

**The Corporation of the Town of Essex**  
**Minutes of Regular Committee of Adjustment Meeting**  
**Tuesday February 6, 2018**

A regular meeting of the Town of Essex Committee of Adjustment was held on February 6, 2018 at 4:00 PM in the Small Council Chambers of the Municipal Building at 33 Talbot Street South, Essex, Ontario.

**1. Roll Call**

Members Present:	John Scott, Chair
	Percy Dufour, Vice-Chair
	Councillor Sherry Bondy
	Councillor Larry Snively
	Joe Iatonna
Also Present:	Rita Jabbour, Assistant Planner
	Sarah Girard, Planning Assistant

Members of Public in Attendance: See sign-in sheet attached hereto

**2. Declarations of Conflict of Interest**

None

**3. Adoption of Minutes**

Moved by Councillor Snively

Seconded by Councillor Bondy

(COA-2018-02-01) That the minutes of the December 19, 2017 Committee of Adjustment meeting be adopted as circulated.

"Carried"

**4. Adoption of Published Agenda**

Moved by Percy Dufour

Seconded by Joe Iatonna

(COA-2018-02-02) That the published agenda for the February 6, 2018 meeting of the Committee of Adjustment be adopted as circulated.

"Carried"

**5. Applications**

The following applications were heard:

**a) B-01-18 and A-01-18– Miller Cattle and Grain LTD– 2917 County Road 20 East  
(Colchester South, Ward 3)**

**B-01-18**

A consent application has been received by the Town of Essex Committee of Adjustment for the lands at 2917 County Road 20 East in the former Township of Colchester South, Ward 3. The applicants are proposing to sever a  $\pm 0.47$  hectare ( $\pm 1.18$  acre) parcel from the existing  $\pm 17.09$  hectare ( $\pm 42.25$  acre) lot. The retained parcel is proposed to have an area of  $\pm 16.62$  hectares ( $\pm 41.07$  acres). The applicants are proposing this consent as a result of farm consolidation.

**A-01-18**

An application for minor variance has been received by the Town of Essex Committee of Adjustment for the lands at 2917 County Road 20 East, in the former Township of Colchester South, Ward 3. As a result of a proposed severance, the lot area for the retained and severed parcel will decrease in size from  $\pm 17.09$  hectares ( $\pm 42.25$  acres) to  $\pm 16.62$  hectares and  $\pm 0.47$  hectares ( $\pm 41.07$  acres and  $\pm 1.18$  acres), respectively. The total lot width for the severed parcel will be reduced to  $\pm 50$  metres ( $\pm 165$  feet). The required minimum lot area for properties within the General Agricultural district (A1.1) under the Town of Essex Zoning By-Law 1037 is 40 hectares (100 acres) or as existing. The required minimum width for lots in the General Agricultural district (A1.1) under the Town of Essex Zoning By-Law 1037 is 60 metres (200 feet) or as existing. Thus, variances are being sought to accommodate the reduction in total lot area for the retained and severed parcels and a reduction in lot width for the severed parcel.

**Rita Jabbour, Assistant Planner, wrote:**

Official Plan Designation: "Agricultural"

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

Applications for consent and minor variance have been submitted for the lands located at 2917 County Road 20 East 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 the Town of Essex Zoning Bylaw, Bylaw 1037.

The applicants are proposing to sever a  $\pm 0.47$  hectare ( $\pm 1.18$  acre) parcel from the existing  $\pm 17.09$  hectare ( $\pm 42.25$  acre) lot. The severed parcel will be occupied by the existing single detached dwelling, an accessory structure and accompanying infrastructure (i.e. septic system and driveway). Access to the severed lot will be by way of County Road 20.

The retained lot is proposed to have an area of  $\pm 16.62$  hectares ( $\pm 41.07$  acres) and will continue to be used for agricultural purposes. Access to the retained lot is by way of County Road 20. A separate access area exists to serve the retained lot.

The applicant is proposing this consent due to the house being surplus to his needs. The applicant owns several agricultural parcels within the Town of Essex. The Provincial Policy Statement (PPS) states that a surplus dwelling, namely a dwelling that is acquired as part of farm land acquisition, may be severed and sold, with the stipulation that no new dwelling can be constructed on the retained farm lot. The intent is to preclude the construction of new dwellings on prime agricultural lands. The application conforms to these mandates and the applicants understand that no new dwelling will be permitted on the retained farm parcel.

The minimum lot area required for lots zoned A1.1 under Bylaw 1037 is the lesser of 40 hectares (100 acres) or as existing. The required minimum width for lots in the General Agricultural district (A1.1) under the Town of Essex Zoning By-Law 1037 is 60 metres (200 feet) or as existing. As a result of the proposed severance, the lot area for the retained and severed parcel will decrease in size from  $\pm 17.09$  hectares to  $\pm 16.62$  and  $\pm 0.47$  hectares respectively. The total lot width for the severed parcel will be reduced to +50 metres (+165 feet).

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;
- 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.

The existing dwelling is serviced by municipally piped water. As such, it has been confirmed with the Manager of Environmental Services that no water buy in fee is necessary as a condition of the consent.

As a result of the giving of public notice, no objections were received from the public, departments and agencies notified as of Thursday February 1, 2018. Planning did receive a phone call from the owner of the landlocked property to the southeast of the subject lands. The property owner called to inquire about the location of a right of way or easement as access to their property is through the subject lands. Planning advised the owner to contact a lawyer to determine if an easement does exist over the subject lands and its location. Planning also requested they call the Department should they wish to make an application for an easement.

**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 meets 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 February 6, 2019.

**Additional comments resulting from circulation.**

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

The following is provided for your information and consideration as a result of our review of Application for Consent B-01-18. We understand that the owners wish to sever a parcel of land from the property identified as 2917 County Rd 20 East, as it has been deemed to be surplus to the needs of the farming operation.

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

A portion of the proposed retained lot is subject to our Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulations under the Conservation Authorities Act, (Ontario Regulation No. 158/06). This portion of the subject parcel falls within the regulated area of the Taylor Drain. The property owner would be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority

prior to any construction or site alterations within the vicinity of the regulated Taylor Drain, or other activities affected by the regulations.

We have reviewed these applications with regards to Section 28 of the Conservation Authorities Act and have no objections.

### **WATER RESOURCES 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 within, and/or is adjacent to (within 120 metres of), a natural heritage feature that is identified as a significant wetland, 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 valleylands, 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.”

Section 2.1.8 of the PPS 2014 states – “Development and site alterations 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 outline above, is most effectively accomplished through the completion of an Environmental Impact Assessment (EIA). However, other options may exist as an adequate demonstration of no negative impact.

Our information also indicates that the subject properties may support habitat of endangered species and threatened species. As per Section 2.1.7 of the PPS 2014 – it is the proponents responsibility to exercise due diligence in ensuring that all issues relation to the provincial Endangered Species Act and its regulations have been addressed.

### **FINAL RECOMMENDATION**

It is our understanding that the retained lot will be subject to a re-zoning that will prohibit future dwellings on the subject parcel. In our opinion, the successful re-zoning of the retained parcel is a satisfactory demonstration of no negative impact on the natural heritage feature. Therefore, no Environmental Impact Assessment is required and we can advise that it is our opinion that there are no outstanding natural heritage concerns associated with this application. We have no objections to this Consent application.

## **Discussions:**

Rita Jabbour, Assistant Planner, explains the nature of the application.

She states that owner of the land to the southeast of the subject lands has contacted her to determine the location of an existing right of way that might be registered over part of the severed lot. She explains that she has advised the owner that he should retain the services of a solicitor to determine the exact location of the right of way.

Percy Dufour asks Rita if she can clarify the issue with the right of way.

Rita states that the parcel located to the southeast corner of the subject land is landlocked and currently uses the subject land for access. She explains that there might be a registered right of way over the driveway serving the lot to be severed.

Rita states that Karl Melinz, solicitor for Peter Pucowsky, the owner of the landlocked parcel, is in attendance and would be the best person to explain the situation involving the right of way to committee members.

Karl Melinz, Lawyer, hands a reference plan to the committee members which outlines the original right of way. He explains that the original right of way which is registered over the driveway that serves the severed lot has been abandoned. He states that a new right of way to be registered over the eastern side of the retained farm is the one being used. He states that when Frank Miller, applicant, purchased the said property the right of way was moved to the blue location on the survey.

He suggests that the original right of way be released and reflect the on-going right of way before the application be completed. He asks that this be made a condition of the consent.

Councillor Snively asks if the applicant and Mr. Pucowsky have discussed the changes that Mr. Melinz is proposing. Mr. Melinz states that his client would like the right of way to be changed to reflect the changes as requested. Frank Miller, applicant, advises that he would have no problem ensuring there was an agreement between himself and Mr. Pucowsky.

Councillor Snively suggest that an agreement be done between the applicant and Mr. Pucowsky and that it be a condition for the completion of the application. All parties and the committee agree with these terms.

Moved by Councillor Snively

Seconded by Joe Iatonna

(COA-2018-02-03) That application B-01-18 be granted 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 meets 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 existing right-of-way over the severed lot be relocated;
- g) That all of the above conditions be fulfilled on or before February 6, 2019.

"Carried"

#### **Reasons:**

In the opinion of the Committee, approval of this consent application is in keeping with the policies of the Town of Essex Official Plan, the requirements of the Planning Act and the policies mandated under the Provincial Policy Statement (PPS).

Moved by Councillor Snivel

Seconded by Councillor Bondy

(COA-2018-02-04) That application A-01-18 be granted.

"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. New Business**

None

#### **7. Old Business**

None

**8. Next Meeting Date –March 20, 2018**

The next Committee of Adjustment meeting is scheduled to be held at 4:00 PM on Tuesday March 20, 2018, in the Small Council Chambers of the Essex Town Hall, subject to the submission of complete applications for this agenda.

**9. Adjournment**

Moved by Councillor Bondy

(COA-2018-02-04) That the meeting be adjourned at 4:15 pm.

“Carried”

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Chair

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Secretary-Treasurer/Assistant Planner





Date: February 8 2018

Meeting Time: 4:00pm

Location: 33 Talbot Street South., Essex, Ontario

Full Name (Please Print)	Address (Please Print)	Telephone Number	Email Address (Please Print)
1 Frank Miller	4581 conc 4 Amherstburg		millercallie@aol.com
2 Bruce Gonsen	2915 County Rd 20 Harrow		j.guirke@hotmail.com
3 JAMIE QUICK	3890 RY RD 20 HARROW		
4 KARL MILLINZ	Box 880, HARROW, ON, N4R 1G0		
5 Kevin Lucovsky	1771 Qy Rd 20 Kijith, ON N4Y 2E6		
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Personal information that you provide on this sign in sheet is collected pursuant to the Municipal Freedom of Information and Protection of Privacy Act and will be used for the purpose of responding to your request for information regarding the application. Please note that this sign in sheet will appear in the published Committee of Adjustments Meeting Minutes and will also be included in the Council Agenda, both of which become part of the public record and are posted on our municipal website.