

**DATE:** June 23<sup>rd</sup>, 2021

**REPORT NO:** COA-019-21

**SUBJECT:** **Recommendation Report**  
Application for Minor Variance by Cody Kelly  
File No. A13/2021WL

**CONTACT:** Madyson Etzl, Planner II  
Brian Treble, Director of Planning and Building

**OVERVIEW:**

- A minor Variance application has been submitted by Cody Kelly for the property legally known as Concession 1, Part Lot 13, in the former Township of Gainsborough, now in the Township of West Lincoln, Region of Niagara. Municipally known as 5352 Elcho Road.
- This Minor Variance application has been applied for to permit an accessory building to be located in the front yard, specifically 3.7 metres (12.14 feet) closer to the front lot line than the main building with a setback of 19.3 metres (63.32 feet) to the front lot line.
- Whereas Table 1-1 of the Township Zoning Bylaw 2017-70, as amended, identifies that an accessory building cannot be in the front yard and cannot be located closer to the front lot line than the main building.
- To avoid the septic bed, propane tank, and to still utilize the existing driveway the applicant has proposed the accessory building to be positioned roughly 3.7 metres closer to the front lot line.
- The Township's Zoning By-law identifies that where private garages are permitted, an attached private garage may project up to a maximum of 4 metres closer to the front lot line than the main front wall of the dwelling.
- Even though the proposed accessory building is not attached it is proposing a variance that is less than what would be required if it were to be attached to the main building.
- The minor variance application has been reviewed against the four tests of a Minor Variance and can be recommended for approval.

**RECOMMENDATION:**

1. THAT, the application for the Minor Variance made by Cody Kelly as outlined in Report COA-019-21, to permit an accessory building be built 3.7 metres closer to the front lot line than the main building with a setback of 19.3 metres to the front lot line, BE APPROVED subject to a required condition:
  - a. That the Department of Planning and Building approve the exterior design of the accessory building, which shall be alternatively designed in keeping with the residential characteristic of the property.

**BACKGROUND:**

The subject lands are situated on the south side of Elcho Road and the east side of Wellandport Road, being legally described as Concession 1, Part Lot 13, in the former Township of Gainsborough, now in the Township of West Lincoln, Region of Niagara. The subject property is municipally known as 5352 Elcho Road. (See attachment 1 for a site sketch)

The subject property is approximately 2 acres (0.81 hectares) in size. The property has a Good General Agricultural designation and is zoned Agricultural. The surrounding properties to 5352 Elcho Road also share the Good General Agricultural designation and Agricultural zoning.

This Minor Variance application has been applied for to permit an accessory building to be located in the front yard, specifically 3.7 metres (12.14 feet) closer to the front lot line than the main building with a setback of 19.3 metres (63.32 feet) to the front lot line. Whereas Table 1-1 of the Township Zoning Bylaw 2017-70, as amended, identifies that an accessory building cannot be in the front yard and cannot be located closer to the front lot line than the main building. The applicant indicated that to avoid the septic bed the front yard is the only place to build the accessory building.

**CURRENT SITUATION:**

Planning Staff have completed an analysis of the proposed Minor Variance application and can provide the following evaluation:

**Does the proposal maintain the general intent and purpose of the Official Plan?**

**Yes**

The property is designated as Good General Agriculture under the Township's Official Plan. The Good General Agricultural Zone comprises those lands designated as the second highest level of protection and preservation for agricultural purposes. Residential and accessory residential uses are permitted in the Good General Agricultural designation. The proposed accessory building will be accessory to the existing residence on the property and would not significantly impact the environment nor negatively impact neighbouring residential properties.

Township Planning Staff are of the opinion that the minor variance meets the general intent and purpose of the Official Plan as the proposed use is permitted.

**Does the proposal maintain the general intent and purpose of the Zoning By-law?**

**Yes**

The subject land is zoned Agricultural 'A' in the Township's Zoning By-law 2017-70, as amended, and is 0.81 hectares (2 acres) in size. The agricultural zone permits single detached dwellings and their associated accessory buildings. The proposed accessory building is a permitted use under the regulations of the Agricultural Zone.

Under the Township's Zoning By-law accessory buildings shall be no closer to the front lot line than the main building. This ensures that there is a consistent streetscape throughout the Township of West Lincoln and that the main buildings on the lot are the

prominent buildings, and the accessory buildings are seen as accessory.

The applicant would like to utilize the existing drive way with the accessory building. The drive way runs to the east of the house and to the rear the drive way is the applicant's propane tank and a tree and to the rear of the dwelling is the property's septic bed. To avoid the septic bed, propane tank, and to still utilize the existing driveway the applicant has proposed the accessory building to be positioned roughly 3.7 metres (12.14 feet) closer to the front lot line than the main building with a setback of 19.3 metres (63.32 feet) to the front lot line.

Section 3.12.7.f.iii. of the Township's Zoning By-law identifies that where private garages are permitted, an attached private garage may project up to a maximum of 4 metres closer to the front lot line than the main front wall of the dwelling on the same lot. Even though the proposed accessory building is not attached it is proposing a variance that is less than what would be required if it were to be attached to the main building at a distance of 3.7 metres (12.14 feet) closer to the front lot line than the main building. In addition, the accessory building will be maintaining a setback of 19.3 metres (63.32 feet) to the front lot line which is further than the 15 metres that the Township's Zoning By-law requires for the dwelling on the property.

Township Planning Staff are of the opinion that the minor variance meets the general intent and purpose of the Township's Zoning Bylaw.

**Is the proposal desirable for the appropriate development or use of the land?**  
**Yes**

The applicant has proposed to construct a 71.35 square metre accessory building. The applicants started inquiring about a building permit in April of this year with Township staff, in which planning staff determined it had to go through a Minor Variance Application to permit its location. This building is proposed to be used for residential storage and as a garage, which is permitted on an Agricultural property. As such, Planning Staff are of the opinion that the requested variance, regarding the location of the accessory building, is appropriate development and use of the land on this property.

**Is the proposal minor in nature?**  
**Yes**

The subject application is requesting to permit a proposed accessory building be built 3.7 metres (12.14 feet) closer to the front lot line than allowed on the property. If the accessory building, which is proposed to be used for storage and as a garage, was attached to the dwelling it would be able to project up to 4 metres closer to the front lot line. However, since it is not proposed to be attached it is not allowed to project from the dwelling to the front lot line.

Township planning staff are of the opinion that the requested variance of the proposed garage is minor in nature as what is being requested is 0.3 metres (0.98 feet) less than what would be allowed if the accessory building was attached to the dwelling.

**FINANCIAL IMPLICATIONS:**

There are no financial implications associated with this application.

**INTER-DEPARTMENTAL COMMENTS:**

Notification was mailed to all applicable agencies and departments on June 7<sup>th</sup> 2021. A yellow sign was also posted on the property a minimum of 10 days before the hearing.

The Township's Septic Inspector has no objections.

No other comments have been received at this time.

**PUBLIC COMMENTS:**

Notification was mailed to all neighbouring properties within a 60m radius of the subject lands June 7<sup>th</sup> 2021. A notice was posted to the Township's website on the same day, and a Yellow sign was posted on the property a minimum of 10 days before the hearing.

No public comments have been received as of June 18<sup>th</sup>, during the preparation of this report.

**CONCLUSION:**

A Minor Variance application has been submitted by Cody Kelly for the property municipally known as 5352 Elcho Road. The Minor Variance application is submitted to permit a proposed accessory building to be constructed in the front yard, specifically 3.7 metres (12.14 feet) closer to the front lot line than the main building with a setback of 19.3 metres (63.32 feet) to the front lot line. Planning staff are of the opinion that this application meets all four tests of a minor variance and as such, can recommend approval of this application as it represents good planning.

**ATTACHMENTS:**

1. Site Sketch
2. Accessory Building Zoning Provisions
3. Agency Comments

**Prepared by:**



---

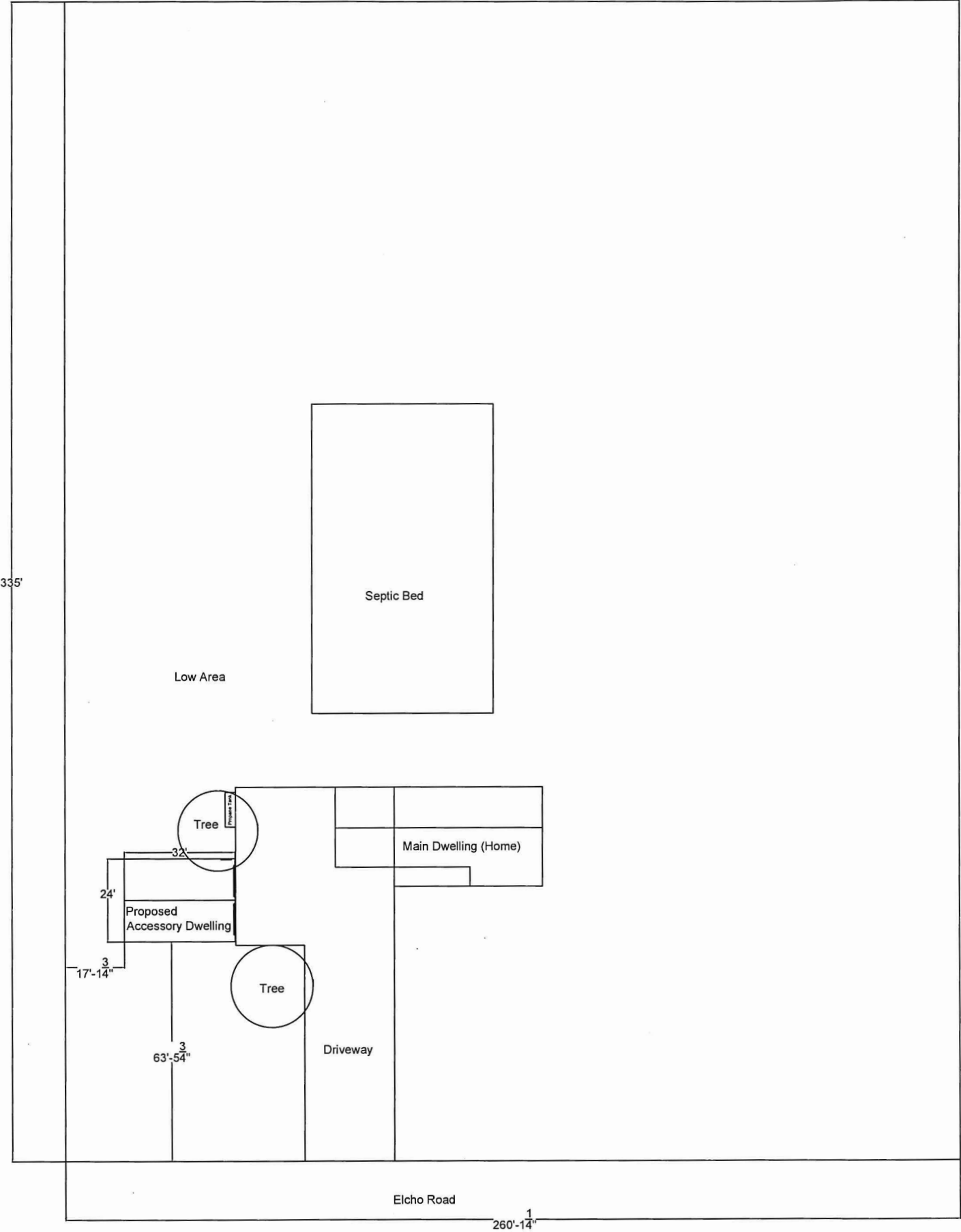
**Madyson Etzl**  
Planner I



---

**Brian Treble, RPP, MCIP**  
Director of Planning and Building

5352 Elcho Road Property



## PART 3. GENERAL PROVISIONS

### 3.1 ACCESSORY BUILDINGS OR STRUCTURES AND ACCESSORY USES

The following regulations apply to *accessory buildings or structures* and *accessory uses*:

- a) Where this By-law permits a *lot* to be used or a *building or structure* to be *erected* or used for a permitted *use*, that *use* shall include any *accessory building or structure* and any *accessory use*.
- b) An *accessory building or structure* shall not be used for human habitation or an occupation for gain or profit, except if specifically permitted by this By-law.
- c) An *accessory building or structure* and *accessory use* shall be located on the same *lot* as the *principal use* to which it is associated.
- d) An *accessory building or structure* shall not be *erected* on a *lot* prior to the *erection* of the *main building* on the *lot* or prior to the establishment of the *principal use* to which it is associated, except if specifically permitted by this By-law.
- e) An *accessory building or structure* or part thereof shall not be located within an easement that is in favour of a *public authority*.
- f) An *accessory building or structure* shall not include any storage or *pre-fabricated shipping container*, portable storage unit, repurposed *motor vehicle* or *trailer*, in whole or in part, except:
  - i. In the Service Commercial *Zone* outside of *settlement areas*, on a *lot* having a minimum *lot area* of 2 hectares, a maximum of 2 *pre-fabricated shipping containers* are permitted as *accessory structures* to be located in the *rear yard* or *interior side yard* only;
  - ii. In Employment *Zones*, in the *rear yard* or *interior side yard* only; and,
  - iii. In Agricultural *Zones*, a *pre-fabricated shipping container* is permitted as an *accessory structure*, accessory to an *agricultural use*, to a maximum of 1 *pre-fabricated shipping container* per 4 hectares of *lot area* and not exceeding a total of 5 *pre-fabricated shipping containers* on a *lot*. (Bylaw 2018-61)
- g) Certain *accessory buildings or structures* and *accessory uses* are subject to additional regulations contained in other Sections or Subsections of this By-law as follows:
  - i. *Accessory dwelling units*: refer to Subsection 3.2.1;
  - ii. *Accessory farm dwellings*: refer to Subsection 3.2.2;
  - iii. *Agri-tourism / value-added uses*: refer to Section 3.11;
  - iv. Allowable projections: refer to Section 3.3;
  - v. *Bed and breakfast establishments*: refer to Subsection 3.4;
  - vi. *Bicycle parking facilities*: refer to Subsection 3.12.4;
  - vii. *Drive-through facilities*: refer to Subsection 3.12.3;
  - viii. *Garden suites*: refer to Subsection 3.2.4;
  - ix. *Home occupations* and *home industries*: refer to Subsection 3.7;
  - x. *Landscaping* and *planting strips*: refer to Section 3.9;
  - xi. *On-farm diversified uses*: refer to Section 3.11;

- xii. Parking and loading facilities: refer to Section 3.12;
- xiii. *Private garages*: refer to Subsection 3.12.7;
- xiv. *Renewable energy systems*: refer to Section 3.15;
- xv. *Signs*: refer to Section 3.23;
- xvi. *Swimming pools*: refer to Subsection 3.24;
- xvii. *Waste storage enclosures*: refer to Section 3.26.

- h) In addition to the above, an *accessory building or structure* shall comply with the regulations in Tables 1-1 and 1-2 based on the applicable *zone*.

**Table 1-1: Regulations for Accessory Buildings and Structures in Agricultural Zones**

Regulation		Accessory Buildings or Structures in an Agricultural Zone		
		Type 1 (0.1 to 10m <sup>2</sup> )	Type 2 (10.1 to 100m <sup>2</sup> )	Type 3 (greater than 100m <sup>2</sup> )
Maximum <i>ground floor area</i> per <i>building</i> or <i>structure</i>		10m <sup>2</sup>	100m <sup>2</sup>	Based on maximum <i>lot coverage</i> (see below)
Maximum number of <i>accessory buildings</i> or <i>structures</i> per <i>lot</i>	<i>Accessory buildings</i>	3	2	Based on maximum <i>lot coverage</i> (see below)
	<i>Accessory Structures</i>	Based on maximum <i>lot coverage</i> (see below)		
Permitted <i>yards</i>		All <i>Yards</i> except the <i>required front yard</i> or <i>required exterior side yard</i> , except that a Type 1 <i>accessory building or structure</i> used for the retail sale of farm produce shall be permitted in the <i>required front yard</i> and <i>required exterior side yard</i>		
Minimum setback to <i>front lot line</i>		No closer to the <i>front lot line</i> than the <i>main building</i> , and in accordance with the minimum <i>yard</i> requirements of the applicable <i>zone</i> , except that a Type 1 <i>accessory building or structure</i> used for the retail sale of farm produce shall not be located any closer than 6 metres to the <i>front lot line</i>		
Minimum setback to <i>exterior side lot line</i>		No closer to the <i>exterior side lot line</i> than the <i>main building</i> , except that a detached <i>private garage</i> in the <i>rear yard</i> shall not be located any closer than 6 metres to the <i>exterior side lot line</i> , and a Type 1 <i>accessory building or structure</i> used for the retail sale of farm produce shall not be located any closer than 6 metres to the <i>exterior side lot line</i>		
Minimum setback to <i>interior side lot line</i>		1.2 metres	2 metres	7.5 metres
Minimum setback to <i>rear lot line</i>				
Maximum <i>height</i>		3 metres	5.5 metres	10 metres
Maximum <i>lot coverage</i> of all <i>accessory buildings</i> or <i>structures</i> on the <i>lot</i>	<i>Lot area</i> 0.4 ha or less	8%, of the <i>lot area</i> , provided the <i>lot coverage</i> shall not exceed the maximum <i>lot coverage</i> requirement for all <i>buildings</i> and <i>structures</i> in the respective <i>zone</i>		Not permitted on this <i>lot size</i>
	<i>Lot area</i> 0.5 ha to 2 ha	Greater of 5% or 320m <sup>2</sup> , provided the <i>lot coverage</i> shall not exceed the maximum <i>lot coverage</i> requirement for all <i>buildings</i> and <i>structures</i> in the respective <i>zone</i>		
	<i>Lot area</i> 2.1 ha to 10 ha	Greater of 2.5% or 1,000 m <sup>2</sup> , provided the <i>lot coverage</i> shall not exceed the maximum <i>lot coverage</i> requirement for all <i>buildings</i> and <i>structures</i> in the respective <i>zone</i>		
	<i>Lot area</i> greater than 10 ha	Greater of 1% or 2,500 m <sup>2</sup> , provided the <i>lot coverage</i> shall not exceed the maximum <i>lot coverage</i> requirement for all <i>buildings</i> and <i>structures</i> in the respective <i>zone</i>		
Minimum setback from <i>main building</i> <sup>(1)</sup>		1.5 metres	3 metres	
Maximum distance from a <i>main building</i>		The nearest point of a wall of the accessory building must be located within 50 metres of the <i>main building</i> (Bylaw 2018-61)		

<sup>(1)</sup> No projection shall be permitted into this required setback. This setback does not apply to a balcony, deck, fence, patio, porch, roof-mounted solar panels, satellite dish/antenna, steps, sunroom, walkway or other accessory structure normally appurtenant to a *main building*.

Table 1-2: Regulations for Accessory Buildings and Structures in Non-Agricultural Zones

Regulation		Accessory Buildings or Structures in a Residential Zone	Accessory Buildings or Structures in a Commercial, Institutional or Open Space Zone	Accessory Buildings or Structures in an Employment Zone
Maximum ground floor area per building or structure	RuR and R1A Zones	100m <sup>2</sup>	Based on maximum <i>lot coverage</i> (see below)	
	All other Residential Zones	50m <sup>2</sup>		
Maximum number of accessory buildings or structures per lot	Accessory buildings	2		
	Accessory Structures	Based on maximum <i>lot coverage</i> (see below)		
Permitted yards		Interior Side Yard Rear Yard	All Yards	
Minimum setback from <i>front lot line</i>		No closer to the <i>front lot line</i> than the <i>main building</i>	4.5 metres	15 metres
Minimum setback to <i>exterior side lot line</i>		No closer to the <i>exterior side lot line</i> than the <i>main building</i> , except that a detached <i>private garage</i> in the <i>rear yard</i> shall not be located any closer than 6 metres to the <i>exterior side lot line</i>		
Minimum setback to <i>interior side lot line</i>		1.2 metres, except that this shall not apply to prevent a permitted detached <i>private garage</i> which services two <i>dwellings</i> that are each on a separate <i>lot</i>	1.2 metres, or as required in the applicable <i>zone</i> where a lesser <i>interior side yard</i> is required for the <i>main building</i>	5 metres
Minimum setback to <i>rear lot line</i>			1.2 metres	7.5 metres
Maximum <i>height</i>		5 metres	6 metres	10 metres
Maximum <i>lot coverage</i>	RuR and R1A Zones	200m <sup>2</sup> or 8% of the lot area, whichever is less, provided the <i>lot coverage</i> shall not exceed the maximum <i>lot coverage</i> requirement for all <i>buildings</i> and <i>structures</i> in the respective <i>zone</i>	8% of the <i>lot area</i> , provided the <i>lot coverage</i> shall not exceed the maximum <i>lot coverage</i> requirement for all <i>buildings</i> and <i>structures</i> in the respective <i>zone</i>	
	All other Residential Zones	100m <sup>2</sup> or 8% of the lot area, whichever is less, provided the <i>lot coverage</i> shall not exceed the maximum <i>lot coverage</i> requirement for all <i>buildings</i> and <i>structures</i> in the respective <i>zone</i>		
Minimum setback from <i>main building</i> <sup>(1)</sup>		1.5 metres	3 metres	

<sup>(1)</sup> No projection shall be permitted into this required setback. This setback does not apply to a balcony, deck, fence, patio, porch, roof-mounted solar panels, satellite dish/antenna, steps, sunroom, walkway or other accessory structure normally appurtenant to a main building.



## Meghan Birbeck

---

**From:** Lyle Killins <lkillins@live.com>  
**Sent:** June 9, 2021 9:08 AM  
**To:** Meghan Birbeck  
**Subject:** Re: File A-13/2021 WL Cody Kelly

Hello Meghan

The application as proposed complies with minimum separation distance from a structure to a sewage system as per Tables 8.2.1.6 A,B Part 8, Ontario Building Code.

Thus, no objection to the application as proposed.

Lyle Killins C.P.H.I.(c)

BCIN# 11112

---

**From:** Meghan Birbeck <mbirbeck@westlincoln.ca>  
**Sent:** June 7, 2021 4:16 PM  
**To:** Development Planning Applications <devtplanningapplications@niagararegion.ca>; Alderman, Aimee <Aimee.Alderman@niagararegion.ca>; Nikolas Wensing <nwensing@npca.ca>; Mike DiPaola <mdipaola@westlincoln.ca>; Jennifer Bernard <jbernard@westlincoln.ca>; John Schonewille <jschonewille@westlincoln.ca>; Jessie Lechowicz <jlechowicz@westlincoln.ca>; Lyle Killins <lkillins@live.com>; John Bartol <jbartol@westlincoln.ca>; Madysen Etzl <metzl@westlincoln.ca>; Gerrit Boerema <gboerema@westlincoln.ca>; Brian Treble <btreble@westlincoln.ca>; Jeni Fisher <jfisher@westlincoln.ca>; Ray Vachon <rvachon@westlincoln.ca>  
**Subject:** Notice of Hearing June 23 Committee of Adjustment, West Lincoln

Good afternoon,

There are two minor variance applications to be heard at the Township of West Lincoln's June 23<sup>rd</sup> Committee of Adjustment Hearing.

- A12/2021WL - Dona Hubber – Accessory Building
- A13/2021WL - Cody Kelly – Accessory Building

Please see find the full package for both applications attached.

Best,  
Meghan

	<p><b>Meghan Birbeck</b></p> <p><b>Planner I</b></p> <p>Tel: 905-957-3346 ext. 5140 Email: <a href="mailto:mbirbeck@westlincoln.ca">mbirbeck@westlincoln.ca</a> Web: <a href="http://www.westlincoln.ca">www.westlincoln.ca</a></p> <p> </p>
---	--