



MUNICIPALITY OF THAMES CENTRE

REPORT NO. PDS-034-24

FILE NO. B7-24

TO: Mayor and Members of Council

FROM: A. Kertesz, Planner

MEETING DATE: June 24, 2024

SUBJECT: Application for Consent; Kilbyrne Estates Ltd. (Applicant); Brown Beattie O'Donovan LLP c/o Stephen Carneiro Fernandes (Agent); 22697 & 22649 Nissouri Road

RECOMMENDATION:

THAT Application for Consent B7-24 requested by Brown Beattie O'Donovan LLP c/o Stephen Carneiro Fernandes on behalf of Kilbyrne Estates Ltd. to sever a parcel of land having a frontage of approximately 74 metres along Nissouri Road and an area of approximately 0.49 hectares from an existing agricultural parcel for lands legally described as Part of Lot 23, Concession 2 (geographic Township of West Nissouri), and designated as Part of Part 1 on Reference Plan 33R-5733, Municipality of Thames Centre, known municipally as 22697 & 22649 Nissouri Road be **DENIED**.

REASONS

- The application is not consistent with the Provincial Policy Statement.
- Conformity with the County of Middlesex Official Plan would not be maintained.
- Conformity with the Municipality of Thames Centre Official Plan would not be maintained.
- Conformity with the Municipality of Thames Centre Zoning By-law would not be satisfied.

PURPOSE:

The purpose and effect of the subject application is to sever a parcel of land having a frontage of approximately 74 metres (244 ft) and an area of approximately 0.49 hectares (1.2 ac) from an existing agricultural parcel.

BACKGROUND:

The subject property is a 75 hectare (185 ac) farm situated on the west side of Nissouri Road (County Road 27), south of Plover Mills Road (County Road 16) and backing onto the Thames River. The farm contains a single detached dwelling (serviced by a private septic system and well), a horse stable, and office. The Waugh Award Drain and the Pister Drain

are also located on the property. The horse stable is located approximately 105 metres (344.49 ft) from the proposed severed lot. The lands are used for field crop cultivation and as a horse farm except for the portions of the property towards the back which contain woodlots. According to the Thames Centre Official Plan, the lands are designated Agricultural, Protection Area and Environmental Area. The lands are zoned Agricultural (A) and Environmental Protection (EP) according to the Thames Centre Comprehensive Zoning By-law. The property contains natural heritage features including significant woodlands as identified by the Middlesex Natural Heritage Systems Study (MNHSS, 2014) and contains lands regulated by the Upper Thames River Conservation Authority (UTRCA) given the proximity of the Thames River and the Waugh Award Drain.

The applicants are requesting to sever a parcel known municipally as 22649 Nissouri Road (County Road 27) and have indicated that the lands were previously a separate lot however they merged with the farm, known municipally as 22697 Nissouri Road (County Road 27) in 2012 due to common ownership. The lands to be severed would have frontage of approximately 70 metres (244 ft) along Nissouri Road (County Road 27) and an area of approximately 0.49 hectares (1.2 ac). The lands to be severed are vacant. The application and the air photo used for the location map indicate a dwelling was once located on the lands to be severed, however it has been removed. The lands to be retained would have a frontage of approximately 540 metres (1,772 ft) along Nissouri Road (County Road 27) and an area of approximately 74.5 hectares (184 ac) and would contain the single detached dwelling, horse stable, and office.

ANALYSIS:

The Provincial Policy Statement (PPS), the guiding planning policy document in Ontario, states the creation of new residential lots in prime agricultural areas shall not be permitted, except in accordance with surplus farm dwelling severance policies. This application does not propose a surplus farm dwelling severance. Additionally, the PPS, the County of Middlesex Official Plan and Municipal Official Plan provide policy direction to allow the creation of farm parcels provided the lots are of a size appropriate for the type of agriculture common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agriculture and to avoid the unwarranted fragmentation of farmland. Specifically, new farm parcels shall generally be 40 hectares (99 acres) in size as noted in both Official Plans. Given that the new parcel proposes an area of 0.49 hectares (1.2 ac) being significantly less than 40 hectares (99 ac), the subject application would not be consistent with the Provincial Policy Statement and would not be in conformity with both Official Plans.

To implement the foregoing policy direction, the Agricultural (A) Zone requires a minimum lot area of 40 hectares (99 ac) and a minimum frontage of 150 metres (492.13 ft). Although the lands to be retained would have an area of approximately 74.5 hectares (184 ac) and a frontage of approximately 540 metres (1772 ft) thereby exceeding the minimum, the lands to be severed would fail to conform to the minimum lot area and frontage requirements having an area of approximately 0.49 hectares (1.2 ac) and frontage of approximately 74 metres (244 ft).

From a land use planning perspective, an application for consent to re-establish formerly separate parcels is to be evaluated against the planning policies in place when the application is made. In other words, a previous merger does not excuse a proposal from having to satisfy the planning policies and therefore a parcel may be irreparably merged. The Planning Act does provide a special provision to address the merger of lands as a result of the death of a joint tenant which is not the cause in this case.

In addition, as previously indicated, the horse stable on the lands to be retained is located approximately 105 metres (344.49 ft) from the proposed severed lot. The Provincial Policy Statement, the County of Middlesex Official Plan, Thames Centre's Official Plan and the Municipality's Zoning By-law require compliance with Minimum Distance Separation Formulae when considering the division of land. According to the Zoning By-law, no residential use located on a separate lot shall be established and no building or structure shall be erected or altered unless it complies with Minimum Distance Separation (MDS I) setbacks. At the time of writing this report, staff did not have information related to the MDS I setbacks requirements from the proposed lot line of the severed lot to the horse stable and are working with the applicant to obtain that information. Having said that, should the proposed lot meet the MDS I requirements from the existing stable, it may constrain the ability for any expansion on the stable in the future.

Based on the foregoing, the subject application is not consistent with the Provincial Policy Statement, does not conform with the Middlesex County and Thames Centre Official Plans, and furthermore does not comply with the Thames Centre Zoning By-law.

Should Council wish to approve the subject application be approved, staff offers the following for consideration:

THAT Application for Consent B7-24 requested by Brown Beattie O'Donovan LLP c/o Stephen Carneiro Fernandes on behalf of Kilbyrne Estates Ltd. to sever a parcel of land having a frontage of approximately 74 metres along Nissouri Road and an area of approximately 0.49 hectares from an existing agricultural parcel for lands legally described as Part of Lot 23, Concession 2 (geographic Township of West Nissouri), and designated as Part of Part 1 on Reference Plan 33R-5733, Municipality of Thames Centre, and known municipally as 22697 & 22649 Nissouri Road be **APPROVED**, subject to the following conditions:

1. That the Certificate of Consent under Section 53(42) of the Planning Act be given within two years of the date of the notice of the decision. The request for the Certificate of Consent shall be accompanied by a written submission that details how each of the conditions of consent has been fulfilled and the required fee.
2. That the applicant be required to dedicate lands up to 18 m from the centreline of construction of County Road 27 (Nissouri Road) to the County of Middlesex across the severed and retained parcels for the purposes of road widening if the right of way is not already to that width.
3. That the applicant obtain a minor variance approval to address any deficiencies of the Agricultural (A) Zone for the severed lot including but not limited to lot area, lot frontage as well as setbacks for Minimum Distance Separation (MDS).

4. That all applicable property taxes, municipal fees and charges be paid to the Municipality.
5. That all outstanding work orders or by-law enforcement issues be resolved to the satisfaction of the Chief Building Official.
6. That the necessary deeds, transfers and charges for certificates and /or instruments necessary for registration be submitted electronically to the Municipality, all of which are to be fully executed.
7. That an electronic version of a deposited reference plan be submitted to legally describe the lands affected and in general conformity with this decision, all to the satisfaction of the Municipality.

REASONS

- The application would be consistent with the Provincial Policy Statement.
- Conformity with the County Official Plan and the Thames Centre Official Plan would be maintained.
- The requirements of the Zoning By-Law are capable of being satisfied as a condition of consent

CIRCULATION CONSULTATION:

Agency Comments

In the circulation of the notice of public hearing to prescribed agencies, the following comments were received:

County of Middlesex

The owner will be required to dedicate lands up to 18 m from the centerline of construction of County Road 27 (Nissouri Road) to the County of Middlesex across the severed and retained parcels for the purposes of road widening if the right of way is not already to that width.

Drainage Superintendent:

No comment.

Chief Building Official:

The proponent shall provide a plan demonstrating compliance with applicable MDS setback requirements for a future dwelling.

Upper Thames River Conservation Authority:

No objections.

Public Comments

In the circulation of the notice of public meeting to surrounding property owners, no responses have been received as of the date of this report.

FINANCIAL IMPLICATIONS:

None.

STRATEGIC PLAN LINK

Pillar: *Smart Planning*

Goal: *Make smart planning decisions to grow the community , while maintaining a "hometown feel"*

ATTACHMENTS:

Location Map

Prepared by: A. Kertesz, Planner, in consultation with A. Storrey, Interim Director of Planning and Development Services

Reviewed by: D. Barrick, Chief Administrative Officer