

ISSUE DATE:

August 09, 2013



PL120098

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: James & Shirley Zavitz
Subject: Consent (Amended Application)
Property Address/Description: Lots 5 & 6, Conc. 8
Municipality: Township of Middlesex Centre
Municipal File No.: B-20/11
OMB Case No.: PL120098
OMB File No.: PL120098

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: James & Shirley Zavitz
Subject: Consent (Amended Application)
Property Address/Description: Lots 5 & 6, Conc. 8
Municipality: Township of Middlesex Centre
Municipal File No.: B-21/11
OMB Case No.: PL120098
OMB File No.: PL120099

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: James & Shirley Zavitz
Subject: Consent (Amended Application)
Property Address/Description: Lots 5 & 6, Conc. 8
Municipality: Township of Middlesex Centre
Municipal File No.: B-22/11
OMB Case No.: PL120098
OMB File No.: PL120100

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: James & Shirley Zavitz
Subject: Consent (Amended Application)
Property Address/Description: Lots 5 & 6, Conc. 8
Municipality: Township of Middlesex Centre
Municipal File No.: B-23/11

OMB Case No.: PL120098
 OMB File No.: PL120101

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: James & Shirley Zavitz
 Subject: Consent (Amended Application)
 Property Address/Description: Lots 5 & 6, Conc. 8
 Municipality: Township of Middlesex Centre
 Municipal File No.: B-24/11
 OMB Case No.: PL120098
 OMB File No.: PL120102

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: James & Shirley Zavitz
 Subject: By-law No. 2012-014
 Municipality: Upper Tier of Middlesex
 OMB Case No.: PL120098
 OMB File No.: PL120329

APPEARANCES:

Parties

Counsel

James and Shirley Zavitz

Elizabeth Cormier

Municipality of Middlesex County

Andrew Wright

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

INTRODUCTION

[1] This is an appeal by James and Shirley Zavitz (“Appellants”) against the refusal by the Committee of Adjustment of the Municipality of Middlesex Centre of applications for the five consents for a property at Part Lots 5 and 6, Concession 8, Middlesex Centre and against the Municipality’s approval of a Zoning By-law Amendment for the same lands which would permit residential use of a portion of the five lots. The By-law

Amendment was appealed because the Municipality amended the Appellants' application which had the effect of reducing the area of the lots where the residential zoning would apply.

[2] The subject property is located in the Hamlet of Poplar Hill/Coldstream with frontage on Ilderton Road (County Road 16). The total property is approximately 17.17 hectares in size and contains open lands along the road frontage and forested lands at the rear. The five proposed lots occupy approximately 8.25 hectares of the lands and it is this area that is proposed to be rezoned.

[3] In addition to the appearances noted above, Colin Jackson also attended the hearing. The Board heard that Mr. Jackson had been acting as agent for the Appellants, but he purchased the subject property in July of 2012.

[4] At the beginning of the proceeding the Board heard that the parties had settled all issues in the appeal and they filed Minutes of Settlement (Exhibit 1). The remainder of the hearing considered evidence related to the settlement.

EVIDENCE

[5] The Board heard evidence in support of the settlement from Mark Bancroft, Senior Planner with the County of Middlesex. Mr. Bancroft is a Registered Professional Planner who has approximately 14 years of experience. He was qualified by the Board to give opinion evidence in the area of land use planning.

[6] Mr. Bancroft had previously worked as a senior planner for the Municipality of Middlesex Centre. He stated that he had prepared the report (Exhibit 3) on the Appellants' zoning application that was considered by Middlesex Council. He indicated that the original consent applications proposed very large lots and they were refused by the Committee of Adjustment. A revised lot configuration, with smaller lots was proposed in Mr. Bancroft's report on the By-law Amendment application. On the basis of the revised proposal, Mr. Bancroft provided a positive recommendation and Council approved the By-law Amendment. However, since the lot configuration differed from the Appellant's consent application, the By-law was appealed as well as the refusal of the consents.

[7] The revised proposal is now the basis of the settlement, and it is illustrated in Exhibit 1 Schedule A, Map for Amended Consent Applications. If approved it will create five lots, the first of which will form an addition to the rear of the property at 10007 Ilderton Road. Lots 2 and 3 each have 40 metres frontage on Ilderton Road and an area of 0.92 hectares. Lot 4 has frontage of 75 metres on Ilderton Road and an area of 2.07 hectares. Lot 5 has frontage of 39 metres on Ilderton Road and an area of 1.29 hectares. Three retained parcels will result from the consents.

[8] Mr. Bancroft stated that the Poplar Hill/Coldstream is a Hamlet settlement area where development is allowed on private services. He indicated that the revised proposal represents an efficient use of the land and utilizes appropriate development standards. Furthermore, it represents a form of intensification. Mr. Bancroft's opinion is that the revised proposal is consistent with the Provincial Policy Statement ("PPS") with particular reference to sections 1.1.3.2, 1.1.3.3, 1.1.3.4 and 1.6.4.4.

[9] Mr. Bancroft indicated that the property contains natural heritage features within the forested portion of the lands. He stated that a biological assessment had been completed which is subject to approval by the St. Clair Region Conservation Authority. Mr. Bancroft noted that the proposed Zoning By-law Amendment (Exhibit 1, Schedule C) places the area containing the natural heritage features in an Open Space (OS-5) zone which he maintained will protect it. Mr. Bancroft stated that the developable portion of the proposed lots will be placed in a Hamlet Residential (HR-1-8) zone which will permit the residential development.

[10] Mr. Bancroft indicated that the property is designated as Hamlet in the Municipality of Middlesex Centre Official Plan and as Agricultural Area in the County of Middlesex Official Plan. He stated that the County Official Plan recognizes the Hamlet designation and the residential development is allowed under both plans subject to the constraints regarding the natural heritage features on portions of the lands.

[11] Mr. Bancroft noted that the Middlesex Official Plan requires compatibility of proposed development with the character of the area. Mr. Bancroft's opinion is that the revised proposal will be compatible with the area and it complies with all provisions of both the County and Middlesex Official Plans.

[12] Mr. Bancroft referred to the proposed conditions of the consents (Exhibit 1, Schedule B) and indicated that they are appropriate for the proposal. He also indicated that the By-law is appropriate.

[13] Mr. Bancroft's expert opinion is that the revised consents and the By-law Amendment comply with all provisions of the County and Middlesex Official Plans, they are consistent with the PPS and they represent good planning. Mr. Bancroft also stated that the consents have regard for all provisions of s. 51(24) of the *Planning Act*. He recommended that in accordance with the provisions of the Minutes of Settlement that the provisional consents should be given and the By-law Amendment should be approved.

[14] The Board has considered the submissions of the parties and the evidence provided by Mr. Bancroft. The expert opinion evidence in support of the settlement is uncontested. The Board accepts and relies upon the evidence provided by Mr. Bancroft and finds that the proposed By-law Amendment is appropriate, it is consistent with provincial policy, it complies with the provisions of the County and Middlesex Official Plans and it represents good planning.

[15] The Board notes that the consents have been revised from the original application. Based upon the evidence, the Board finds that the revisions to the consents are minor and pursuant to s. 53(35) and s. 53(35.1) of the *Planning Act* no further notice is required.

[16] Furthermore, the Board finds that the revised consents comply with the requirements of s. 51(24) and s. 53(1) of the *Planning Act* and they represent good planning. The Board also adopts the recommended conditions of approval for the consents.

[17] Based upon the above, the Board will allow the appeals in part and approve the By-law Amendment and give the provisional consents.

[18] The parties provided a draft order in which they requested that the Board repeal the By-law Amendment which had been passed by Council and approve the revised By-

law Amendment. The appropriate order which maintains the intent of the draft order is provided below.

ORDER

[19] The Board orders that the appeals are allowed in part based upon the provisions of the Minutes of Settlement (Exhibit 1).

[20] The Board orders that the provisional consents are to be given subject to the conditions included in Attachment 1.

[21] The Board orders that By-law No. 2012-014 of the Municipality of Middlesex Centre is repealed.

[22] And furthermore, the Board orders that Comprehensive Zoning By-law No. 2005-005 of the Municipality of Middlesex Centre is amended as set out in Attachment 2, and the Municipal Clerk is directed to assign a number to the amended By-law for record keeping purposes.

“C. Conti”

C. CONTI
MEMBER

With respect to the creation of the parcel to be added to 10007 Ilderton Road (Middlesex Centre B-20/11 and OMB File No. PL120098), the Board's decision shall stipulate that subsections 50(3) and 50(5) of the *Planning Act* shall apply to any subsequent conveyance of or other transaction involving that parcel.

Consent Conditions

1. That the Certificate of Consent under Section 53(42) of the Planning Act shall be given within one year of the date of the notice of the decision.
2. That the Certificate of Consent under Section 53(42) of the Planning Act for the parcel to be added to 10007 Ilderton Road (Middlesex Centre B-20/11 and OMB File No. PL120098) shall stipulate that subsections 50(3) and 50(5) of the *Planning Act* shall apply to any subsequent conveyance of or other transaction involving that parcel.
3. That the parcel to be added to 10007 Ilderton Road (Middlesex Centre B-20/11 and OMB File No. PL120098) shall be conveyed to the registered owners of 10007 Ilderton Road.
4. That the applicants pay a \$1,000 cash-in-lieu of parkland dedication to the Municipality for each severed lot created by these Consents, including the parcel to be added to 10007 Ilderton Road (B-20/11/OMB File No. PL120098; B-21/11/OMB File No. PL120099; B-22/11/OMB File No. PL120100; B-23/11/OMB File No. PL120101; B-24/11/OMB File No. PL120102).
5. That a Development Assessment Report (DAR) with respect of the amended applications be submitted to, reviewed by the St. Clair Region Conservation Authority and approved by the Municipality after consultation with the St. Clair Region Conservation Authority.
6. That the applicants shall enter into an Severance Agreement with the Municipality, and that the Agreement be registered on title of the subject land, which addresses among other matters, entrance locations and construction, lot grading and drainage, building envelopes, septic systems and 100% related contingency areas and potable wells, DAR mitigation requirements, all to the satisfaction of the Municipality.
7. That a Zoning By-law Amendment be approved and be in full force which has the effect (a) of rezoning the residential lots to be created to a site-specific Hamlet Residential (HR1) Zone and a site-specific Open Space (OS-5) Zone, and (b) of rezoning the parcels to be retained on the east and west sides of the residential lots to a site-specific Existing Use (EU-#) Zone.
8. That land up to 18m from the centre line of Ilderton Road (County Road 16) along the frontage of the severed parcels be dedicated to the County of Middlesex if the right-of-way is not already to that width and that any fences and signs within this land dedication be relocated at the Applicant's expense.

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ATTACHMENT 2

Schedule "C"
Draft Zoning By-law

MUNICIPALITY OF MIDDLESEX CENTRE

BY-LAW NUMBER 2013-____

**BEING A BY-LAW TO AMEND THE MIDDLESEX CENTRE
COMPREHENSIVE ZONING BY-LAW NUMBER 2005-005 WITH RESPECT TO
PART OF LOTS 5 AND 6, CONCESSION 8
(GEOGRAPHIC TOWNSHIP OF LOBO)
MUNICIPALITY OF MIDDLESEX CENTRE**

WHEREAS, the Council of the Municipality of Middlesex Centre deems it advisable to amend the Middlesex Centre Comprehensive Zoning By-law 2005-005;

AND WHEREAS this By-law is in conformity with the Municipality of Middlesex Centre Official Plan;

NOW Therefore the Council of the Municipality of Middlesex Centre ENACTS as follows:

1. That Zoning Map Schedule A, Key Map U-12 to the Middlesex Centre Comprehensive Zoning By-law 2005-005, is hereby amended by changing from Existing Use (EU) Zone to site-specific Hamlet Residential First Density (HR1-8) Zone with an (h-4) holding provision, those lands drawn in heavy solid lines and identified on Schedule A, attached hereto and described as Part of Lots 5 and 6, Concession 8 (geographic Township of Lobo), Municipality of Middlesex Centre.
2. That Zoning Map Schedule A, Key Map U-12 to the Middlesex Centre Comprehensive Zoning By-law 2005-005, is hereby further amended by changing from Existing Use (EU) Zone to site-specific Open Space (OS-5) Zone, those lands drawn in heavy solid lines and identified on Schedule A, attached hereto and described as Part of Lots 5 and 6, Concession 8 (geographic Township of Lobo), Municipality of Middlesex Centre.
3. That Zoning Map Schedule A, Key Map U-12 to the Middlesex Centre Comprehensive Zoning By-law 2005-005, is hereby further amended by changing from Existing Use (EU) Zone to a site-specific Hamlet Residential First Density (HR1-1) Zone, those lands drawn in heavy solid lines and identified on Schedule A, attached hereto and described as Part of Lots 5 and 6, Concession 8 (geographic Township of Lobo), Municipality of Middlesex Centre.
4. That Zoning Map Schedule A, Key Map U-12 to the Middlesex Centre Comprehensive Zoning By-law 2005-005, is hereby further amended by changing from Existing Use (EU) Zone to a site-specific Existing Use (EU-1) Zone and to a site-specific Existing Use (EU-2) Zone, those lands drawn in heavy solid lines and identified on Schedule A, attached hereto and described Part of Lots 5 and 6, Concession 8 (geographic Township of Lobo), Municipality of Middlesex Centre.
5. That Section 12.3 "Exceptions" be amended by adding the following new subsection:

"12.3.8 (a) DEFINED AREA

HR1-8 as shown on Schedule A, Key Map U-12

(b) SPECIAL PROVISION

Notwithstanding section 4.12(b), where a lot is divided into two or more zones, the uses, buildings and structures permitted on the lot shall be limited in each of the zones to those permitted in that zone but, otherwise, for the purposes of zoning regulations of lot area and frontage and of the location of buildings and structures on the lot, the lot shall be considered a single lot, rather than separate as otherwise contemplated by section 4.12(b)."

6. That Section 22.3 "Exceptions" be amended by adding the following new subsections:

"22.3.6 (a) DEFINED AREA

OS-5 as shown on Schedule A, Key Map U-12. The irregular OS-5 zone lines on Schedule A, Key Map U-12 replicate the "Erosion Hazard Limit" identified by Gerry Waldron, Consulting Ecologist, Development Assessment Report, Figure 6, January 2013.

(b) PERMITTED USE

conservation use, excluding buildings and structures

(c) SPECIAL PROVISION

Notwithstanding section 4.12(b), where a lot is divided into two or more zones, the uses, buildings and structures permitted on the lot shall be limited in each of the zones to those permitted in that zone but, otherwise, for the purposes of zoning regulations of lot area and frontage and of the location of buildings and structures on the lot, the lot shall be considered a single lot, rather than separate as otherwise contemplated by section 4.12(b)."

7. That Section 23.3 "Exceptions" be amended by adding the following new subsections:

- | | | | |
|--------|-----|--|-------------------|
| 23.3.1 | (a) | <u>DEFINED AREA</u>
EU-1 as shown on Schedule A, Key Map U-12 | |
| | (b) | <u>MINIMUM LOT FRONTAGE</u> | 15 m (49 ft) |
| | (c) | <u>MINIMUM LOT AREA</u> | 2.8 ha (6.9 ac) |
| 23.3.2 | (a) | <u>DEFINED AREA</u>
EU-2 as shown on Schedule A, Key Map U-12 | |
| | (b) | <u>MINIMUM LOT FRONTAGE</u> | 224 m (734 ft) |
| | (c) | <u>MINIMUM LOT AREA</u> | 7.4 ha (18.3 ac)" |

8. This by-law comes into force and takes effect upon the day of passing in accordance with the provisions of Section 34 of the Planning Act, R.S.O 1990, c.P. 13.

READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED on this ____ day of _____, 2013.

Mayor

Clerk

