

DATE: November 25th, 2020

REPORT NO: COA-006-20

SUBJECT: **Recommendation Report**
Application for Minor Variance by Fred and Rebecca Vrugteveen
(Craig Rohe - Agent)
File No. A14/2020WL

CONTACT: Gerrit Boerema, Planner II
Brian Treble, Director of Planning and Building

OVERVIEW:

- A minor Variance application has been submitted by Fred and Rebecca Vrugteveen for the property municipally known as 5267 Elcho Road.
- This Minor Variance application is requesting a decrease in the Minimum Distance Separation I (MDS I) for a new single detached dwelling to a neighboring livestock operation.
- The Township's Zoning By-law and the Provincial MSD document identify a *dwelling* as a building that is habitable or intended to be habitable.
- The property currently has one former dwelling and four accessory structures (two of which are known to be dilapidated).
- The 'house' on the property can no longer be considered a dwelling as it is inhabitable in its current state and the owners of the property have no intent to rebuild it.
- According to the MDS I formulae a dwelling unit on 5267 Elcho Road would have to have a minimum 241 metre setback from the neighboring poultry barn to the east.
- However, the current setback from the foundation of the property's former dwelling is 148.75 metres to the poultry barn.
- The applicants are requesting a setback of 139 metres to construct a single detached dwelling that uses elements of the foundation from the former dwelling.
- A setback of 139 metres from the poultry barn is a 9.75 metre decrease in the setback from the foundation of the property's former dwelling and a 102 metre decrease in the setback from the MDS I requirement.
- This request will enable the applicants to replace the property's former dwelling with an enlarged dwelling to meet their aging family's needs.
- Building a new dwelling in the same location as the former dwelling is the applicants desired location.
- This application has been reviewed against the four tests of a Minor Variance and can be recommended for approval, with appropriate conditions.

RECOMMENDATION:

THAT, report COA-006-20, regarding an application for a Minor Variance made by Fred and Rebecca Vrugteveen, BE APPROVED; subject to the following conditions:

1. That the applicants build a dwelling with its habitable rooms (e.g. cooking, eating, living, sleeping, and sanitary facilities) no closer than the former dwelling setback from the poultry barn to the east, 148.75 metres.
2. That the applicants may build their un-habitable rooms (e.g. parking garage) that are attached to the new dwelling closer than the 148.75 metre setback.
3. That if the new dwelling is not built any closer to the Provincial Significant Wetland an Environmental Impact Study and Tree Saving Plan will not be required.

BACKGROUND:

The subject lands are legally described as Concession 2 Lot 14 in the former Township of Gainsborough, now in the Township of West Lincoln. The property is located on the north side of Elcho Road, west of Heaslip Road, and east of Wellandport Road. The subject lands are municipally known as 5267 Elcho Road.

The subject property is approximately 47.9 acres (19.4 hectares) in size. The property has a Good General Agricultural lands designation and contains elements of the Township's Natural Heritage System. The adjacent properties to 5267 Elcho Road are all zoned agricultural. The principal use on the properties to the north, west, and south are agricultural uses and single detached dwellings, while the principle use to the property to the east is a livestock operation for poultry.

The property currently has one former dwelling and four accessory structures (two of which are known to be dilapidated). The 'house' on the property can no longer be considered a dwelling as it is inhabitable, as stated by the owners, in its current state and the owners of the property have no intent to rebuild it. The Township's Zoning By-law and the Provincial MSD document identify a dwelling as any building that is habitable or intended to be habitable.

The applicants are proposing to remove the property's former dwelling, that is currently inhabitable, and one of the accessory buildings and replace them with a larger single detached dwelling unit. The applicants have identified that they plan to build the dwelling in a way that emulates the foundation of the property's former dwelling. By building a larger unit in the general area as the former dwelling the applicant will be encroaching within the Minimum Distance Separation I (MDS I) requirement for the neighbouring livestock operation based on the presence of the existing structure.

The MDS I formulae identifies that a residential use would have to be a minimum of 241 metres from the neighbouring poultry barn. However, the current foundation of the

property's former dwelling has a setback of 148.75 metres from the neighboring livestock operation. The applicants are requesting a further reduced setback of 139 metres between the purposed new dwelling and the poultry barn to the east. The applicants desire their purposed dwelling unit to be located in the same general area as the former dwelling and to be enlarged eastwardly, to have optimal access to the property's current driveway. The applicant identifies that the larger home would provide them with additional living space for their aging family members and for family functions.

The applicants also provided the Township with drawings of the proposed layout of the new dwelling. The drawings that were reluctantly given to Township staff to review had a secondary apartment unit that did not meet the requirements of the zoning bylaw, however, a minor variance has only been applied for to address the requested MDS I reduction. The proposed dwelling and accessory dwelling unit (if proposed) would need to comply with the zoning bylaw in every respect. Township staff have reviewed this MDS I reduction as applied for as a new single detached dwelling.

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

According to the Township's 2019 Official Plan the property in question has two land use designations: Natural Heritage System and Good General Agricultural. A substantial portion (roughly 70%) of this property is designated under the Natural Heritage System. The Natural Heritage System is situated along the western edge of the property and back half of the property. Roughly a 423 metre Fish Habitat runs through the north width of this Natural Heritage System. The entirety of the Natural Heritage System on this property is considered both a Significant Woodland and an Environmental Conservation Area. While over half (roughly 65%) of the Natural Heritage System is considered both an Environmental Protection Area and Provincially Significant Wetland.

The foundation of the property's former dwelling is located outside of the Natural Heritage System within the Good General Agricultural area. However, the foundation of the former dwelling and where the applicant plans to build their new dwelling is within a 120 metre buffer of the Provincially Significant Wetlands. Since the proposed development is within this buffer the Official Plan stipulates an Environmental Impact Study and possible Tree Saving Plan will be required for future development applications for this proposed dwelling.

The Good General agricultural area comprises those lands designated as the second

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highest level of protection and preservation for agricultural purposes. Residential and accessory residential uses are permitted in the Good General Agricultural designation. The Official Plan stipulates that the MDS I formulae, as amended from time to time, shall be utilized to determine separation distances between new or expanding livestock operations and new or expanding non-farm uses in all Agricultural areas.

The MDSI formulae identifies that a new residential dwelling would have to be a minimum of 241 metres from the neighbouring livestock operation. However, the property's former dwelling is not currently located 241 metres away from the neighboring poultry operation. If the applicant was to relocate the foundation for a single detached dwelling unit on this property to meet the MDS I's minimum 241 metre setback requirement a disturbance would be caused to the land that is currently being farmed on the property. This disturbance has the ability to significantly reduce the cash crop productivity of this agricultural land. However, by not meeting the minimum 241 metre setback this may cause a larger disturbance to the neighboring poultry barn if the owners want to expand their livestock operation in the future.

As the main purpose of Good General Agricultural lands is to protect and preserve Agricultural practices the Planning Department believes that it is in the general intent and purpose of the Township's Official Plan to build the single detached dwelling unit in a manner that supports the agricultural practices on all surrounding properties. Building the habitable rooms (e.g. cooking, eating, living, sleeping, and sanitary facilities) of the new dwelling no closer then the foundation of the former dwelling will insure that there are no additional impacts to the poultry barn to the east and negligible impacts to the cash crop production on applicants' property.

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

According to the Township's Zoning By-law 2017-70, as amended, there are three different zones layered on top of the property in question: Environmental Protection 'EP', Environmental Conservation 'EC', and Agricultural 'A'.

The subject parcel is approximately 47.9 acres (19.4 hectares) in size and a substantial portion of the property does not support the development of a single detached dwelling unit (i.e. the portion of the property zoned 'EP' and 'EC'). However, the portion zoned 'A' does permit a single detached dwelling unit.

When a non-agricultural use, building, and structure are proposed outside of the settlement area the Zoning By-law stipulates that they must comply with the MDS I formulae. According to this formulae, a non-agricultural use, building, and structure would have to be a minimum of 241 metres from the neighbouring poultry operation. However, the current foundation of the property's former dwelling unit has a setback of

148.75 metres from the neighboring livestock operation.

The Zoning by-law identifies the MDS I formulae should not prevent the enlargement, repair, renovation, or replacement of an existing building if the construction does not further increase the extent or degree of non-compliance. If the applicants were not wishing to build closer to the neighboring livestock barn, there would be no need for a minor variance. However, since the applicants are wishing to build their new single detached dwelling closer this minor variance is required.

The applicants are proposing to build a new dwelling that would have 9.75 metre encroachment into the setback of the former dwelling from the neighboring livestock operations. This 9.75 metre encroachment would allow the new larger single detached dwelling unit to emulate the foundation of the former dwelling. The increase in size allows for additional living space for family members and family functions.

The proposed minor variance maintains the general intent and purpose of the Township's Zoning By-law.

Is the proposal desirable for the appropriate development or use of the land?
No

The proposed single detached dwelling unit is permitted in an Agricultural Zone, within the Township's Zoning By-Law. The proposed new build will be partially located on the footprint of the existing foundation of the property's former dwelling. While the applicants are asking for a new dwelling to be granted a minor variance for a setback reduction that would be 9.75 metres closer then from the property's former dwelling to the neighboring livestock operation, it is important to remember that the former dwelling is already considerably close to the poultry barn to the east. The MDS I formulae requires a minimum 241 metre setback and the former dwelling only has a setback of 148.75 metres, which is already an encroachment of 92.25 metres on the MDS I formula. Approving the minor variance application, as is, would increase the encroachment to 102 metres.

The Planning Department believes that increasing the distance between the single detached dwelling unit on this property to the neighboring livestock operation would not be protecting and preserving the agricultural lands in this area as it limits future growth of the neighbouring poultry operation and may lead to increased odour issues. While the owners of this property may not believe that decreasing this setback may lead to increased land use or odour conflicts it is unknown that future owners will feel the same way. It is in the Planning Departments belief that the MDS I formulae should be supported when possible to prevent both future land use conflicts and nuisance complaints from odours.

The Planning Department requested more information from the applicant to identify why they cannot build an enlarged dwelling unit over the existing dwelling unit's foundation in a way that does not further encroach on the MDS I formulae's minimum setback requirements. The applicant did not identify that there was anything in particular preventing them from building a new dwelling in a way that would not further encroach on to the MDS I formulae's minimum setback requirements. However, the applicant did identify that the reason they wished to build a dwelling in a way that would be further reducing the MDS I requirements is because the location was desirable for them. The applicants are hoping to build a dwelling around the existing driveway.

As there a no substantial reason why the applicant cannot build a dwelling in a manor that attempts to not further reduce the MDS I formulae's setback requirements, Planning staff believe that the habitable rooms in the new dwelling should not be located any closer then the property's former dwelling setback.

Is the proposal minor in nature?

No

The applicants are requesting to recognize an encroachment of 9.75 metres from the property's former dwelling unit to the neighboring poultry operations. The encroachment is to allow for a larger home that has adequate room for family members to age in place by accommodating mobility aids, such as walkers, wheelchairs, etc. While the applicants are asking for an encroachment that is less than 10 metres, it is important to note that the additional encroachment would further decrease the setback that the MDS I formulae requires by 42%. For this reason, the Planning Department is of the opinion that this variance is not minor in nature.

FINANCIAL IMPLICATIONS:

There are no financial implications associated with this application.

INTER-DEPARTMENTAL COMMENTS:

Circulation was provided to interested agencies on November 6th 2020, by way of mail and e- mail.

Township Public Works Department, and Building Department have no objections to the application as proposed.

The Township has received a response on this application from both the Niagara Region and Niagara Peninsula Conservation Authority.

The Niagara Region identified that Regional staff have no comments to provide for the subject Minor Variance application for 5267 Elcho Road as it is the responsibility of the

local area municipality and Committee of Adjustment to implement MDS I setback requirements.

The Niagara Peninsula Conservation Authority (NPCA) articulated that the proposed home is not located near any NPCA regulated features or hazards. In regard to an unregulated Watercourse that is located near the proposed home, and the potential for a Floodplain Hazard which is located to the north of the proposed home. The proposed home is not any closer to the unregulated Watercourse than the existing home, and it does not appear to fall within the Floodplain Hazard. As such, the NPCA does not object to the Minor Variance application for 5267 Elcho Road at this time.

PUBLIC COMMENTS:

Notification was mailed to all neighbouring properties within a 60m radius of the subject lands on November 6th. A Yellow sign was posted on the property a minimum of 10 days before the hearing.

No public comments have been received as of November 20th 2020, during the preparation of this report.

CONCLUSION:

A Minor Variance application has been submitted by Fred and Rebecca Vrugteveen to permit a 139 metres setback from the single detached dwelling unit to the neighboring poultry operation, whereas a minimum 241 metre setback is required through the MDS I formulae and the property's former dwelling setback is currently 148.75 metres.

Planning staff feel that the convenience of the use of the current drive way is not a strong enough reason to not attempt to locate the new single detached dwelling in a location that would meet the MDS I formulae's minimum setback requirements. Further, it is in the benefit of the surrounding agricultural network for a new dwelling to maintain of the former dwellings setback from the poultry barn to the east. Maintaining the former dwelling separation to the poultry barn will ensure that the livestock operation is not further disrupted in the future.

Planning staff are of the opinion that this application, as is, does not currently meets all four tests of a minor variance and as such, cannot recommend approval of this application.

Therefore, planning staff have added several conditions to maintain the integrity of the areas agricultural network, so that the minor variance can be recommended for approval.

ATTACHMENTS:

1. Site Sketch
2. Location Map
3. Agency Comments

Prepared by:

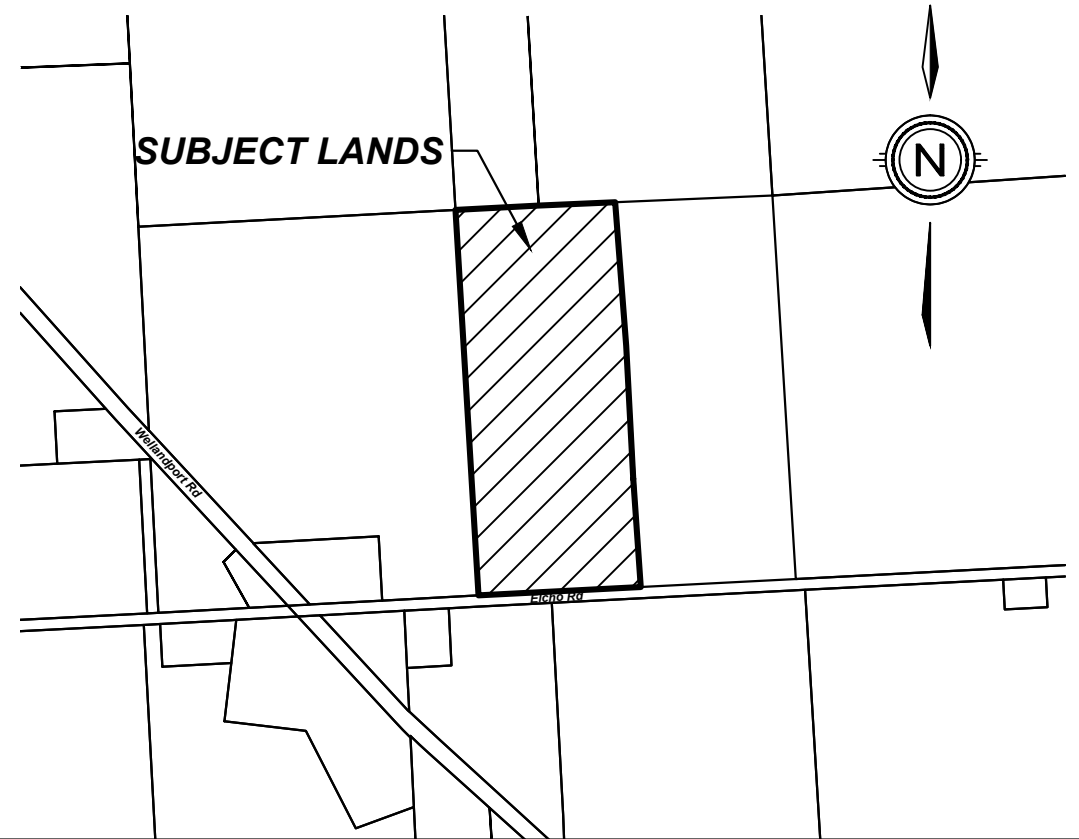
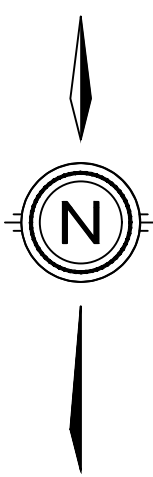


Gerrit Boerema
Planner II



Brian Treble, RPP, MCIP
Director of Planning and Building

5267 ELCHO ROAD
TOWN OF WEST LINCOLN



KEY PLAN
N.T.S.

MDS PLAN

LEGAL DESCRIPTION

PART OF THE SOUTH 1/2 OF LOT 14
CONCESSION 2

GEOGRAPHIC TOWNSHIP OF
GAINSBOROUGH

TOWNSHIP OF WEST LINCOLN

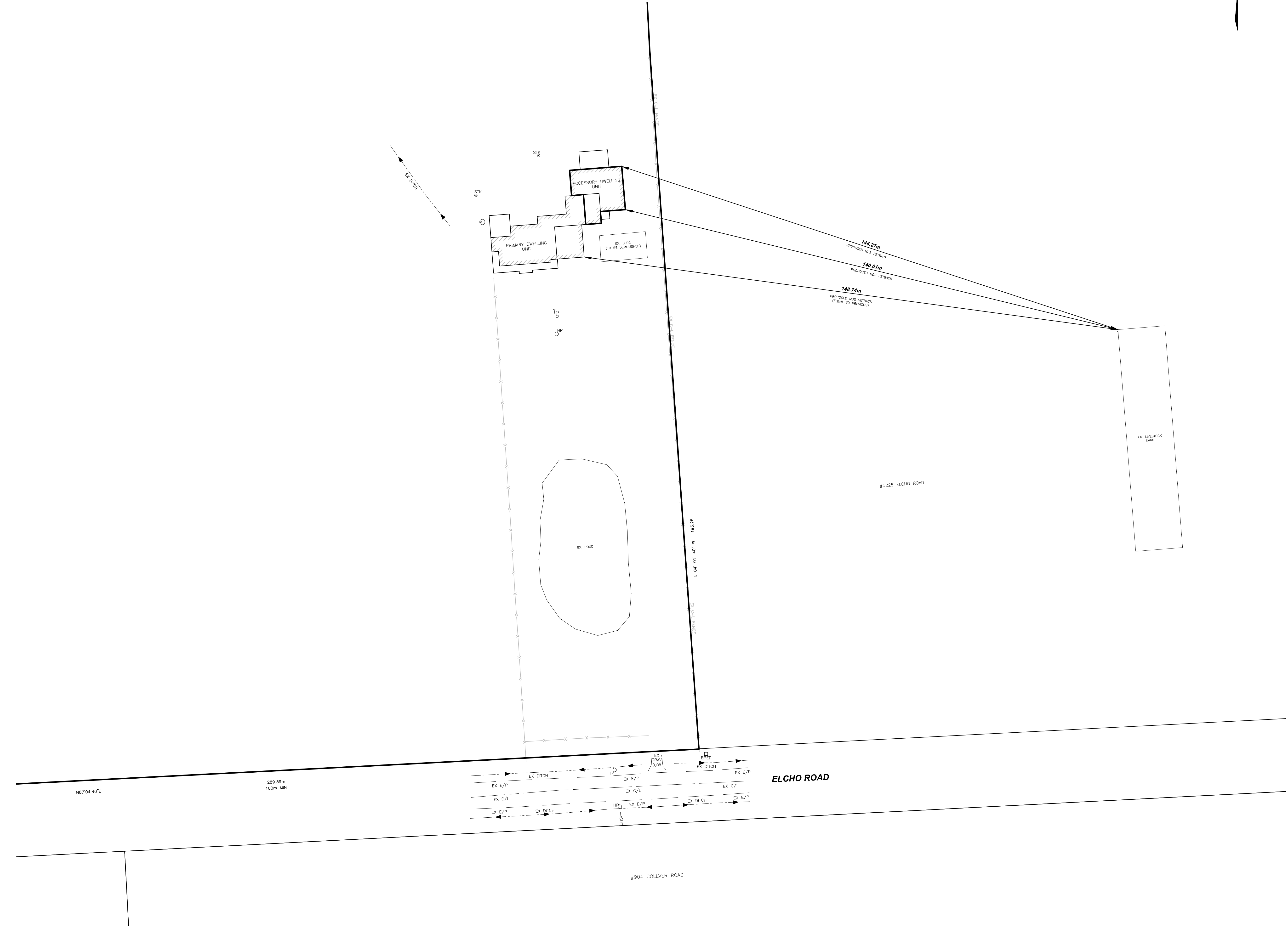
(A) AGRICULTURAL ZONING

PROVISION	REQUIRED	PROPOSED
MIN. LOT AREA	40 ha	19.78ha
MIN. LOT FRONTAGE	100m	289.39m
MIN. FRONT YARD	15m	136.45m
MIN. INTERIOR SIDE YARD	5m	9.88m E 240.61m W
MIN. REAR YARD	15m	525.02m
MAX. LOT COVERAGE	10%	0.24%
MAX. ACCESSORY DWELLING UNIT FLOOR AREA	100m ²	171.09m ²

0	ISSUED FOR	2020-09-16	SD
#	REVISION	DATE	INIT

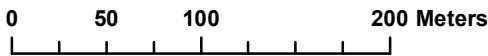


DRAWING TITLE MINIMUM DISTANCE SEPARATION PLAN	DRAFTING	SD
	DATE	SEPTEMBER 16, 2020
	PRINTED	SEPTEMBER 16, 2020
	SCALE	1:500
DWG No. 2068-MDS	REV	0









Location Map
5267 Elcho Road



Document Path: X:\wl-GIS\2020\Location Maps\5267 Elcho Rd\5267 Elcho.mxd



Legend *November 2020*

-  Former dwelling
-  Poultry Barn
-  MDS minimum setback
-  Subject Lands



318 Canborough St. P.O. Box 400
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L0R 2A0
T: 905-957-3346
F: 905-957-3219
www.westlincoln.ca

Memo

To: Madyson Etzl, Planner II
From: Jennifer Bernard, Coordinator of Engineering Services
Date: November 13, 2020
Re: File A14/2020WL – Vrugtrveen

A review has been completed on this minor variance application to permit the decrease in the minimum distance separation (MDS) setback for the existing property of 148.75 metres to 139 metres.

Public Works has no comments to provide on this application.

Meghan Birbeck

From: Alderman, Aimee <Aimee.Alderman@niagararegion.ca>
Sent: November 17, 2020 8:58 AM
To: Madyson Etzl; Meghan Birbeck
Cc: Development Planning Applications; Alguire, Robert
Subject: Regional Response - 5267 Elcho Road, West Lincoln

Good morning Maddy & Meghan,

Regional Planning and Development Services staff has reviewed the Minor Variance application for 5267 Elcho Road (Township File No. A14/2020WL), which proposes to decrease the minimum distance separation (MDS) setback for the existing property from 148.75 metres to 139 metres. The Planning Justification Brief (dated October 1, 2020, prepared by Upper Canada Consultants) notes that a variance is also required to permit for increased floor area of the proposed accessory dwelling unit.

Regional staff note that it is the responsibility of the local area municipality, and Council/Committee of Adjustment, to implement MDS setback requirements. Accordingly, Regional staff have no comments to provide for the subject Minor Variance application for 5267 Elcho Road. Township staff should be satisfied that the reduction to the MDS setback will not result in potential land use conflicts.

Should you have any questions regarding the above comments, please do not hesitate to contact me.

Thank you,

Aimee Alderman, MSc, MCIP, RPP
Development Planner

Planning and Development Services
Regional Municipality of Niagara | www.niagararegion.ca
1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
Phone: 905-980-6000 ext. 3352 | Toll-free: 1-800-263-7215
Email: aimee.alderman@niagararegion.ca

From: Madyson Etzl <metzl@westlincoln.ca>
Sent: Friday, November 06, 2020 3:30 PM
To: Madyson Etzl <metzl@westlincoln.ca>
Subject: Notice of Hearing A142020WL

CAUTION: This email originated from outside of the Niagara Region email system. Use caution when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

Please find attached the above mentioned notice for a Minor Variance application for **5267 Elcho Road**.
Comments would be appreciated by Wednesday **November 18th 2020**

Meghan Birbeck

From: Madyson Etzl
Sent: November 18, 2020 2:33 PM
To: Meghan Birbeck
Subject: FW: Notice of Hearing A142020WL

Hi Meghan,
This is for your Minor Variance application for Elcho.

Maddy

From: Nikolas Wensing [mailto:nwensing@npca.ca]
Sent: November-18-20 2:32 PM
To: Madyson Etzl
Subject: Re: Notice of Hearing A142020WL

Hello Madyson,

The proposed home is not located near any NPCA regulated features or hazards. I checked with the NPCA's technical staff in regard to an unregulated Watercourse that is located near the proposed home, and the potential for a Floodplain Hazard which is located to the north of the proposed home. The proposed home is not any closer to the unregulated Watercourse than the existing home, and it does not appear to fall within the Floodplain Hazard. As such, the NPCA does not object to Application File No. A14/2020WL at this time.

Please let me know if you have any questions.

Sincerely,

Nikolas Wensing, B.A., MPlan
Watershed Planner
Niagara Peninsula Conservation Authority (NPCA)
250 Thorold Road West, 3rd Floor, Welland, ON, L3C 3W2
905-788-3135, ext. 228
nwensing@npca.ca
www.npca.ca

From: Madyson Etzl <metzl@westlincoln.ca>
Sent: Friday, November 6, 2020 3:29 PM
To: Madyson Etzl <metzl@westlincoln.ca>
Subject: Notice of Hearing A142020WL

Good Afternoon,

Please find attached the above mentioned notice for a Minor Variance application for **5267 Elcho Road**.
Comments would be appreciated by Wednesday **November 18th 2020**