

Municipality of Lakeshore Committee of Adjustment Report

Growth & Sustainability

Community Planning



To: Chair & Members of Committee of Adjustment
From: Ian Search, BES, Planner I
Date: September 7, 2023
Subject: Consent Application B/32/2023 & B/33/2023 – 9141 Lakeshore Road 305

Recommendation

Approve consent application B/32/2023 to sever a surplus dwelling with a lot area of approximately 1.513 acres from 9141 Lakeshore Road 305, subject to the following conditions:

- 1) That the applicant obtains a proper survey and Reference Plan from an Ontario Land Surveyor for the lot to be severed to the satisfaction of Community Planning at the Municipality of Lakeshore;
- 2) That the applicant transfer the subject property to a buyer who owns multiple farm holdings, at least one of which contains a dwelling, prior to the stamping of the Deed;
- 3) That the applicant confirm existing municipal services are fronting the lot to be severed to the satisfaction of the Municipality of Lakeshore;
- 4) That all municipal taxes be paid in full prior to the stamping of the Deed;
- 5) That a Park Fee be imposed on the granting of this application in the amount specified by the By-law to provide for the dedication of Parkland or the Payment of Cash in Lieu Thereof at the time of payment, and that such fee shall be paid prior to the stamping of the Deed;
- 6) That the applicant obtain a Zoning By-law amendment to rezone the retained farmland to prohibit dwellings and to address any zone regulations (lot area, frontage, etc.);
- 7) That the applicant complete the septic test report attached to the consent application to the satisfaction of the Municipality of Lakeshore for the existing septic system on the lot to be created, and if deemed required by the Municipality of Lakeshore, install a new septic system on the severed lot to the satisfaction of the Municipality of Lakeshore, prior to the stamping of the Deed;

8) That the applicant enter into an Agreement with the Municipality of Lakeshore to be registered on title prior to the stamping of the Deed, to pay any applicable water rates or fees with respect to the subject lands;

9) That the applicant enters into an Agreement with the Municipality prior to the stamping of the Deed regarding the apportionment of any current or future local improvements or drainage charges levied against the subject property;

10) That the applicant submit a drawing detailing the surface and subsurface drainage for the entire lands, to the Municipality's satisfaction, prior to the stamping of the Deeds;

11) That the Deed and a copy for our records be forwarded to the Secretary for stamping;

12) That all conditions be met in accordance with Section 53(41) of the Planning Act, R.S.O. 1990 by September 14, 2025. Failure to fulfil the conditions by this date, shall deem the consent refused, as per the Planning Act.

Approve consent application B/33/2023 to establish an easement over Part 2 on the draft survey in favour of the owner of Part 1 for access, subject to the following conditions:

1) That the applicants obtain a proper survey and Reference Plan from an Ontario Land Surveyor to the satisfaction of Community Planning at the Municipality of Lakeshore, including setbacks of any buildings, septic systems, and existing entrances;

2) That all municipal taxes be paid in full prior to the stamping of the Deed;

3) That the Deed and Easement/Right-of-Way Agreement be prepared to the satisfaction of Community Planning at the Municipality of Lakeshore and be forwarded to the Secretary for Stamping;

4) That all conditions be met in accordance with Section 53(41) of the Planning Act, R.S.O. 1990 by September 14, 2025. Failure to fulfil the conditions by this date, shall deem the consent refused, as per The Planning Act.

Purpose

The Municipality of Lakeshore has received an application for a surplus farm dwelling severance at the property known as 9141 Lakeshore Road 305, located north of Highway 401 and east of County Road 35/Comber Sideroad. The subject property is designated "Agricultural" in the Lakeshore Official Plan and zoned "Agriculture" in the Lakeshore Zoning By-law 2-2012.

The subject property is approximately 10.11 ha (25 acres) in area with approximately 124 metres of frontage along Lakeshore Road 305. The property currently contains a residential dwelling, a detached garage and a large accessory building. The residential dwelling is considered surplus to a farming operation, and the applicants are proposing

to sever the surplus dwelling and accessory buildings from the farm property for the creation of one lot (file: B/32/2023).

The proposed lot will have approximately 86.26 metres (283 feet) of frontage along Lakeshore Road 305 and will be approximately 1.513 acres in lot area – Part 1 on the attached Draft Survey (Appendix C). The retained lot will have approximately 38.85 metres (127.49 feet) of frontage along Lakeshore Road 305 and will be approximately 9.51 hectares (23.5 acres) in lot area following the severance.

The Committee of Adjustment will need to impose a condition on any consent approval to rezone the retained land to prohibit dwellings and to recognize the deficient lot area and frontage of the retained land.

The applicant is also applying for an easement (file: B/33/2023) in favour of the owners of the future severed lot over a portion of the retained land – Part 2 on the draft survey (easement land). The easement is in favour of the future owner of the severed lot to use this land to access the large accessory building on the severed lot – west of the dwelling. The existing access from Lakeshore Road 305 over the easement land will be shared between the owner of the severed lot and the owner of the retained land. The easement land is approximately 0.146 acres.

Summary

Location:

The subject property is located north of Highway 401, east of County Road 35/Comber Sideroad, and south of County Road 42, known municipally as 9141 Lakeshore Road 305.

Surrounding Land Uses:

North: Agriculture
West: Agriculture and rural residential lots
East: Agriculture and rural residential lots
South: Highway 401 and Agriculture

Provincial Policy Statement

B/32/2023

The applicant has entered into a purchase of sale agreement with a farmer who owns multiple farm holdings. The farmer will transfer the lot to be severed to the applicant following their purchase of the subject property. The buyer owns at least one other farm holding that supports a dwelling, so the dwelling on the subject property is rendered surplus to an operation. The proposed surplus farm severance is consistent with Section 2.3.4.1 c) lot creation in prime agricultural areas:

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. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective”*

The lot to be severed, as depicted on the draft survey, will incorporate a private septic system, dwelling and two accessory buildings on the subject property. It will also include a portion of driveway leading from an access located west of the proposed severed lot for the purposes of facilitating an easement/mutual access with the retained farmland (File: B/33/2023). Little to no cultivated farmland will be incorporated in the severed lot. As a condition of consent approval, the applicant will need to rezone the retained land to prohibit new dwellings in accordance with the PPS.

B/33/2023

Section 2.3.4.2 of the PPS states that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. The PPS defines legal or technical reasons to mean severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.

The proposed easement land will provide mutual access from Lakeshore Road 305 between the owner of the proposed severed lot and the owner of the retained farmland. While the proposed severed lot will have its own independent access from Lakeshore Road 305 located on the east side of the lot, the proposed easement will provide direct and convenient access to the large shed located west of the dwelling on the severed lot. According to the applicant, this building is used for the repair and storage of the applicant's own vehicles and equipment.

It appears that it would be challenging/inconvenient to approach the building from the east access given that a private septic system is in the front yard north of the dwelling and there is minimal space east and south of the dwelling due to an existing garage and amenity space. For this reason, it is the opinion of the Planner that the proposed easement has technical justification and is consistent with the PPS.

Official Plan

B/32/2023

The subject property is designated Agricultural in the Official Plan. Section 6.2.3 b) of the current Lakeshore Official Plan permits a surplus farm severance in areas designated Agricultural subject to the following conditions:

- i) the remnant farm parcel will be zoned so as to prohibit the construction of any additional dwellings;*

ii) the non-farm parcel will be zoned to recognize the non-farm residential use and will not accommodate a livestock operation;
iii) any livestock facilities to remain on the retained parcel will not be made unsuitable for further livestock operations if the Minimum Distance Separation I provisions cannot be met; and
iv) the implementing Zoning By-law will not impose a setback on nearby expanding livestock operations greater than that required by the application of Minimum Distance Separation II Formula including the Minimum Distance Separation Guidelines.

The lot creation proposal conforms to this section of the Official Plan. There are no livestock facilities on the subject property and the Zoning By-law will automatically prohibit this use on the lot to be severed. As a condition of lot creation approval, the remnant farm parcel will need to be rezoned to prohibit the construction of any additional dwellings.

There are no issues of County significance raised by the application, and the proposal conforms to the County of Essex Official Plan. Section 3.3.3.4 of the County Official Plan states that farm parcel consolidation can be interpreted to permit non-contiguous farm parcel consolidations, which is the case with this surplus farm dwelling severance proposal.

B/33/2023

In areas designated Agricultural, Section 6.2.3 e) of the Lakeshore Official Plan permits consents for minor boundary adjustments or corrections and easements, and in accordance with Sections 50(3) and (5) of the Planning Act, which do not result in the creation of a new lot. This policy is echoed under Section 3.3.3.4 e) of the County of Essex Official Plan.

The subject property is located on a Rural Collector Road. Section 7.2.2.1.10 of the Lakeshore Official Plan states that these roads are designed to primarily provide access to individual properties throughout areas of low density and low development activity. Subsection c) states that the Municipality will “address the adequacy of sight distances related to the road alignment and will avoid multiple individual access points when reviewing development applications on Rural Collector Roads”. The proposed easement will help mitigate the potential construction of multiple individual access points. If the easement is not established, the applicant may be inclined to construct a second access bridge along the frontage of the severed lot for convenient access to the accessory building. Development of this second access would be permitted under the Zoning By-law.

Section 8.3.5.2 c) i) of the Lakeshore Official Plan states that the lot to be retained and the lot to be severed will have frontage on and access to an open, improved public road which is maintained on a year-round basis. The severed lot and retained land will have independent frontage on Lakeshore Road 305, and each parcel will have legal access to this street regardless of whether the proposed easement is approved.

Zoning

The subject property is approximately 10.11 hectares (25 acres) in area with approximately 124 metres of frontage along Lakeshore Road 305. The retained lot will have approximately 38.85 metres (127.49 feet) of frontage along Lakeshore Road 305 and will be approximately 9.51 hectares (23.5 acres) in lot area following the severance.

The Zoning By-law requires a farm parcel to have a minimum lot area of 19 hectares and a minimum lot frontage of 75 metres. Therefore, the Zoning By-law Amendment that will rezone the retained lot to prohibit dwellings as a condition of consent approval, will also need to recognize the deficient area and frontage of this lot that will result from the severance.

The severed lot will meet the minimum lot frontage and area requirements in the Zoning By-law. A draft survey has been provided with the application confirming its compliance with zone regulations.

Correspondence from external and internal agencies

External and Internal Agencies

The applications were circulated to various external and internal agencies, comments received from them are summarized below.

The Operations Department has expressed that reciprocal access agreements are not typical for municipal drainage access bridges. It is recommended by Lakeshore's Drainage Superintendent that each parcel (retained and severed) maintain its own separate access bridge to Lakeshore Road 305. This recommendation will mitigate any future by-law or drainage work cost disputes on the shared driveway/access bridge. Furthermore, sharing the access bridge between residential use and agricultural use may negate/jeopardize the property's eligibility for grant funding from OMAFRA for future repairs, maintenance, and upgrades to the access bridge.

In response to these comments, the Committee of Adjustment should impose a condition on any approval of the easement/mutual access requiring an easement agreement to be prepared and registered on title to the satisfaction of Community Planning. This department will consult with Legal Affairs and the Drainage Superintendent in their review of the agreement. The applicant will need to hire a solicitor to prepare an agreement that is congruent with the Drainage Act and clearly details future drainage work costs between the parties – including, but not limited to, repairs/replacement, maintenance, and upgrades to the access bridge. The easement can only be registered/finalized if the agreement effectively addresses all issues to the satisfaction of the municipality.

The Operations Department has also stated that a drain apportionment agreement will be required for the severance. This requirement is a standard condition imposed on lot

creation consents. Lastly, they state that confirmation is needed that all existing municipal services and septic system for the dwelling are fronting/contained within Part 1. The applicant has confirmed that the septic system is in front of the dwelling on the lot to be severed, and they will be able to contact the municipality for locates with respect to their water service. Full comments from the Operations Department can be found in Appendix D.

The Ministry of Transportation and Essex Region Conservation Authority stated that they had no objection to the proposal. Full comments can be found in Appendix F and Appendix E respectively.

Conclusion

The proposed consent applications are consistent with the Provincial Policy Statement (PPS), conform to the Official Plan, and comply with the Zoning By-law 2-2012, subject to the conditions included in the recommendation section of the report.

Public Notice Circulation

Notice of Public Meeting and information regarding the requested consent applications were sent to all property owners within 60 metres of the subject land. At the time of writing, no written comments were received.

Attachment(s):

Appendix A – Aerial Map
Appendix B – Photos
Appendix C – Survey
Appendix D – Operations Department
Appendix E – ERCA
Appendix F – MTO

Prepared by:



Ian Search, BES
Planner I

Report Approval Details

Document Title:	B-32-2023 and B-33-2023 Report.docx
Attachments:	<ul style="list-style-type: none">- Appendix A - Aerial Map.pdf- Appendix B - Photos.pdf- Appendix C - Survey.pdf- Appendix D - Operations Department.pdf- Appendix E - ERCA.pdf- Appendix F - MTO.pdf
Final Approval Date:	Sep 7, 2023

This report and all of its attachments were approved and signed as outlined below:

Kristina Brcic - Sep 7, 2023 - 4:14 PM