



Committee of adjustment report

Meeting date:	June 20, 2022
Title:	A07.2022 – KIESWETTER, Ken and KIESWETTER, Cindy (Cuesta Planning Consultants Inc.)
Prepared by:	Lorelie Spencer, Manager of Planning and Development
Reviewed by:	Laura Johnston, CAO

Recommendation

That Committee of Adjustment receives the report from Planner Spencer, A07.2022 – KIESWETTER, Ken and KIESWETTER, Cindy (Cuesta Planning Consultants Inc.) wherein the planner recommends denial of application A07.2022 as the application is not considered to meet the tests of section 45(2) of the Planning Act as it is not consistent with the PPS, does not maintain the general intent and purpose of the County Plan, does not maintain the general intent and purpose of the zoning by-law and does not represent good planning.

Executive summary

The subject lands are municipally identified as 522550 Welbeck Road. The lands are legally described as PT LOT 15, CON 3 WGR, RP 17R1089, PTS 1 and 2, in the geographic township of Bentinck. The purpose of the application is to request permission under section 45(2) of the Planning Act, R.S.O. 1990, as amended to permit the demolition and reconstruction of a legal non-conforming use. The effect of which will permit the replacement of a single detached dwelling unit in the NE (natural environment) zone.

Section 45(2) although termed a minor variance is a request for permission under the Planning Act, R.S.O. 1990, as amended. The test for permission under section 45(2) is whether the application is desirable for appropriate development of the subject property and whether the application will result in adverse impacts on the surrounding properties and neighbourhood. The following sections will elaborate on the request for permission which differ from previous reports provided to the Committee under section 45(1).

Background and discussion

The property is located east of the intersection of Baseline and Welbeck Road. The property currently contains two (single detached dwelling units, a sawmill, barn, and accessory structure. The property is approximately 11.3 ha (28 acres) in size and contains a provincially significant wetland feature in addition to identified significant woodlands on the majority of the property.

Section 45(2) of the Planning Act gives the Committee of Adjustment the authority to grant permission and is defined under the Planning Act, R.S.O. 1990, as amended as follows:

- (a) Where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,



- I. The enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or
 - II. The use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the committee continued until the date of the application to the committee; or
- (b) Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law.

An application under s. 45(2) must be evaluated on the basis of whether or not the application is desirable for appropriate development of the subject property; and whether the application will result in an undue adverse impacts on the surrounding properties and neighbourhood.

The applicant's agent proposes to demolish the existing single detached dwelling unit, and reconstruct a new dwelling to be used for the same purpose. The new single detached dwelling unit will have an expanded footprint with the addition of a covered porch.

Section 6.21(c) of the Municipality of West Grey's Comprehensive Zoning By-law No. 37-2006 states as follows:

Nothing in this by-law shall prevent the strengthening or restoration of a non-conforming building or structure to a safe condition so long as the strengthening or restoration does not alter the height, area, size or volume of the building or structure or change its use to other than a conforming one.

The above noted provision does not account for the demolition and reconstruction of a non-conforming use nor does it permit the increase in size, volume and area from the present structure.

The two tests of the application are defined with review in the following subsections.

1.0 Is the application desirable for the appropriate development of the subject property?

The subject lands are designated as 'rural', 'hazard', and 'provincially significant wetlands' within schedule A of the County of Grey Official Plan. Appendix B of the County Official Plan further defines a significant portion of the property as being within identified 'significant woodlands'. The single detached dwelling unit in question is located completely within the mapped hazard lands and within the adjacent lands of the provincially significant wetlands.

The Provincial Policy Statement 2020 (2020 PPS) provides legislative authority which requires that in respect of any exercise of any authority that affects a planning matter, section 3 of the *Planning Act* requires that decisions affecting planning matters 'shall be consistent with' policy statements issued under the Act.

Section 2.0 of the 2020 PPS speaks to the wise use and management of resources. Section 2.1.1 specifically states that natural features and areas shall be protected for the long term. Section 2.1.5 states that development and site alterations shall not be permitted in significant



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wetlands or significant woodlands unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions. In addition section 2.1.8 states that 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.

Planning staff are not satisfied that the demolition and replacement proposed by the applicant, through their agent, has fully evaluated alternative locations, nor has sufficient evaluation been provided that demonstrates the reconstruction in this location and subsequent site alterations will not have an adverse impact on the natural features and functions of the subject lands.

Section 3.1 of the 2020 PPS speaks to natural hazards. This section requires that development shall generally be directed, in accordance with guidance developed by the Province (as amended from time to time, to areas outside of hazardous lands adjacent to river, stream and small inland lake systems under section 3.1.1(b). As previously noted, the single detached dwelling unit in question is located entirely within the identified hazard lands designation.

The intent of the hazard lands designation is to prevent loss of human life or property during a significant flooding event (in this case). Planning staff are not satisfied that regardless of the existing structure, which predates current policy, consideration has been provided to rectify a non-conforming use through the evaluation of relocating the structure.

Policy 7.2 of the County Official Plan states that development should generally be directed away from the hazard lands designation.

Policy 7.2(8) of the County Plan does address the replacement of an existing structure. This policy states as follows:

Replacement of existing buildings or structures may be permitted if the hazard risk does not increase from the original condition, and the feasibility of re-locating the buildings or structures outside of the hazard areas has been assessed.

Planning staff are not satisfied that a formal assessment for the relocation of the structure outside of the hazards lands designation and within the rural designation has been conducted, in the form of an environmental impact study.

In the absence of a formal review to assess the impact of a new foundation, structure and the addition of the porch outside of the hazard lands designation, Planning staff do not support the proposal provided by the applicant's agent. An assessment of the long term relocation of the structure is encouraged by planning staff to an appropriate area within the hazard lands designation.

The Municipality of West Grey Comprehensive Zoning By-law 37-2006 zones the subject lands C6-15 (rural commercial with exception), NE (natural environment), NE2 (natural environment 2), and A2 (rural). Exception 15 states that notwithstanding section 23, rural commercial zone, the lands zoned C6-15 may permit a sawmill, planer mill, single mill, building supply outlet, storage building, open storage, and accessory uses and structures.

The location of the proposed redevelopment is entirely within the NE (natural environment) zone. Planning staff are not satisfied that review of the relocation to the C6-15 zone has been conducted nor has an environmental impact study been provided to ensure that no negative impacts on the features and their functions within the NE zone will occur.



Although provision 6.21(c) permits the restoration and strengthening of existing non-conforming structures, planning staff are not supportive of the complete demolition and reconstruction in this location. Legal non-conforming uses are intended to phase out over the long-term as planning policy is updated. Planning staff acknowledge that policy 6.21(c) provides certain permissions for the use to continue, expansion of that use, in this case, without an evaluation of alternatives, is not considered an appropriate development of the subject lands.

In the opinion of planning staff, the appropriateness of this use has not been reviewed and demonstrated by the applicant through their agent. The application fails to meet this test in this regard.

2.0 Will the application result in undue adverse impacts on the surrounding properties and neighbourhood.?

As previously noted under subsection 1.0 supporting review of the application in the form of an environmental impact study or a planning justification report reviewing alternative relocations has not been provided.

In the absence of this supporting documentation, planning staff are not satisfied that this test has been met. The impact of development within the adjacent lands of a provincially significant wetland requires review under the 2020 PPS and the County of Grey Official Plan.

The permission related to a continuance of a non-conforming use is there to retain the rights of landowners in some respect. It is not intended for the expansion of uses where impacts may result in adverse impacts on adjacent lands to provincially significant wetlands and hazard lands. The provisions of 6.21(c) are intended for the proper maintenance and repair of structures, not their complete demolition and replacement, save and except in the case of acts of God. The NE (natural environment) zone and hazard lands designation specifically refer to property or lands that could be unsafe for development and site alteration due to naturally occurring hazards. These are further defined as potentially including unstable soils, organic soils or unstable bedrock in accordance with the 2020 PPS.

The County Official Plan further states that hazard lands means property or lands that could be unsafe for development due to naturally occurring processes. In this case, the lands are defined as a flooding hazard which means the inundation flooding resulting from the rainfall actually experienced during a major storm such as the Hurricane Hazel storm (1954) or the Timmins storm (1961), or a 100 year flood event.

Planning staff are concerned that the demolition and replacement of this structure, currently located in a hazard area, will experience the potential for the loss of property and / or human life. It is the opinion of planning staff that the evaluation of the potential impact has not been provided and the potential for a catastrophic event in future has not been reviewed nor mitigative measures provided for the subject lands or those lands within proximity to the proposed redevelopment.

The application, as provided fails to meet this test under section 45(2) of the Planning Act, R.S.O. 1990, as amended.

Legal and legislated requirements

None.

Financial and resource implications

None.

Staffing implications

None.

Consultation

- County of Grey Planning and Development Department
- Saugeen Valley Conservation Authority

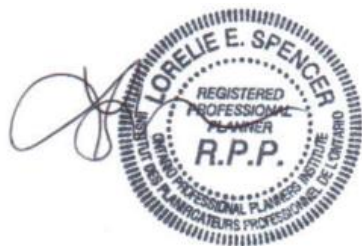
Attachments

- 1.) Aerial and official plan mapping
- 2.) Aerial and zoning map
- 3.) Commissioned application form
- 4.) County of Grey Planning and Development Department comments

Next steps

If approved, planning staff will provide notice of decision. Provided no appeals are received, the applicant will be advised that they can pursue their building permit.

Respectfully submitted:



Lorelie Spencer, Ba.U.R.PI. MCIP, RPP
Manager of Planning and Development