

Staff Report

Report To: Committee of Adjustment
Report From: David Smith, RPP, MCIP Manager of Planning and Development
Meeting Date: March 4, 2025
Subject: B21.2024 – Martin and Brubacher (Loft) Revised

Recommendations:

THAT in consideration of staff report 'B21.2024 – Martin and Brubacher (Loft) Revised', the Committee of Adjustment hereby grants provisional approval to consent application B21.2024 for the creation of a new agricultural lot as shown on Schedule 'A' attached to this decision and subject to the following conditions:

- i. THAT the owner provides a property tax certificate or, correspondence from the municipal finance department, indicating that all property taxes have been paid up-to-date with respect to the property that is subject to this decision;
- ii. THAT this decision applies only to 'Severed Lot 1' as indicated on Schedule 'A' attached to and forming part of this decision. The severed lot shall substantially conform with Schedule 'A';
- iii. THAT a Reference Plan (survey that is registered) be completed and a digital and/or hard copy be filed with the Secretary-Treasurer of the Committee of Adjustment, or an exemption from the Reference Plan be received from the Registrar. A draft copy of the Reference Plan shall be provided to the Secretary-Treasurer for review and approval prior to registration of the survey;
- iv. THAT pursuant to Section 53(42) of the *Planning Act*, the 'Certificate of Consent' be affixed to the deed within two years of the giving of the Notice of Decision. (Note: Section 53(43) of the *Planning Act* requires that the transaction approved by this consent must be carried out within two years of the issuance of the certificate (i.e., Stamping of the deed);
- v. THAT the owner provides a draft transfer prepared by a solicitor describing the legal description of the new lot;

- vi. THAT the owner pays a \$500 parkland dedication fee for the severed land in accordance with Section 51(1) of the *Planning Act* to the Municipality of West Grey;
- vii. THAT the owner submits a letter, or similar, indicating that the requirements of the County of Grey Transportation Department have been satisfied;
- viii. THAT the Clerk of the Municipality of West Grey provide written confirmation that a minor variance or zoning bylaw amendment is in force and effect recognizing a reduced 'Front Yard, Minimum' and any other required exemptions.

Highlights:

- B21.2024 was deferred at the February 4, 2025, Committee of Adjustment meeting.
- Municipal address: 142239 Grey Road 9
- The parcel is comprised of Part Lot 26 (142239 Grey Road 9), Part Lot 27 and Lot 28, Concession 10 Normanby. The total parcel is 110.2 hectares.
- The purpose and effect of the **AMENDED** application is to sever one Agricultural lot and Retain one Agricultural lot:
 - i. Severed Lot 1 = 40.0-hectare Agricultural lot with frontage onto Grey Road 9;
 - ii. Retained Lot = 69.8-hectare Agricultural lot with frontage onto Grey Road 9.
- The property is designated as 'Agricultural' and 'Hazard' in the Grey County Official Plan. Aggregate Resource Area (Schedule B); Significant Woodlands (Appendix B) constraints have also been identified on the lot.
- The 40.0 hectare severed Agricultural lot will have regard to the Grey County Official Plan for newly created agricultural lots.
- The 40.0 hectare severed Agricultural lot will meet the 'Lot Area, Minimum' requirement of the West Grey Zoning Bylaw.
- The lot is subject to Saugeen Valley Conservation Authority (SVCA) Regulated Areas in part.
- There would be a dwelling and farm buildings on both the severed and retained agricultural lots.

Previous Report/Authority:

[B21.2024 - Martin and Brubacher \(Loft\) - Feb 4, 2025 Planning Report](#)

Analysis:

Comments – Agencies:

The application was submitted to the standard commenting agencies. Comments have been received from the following:

West Grey Public Works: No concerns.

West Grey Building: No concerns.

County of Grey comments (Excerpt from County Planning Comments Application B21.2024 dated February 21, 2025):

The proposed severance would create a new 40-hectare Agricultural lot. The new lot would be considered to be farm sized. Therefore, County staff have no concerns

... the proposed severance is considered to be farm sized and would be permitted within the Aggregate Resource Area. Therefore, County Planning staff have no concerns.

... it is Grey County Staffs opinion that the potential impact to natural heritage would be negligible and the requirement for a scoped Environmental Impact Study (EIS) can be waived

County Transportation Services have reviewed the subject application and have no concerns. Provided positive comments are received from the Conservation Authority; County Planning staff have no concerns with the subject application.

Saugeen Valley Conservation Authority: SVCA staff find the proposal to be acceptable. Part of the proposed development is within a SVCA Regulated Area and will need permission from the SVCA.

Comments – Public:

All written comments received as of February 24, 2025, are included in an attachment to this report.

Background

Severed Lot 1: Part Lot 26 Concession 10 = 40.0 ha.

Retained Lot: Part Lot 27/Lot 28 Concession 10 = 69.8 ha.

There is an existing house, barn and shed on the lot to be severed. There are no buildings/structures on the lot to be retained. Most of the parcel is farmland or forested.

West Grey Committee of Adjustment (COA) held a public hearing on consent file B21.2024 on February 4, 2025. The COA deferred a decision on consent file B21.2024.

The following documents were submitted by Loft Planning in support of consent file B21.2024:

- Amendment to application B21.2024 – dated February 19, 2025
- Addendum Planning Justification Letter to Files B21/2024 and B22/2024 and ZA17.2024 prepared by Loft Planning - dated November 19, 2024
- Planning Justification Letter prepared by Loft Planning – dated July 29, 2024
- Agricultural Study prepared by Beacon Environmental – dated 2024-06-24
- Farm Business Plan prepared by Loft Planning

Planning Act, RSO 1990, as amended

The applicant(s) may amend their application at any time prior to West Grey Committee of Adjustment giving or refusing to give the consent:

53(4.2.1) Amendment to application (Consents)

An application may be amended by the applicant at any time before the council or the Minister gives or refuses to give a consent. 2021, c. 25, Sched. 24, s. 4 (2).

West Grey Committee of Adjustment may impose such terms on the amended application as the Committee considers appropriate:

53(4.2.2) Terms (Consents)

If an application is amended by the applicant, the council or the Minister may impose such terms as the council or Minister considers appropriate, including terms,

(a) requiring the provision of additional information and material in relation to the amendment; and

(b) specifying that the time period referred to in subsection (14) is deemed not to have begun until the later of,

(i) the date the application was amended, and

(ii) if additional information and material was required under clause (a), the date on which all the information and material was provided. 2021, c. 25, Sched. 24, s. 4 (2).

There is no requirement in the *Planning Act* to provide additional notice or another public meeting when an application is amended.

It is at the sole discretion of the Committee of Adjustment to determine whether additional terms i.e., another public meeting, are to be imposed on the application.

In the opinion of the Manager of Planning and Development, the revision to the application from a 38.6 hectare consent to a 40 hectare consent, is minor, and further, that no additional ‘terms’ be required.

“Tests” of a Consent

In determining whether a provisional consent is to be given, the Committee of Adjustment shall have regard to matters under subsection 51(24) of the *Planning Act*:

53(12) Powers (Consents)

A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51(24) and has the same powers as the approval authority has under subsection 51(25) with respect to the approval of a plan of subdivision and subsections 51(26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent. 1994, c. 23, s. 32.

Subsection 51(24) of the Planning Act provides criteria to which regard shall be had such as:

51(24) Criteria

In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

(b) whether the proposed subdivision is premature or in the public interest;

(c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;

(d) the suitability of the land for the purposes for which it is to be subdivided;

(d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;

There are a further nine general criteria to which the Committee of Adjustment “shall have regard to.”

“Shall have regard to” does not mean “absolute adherence to”.

The preamble to section 51(24) makes it clear that it is up to the approval authority, the West Grey Committee of Adjustment, to decide what is relevant to their decision.

Section 51(24) requires the Committee of Adjustment to have ‘regard’ for various matters, but it does not mandate ‘conformity’ with an official plan. As to ‘conformity’ with an official plan, the criteria list only requires that consideration be given to “whether” the consent conforms to the official plan and not that the consent must conform.

Source: [Troister, S.H. LLB, KC, LSM](#) (Ontario Law Society Medal]. 2022. *The Law of Subdivision Control in Ontario 4th Edition. A Practical Guide to Section 50 of the Planning Act*. Thomson Reuter. Toronto, ON.

Provincial Planning Statement 2024 (PPS)

As of October 20, 2024, the new Provincial Planning Statement applies to all decisions in respect of the 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.

The parcel is located on ‘Agricultural’ and ‘Natural Hazard’ lands as defined in the PPS. A ‘Natural Heritage’ area (Significant Woodlands) and ‘Mineral Aggregate Resources’ (Aggregate Resource Area) constraints are also identified on the parcel.

Natural Heritage

Policy 4.1 Natural Heritage identifies the need for the wise use and management of natural heritage resources. As previously noted, Significant Woodlands are identified on the lands. Policies 4.1.5 and 4.1.8 state that *development* and *site alteration* is not permitted in, nor on lands adjacent to, *significant woodlands* unless it has been demonstrated that there will be no *negative impacts* on the natural features or their *ecological functions*.

The Grey County Planning Ecologist has stated that the requirement for an Environmental Impact Study (EIS) to determine if there will be any negative impact on the natural features or their ecological functions due to the development, the severance of an agricultural lot, can be waived.

It should be noted that Policy 4.1.9 Natural Heritage further states that: *“Nothing in policy 4.1 is intended to limit the ability of agricultural uses to continue.”*

Agricultural

Policy 4.3.2.1 Permitted Uses (Agriculture) states that:

In prime agricultural areas, permitted uses and activities are: agricultural uses, agricultural-related use and on-farm diversified uses based on provincial guidance.

Policy 4.3.2.2 Permitted Uses (Agriculture) goes further and states that:

In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.

Policy 4.3.3.1(a) Lot Creation and Lot Adjustments permits lot creation in prime agricultural areas for:

“agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations”.

The PPS does not provide, or require, a minimum lot size in an agricultural area. This is because agricultural activities and ‘farm size’ vary significantly across Ontario and a one-size-fits-all policy would be unworkable.

Grey Official Plan however has set a ‘generally 40 hectare’ lot size for new agricultural uses/lots in the Agricultural area:

5.2.2(2) Agricultural Development Policies (Agricultural Land Use Type)

*In the Agricultural land use type, newly created farm lots should **generally** be 40 hectares (100 acres) in size, in order to reduce the breakup of farmland. New lot creation shall be in accordance with section 5.2.3 of the Plan.*

The proposed 40 hectare severed lot and 69.8 hectare retained lot would be consistent with the Grey Official Plan.

Policy 4.3.2.3 Permitted Uses (Agriculture) requires that new land uses, including the creation of lots, comply with minimum distance separation formulae. MDS calculations have been provided by the applicants. The calculations indicated that there is a small area in the southeastern corner of the retained agricultural lot that would be subject to building restrictions. All new dwellings on the retained agricultural lot will need to be constructed outside of the MDS I setback requirements. MDS II calculations provided by the applicants indicate that there is sufficient room on the proposed agricultural lots to construct new livestock barns.

Mineral Aggregate Resources

Policy 4.5.5 Mineral Aggregate Resources provides policy direction on development in areas of known mineral aggregate resources. Development and activities which would preclude or hinder the establishment of new aggregate operations or access to the aggregate resource is only permitted if:

- a) use of the aggregate resource would not be feasible; or*
- b) the proposed land use or development serves a greater long term public interest.*

An Aggregate Resource Area constraint has been identified across approximately 3.38 hectares of the proposed severed lot and across the majority of the retained agricultural lot.

The Grey County Official Plan has set minimum lot areas that in the opinion of the County would theoretically permit the future extraction of the aggregate resource or, at the very least, not hinder the extraction on abutting/nearby properties. This is reviewed further under the Grey County Official Plan section below.

Natural Hazards

Policy 5.2 Natural Hazards addresses hazards that may arise due to development on lands adjacent to river, stream and small inland lake systems which are impacted by flooding hazards and/or erosion hazards. SVCA Regulated Area has been identified on the proposed agricultural lots. There is sufficient land area outside of the Regulated Area on the proposed lots for a dwelling, farming and other purposes.

The Manager of Planning and Development is of the opinion that the consent is consistent with the PPS.

Grey County Official Plan (Grey OP)

The subject lands are designated as ‘Agricultural’ and ‘Hazard’ on Schedule A of the Grey OP.

Schedule B identifies ‘Aggregate Resource Area’ on the lands. Appendix B identifies ‘Significant Woodlands’ on the lands.

Agricultural Area – Minimum Lot Size Requirement

Section 5.2.3.1 Consent Policies (Agricultural land use type) require new agricultural lots to generally be 40 ha. (100 acres) in size, to reduce the fragmentation of prime agricultural land.

The severed and retained agricultural lots would meet or exceed the minimum agricultural lot size.

Agricultural Area – Minimum Distance Separation

Section 5.2.3.1.7 Consent Policies require both the severed lot and the retained lot to comply with the Minimum Distance Separation (MDS) Formula.

There is an existing dwelling on the agricultural lot to be severed. MDS Guideline 8 does not require an MDS I setback for a severed lot for an *agricultural use* when that *lot* already has an existing *dwelling* on it.

A new dwelling would be constructed in the agricultural lot to be retained. There is sufficient area on the retained lot to meet the MDS I requirements for a new dwelling.

Aggregate Resource Area – Minimum Lot Size Requirement:

The Grey OP has set minimum lot areas that in the opinion of the County would theoretically permit the future extraction of the aggregate resource or, at the very least, not hinder the extraction on abutting/nearby properties.

Section 5.2.2(8) (Agricultural Development Policies) of the Grey OP states that:

Non-farm sized lot creation is not permitted within an area identified as Aggregate Resource Area on Appendix B to this Plan.

In addition, the County OP defines farm sized as:

- *Agricultural = 40 hectares,*

The severed and retained agricultural lots would meet or exceed the minimum agricultural lot size.

Hazard Lands

Section 7.2(3) prohibits the establishment of new buildings or structures within the Hazard designation. There are sufficient lands outside of the Hazard for the construction

of a dwelling and livestock facilities on each proposed agricultural lot. The SVCA has noted they have no concerns with the application.

Significant Woodlands

Section 7.4(1) states that no development or site alteration may occur within Significant Woodlands, or within 120 metres of the feature, unless it has been demonstrated through an environmental impact study that no negative impacts will occur. The proposed agricultural lots have sufficient lands outside of the 120 metre adjacent lands from the Significant Woodlands constraint such that an Environmental Impact Study (EIS) is not required. The Grey Planning Ecologist has determined that an EIS is not required for the proposed development.

The Manager of Planning and Development is satisfied that the consent conforms to the policies of the Grey County Official Plan.

Municipality of West Grey Comprehensive Zoning Bylaw 37-2006

The West Grey Zoning Bylaw zones the lands as 'A1 – Agricultural' and 'NE - Natural Environment'.

The 'A1' zone sets a Lot Area, Minimum of 40 hectares. The proposed severed lot and retained lot meet the Lot Area, Minimum requirements of the Bylaw. The 'A1' zone sets a Front Yard, Minimum of 20 metres for residential and accessory buildings. The dwelling on 'Severed Lot 1' has a Front Yard of approximately 5 metres and would generally be considered to have a legal non-conforming status.

A concurrent zoning bylaw amendment application has been submitted for the proposed reduced Front Yard, Minimum.

A condition requiring a zoning bylaw amendment to be in force has been included in the Provisional Consent.

The Manager of Planning and Development is of the opinion, provided a zoning bylaw amendment is approved and in force, that the consent maintains the intent and purpose of the West Grey zoning bylaw and represents good planning.

Financial Implications

Potential appeal to the Ontario Land Tribunal.

Climate and Environmental Implications:

As reviewed in this Report.

Communication Plan

As required under the Planning Act, R.S.O. 1990, as amended.

Consultation

As required under the Planning Act, R.S.O. 1990, as amended.

Attachments:

1. Public Comments received
2. Schedule A – B21.2024 (Martin and Brubacher)
3. Aerial
4. Grey Official Plan Schedule A
5. Grey Official Plan Schedule B
6. Grey Official Plan Appendix B
7. SVCA Regulated Area
8. West Grey Zoning

Recommended by:

David Smith, RPP, MCIP, Manager of Planning and Development

Submission reviewed by:

Michele Harris, Chief Administrative Officer

For more information on this report, please contact David Smith, Manager of Planning and Development at planning@westgrey.com or 519-369-2200 Ext. 236.