 40 hectares (100 acres) or as existing.

**Note: An application for consent has also been received for the subject lands (File Number: B-05-20). The public notice for the consent application has been included with this notice.**

#### **5.10.1 Public Presentations (if any)**

**Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the lands located at 7458 County Road 18 in the former township of Colchester North. The subject property is designated "Agricultural" under the Town's Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a +3.17 acre surplus dwelling lot parcel from the existing +74.17 acre farm lot. The severed parcel will be occupied by an existing single detached dwelling, two (2) outbuildings and accompanying infrastructure (i.e. water service connection, septic system and access bridge). The retained parcel is proposed to have an area of +71 acres and will continue to be used for agricultural purposes.

Access to the severed parcel will be by way of County Road 18 via the existing access bridge. Access to the retained parcel will continue to be way of County Road 18 via a second existing access bridge along the westerly side lot line.

#### Proposal Conformity with Town of Essex Official Plan Policies

The applicants are proposing this consent because the residence has been rendered surplus to the farming operation. The Provincial Policy Statement (PPS) defines a *residence surplus to a farming operation* as an existing habitable farm residence that is rendered surplus as a result of farm consolidation. Farm consolidation is defined as the acquisition of additional farm parcels to be operated as one farm operation. In addition to the subject parcel, the applicant/agent (Kenneth Newman) owns two (2) other agricultural operations totalling ninety (90) acres.

In accordance with Town of Essex Official Plan policies relating to consents in areas designated "Agricultural", one (1) lot creating consent will be permitted for a surplus dwelling on the condition that:

- g) No new dwelling will be permitted on the retained farm parcel;  
A restricted development layer will be applied to the property upon provisional consent approval on the Town's Geographic Information System (GIS).
- h) the size of the surplus dwelling lot should not be greater than one (1) hectare, however, the choice of consolidating outbuildings with the surplus dwelling will also

be considered when the size and boundaries of the surplus dwelling lot are determined and approved by consent;

the size of the proposed surplus dwelling lot is greater than one (1) hectare because the applicants have chosen to consolidate the outbuildings with the surplus dwelling.

- i) the lot to be created has provision for sewage disposal, a potable water supply and stormwater management systems satisfactory to the Town and other statutory approval authority having jurisdiction;

The surplus dwelling lot has access to municipal water and is serviced by the South Townline Drain. The applicants will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate;

- j) the severed dwelling lot will satisfy Minimum Distance Separation 1 (MDS 1) provisions of the Official Plan;

the lot to be severed contains an existing dwelling. No additional dwellings will be permitted on this lot. Therefore, no livestock facilities will be impacted by the proposed development.

- k) the severed dwelling lot has frontage on a public road;

the severed dwelling lot has frontage on County Road 18, a public road which is owned and assumed by the County of Essex.

- l) the surplus dwelling is in habitable condition, as determined by the Town or certified by a qualified building inspector.

No objections to the application were received from the Building Department.

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should also have regard to:

- m) the proposal's consistency with Provincial legislation, policies and guidelines:

The PPS discourages lot creation in *prime agricultural areas* but permits them for a *residence surplus to a farming operation* as a result of farm consolidation, provided that:

7. the new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*; and
8. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance;

- n) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:

Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. Comments were also received from the County of Essex. They note that the applicants will be required

to comply with County Road regulations to provide for the protection of highways and the installation of entranceways, and to regulate the location of building and structures on land adjacent to County Roads, should they choose to make any changes to existing entrances and structures, or construct new entrances or structures in the future. Otherwise, they did not state any explicit concerns with the applications. No other comments were received from circulated public authorities or agencies

- o) The continuation of an orderly development pattern:  
The surplus dwelling lot is not irregular in shape.
- p) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
The surplus dwelling lot has access to municipal water and is serviced by the South Townline Drain. The applicants will be required to obtain satisfactory confirmation that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the consent certificate

#### Requirement for Minor Variance

As a result of the proposed severance, the width of the severed lot will be reduced to 184 feet, and the lot area for the severed and retained lots will decrease in size from +74.17 acres, the existing lot area, to +3.17 acres and 71 acres, respectively. The minimum lot width for lots within Agricultural District 1.1 (A1.1) is 60 metres (200 feet). The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or as existing.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- m) The general intent of this Plan and the Zoning Bylaw are maintained:  
Severances for surplus dwellings are permitted in the agricultural district and in accordance with the policies found under section 2.3.4.1 c) of the Town of Essex Official Plan. The main use of the retained parcel will continue to be agricultural. Construction of a new dwelling will not be permitted on the retained farm parcel;
- n) The variance(s) is minor and desirable for the appropriate use of the land:  
Lot widths and lot areas in the agricultural district vary greatly. Additionally, no agricultural land will be taken out of production;
- o) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:  
The dwelling and accompanying infrastructure are existing and there will be a prohibition against the construction of any new dwelling on the retained agricultural land. Thus, no new entrances or buildings that would impact traffic patterns or neighbouring lots are proposed to be constructed;
- p) The variance deals with circumstances particular to the site and development:  
The variance is necessary in order to accommodate a surplus dwelling application.

## Public Comment

As a result of the giving of public notice, no phone calls or written correspondence objecting to the severance have been received from members of the public as of Thursday January 16, 2020.

### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;

b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;

c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;

d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;

e) That a septic test report be completed and filed with the municipality by a Certified Septic System Installer confirming that the septic system(s) meet Part 8 of the Ontario Building Code (OBC) regulations prior to the stamping of the Deeds and/or the issuance of the certificate;

f) That all of the above conditions be fulfilled on or before January 21, 2021.

2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot width for the severed parcel and the minimum lot area for the severed and retained parcel.

### **Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

### **DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

We have reviewed this application with regards to the natural hazard policies of the PPS and have no objections.



The most southern portion of the above noted lands is subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Act (Ontario Regulation No. 158/06). The parcel falls within the regulated area of the South Townline Drain. The property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act.

#### **WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management.

#### **SECTION 1.6.6.7 Stormwater Management (PPS, 2014)**

Our office has reviewed the proposal and has no concerns relating to stormwater management.

#### **NATURAL HERITAGE POLICIES OF THE PPS, 2014**

The subject property contains a natural heritage feature that is identified as a significant woodland, significant valleyland, significant wildlife habitat under the Provincial Policy Statement (PPS, 2014).

Section 2.1.5 of the PPS, 2014 states - Development and site alterations shall not be permitted in significant woodland... and significant valleyland... and significant wildlife habitat unless it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

Based on our review of the subject application, we recommend to the Municipality that an Environmental Impact Assessment is not required in this case. The extents of the proposed surplus dwelling lot will be located well over 120 metres from the identified natural heritage feature, and we understand that the retained farm lands will be subject to a rezoning that will prohibit future dwellings. Based on these circumstances, no negative impacts are anticipated. We can advise the Municipality that this application is consistent with the natural heritage policies of the PPS 2014.

#### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Kristoffer Balallo, Engineering Technician, County of Essex wrote:**

Please be advised that the County has reviewed the aforementioned application and the comments provided are engineering related only. This application has not been reviewed from a planning perspective. The subject lands have frontage on County Road No. 18. The Applicant will be required to comply with the following County Road regulations:

County By-Law Number 2481 - A By-Law to Provide for the Protection of Highways and to Provide for the Installation of Entrance Ways.

County By-Law Number 2480 - A By-Law of the Corporation of the County of Essex to Regulate the Location of Buildings and Structures on Land Adjacent to County Roads.

The minimum setback for any proposed structures on this property must be 110 feet from the centre of the original ROW of County Road No. 18 due to the presence of the South Townline Drain. Permits are necessary for any changes to existing entrances and structures, or the construction of new entrances or structures.

We are requesting a copy of the Decision of the aforementioned application. Should this application be approved we are requesting a copy the revised survey plan of the subject lands in order to update our mapping records. Thank you for your assistance and cooperation in this matter.

**Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application

Moved by: Ray Beneteau

Seconded by: Phil Pocock

**(CAO-2020-01-14)** That application A-05-20 be granted to accommodate a lot width of 184 feet for the severed lot, and a lot area of +3.17 acres and 71 acres for the severed and retained parcels, respectively.

**Reasons:**

The Committee of Adjustment is of the opinion that the four (4) tests for minor variances under Section 45 (1) of the Planning Act have been satisfied.

**“Carried”**

**5.11 Rita Jabbour, Planner RE:**

**Application B-06-20 Gorski Holdings Inc. (Agent: Bernard Gorski), Vacant Land on the south side of Gore Road (Colchester South, Ward 3)**

A consent application has been received by the Town of Essex Committee of Adjustment for the vacant agricultural lands located on the south side of Gore Road in the former township of Colchester South. The applicants are proposing to sever a  $\pm 0.497$  acre parcel from the existing  $\pm 41.5$  acre agricultural lot. The applicant is proposing this consent for the purpose of a lot addition. The severed parcel is proposed to be merged with the vacant lands located directly to the East and identified as Part 1 on 12R3976. The retained parcel is proposed to have an area of  $\pm 41.065$  acres and will continue to be used for agricultural purposes.

**Note: An application for minor variance has also been received for the subject lands (File Number: A-06-20). The public notice for the minor variance application has been included with this notice.**

**5.11.1 Public Presentations (if any)**

**Rita Jabbour, Planner wrote:**

Official Plan Designation: “Agricultural”

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the vacant agricultural lands located on the south side of Gore Road in the former township of Colchester South. The subject property is designated “Agricultural” under the Town of Essex Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a  $\pm 0.497$  acre parcel from the existing  $\pm 41.5$  acre agricultural lot. The applicants are proposing this consent for the purpose of a lot addition. The severed parcel is proposed to be merged with the vacant lands located directly to the East and identified as Part 1 on 12R-3976. The severed parcel is presently being used for cultivation. The severed parcel, once merged, is proposed to be grassed.

The retained parcel will continue to be used for agricultural purposes. The proposed severance will not adversely impact the existing farming operation. Gorski Land Holdings Inc. owns seventeen (17) agricultural lots within the Town of Essex. The severed parcel is located between the vacant lot to the East; an existing access area serving the farming operation; and, an existing hydro pole. The location of the severed parcel makes it difficult to cultivate. Access to the retained parcel will continue to be by way of Gore Road via two (2) existing access areas. Thus, the proposed severance will not adversely impact access to the retained lot.

#### Proposal Conformity with Town of Essex Official Plan Policies

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should have regard to:

- a) the proposal’s consistency with Provincial legislation, policies and guidelines:  
the Provincial Policy Statement (PPS) states that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. Legal or technical reasons include minor boundary adjustments which do not result in the creation of a new lot. As a condition of this consent, the applicants will be responsible for submitting evidence that indicates the severed parcel will be consolidated with Part 1 on 12R-3976 ;
- b) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:  
Section 6.4 of the Town of Essex Official Plan states that consents should only be granted for lot adjustments or minor boundary changes provided both parcels comply with the provisions of the implementing zoning bylaw or such variances granted through the Committee of Adjustment and the consent is granted in accordance with section 50(3) of the Planning Act.

The applicant has submitted for a variance to accommodate the reduction in lot area for the retained parcel. Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. No other comments were received from circulated public authorities or agencies;

- c) The continuation of an orderly development pattern:

The lot addition is not irregular in shape;

- d) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:  
Water supply, sanitary sewage treatment and stormwater management is not required as the proposal will not result in the creation of a new vacant buildable lot.

#### Requirement for Minor Variance

The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or the existing lot size. As a result of the proposed severance, the lot area for the retained farm parcel will be reduced from +41.5 acres, the existing lot size, to +41 acres. As such, a variance to accommodate a reduction in lot area for the retained farm parcel is required.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- e) The general intent of this Plan and the Zoning Bylaw are maintained:

The main use of the retained farm parcel will remain agricultural.

- f) The variance(s) is minor and desirable for the appropriate use of the land:

The variance will not impact ingress or egress to the retained parcel. The variance will allow for the lot addition which will make it easier to farm the parcel.

- g) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:

Agricultural lot sizes vary greatly in the agricultural district.

- h) The variance deals with circumstances particular to the site and development:

The variance is necessary to accommodate an application for consent to facilitate a lot addition. The area to be severed is difficult to cultivate due to the location of a neighbouring residential lot, the existing access area and an existing hydro pole.

#### Public Comment

As a result of the giving of public notice, one (1) written correspondence has been received from a circulated member of the public. Planning contacted the resident to clarify the purpose of the severance following which, the resident withdrew their objection. No other comments were received as of Thursday January 16, 2020.

**Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
- b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
- c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
- d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
- e) That the severed parcel be consolidated with the vacant lands to the east, described as Part 1 on 12R-3976. In accordance with Subsection 3 of Section 50 of the Planning Act, the applicant shall submit to the Secretary-Treasurer satisfactory evidence that the transferee of the severed portion of the property and the owner of the abutting property are identical, together with an undertaking from the applicant's solicitor to consolidate the severed portion and the abutting into one parcel. Within thirty days of the issuance of the certificate of consent to sever, the applicant shall provide evidence to the Secretary-Treasurer that an application to consolidate parcels has been filed with the Land Registry Office.
- f) That all of the above conditions be fulfilled on or before January 21, 2021.

2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot area for the retained parcel.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

We have reviewed these applications regards to the natural hazard policies of the PPS and have no objections.

We have reviewed our floodline mapping for this area and it has been determined this site is not located within a regulated area that is under the jurisdiction of the ERCA (Section 28 of the Conservation Authorities Act). As a result, a permit is not required from ERCA for issues related to Section 28 of the Conservation Authorities Act, Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservations Authorities Act, (Ontario Regulation No. 158/06).

#### **WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management.

#### **SECTION 1.6.6.7 Stormwater Management (PPS, 2014)**

Our office has reviewed the proposal and has no concerns relating to stormwater management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

#### **NATURAL HERITAGE POLICIES OF THE PPS, 2014**

The subject property is adjacent to (within 120 metres of), a natural heritage feature that is identified as a significant wetland (South Harrow Woods ER 30) under the Provincial Policy Statement (PPS, 2014).

Section 2.1.8 of the PPS states – “Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.4, 2.1.5 and 2.1.6 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.” The required demonstration of no negative impact, in accordance with the relevant PPS policies outlined above, is most effectively accomplished through the completion of an Environmental Impact Assessment (EIA).

Notwithstanding the above noted references to the PPS policies, we understand that the purpose of this application is for a lot addition only, whereby a vacant parcel will be added to another parcel and that there will be no change in land use. We also note that the severed parcel is located well over 120 metres from the natural heritage feature. In our opinion, this type of Planning Act application does not meet the definition of development under the PPS 2014, it is only a reconfiguration of existing lots. Based on this, we advise that these applications are consistent with the natural heritage policies of the PPS.

#### **FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

#### **Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application

Moved by: Brian Gray

Seconded by: Phil Pocock

**(CAO-2020-01-15)** That application B-06-20 be granted to sever a +0.497 acre parcel from the existing +41.5 acre agricultural lot for the purposes of a lot addition subject to the following conditions:

- a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
- b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
- c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
- d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
- e) That the severed parcel be consolidated with the vacant lands to the east, described as Part 1 on 12R-3976. In accordance with Subsection 3 of Section 50 of the Planning Act, the applicant shall submit to the Secretary-Treasurer satisfactory evidence that the transferee of the severed portion of the property and the owner of the abutting property are identical, together with an undertaking from the applicant's solicitor to consolidate the severed portion and the abutting into one parcel. Within thirty days of the issuance of the certificate of consent to sever, the applicant shall provide evidence to the Secretary-Treasurer that an application to consolidate parcels has been filed with the Land Registry Office.
- f) That all of the above conditions be fulfilled on or before January 21, 2021.

"Carried"

**Reasons:** The Application is in keeping with subsection 2.3.4 of the Provincial Policy Statement (PPS) respecting lot creation and lot adjustments in prime agricultural areas and subsections 6.4 and 6.5 of the Town of Essex Official Plan policies respecting consents and consents in areas designated "Agricultural".

**5.12 Rita Jabbour, Planner RE:**

**Application A-06-20 Gorski Holdings Inc. (Agent: Bernard Gorski),  
Vacant Land on the south side of Gore Road (Colchester South, Ward 3)**

An application for minor variance has been received by the Town of Essex Committee of Adjustment for the agricultural lands located on the south side of Gore Road in the former township of Colchester South. As a result of a

proposed severance for lot addition, the lot area for the retained parcel will be reduced from  $\pm 41.5$  acres to  $\pm 41$  acres. The minimum lot area for lots within Agricultural District 1.1 (A1.1) is 40 hectares (100 acres) or as existing.

**Note: An application for consent has also been received for the subject lands (File Number: B-06-20). The public notice for the consent application has been included with this notice.**

#### 5.12.1 Public Presentations (if any)

**Rita Jabbour, Planner wrote:**

Official Plan Designation: "Agricultural"

Zoning: Agricultural District 1.1 (A1.1) –General agriculture and farm production support activities

An application for consent and minor variance has been submitted for the vacant agricultural lands located on the south side of Gore Road in the former township of Colchester South. The subject property is designated "Agricultural" under the Town of Essex Official Plan and zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities under Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a  $\pm 0.497$  acre parcel from the existing  $\pm 41.5$  acre agricultural lot. The applicants are proposing this consent for the purpose of a lot addition. The severed parcel is proposed to be merged with the vacant lands located directly to the East and identified as Part 1 on 12R-3976. The severed parcel is presently being used for cultivation. The severed parcel, once merged, is proposed to be grassed.

The retained parcel will continue to be used for agricultural purposes. The proposed severance will not adversely impact the existing farming operation. Gorski Land Holdings Inc. owns seventeen (17) agricultural lots within the Town of Essex. The severed parcel is located between the vacant lot to the East; an existing access area serving the farming operation; and, an existing hydro pole. The location of the severed parcel makes it difficult to cultivate. Access to the retained parcel will continue to be by way of Gore Road via two (2) existing access areas. Thus, the proposed severance will not adversely impact access to the retained lot.

#### Proposal Conformity with Town of Essex Official Plan Policies

In accordance with section 6.4 of the Town of Essex Official Plan, in considering an application for consent, the Committee of Adjustment should have regard to:

- a) the proposal's consistency with Provincial legislation, policies and guidelines: the Provincial Policy Statement (PPS) states that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. Legal or technical reasons include minor boundary adjustments which do not result in the creation of a new lot. As a condition of this consent, the applicants will be responsible for submitting



evidence that indicates the severed parcel will be consolidated with Part 1 on 12R-3976 ;

- b) The requirements and policies of the Official Plan for the Town of Essex and the comments of other public authorities and agencies:

Section 6.4 of the Town of Essex Official Plan states that consents should only be granted for lot adjustments or minor boundary changes provided both parcels comply with the provisions of the implementing zoning bylaw or such variances granted through the Committee of Adjustment and the consent is granted in accordance with section 50(3) of the Planning Act.

The applicant has submitted for a variance to accommodate the reduction in lot area for the retained parcel. Comments were received from the Essex Region Conservation Authority (ERCA). They had no objections to the application for consent or minor variance. No other comments were received from circulated public authorities or agencies;

- c) The continuation of an orderly development pattern:

The lot addition is not irregular in shape;

- d) The adequate provision of potable water supply, sanitary sewage treatment and disposal and stormwater management in accordance with the Official Plan and to the satisfaction of the Town and the statutory approval authority having jurisdiction:

Water supply, sanitary sewage treatment and stormwater management is not required as the proposal will not result in the creation of a new vacant buildable lot.

#### Requirement for Minor Variance

The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or the existing lot size. As a result of the proposed severance, the lot area for the retained farm parcel will be reduced from +41.5 acres, the existing lot size, to +41 acres. As such, a variance to accommodate a reduction in lot area for the retained farm parcel is required.

As per section 9.8 of the Town of Essex Official Plan, when reviewing applications for minor variance to the Zoning Bylaw, the Committee of Adjustment should be satisfied that:

- e) The general intent of this Plan and the Zoning Bylaw are maintained:

The main use of the retained farm parcel will remain agricultural.

- f) The variance(s) is minor and desirable for the appropriate use of the land:

The variance will not impact ingress or egress to the retained parcel. The variance will allow for the lot addition which will make it easier to farm the parcel.

- g) The variance is compatible with the established character of the neighbourhood, traffic and parking patterns:

Agricultural lot sizes vary greatly in the agricultural district.

- h) The variance deals with circumstances particular to the site and development:

The variance is necessary to accommodate an application for consent to facilitate a lot addition. The area to be severed is difficult to cultivate due to the location of a neighbouring residential lot, the existing access area and an existing hydro pole.

#### Public Comment

As a result of the giving of public notice, one (1) written correspondence has been received from a circulated member of the public. Planning contacted the resident to clarify the purpose of the severance following which, the resident withdrew their objection. No other comments were received as of Thursday January 16, 2020.

#### **Actions:**

1. Should the Committee choose to approve this application, approval should be subject to satisfying the following conditions:
  - a) That at the time the conveyance is prepared for certification, three hard copies and one digital copy in a format compatible with AutoCAD 2000 of a reference plan prepared by an Ontario Land Surveyor, which has been numbered, dated, signed and registered, must be submitted to the Town;
  - b) That the appropriate documents for the conveyance be prepared in triplicate (three copies) and suitable for registration. All copies shall have original signatures and one copy will remain as a record with the Town;
  - c) That at the time the conveyance is presented for certification, a tax certificate from the Treasurer of the Town or evidence showing all taxes for the current year have been paid in full to the date of consent approval, as well as any and all arrears owing on the total parcel, shall be submitted to the Town;
  - d) That an apportionment of assessment pursuant to Section 65 of The Drainage Act, R.S.O. 1990, and amendments thereto, be provided to the satisfaction of the Drainage Superintendent for the Town of Essex, if deemed necessary by the Town;
  - e) That the severed parcel be consolidated with the vacant lands to the east, described as Part 1 on 12R-3976. In accordance with Subsection 3 of Section 50 of the Planning Act, the applicant shall submit to the Secretary-Treasurer satisfactory evidence that the transferee of the severed portion of the property and the owner of the abutting property are identical, together with an undertaking from the applicant's solicitor to consolidate the severed portion and the abutting into one parcel. Within thirty days of the issuance of the certificate of consent to sever, the applicant shall provide evidence to the Secretary-Treasurer that an application to consolidate parcels has been filed with the Land Registry Office.
  - f) That all of the above conditions be fulfilled on or before January 21, 2021.
2. That, prior to the granting of this consent, the requested variance should be granted by the Committee of Adjustment to accommodate the reduction in minimum lot area for the retained parcel.

**Additional comments resulting from circulation:**

**Corinne Chiasson, Resource Planner, Essex Region Conservation Authority (ERCA), wrote:**

**DELEGATED RESPONSIBILITY TO REPRESENT PROVINCIAL INTEREST IN NATURAL HAZARDS (PPS) AND REGULATORY RESPONSIBILITIES OF THE CONSERVATION AUTHORITIES ACT**

The following comments reflect our role as representing the provincial interest in natural hazards as outlined by Section 3.1 of the Provincial Policy Statement of the Planning Act as well as our regulatory role as defined by Section 28 of the Conservation Authorities Act.

We have reviewed these applications regards to the natural hazard policies of the PPS and have no objections.

We have reviewed our floodline mapping for this area and it has been determined this site is not located within a regulated area that is under the jurisdiction of the ERCA (Section 28 of the Conservation Authorities Act). As a result, a permit is not required from ERCA for issues related to Section 28 of the Conservation Authorities Act, Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservations Authorities Act, (Ontario Regulation No. 158/06).

**WATERSHED BASED RESOURCE MANAGEMENT AGENCY**

The following comments are provided in an advisory capacity as a public commenting body on matters related to watershed management.

**SECTION 1.6.6.7 Stormwater Management (PPS, 2014)**

Our office has reviewed the proposal and has no concerns relating to stormwater management. Our office has reviewed the proposal and has no concerns relating to stormwater management.

**NATURAL HERITAGE POLICIES OF THE PPS, 2014**

The subject property is adjacent to (within 120 metres of), a natural heritage feature that is identified as a significant wetland (South Harrow Woods ER 30) under the Provincial Policy Statement (PPS, 2014).

Section 2.1.8 of the PPS states – “Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.4, 2.1.5 and 2.1.6 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.” The required demonstration of no negative impact, in accordance with the relevant PPS policies outlined above, is most effectively accomplished through the completion of an Environmental Impact Assessment (EIA).

Notwithstanding the above noted references to the PPS policies, we understand that the purpose of this application is for a lot addition only, whereby a vacant parcel will be added to another parcel and that there will be no change in land use. We also note that the severed parcel is located well over 120 metres from the natural heritage feature. In our opinion, this

type of Planning Act application does not meet the definition of development under the PPS 2014, it is only a reconfiguration of existing lots. Based on this, we advise that these applications are consistent with the natural heritage policies of the PPS.

**FINAL RECOMMENDATION**

We have no objections to these applications for Consent and Minor Variance.

**Discussion:**

Rita Jabbour, Secretary-Treasurer/Manager of Planning Services, explains the nature of the application.

Moved by: Ray Beneteau

Seconded by: Brian Gray

**(CAO-2020-01-16)** That application A-06-20 be granted to accommodate a lot area of +41 acres for the retained parcel.

**“Carried”**

**Reasons:**

The Committee of Adjustment is of the opinion that the four (4) tests for minor variances under Section 45 (1) of the Planning Act have been satisfied.

**6. Unfinished Business**

**6.1 Committee of Adjustment Meeting Schedule 2020**

Moved by: Phil Pocock

Seconded by: Ray Beneteau

**(CAO-2020-01-17)** That the 2020 Committee of Adjustment meeting schedule be adopted as circulated.

**“Carried”**

**7. Correspondence**

**8. New Business**

**9. Notices of Motion**

**10. Adjournment**

Moved by: Phil Pocock/

Seconded by: Ray Beneteau

**(CAO-2020-01-18)** That the meeting be adjourned at 6:42 p.m.

**11. Next Meeting**

**11.1** No meeting scheduled for February 11<sup>th</sup> at this time.

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Chair

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Secretary-Treasurer