



Planning and Development Services

Prepared for: Committee of Adjustment

Meeting Date: December 19, 2024

Application Number: B48/24

Address: 4924 Sherkston Road, Fort Erie

Owner/Applicant: John Day and Barbara Day

Agent: Carol Moroziuk

1. Title

Consent Application B48/24 for lands located at 4924 Sherkston Road, Fort Erie

2. Proposal

The purpose and effect of this application is to permit severance of a surplus farm dwelling on the subject lands.

The Applicant seeks to convey a surplus farm dwelling (Part 1 on the Consent Sketch) from the remnant lands (Part 2) which will continue its agricultural use. Part 1 is proposing 100.46 metres of lot frontage along Sherkston Road and a lot area of 0.62 hectares. Part 2 is proposing 818.65 metres of lot frontage along Point Abino Road North and a lot area of 28.09 hectares.

3. Recommendations

It is recommended that Consent Application B48/24 be **APPROVED**, subject to the following conditions:

1. That the Owner / Applicant receive final approval of a Minor Zoning By-law Amendment application by Council to permit the creation of a lot intended for the surplus farm dwelling and to implement Agriculture Production Only (APO) zoning on the remnant lands, to the satisfaction of the Town;
2. That the Owner / Applicant submit and receive final approval of a Planning Justification Report (PJR) prepared by a Registered Professional Planner (R.P.P.) to the satisfaction of Niagara Region and the Town of Fort Erie. The PJR will be required to contain a Minimum Distance Separation I (MDS I) calculation in accordance with Provincial requirements to confirm that the proposed new lot meets separation requirements from any existing livestock facilities that may exist in the area. The PJR will also be required to justify the proposed lot area of Part 1 as it is

greater than 0.40 hectares;

3. That the Applicant's Solicitor and / or Land Surveyor provide the Secretary-Treasurer with a legal description of the lands to be severed to be registered on title together with a draft copy of the reference plan for approval and an original and electronic copy (in AutoCAD.dwg and PDF format) of the deposited reference plan if required, for use in the issuance of the Certificate of Consent;
4. That the Applicant's Solicitor provide the Secretary-Treasurer with a firm Undertaking to register the Transfer and provide a copy of the registered Transfer as soon as possible after registration;
5. That the final certification fee payable to the "Town of Fort Erie" be submitted to the Secretary-Treasurer. Reminder: consent is not considered final prior to final consent certificate being issued; and,
6. That in the event of any tree removal, or development that may result in injury or harm to a public or private tree, the Owner / Applicant shall submit and receive final approval of a Tree Protection Plan and Arborist Report prepared by an ISA Certified Arborist (or per the Town's definition in the By-law) to the satisfaction of the Town.
7. That in the event of any tree removal requiring re-planting, the Owner / Applicant shall submit and receive final approval of a Landscape Plan prepared by a member of the OALA in good standing demonstrating the re-planting using compensation ratios per Table B.1 of (Tree) By-law No. 33-2024, as amended, to the satisfaction of the Town.
8. That the Owner / Applicant make payment in the amount of \$1,000.00 to the Town of Fort Erie for a boulevard street tree. The Tree will be placed on the road allowance frontage if it is practical to do so, otherwise the tree will be planted elsewhere in the Town to enhance the Tree Canopy Cover.

4. Analysis

4.1 Site Context

The subject lands are located in an agricultural area of the Town of Fort Erie outside of the Urban Boundary. The subject lands have a single detached dwelling on it in addition to several accessory structures. The majority of the rear of the parcel is farmed. There is also a wooded area at the northern edge of the subject lands that is identified as Provincially Significant Wetland under the regulation of the Niagara Peninsula Conservation Authority (NPCA). The surrounding land uses are as follows:

- North: An untravelled Town-owned road allowance, vacant, wooded land, a single detached dwelling, the Town's Fort Erie Friendship Trail and agricultural land.
- East: Point Abino Road North, single detached dwellings, wooded area, and agricultural land.
- South: Sherkston Road, single detached dwellings and agricultural land.
- West: Vacant agricultural land, vacant wooded land and a single detached dwelling.

4.2 Environmentally Sensitive Areas

The northern edge of the subject lands contains a wooded area that is identified as Provincially Significant Wetland (PSW) area that is under the regulation off the Niagara Peninsula

Conservation Authority (NPCA). There is also a small area designated Environmental Conservation along the west property line near the northern edge of the parcel. The remainder of the parcel is free of any natural heritage features.

The NPCA has confirmed that the proposed severance will not impact the NPCA regulated area and therefore the agency has no objection to this proposal.

Niagara Region did not provide environmental comments and did not request completion of an Environmental Impact Study (EIS) for this application. Planning staff note that the PSW area is part of the Niagara Official Plan's Natural Environmental System, however the proposed severance will not have any impacts to this area as it will remain with the remnant parcel (Part 2).

Town Environmental Planning staff noted the PSW and its associated buffer impact the northern portion of the site. It is noted that this proposal does not impact any of the natural heritage features on site. An EIS is not being requested by Town Environmental Planning staff for this proposal.

The Town's Environmental Planning staff note that the subject lands are subject to the Town's Tree By-law 33-2024. If tree removal is proposed, the Applicant will be required to submit a Tree Preservation Plan, an Arborist Report (prepared by an International Society of Arboriculture (ISA) Certified Arborist) and a Landscape Plan (prepared by an Ontario Association of Landscape Architects (OALA) in good standing).

The requirement for a Tree Preservation Plan, an Arborist Report and a Landscape Plan will be required as a condition of approval as a precautionary measure. If no tree removal is proposed Town Environmental Planning staff can clear the condition.

4.3 Planning Context

Planning Act, R.S.O. 1990, c. P.13

A proposal for a Consent can be considered proper and orderly development without the need for a Plan of Subdivision pursuant to Section 51 of the *Planning Act*. This Consent proposes severance of a surplus farm dwelling that will result in creation of only one lot. Given the relatively limited scope of the proposal it is the opinion of Planning staff that development review through a Plan of Subdivision process is not required.

Section 53(12) of the *Planning Act* requires that the criteria set out under Section 51(24) shall be given regard for matters such as health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality when considering an application for Consent. The *Planning Act* requires that consents have regard to the dimensions and shapes of the proposed lots. The lands to be severed (Part 1) will be slightly irregular in shape, however this is a result of Sherkston Road being diagonal and the alignment of the single detached dwelling along the road. The remnant parcel (Part 2) will be irregular, however this is an existing situation due to the large size of the subject lands. It is the opinion of Planning staff that the application has appropriate regard for the *Planning Act*.

Provincial Planning Statement, 2024 (PPS)

The subject property is located within a Prime Agricultural Area under the Provincial Planning Statement (PPS). The proposed consent application for creation of a lot intended for a surplus farm dwelling is permitted under Subsection 4.3.3 1. c) of the PPS, provided that:

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 dwellings and additional residential units are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new dwellings or additional residential units are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches that achieve the same objective.

Staff Response

The proposed lot (Part 1) is of sufficient size to accommodate the existing dwelling and appropriate sewage and water services while minimizing impacts to the remnant lands which will continue its agricultural use. A Minor Zoning By-law Amendment will be required to permit the lot creation and to implement Agriculture Production Only (APO) zoning on the remnant lands (Part 2). This will be a condition of approval of this Consent application. It is of the opinion of Planning staff that the proposed lot is consistent with the policies of the PPS.

Niagara Official Plan, 2022 (NOP)

The subject property is located within a Prime Agricultural Area in the NOP. Subsection 4.1.6.2 permits severance of a 'residence surplus to a farming operation' under the following circumstances:

- a. The lot contains a habitable residence, which existed as of June 16, 2006, that is rendered surplus as a result of farm consolidation;
- b. The size of any new lot shall be an area of 0.4 hectares except to the extent of any additional area deemed necessary to support an on-site private water supply and private sewage disposal system as determined by Provincial and Regional requirements to a maximum of one hectare; and
- c. To reduce fragmentation of the agricultural land base, the retained lot shall be merged with an abutting parcel. Where merging of two lots is not possible, the retained farm parcel shall be zoned to preclude its use for residential purposes.

Staff Response

Planning staff note that Municipal Property Assessment Corporation (MPAC) records indicate that the surplus dwelling on the subject lands was constructed in 1918. The size of Part 1 is 0.62 hectares which is within the range of 0.40 hectares to 1.00 hectares required by the NOP. The Town of Fort Erie will require a Minor Zoning By-law Amendment to permit the lot creation and

to implement Agriculture Production Only (APO) zoning on the remnant lands (Part 2). This will be a condition of approval of this Consent application. It is of the opinion of Planning staff that the proposed lot is consistent with the policies of the NOP.

Town of Fort Erie Official Plan, 2021

The subject lands are designated “Agricultural”, in part, “Environmental Conservation”, in part, and “Environmental Protection”, in part, in the Town’s Official Plan. It is noted that the lot intended for the surplus farm dwelling is located in the portion of the subject lands that is designated Agricultural and the proposed severance will not impact the areas that are designated Environmental Conservation or Environmental Protection.

The Official Plan permits creation of a lot for a surplus farm dwelling, subject to the following criteria:

- a. No residential development will be permitted on a vacant remnant parcel of farmland created by the consent. As a condition of any severance involving a vacant remnant, the remnant parcel shall be rezoned to exclude its use for residential purposes in perpetuity, and the Town shall effect such rezoning;

Staff Response

Planning staff will require a Minor Zoning By-law Amendment to permit the lot creation and to implement Agriculture Production Only (APO) zoning on the remnant lands (Part 2) as a condition of approval. This site-specific zoning will contain a zoning provision that will prohibit any future residential uses on Part 2.

- b. The surplus dwelling, is of sufficient quality and value to warrant its retention as a non-farm residence and meets existing maintenance and occupancy by-law standards;

Staff Response

Planning staff have reviewed the single detached dwelling on the subject lands and note that it is in good condition and is sufficient for habitation purposes.

- c. The dwelling is surplus to the owner’s present and future needs for family residence and farm help purposes;

Staff Response

The Applicant has provided documentation confirming that the proposed buyer of Part 2 is a farmer that is incorporated. It is stated in the application form that the intent of the buyer is to continue to farm Part 2.

- d. A surplus farm dwelling should only be severed if the dwelling can meet the Minimum Distance Separation Formula for livestock operations or buildings capable of housing livestock operations as set out in the Town’s Zoning By-law;

Staff Response

Planning staff have requested a Planning Justification Report (PJR) as a condition of approval of this Consent. The PJR will be required to include a Minimum Distance Separation I (MDS I) calculation to confirm that the proposed lot meets Provincial MDS requirements for separation from nearby livestock facilities (if they exist).

- e. The remnant parcel of farmland should be a substantial size to function as a significant part of the overall farm unit;

Staff Response

The remnant parcel, Part 2, will retain 28.09 hectares of lot area. The entire farmed portion of the subject lands will remain as part of the remnant parcel and will continue its agricultural use.

- f. The new lot created with the surplus farm dwelling will not be further subdivided and not more than one dwelling may be located thereon; and

Staff Response

The Minor Zoning By-law Amendment required as a condition of approval will include site-specific zoning provisions that permit the reduced lot area proposed for Part 1. It will not be possible to further sever the proposed new lot as the minimum lot area will be 0.62 hectares. Planning staff note that recent changes to the 2024 PPS permit more than one dwelling on an agricultural parcel as of right and this supersedes the Town's Official Plan policies that intend to restrict more than one dwelling. However, it is noted that the Applicants do not intend, at this time, to construct additional dwelling units on the subject lands.

- g. The size of the new lot should be a minimum of 0.4 hectares. in size, unless additional lands are required for the installation of a private sewage disposal system or for a private water supply.

Staff Response

The proposed lot area of Part 1 is 0.62 hectares, meeting the minimum lot area requirement.

Planning staff are of the opinion that this Consent application is consistent with the Town's Official Plan policies for a surplus farm dwelling severance as outlined above.

Comprehensive Zoning By-law No. 129-1990, as amended

The subject lands are zoned "Agricultural (A) Zone", in part, "Environmental Conservation (EC) Overlay Zone", in part, and "Environmental Protection (EP) Zone", in part, in accordance with the Town's Zoning By-law. Similar to the Official Plan land use designations, the EC Overlay Zone and EP Zone areas are located on the northern portion of the subject lands and will not be impacted by this proposal.

A Minor Zoning By-law Amendment will be required to implement this Consent application and will be a condition of approval. The Minor Zoning By-law Amendment is required to permit

reduced lot area for Part 1 and to implement Agricultural Production Only (APO) zoning on Part 2. The APO zoning will prohibit any future residential uses on the remnant parcel.

Planning staff note that the proposed Consent will comply with the Zoning By-law if the Minor Zoning By-law Amendment is approved by Council. If Council does not approve the Zoning By-law Amendment the Applicants will be unable to clear the conditions of approval for this Consent and the Consent will lapse. If the Committee of Adjustment approves this application the Applicants will have two years from the date of the decision by the Committee to complete the Zoning By-law Amendment and register the proposed new lot.

4.4 Comments from Departments, Community and Corporate Partners

Building Division

No objection.

Community Planning

No objection.

Environmental Planning

The subject property is not located within the Town's Urban Boundary but is within Natural Heritage system. There are Natural Heritage features present. There is a regulated wetland at the north end of the property, as well as a wetland buffer from an adjacent property. The lands are subject to the Town's Tree By-law 33-2024. If any trees are proposed to be removed from the lands, the subsequent removal application must be accompanied by a Tree Protection Plan, an Arborist report (ISA Certified Arborist or per the Town's definition in the By-law) and a Landscape Plan (GALA in good standing).

Based on the drawing provided by the applicant it appears that the proposed work does not encroach on any natural heritage features.

Conditions:

1. That the Owner / Applicant submit an Arborist Report and Tree Preservation Plan prepared by a qualified arborist in accordance with the Town's (Tree) By-law No. 33-2024, as amended, to the satisfaction of the Town.
2. That the Owner / Applicant submit a Landscape Plan prepared by a qualified person, OALA in good standing or equivalent, demonstrating the re-planting using compensation ratios per Table B.I of (Tree) By-law No. 33-2024, or payment of cash-in-lieu at the prevailing rate, to the satisfaction of the Town.
3. That the Owner / Applicant make payment in the amount of \$1,000.00 to the Town of Fort Erie for a boulevard street tree. The Tree will be placed on the road allowance frontage if it is practical to do so, otherwise the tree will be planted elsewhere in the Town to enhance the Tree Canopy Cover.

Infrastructure Services

Infrastructure Services staff note that the subject lands are within the drainage area of three municipal drains. The west side is within the Baer Drain drainage area. The east side of the property is within the Schooley Drain and the Beaver Creek South Tributary drainage area. There are no objections to this Consent application.

Niagara Peninsula Conservation Authority (NPCA)

Further to your request for comments for the consent for the above noted property, the Niagara Peninsula Conservation Authority (NPCA) can offer the following.

The NPCA regulates watercourses, flood plains (up to the 100-year flood level), Great Lakes shorelines, hazardous land, valleylands, and wetlands under Ontario Regulation 41/24 of the Conservation Authorities Act. The NPCA Policy Document: Policies for Planning and Development in the Watersheds of the Niagara Peninsula Conservation Authority (NPCA policies) provides direction for managing NPCA regulated features.

The NPCA has reviewed the NPCA mapping of ARN 270302001828100 and notes that, the area of proposed lot creation/severance is outside of our regulated areas. As such, the NPCA has no objection.

Please be advised that the Part 2 is impacted by NPCA Regulated Areas. In the case that future works are proposed within an NPCA Regulated Area, the NPCA would require to review and approval works and issue work permits prior to the start of development.

Niagara Region

Niagara Region staff note that the subject lands are within a Prime Agricultural Area in the NOP. The NOP permits severance of a residence surplus to a farm dwelling provided the criteria in Subsection 4.1.5.2 is met.

Regional staff reviewed an affidavit provided by the Applicants that establishes that the proposed buyer of Part 2 is a genuine farmer that is incorporated.

The lot area of Part 1 is greater than 0.40 hectares, however Region staff acknowledge that the lot area of 0.62 hectares for Part 1 is being proposed to achieve consistency with lot lines with neighbouring parcels and to wholly contain the existing septic system for the single detached dwelling.

The Region notes that the subject lands are in an area with archaeological potential as identified in the NOP. As no new construction is being proposed and APO zoning will be required on Part 2, the Region will waive the requirement for an Archaeological Assessment. It is noted that future Planning Act applications may require completion of an Archaeological Assessment. The Region has also provided a warning clause for the Applicant's information, as follows:

If deeply buried or previously undiscovered archaeological remains/resources are found during development activities on the subject lands, all activities must stop immediately. If the

discovery is human remains, contact the Niagara Regional Police Service and coroner to secure the site. If the discovery is not human remains, the area must be secured to prevent site disturbance. The project proponent must then follow the steps outlined in the Niagara Region Archaeological Management Plan: Appendix C. <https://pre.niagararegion.ca/culture-and-environment/pdf/archaeologicalmanagement-plan.pdf>

Regional staff note that an on-site inspection of the existing septic system has occurred. While no record of a septic system is available portions of the septic system were observed. It is noted that the septic system is wholly contained on Part 1. The proposed lot area of Part 1 is also sufficient if a new septic system is required at a future date.

Niagara Region staff conclude that the proposed application is consistent with the PPS and the NOP, subject to future APO zoning on Part 2 to preclude its use for future residential development.

5. Conclusion

Based on the above analysis, Planning Staff recommend Consent Application B48/24 be **APPROVED** subject to recommended conditions.

6. Report Approval

Prepared by:
Daryl Vander Veen
Intermediate Development Planner

Reviewed and Submitted by:
Devon Morton, MCIP, RPP
Supervisor of Development Approvals

7. Attachments

Appendix 1 – Consent Sketch