

DATE: August 28, 2024

REPORT NO: COA-29-2024

SUBJECT: **Recommendation Report –Application for Consent (Gillian Mary Han and Theodore Yuag-Ti Han) 141 Mill Street B07/2024WL**

CONTACT: Stephanie Pouliot, Secretary Treasurer of the Committee of Adjustment

OVERVIEW:

- A consent application for a minor boundary adjustment and partial discharge of mortgage has been applied by Mr. and Mrs. Han who reside at 141 Mill Street referenced as Parcel 1 and 2 on the attached survey sketch.
- This proposed boundary adjustment is to sever ± 735.7 square metres of land referenced as Parcel 2 on the survey sketch and merge the lands with 135 Mill Street referenced as Parcel 3 on the survey sketch, which is the adjoining parcel to the west.
- The purpose of the boundary adjustment is to allow for the continued long term maintenance of the natural heritage features and floodplain along Lower Twenty Mile Creek by the owners of 135 Mill Street.
- The partial discharge of mortgage is required for the proposed lands to be severed (Parcel 2) prior to the benefitting lands (Parcel 3) merging and becoming one larger parcel.
- Site alteration and development is prohibited on Parcel 2.

RECOMMENDATION:

That, the Application for Consent made by Mr. and Mrs. Han, as outlined in Report COA-29-2024, to permit the minor boundary adjustment where ± 735.7 square metres of land referenced as Parcel 2 will be merged with 135 Mill Street referenced as Parcel 3, the adjoining parcel to the west, BE APPROVED, subject to the following conditions:

1. That the approval applies to the transaction as applied for.
2. That all municipal requirements be met to the satisfaction of the municipality including servicing connections if required, cash-in-lieu of park land dedication, property maintenance, compliance with Zoning By-Law provisions for structures, and any related requirements, financial or otherwise.

3. That an undertaking be provided and certified by a solicitor that the ownership for Parcel 2 (severed – 141 Mill Street) on the attached sketch will have a PIN consolidation with the abutting lands to the west referenced as Parcel 3 (benefitting lands – 135 Mill Street) following consent approval to the satisfaction of the Township of West Lincoln.
4. That the Applicant provides the Secretary-Treasurer with a copy of the transfer documents for the conveyance of the subject parcel, or a legal description of the subject parcel to be registered, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
5. That a final certification fee, payable to the Township of West Lincoln, be submitted to the Secretary-Treasurer.
6. That all of these conditions shall be fulfilled within a period of two years after the giving of the Notice of Decision of the Committee of Adjustment, pursuant to Subsection 53(41) of the Planning Act, failing which this consent shall be deemed to be refused.

BACKGROUND:

The subject lands are located on the south side of Mill Street and east of Canborough Street, in the Smithville’s urban boundary area limits.

Currently the lands are ±5,222.3 square metres (0.52 hectares) in size.

The lot configuration has a backward flag shape of which the proposed severed lands (Parcel 2) lies directly behind 135 Mill Street. This piece of land is primarily natural cover with woodland and wetland features including the floodplain of the Lower Twenty Mile Creek. The owners of 135 Mill Street (Ron and Cheryl Peter) have been maintaining this piece of land for over ten years. Recently the owners of 141 Mill Street (Gillian and Theodore Han) have decided to sell the property and Mr. and Mrs. Peter would like to purchase and own the land they have maintained for years prior to the future sale of 141 Mill Street.

The subject lands contains significant natural heritage features including a wetland complex and floodplain of which under the Provincial, Regional and Local policy framework for lot boundary adjustments, these features shall avoid fragmentation. Consequently, with assistance from the Region and Niagara Peninsula Conservation Authority (NPCA) the proposed lot boundary alignment was refined to avoid the natural feature and be conform to Natural Environment System policies.

CURRENT SITUATION:

Planning Staff have completed an analysis of the proposed consent and can provide the following evaluation:

Provincial Policy Statement and A Place to Grow: Growth Plan for the Greater Golden Horseshoe

The Provincial Policy Statement (PPS) 2020, provides guidance on all land use planning

matters in Ontario. All planning decisions must conform to the policies of the PPS. The PPS promotes building and sustaining strong, healthy communities through efficient development and land use patterns. Development should be planned to protect and preserve natural and cultural heritage features, and should avoid natural and man-made hazards.

Section 2.1 Natural Heritage, specifically Policy 2.1.5 development and site alteration shall not be permitted in (a) significant wetlands and (b) significant woodlands, of which Parcel 2 contains both natural heritage features and the proposed boundary adjustment is avoiding the fragmentation of the features and no negative impacts on the natural features or the ecological function is expected as the lands will continue to be maintained in its natural state. As such, the proposed development is consistent with the PPS.

The Growth Plan (2020 Consolidation) provides policies for where and how to grow with a focus on directing population growth to urban areas and rural settlement areas. The Growth Plan also emphasizes the importance for the long term protection of natural heritage features and areas that are essential for the quality of life, economic prosperity, environmental health and ecological integrity of the region. According to the Growth Plan, Section 4.2 Policies for Protecting What is Valuable, Policy 4.2.2 Natural Heritage System, 3 (a) New development or site alteration will demonstrate that (i) there are no negative impacts on key natural heritage features or key hydrological features and their functions. In this circumstance, the proposed boundary adjustment is not proposing any site alteration or development that would negatively impact the function or feature itself, the proposed boundary will be delineated outside of the feature and therefore is consistent with the Growth Plan.

Niagara Official Plan

The Niagara Region Official Plan (2022) designates the subject lands as “Delineated Built up Area” although is impacted by the Region’s Natural Environment System (NES), consisting of the Lower Twenty Mile Creek Provincially Significant Wetland Complex (PSW), and permanent/intermittent stream.

Policy 3.1.9.8.1 requires the completion of an Environmental Impact Study (EIS) when development or site alteration is proposed on lands adjacent to natural heritage features. The EIS must demonstrate that there will be no negative impact on the features or their ecological function. Within settlement areas, mandatory buffers from PSW’s are required. The ecologically appropriate widths of the mandatory buffers are to be determined through the EIS.

Policies 3.1.4.9 prohibits lot boundary adjustments which would fragment PSW’s or significant woodlands. Additionally, as per NOP Policy 3.1.4.10, applications for lot boundary adjustment should avoid the fragmentation of other natural heritage features and areas, key natural heritage features or key hydrologic features wherever possible and practical. Given the proposed boundary adjustment avoids the features entirely, there is no requirement for an EIS and the potential fragmentation and no negative impact on the

features and their function is anticipated. Therefore, the proposed boundary adjustment is consistent with the Niagara Official Plan.

Township of West Lincoln Official Plan

The Township's Official Plan (2021 Consolidation) designates the subject lands as "Medium Density Residential" and "Natural Heritage System". Section 10 Natural Environment, provides direction and the objectives for a Healthy Landscape that is concerned with the ecosystem health and environmental sustainability throughout the Township. The policies aim to maintain a healthy natural environment for present and future generations and conserve the distinctive natural character and support and encourage environmental stewardship and restoration.

Policy 10.2.2 requires decisions for planning and development to protect the health and integrity of the broader landscape, including impacts on the natural environment and any long term and cumulative impacts on the ecosystem. Furthermore, any new development should maintain or enhance the natural features and functions of a site.

Policy 10.6.2 requires that development and site alteration shall be directed away from hazardous lands and hazardous sites where there is an unacceptable risk to public health, safety or property. Hazardous lands are lands that could be unsafe due to naturally occurring processes such as flooding, erosion, and slope failure. Additionally, there are policies that permit development and site alteration within floodplains that are regulated by the NPCA, if it has been demonstrated to the satisfaction of NPCA that it is in accordance with their regulations.

Policy 10.7.2 provides policies for the protection of the Core Natural Heritage System (NES) which contains environmental features and functions of special importance to the character of the Township. The NES is significant in the context of the surrounding landscape because of their size, location, outstanding quality or ecological functions and contribute to the health of the broader landscape, protecting water resources, providing wildlife habitat, reducing air pollution and combating climate change. In this situation, the proposed boundary adjustment is not considered as 'development' in the context of actual and physical changes to the NES and its features because the severed boundary line is avoiding any disturbances and is set back away from any features and the hazardous lands (floodplain and slope) of the Lower Twenty Mile Creek.

Policy 18.13.3 are the policies directed to the Environment Protection Area (EPA) and Environment Conservation Area (ECA) lands. In these areas, consents for conveyance may be granted where both the severed and retained parcels satisfy the Natural Environmental policies and may be granted for title correction purposes and for minor lot boundary adjustments. In this situation, the owners of 135 Mill Street would like to purchase the proposed severed lands referenced as Parcel 2 on the survey sketch and consolidate the lands on title for ownership and the long term protection and maintenance of the NES features of the Lower Twenty Mile Creek.

Given there is no actual physical development or site alteration to occur on the proposed severed lands, Planning Staff are of the opinion that the general intent and conformance of the Official Plan are being satisfied.

Township of West Lincoln Zoning By-law

The subject lands to be severed (Parcel 2) are currently zoned “Environmental Protection – EP”. As noted previously, the intent of the proposed boundary is to avoid fragmentation of the natural heritage features and the zoning after merging of the lands to Parcel 3 will keep the EP zone and the same provisions for no development or site alteration would apply.

INTER-DEPARTMENTAL & AGENCY COMMENTS:

Building Department: At the time of writing this report, no comments have been received.

Public Works: There is an easement through both properties for a sanitary sewer however the proposed severance will have no impact as the easement is located outside of the lands to be severed and therefore there are no issues.

Septic System Inspection Manager: No comments or objections to provide on this application as this is within an area of municipal services.

Niagara Peninsula Conservation Authority (NPCA): The NPCA regulates watercourses, flood plains (up to the 100-year flood level), Great Lakes shorelines, hazardous land, valleylands, and wetlands under Ontario Regulation 155/06 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 subject properties (Parcel 1, 2, and 3) contain the following regulated features: a watercourse (Twenty Mile Creek), and associated floodplain elevation of 183.28 metres and floodplain study Datum of CGVD 28:78. In addition, a Provincially Significant Wetland (Lower Twenty Mile Creek Wetland Complex) and 30 metre buffer were identified.

As per the NPCA Policies, development and site alterations (including placement of fill, and lot grading) are not permitted within a Provincially Significant Wetland or within the 30-metre buffer. Further, the NPCA is not generally supportive of new lot lines crossing regulated features and their buffers. From the proposed boundary adjustment, allowing for Parcel 2 to consolidate with Parcel 3, there will be no lot creation taking place and no negative impact on proposed building envelopes, servicing and amenities. Therefore, NPCA offers no objection.

Niagara Region:

As there is no development and/or site alteration proposed through this application, and no archaeological assessments are required. An archaeological warning clause has been provided for the Applicants' information. Please note that any future development

applications may require an archaeological assessment.

The subject lands are impacted by the Region’s Natural Environment System (NES), consisting of the Lower Twenty Mile Creek Provincially Significant Wetland (PSW) Complex and a permanent watercourse (including associated riparian area). Niagara Official Plan (NOP) policy 3.1.4.9 states that ‘applications for a lot boundary adjustment shall avoid the fragmentation of provincially significant wetlands...’. Regional Staff have reviewed the proposed location of the consent and are satisfied that the new lot line is located outside of the mapped PSW. As such, Regional Staff offer no objection to the application.

PUBLIC COMMENTS:

An email was provided by a concerned resident located on Ellis Street across the creek and noted concerns for the flooding that can cover an extensive area at the bottom of their lot. Muskrats also cause erosion and damage in this area. Concerns for any retaining walls that would cause the flooding and damage to become more severe and want assurance that no changes like this would be approved or allowed.

Staff note that the proposed boundary adjustment will not create a new lot or permit any site alteration or development due to the natural heritage constraints and the environmental protection on this section of the property, the severed lands will remain as is with no physical changes. The Region and NPCA provided no objections to the proposed boundary adjustment since there will be no fragmentation or planned development and site alteration and the change is to the lot lines between the two properties. Therefore, the concerns for additional flooding impacts is not expected with this proposal.

CONCLUSION:

Based on the above analysis, Planning Staff recommend APPROVAL of the proposed consent application B07/2024WL as outlined in report COA-29-2024 to permit severance where ±735.7 square metres of land referenced as Parcel 2 will be merged with 135 Mill Street referenced as Parcel 3, the adjoining parcel to the west, to maintain the natural heritage feature and floodplain of the Lower Twenty Mile Creek, subject to aforementioned conditions.

ATTACHMENTS:

- 1. Survey Sketch
- 2. Agency Comments
- 3. Public Comments

Prepared & Submitted by:



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