

TOWN OF LAKESHORE

COMMUNITY AND DEVELOPMENT SERVICES DEVELOPMENT SERVICES DIVISION

TO: Mayor and Members of Council
FROM: Maureen Emery Lesperance, Secretary-Treasurer
DATE: November 22, 2019
SUBJECT: Committee of Adjustment draft Minutes for November 20, 2019

RECOMMENDATION

It is recommended that:

1. Council receive the draft Minutes from the November 20 2019 Committee of Adjustment meeting.

BACKGROUND

The draft minutes from the November 20, 2019 Committee of Adjustment meeting are attached. The Committee decisions are detailed below and have an appeal deadline of December 9 (minor variance) and December 11 (consent).

1. Consent – **Granted** – surplus lot creation;
2. Consent – **Granted** - residential lot addition;
3. Minor Variance – **Granted** – relief from the rear yard setback and eaves for a new single detached dwelling.

OTHERS CONSULTED

Because of the specific nature of this report, no other staff was consulted.

FINANCIAL IMPACTS

There are no financial impacts resulting from the recommendation in this report.

Prepared by:



Maureen Emery Lesperance, CPT
Secretary Treasurer

Reviewed by:



Kim Darroch, MCIP, RPP
Manager of Development Services

Reviewed by:



Tammie Ryall, MCIP, RPP
Director of CDS

Submitted by:



Truper McBride, M.PL, MCIP, RPP
Chief Administrative Officer

**TOWN OF LAKESHORE
COMMITTEE OF ADJUSTMENT
WEDNESDAY, NOVEMBER 20th, 2019 @ 5:45 P.M.**

The meeting opened at 6:00 P.M. with the following members present:

Chairman	- Pat Niziolek
Members	- Steve Diemer
	- Ron Barrette
	- Robert Sylvestre
	- Mark Hacon
Secretary-Treasurer	- Maureen Lesperance

The Chair introduced the Committee members and support staff and provided a brief outline of the process followed through the hearings.

The Chair also inquired if there were any disclosures of pecuniary interest and the general nature thereof with the applications proposed to be heard at tonight's Committee meeting.

- There were no disclosures of pecuniary interests at this time.

Application No. 1

APPLICATION:	B/39/2019	MAP NO. 700-00900
APPLICANT:	Charles Lanoue c/o Pauline & Jean-Paul Lanoue	
PROPERTY LOCATION:	10300 County Road 42 (Community of Tilbury North)	

PURPOSE OF APPLICATION

- The subject farm land is located on the north side of County Road 42 in the Community of Tilbury North. The applicants' agents have applied for a surplus dwelling lot with 128 metres (400 feet) of frontage and an overall area of 1.93 ha (4.76 acres). The retained farmland will then have a frontage of 184.4 metres (605 feet) and an overall area of 18.1 ha (44.77 acres). The subject lands are zoned A, Agriculture and designated Agricultural.

(If approved, the severed parcel will comply with the Zoning By-law (lot frontage/ area), however the retained farmland requires a condition to amend the zoning to prohibit a single detached dwelling and recognize the deficient lot area.)

PRESENT AT MEETING

Pauline & Jean-Paul Lanoue, Authorized Applicants

CORRESPONDENCE RECEIVED

1. Lakeshore Building Dept. – No objection
2. Lakeshore Drainage Dept. – No objection
3. Lakeshore Engineering Dept. – Any new entrances on retained lot will require an entrance permit through the County of Essex. Retained lot is subject to a water buy in fee according to the tariff of fees by-law at the time of servicing. Surface water and subsurface drainage tiles should be redirected around the lot parcel.
4. Lakeshore Fire – No objection
5. Lakeshore Planning Dept. – If the Committee decides to approve this application, they are advised that the proposed consent would be consistent with the Provincial Policy Statement (PPS), conforms to the Lakeshore Official Plan, subject to the following conditions of consent, in addition to any standard conditions of consent imposed by the Secretary -Treasurer:
 - A zoning by-law amendment application will be required, following the surplus lot creation to:
 - ensure new residential dwellings are prohibited on the retained farmland parcel created by the severance;
 - provide relief for deficient lot area to allow an 18.1 hectare retained farmland parcel and;
 - permit the existing livestock uses on the surplus lot.
 - The applicant will be required to submit a Reference Plan and Survey (Surplus Lot) detailing the proposed consent and to confirm compliance with other provisions of the zoning by-law;
 - The applicant will be advised by the Secretary-Treasurer of the Committee of Adjustment prior to the issuance of a consent certificate that the location of any future livestock facility on the retained lands shall be in accordance with the minimum distance separation (MDS) formula of the Agricultural Code of Practice;

- An agreement will be required to be entered into and will be registered on title noting that the owner agrees to place the following “clause” in every agreement of purchase and sale that “the Buyer hereby acknowledges that the property may be within an area approved for the construction of wind turbines of a commercial size and grade”. This agreement will be placed on the lands to warn future buyers of a potential wind turbine being located in the immediate area;
 - Satisfaction of the Town’s Drainage Department, if required by that Department;
 - Satisfaction of the applicable Conservation Authority, if required by the Authority.
 - Satisfaction of Plains Midstream Canada, if required by the organization
6. Essex Region Conservation – The most northern portion of the retained lot is subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation under the Conservation Authorities Clearance. The property owner would be required to obtain a permit and/or clearance from this office prior to any construction or site alteration (specifically any works within the vicinity of the regulated Garant Drain) or other activities affected by Section 28 of the Conservation Authorities Act. We have no concerns with stormwater management, nor is the property within or adjacent a natural heritage feature. We have no objections to this application for Consent.
7. County of Essex – Subject property has frontage on County Road 42 and minimum setback for any structures is 85 from the centre of the County Road for residential and 105 feet for commercial. Any changes to existing, or new entrances/ structures requires a permit. The County has no objections to this proposal.

APPLICANTS AMENDMENTS

- None

DISCUSSION

Mrs. Pauline Lanoue questioned if a survey/ reference plan would be required for the entire farmland as well as the surplus lot and when a water buy in fee payment would be required. She also advised of their attendance to answer any questions of the Committee.

The Secretary-Treasurer advised that a reference plan for both the retained farmland and the surplus lot was a standard condition of consent and that the water buy-in fee was only applicable when and if the proponents wished to connect to the municipal water line in the future.

The Chair inquired if anyone in the audience wished to speak to the application. No response was received.

Member Sylvestre questioned the recommended zone condition.

The Secretary-Treasurer confirmed the condition required the retained farmland to be rezoned to prohibit single detached dwellings and recognize deficient lot area, as well as rezone the surplus lot to permit 3 horses and 4 chickens on a "residential lot" in an agriculture zone.

Member Sylvestre noted his support of the application, due to its' compliance with the Official Plan, subject to the recommended conditions.

**Moved by Member Sylvestre
2nd by Member Hacon**

That Consent Application B/39/2019 by Charles Lanoue c/o Pauline & Jean-Paul Lanoue be approved subject to the following conditions:

1. That the applicant obtain a proper Survey and Reference Plan from an Ontario Land Surveyor for the severed parcel of land and all buildings that confirms compliance with additional zone provisions, for both the severed parcel and the retained farmland. Data shall also be provided on a CD or floppy disk in the format of a projection (NAD 83) UTM Zone 17.
2. That all municipal taxes be paid in full prior to the stamping of the Deed.
3. That a park fee be imposed on the granting of this Application in the amount of \$600.00, and that such fee shall be paid prior to the stamping of the Deed.
4. That the Secretary-Treasurer provide a Species at Risk Screening memo to the applicant for their follow-up with the Province.
5. That the applicant obtain a Zoning By-law amendment respecting the remnant farm parcel to prohibit the construction of a residential dwelling and to recognize any deficiencies in lot area, if required, and that the surplus lot be rezoned to permit 3 horses/ 4 chickens on a residential lot.
6. 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 OBC regulations prior to the stamping of the Deed.
7. That the applicant enter into an Agreement with the municipality 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.

8. That the applicant enter 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.
9. That the applicant enter into an Agreement with the municipality prior to the stamping of the Deed regarding drain apportionment.
10. That the applicant submit a drawing detailing the surface and subsurface drainage for the entire lands prior to the stamping of the Deed.
11. That a "warning clause" be placed on title alerting potential purchasers of the potential for wind turbine erection within the general area prior to the stamping of the Deed.
12. That the Deed and a copy for our records be forwarded to the Secretary for stamping.
13. That all conditions be met in accordance with Section 53, Subsection 41 of The Planning Act, R.S.O. by **November 22nd, 2020**. Failure to fulfil the conditions by this date, shall deem the consent refused, as per The Planning Act.

- Carried -

Application No. 2

APPLICATION:	B/40/2019	MAP NO. 010-02600
APPLICANT:	Joan Gevaert c/o Greg & Lisa Cavers	
PROPERTY LOCATION:	1729 Lakeshore Road 219 (Community of Maidstone)	

PURPOSE OF APPLICATION

The subject lands are located on the south/west corner of S. Middle Road and Lakeshore Road 219 in the former Community of Maidstone and has 381 metres (1,250 feet) of frontage off Lakeshore Road 219 and an overall area of 20.53 ha (50.73 acres). The applicants' agents are applying to sever a lot addition to add to the abutting vacant residential land at 0 Lakeshore Road 219. The lot addition proposes to add 30.48 metres (100 feet) of frontage off Lakeshore Road 219, and an overall area of 2,090.3 m² (22,500 ft²) which will provide additional lands due to the large municipal drains on both sides of the vacant lot. The retained farmlands, will maintain frontage of 381 metres (1,250 feet) and an overall area of 20.31 ha (50.2 acres). The subject lands are designated "Agricultural" and zoned "A, Agriculture".

(If approved, both the retained land and the severed/merged parcel of land will comply with the Zoning By-law (lot frontage/ area)).

PRESENT AT MEETING

Greg & Lisa Cavers, Authorized Applicants

CORRESPONDENCE RECEIVED

1. Lakeshore Building Dept. – No objection
2. Lakeshore Engineering Dept. – Any new entrances on the lot addition will require an engineer's report under the Drainage Act. Lot addition is subject to a water buy in fee according to the tariff of fees by-law at the time of servicing. Surface water and subsurface drainage tiles should be redirected around the lot addition parcel.
3. Lakeshore Drainage Dept. – Currently, this application will require an access bridge for the newly created lot addition under the Drainage Act as this property abuts municipal drains on the north and west side. To date, no application has been submitted but after speaking with the Planning Department, the owner is aware that a municipal bridge will be required.
4. Lakeshore Fire Dept. – No objection
5. Lakeshore Planning Dept. – Section 8.3.5.2 b) of the Official Plan permits a consent for technical or legal purposes where a separate lot is not being created (e.g. boundary adjustment) and the lots subject to the application and any retained lands comply with the Zoning By-law. It appears both the severed (with the adjoining lands) and the retained parcel's lot area and lot frontage will meet the minimum requirements of the A zone. Section 2.3.4.2 of the PPS states that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. In addition, an R-Plan will be required to detail the lot addition or consent and a survey (if required).

The consent application is in conformity with the Town of Lakeshore Official Plan and the *Provincial Policy Statement*. If the Committee decides to approve this application, the following conditions of approval are recommended, in addition to any required standard conditions:

- The submission of an R-Plan to detail the consent and survey (if required);
- That the proposed severance merge with the lot being enlarged in accordance with Sections 50(3) and (5) of the *Planning Act*;

- Satisfaction of the Town's Drainage Department, if required by that Department;
 - Satisfaction of the applicable Conservation Authority, if required by the Authority.
6. Essex Region Conservation Authority – The subject parcel falls within the regulated area of the Malden Road Drain and 2nd Conc. Rd. Drain South of Malden Rd, requiring the property owner to obtain a permit and/or clearance from this office prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act. We have no concerns with stormwater management, nor is the property within or adjacent a natural heritage feature. We have no objections to this application for consent.

APPLICANTS AMENDMENTS

- None

DISCUSSION

Mr. & Mrs. Greg Cavers advised of their attendance to answer any questions of the Committee.

The Chair inquired if anyone in the audience wished to speak to the application. No response was received.

Member Barrette questioned the ownership of the residential lot and why the necessity for a lot addition.

Ms. Cavers noted that the lot addition is required to accommodate a dwelling and septic system on the subject lands due to the large setbacks required for the two abutting municipal drains. They clarified that a new driveway crossing under the Drainage Act would be applied for and be located off Lakeshore Road 219.

Member Sylvestre questioned how or when the lot was originally created.

Mr. Cavers noted it was a retirement lot created some 35 years ago for his mother/father and prior to the municipal drains now established.

Member Barrette supported the lot addition, noting it complied with severance policies, and subject to the recommended conditions.

**Moved by Member Barrette
2nd by Member Diemer**

That Consent Application B/40/2019 by Joan Gevaert c/o Greg & Lisa Cavers be approved subject to the following conditions:

1. That the applicant obtain a proper Survey and Reference Plan from an Ontario Land Surveyor for the severed parcel of land and all buildings that confirms compliance with additional zone provisions and detail a 1' x 1' square from the original lot at 0 Lakeshore Road 219, to merge the lot addition lands. Data shall also be provided on a CD or floppy disk in the format of a projection (NAD 83) UTM Zone 17.
2. That all municipal taxes be paid in full prior to the stamping of the Deeds.
3. That the applicant enter into an Agreement with the municipality prior to the stamping of the Deeds regarding the apportionment of any current or future local improvements or drainage charges levied against the subject property.
4. That the applicant enter into an Agreement with the municipality prior to the stamping of the Deeds regarding drain apportionment.
5. That the Deed for the lot addition be prepared and a copy for our records be forwarded to the Secretary for stamping.
6. That Section 50(3) and (5) of The Planning Act shall apply to this severance and that the property shall be conveyed & merged to Roll #3751 010-000-02540.
7. That the applicant produce a Deed and/or a Solicitor's Undertaking to the Secretary prior to the stamping of the severance Deeds, in evidence that the severed parcel and the abutting parcel will be registered in the same name(s) in satisfaction that all parcels will merge.
8. That the applicant/ and or a Solicitor provide an Undertaking to the Secretary prior to the stamping of the severance Deed(s), in evidence that "Application to consolidate Pins" will be submitted to the Land Titles/ Registry Office and provide proof of the consolidation.
9. That all conditions be met in accordance with Section 53(41) of the Planning Act, R.S.O. by **November 22, 2020**. Failure to fulfil the conditions by this date, shall deem the consent refused, as per The Planning Act.

- **Carried-**

Application No. 3

APPLICATION:	A/22/2019	MAP NO. 620-26400
APPLICANT:	Joseph Nehme	
PROPERTY LOCATION:	803 Valentino Drive (Community of Rochester)	

PURPOSE OF APPLICATION

The applicant is seeking relief from the following Sections of the Lakeshore Zoning By-law 2-2012 to permit a new single detached dwelling:

- Section 8.3, Residential Waterfront – Lake St. Clair (RW2) Zone provision to permit a new single detached dwelling to be 4.572 metres (15 feet) from the rear yard lot line, whereby the by-law states: **“7.5 metres (24.6 feet) for a rear yard setback for main buildings”**; and:
- Section 6.42 d), Permitted Encroachments in Required Yards to permit the proposed new single detached dwelling eaves to encroach into the rear yard.

PRESENT AT MEETING

Joseph & Nehme, Applicant

CORRESPONDENCE RECEIVED

1. Lakeshore Building Dept. – Septic setbacks shall comply with Ontario Building Code requirements.
2. Lakeshore Engineering Dept. – No objection
3. Lakeshore Drainage Dept. – No objection
4. Lakeshore Fire Dept. – No objection
5. Lakeshore Planning Dept. – Section 45(1) of the *Planning Act* gives the authority of granting minor relief from the provisions of the Zoning By-law to the Committee of Adjustment. Such relief can only be granted if the Minor Variance passes four tests. If the Committee is not satisfied on all four tests, then the Minor Variance cannot be approved.

Staff are satisfied that the proposed development meets the four tests set out in the Planning Act.

The minor variance does not threaten the existing lakeshore/rural character of the Waterfront Residential Designation. The subject property is not part of any significant valley lands, woodlands or wetlands. It is located within the ERCA Limit of the Regulated Area but is outside the Lake St Clair Floodprone Area according to the Official Plan.

The purpose of the rear setback is to provide sufficient amenity space for the resident, as well as privacy and open space between units. Constructing the single detached dwelling 3.233 metres closer to the rear lot line than what is permitted will not significantly impact the ability of the rear yard to provide amenity space. North of the subject land is Crown land (Minister of Fisheries, Oceans and the Canadian Coast Guard) and Lake St. Clair so privacy and open space between units is not an issue.

There appears to be existing dwellings in the area located closer to their rear lot line than the proposed setback of 4.267 metres (14 feet) for the single detached dwelling. Overall, there is very little consistency in the area with respect to rear yard setbacks for main buildings. Therefore, the variance does not threaten the appearance of the streetscape and is compatible with its surroundings. None of the above issues appear to cause a concern and the variance is considered minor.

Therefore, the requested variance meets the following four tests prescribed under Section 45 (1) of the *Planning Act*.

- i. The variance would be "minor" in nature.
 - ii. It would be desirable for the appropriate development or use of the land, building or structure.
 - iii. It would maintain the general intent and purpose of the Official Plan.
 - iv. It would maintain the general intent and purpose of the Zoning By-law.
6. Essex Region Conservation Authority – The parcel falls within the regulated area of Lake St. Clair, requiring the property owner to obtain a permit and/or clearance from this office prior to any construction or site alteration or other activities affected by Section 28 of the Conservation Authorities Act. We have completed our review of the shoreline engineering assessment and advise that this proposal identifying a prescribed building envelope, and engineered shoreline management works will satisfy ERCA's Section 28 requirements for new development. A full ERCA permit will be required prior to future development commencing. We have no concerns with stormwater management, nor is the property within or adjacent a natural heritage feature. ERCA has no objections to this application for Minor Variance.

APPLICANTS AMENDMENTS

- None

DISCUSSION

Mr. Joseph Nehme advised of his attendance to answer any questions of the Committee.

The Chair inquired if anyone in the audience wished to speak to the application.

Mr. John Munro, 793 Valentino – advised he protests the minor variance application. Spoke to the requested reliefs and the current Zoning By-law that should be followed. Supplied pictures of other new dwellings currently being constructed along Ross Beach and other new houses within the area and questioned the proximity of the septic system to the lot lines and road allowances. He was concerned with loss of view and line of site provisions and felt that the application was not minor and could be precedent setting.

The Chair advised that the crown or municipal roads are not part of the Committee's review. She noted that the setback from the water's edge is controlled by the Conservation Authority and that each application stands on its' own merit.

The Secretary-Treasurer noted the Planner's review of the (4) four tests of a minor variance took into consideration the Ministry of Fisheries & Oceans land at the rear of the property.

Mr. & Mrs. Kelly Jordan, 801 Valentino – spoke to the history of the subject lands and the prior fire to the dwelling years ago and recapped her discussion with municipality's Building Department. She was advised back then that the property owner could rebuild the dwelling in its' former location due to hardship. They never made an issue on the existing shed, which remained and was in their line of site of the lakefront. They felt the new property owner was trying to erect too large a dwelling for the property size and felt that no relief should be granted from the Zoning By-law. The dwelling should be made smaller so that no relief would be necessary. The drawings detail a 3 storey house and should not be as high or as close to the water's edge so that it does not impact their view of the waterfront.

The Secretary-Treasurer confirmed that the relief being requested was from the rear yard lot line and not from required Conservation Authority's 50 foot setback from the breakwall.

Mr. Andre Pellerin, 807 Valentino – felt that the applicant bought the lands and it was a buyer beware world and should have been cognizant of his building envelope. In his

opinion, Mr. Nehme is trying to put 10 pounds of potatoes into a 5 pound bag and it doesn't work. It is unfortunate that Mr. Nehme did not do his homework, and felt that the proposed 3 storey dwelling would look into all their backyards and impact their privacy. He felt that Mr. Nehme is a builder who will just build and sell this dwelling and not take into consideration the impact to the residents in the area.

Mr. Dave Marentette, 797 Valentino – commented on the recent removal of the shed on the property and questioned if the applicant would be removing the old septic tank system.

Mr. Nehme confirmed he would be replacing the original septic system with a new one that complied with the Building Code.

Mrs. Lynette Jordan also provided a letter from another property owner, Mr. James White, 799 Valentino who was unable to attend. Mr. White's concerns were that the proposed dwelling would block the views, deprive them of sunlight and privacy, and overshadow the neighbouring houses. He was happy to have a new modern, structurally sound ecofriendly house built to code, but not by allowing a variance to the Zoning By-law.

Member Diemer advised the audience that he understood their concerns. He also resides on the lakefront in a small dwelling with large dwellings on both sides. He noted that lake front properties are always redeveloping.

Member Barrette questioned if the footprint of the new dwelling is larger than the existing concrete footing on the property.

Mr. Nehme advised that the existing concrete on the property is the old shed that was recently torn down.

A discussion ensued on the septic system design and whether it could be made smaller and if the applicant had approached the neighbours to obtain additional lands through a lot addition consent.

The Secretary-Treasurer advised that the septic system is based on the size of the dwelling and was designed to meet the Ontario Building Code, which requires setbacks from lot lines and the proposed dwelling. There is no relief from the Ontario Building Code that can be granted by the Committee of Adjustment.

Mr. Nehme advised he had approached both abutting neighbours previously, and that they were not interested in selling any land.

Member Diemer supported the application, noting it met the four tests of a minor variance.

**Moved by Member Diemer
2nd by Member Sylvestre**

That Minor Variance Application A/22/2019 by Joseph Nehme be approved.

- Carried –

**Moved by Member Sylvestre
2nd by Member Diemer**

That the minutes of October 9, 2019 and October 23, 2019 be adopted as printed and distributed.

- Carried –

**Moved by Member Hacon
2nd by Member Diemer**

THAT the meeting adjourn at 7:20 p.m.

- Carried –

Pat Niziolek
Chairman

Maureen Lesperance
Secretary-Treasurer