

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 9, 2015

CASE NO(S): PL 130164

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	2149555 Ontario Inc.
Applicant:	Stanton Bros. Limited
Subject:	Minor Variance
Variance from By-law No.:	2005-005
Property Address/Description:	13502 Twelve Mile Rd
Municipality:	Township of Middlesex Centre
Municipal File No.:	A-2/13
OMB Case No.:	PL130164
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OMB Case Name:	2149555 Ontario Inc. v. Middlesex Centre (Township)

Heard: July 10, 2013 and November 9, 2015 in
Middlesex Centre, Ontario

APPEARANCES:

Parties

Counsel

2149555 Ontario Inc. ("214")	Barry Card
Stanton Bros. Limited ("Proponent")	Alan Patton

DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD

INTRODUCTION

[1] The Proponent is the owner of approximately 42 hectares (104 acres) of land municipally known as 13502 Twelve Mile Road in the Municipality of Middlesex Centre (“Municipality”) and is seeking relief from the Minimum Distance Separation II (“MDS II”) formulae of the Municipality’s comprehensive zoning by-law. This relief will facilitate the expansion of the Proponent’s dairy operation on the subject lands from approximately 2,000 livestock to 6,000 livestock. No variance relief would be required if the expansion was from 2,000 to 4,000 livestock.

[2] The Proponent’s application (“Minor Variance A-2/13”) for relief was approved (“Committee Decision”) by the Committee of Adjustment (“Committee”), with conditions (“Original Conditions”). The Committee Decision was unanimous and the Committee itself was comprised of all Municipal Councillors.

[3] One of the Original Conditions required the Proponent to commission an odor study which was, *inter alia*, satisfactory to the Municipality (“Odor Condition”). The other condition obligated the Proponent to enter into a Site Plan Agreement to address, among other things, the availability of well water to service proposed livestock increases and area residents, the ability of the existing road network to accommodate anticipated traffic increases and the establishment of a fire route on the property.

[4] 214 is the owner of land approximately 1.25 -1.5 kilometers southwest of the subject site, in the Ilderton Settlement Area, and appealed the Committee’s Decision to the Ontario Municipal Board. The property owned by 214 is proposed for residential development and a plan of subdivision application detailing 146 lots has been submitted.

THE PROPOSAL

[5] Currently there are two existing dwellings on the subject site along with a complex of large dairy barns, liquid manure tanks, bunker silos, a manure digester/methane generator as well as other farm outbuildings and tilled field areas.

[6] The buildings on the site represent the core component of the Proponent's larger family farm operation which includes 2,000 acres of farmland on 11 separate properties.

[7] The proposal involves the addition of two new livestock barns to the existing dairy complex and an expansion to the existing manure storage facilities with two storage tanks.

[8] The additional livestock space would increase total capacity of the barns on the property with an increase for milking-age cows from 800 to 2,500, an increase in heifers from 1,200 to 3,000 and an increase in calves from 175 to 500. The existing space for 40 dairy bulls would be maintained and no expansion of the existing milking parlor is required.

REQUESTED VARIANCES

[9] The MDS II requirements establish minimum setback distances for livestock barns and manure storage facilities. The proposed expansion does not meet the calculated setbacks and as a result, variances ("Requested Variances") to these distances are required as follows:

- (a) The barn setback from the nearest neighbour's dwelling is sought to be varied from 671 metres ("m") to 327 m.
- (b) The manure storage setback from the nearest neighbour's dwelling is sought to be varied from 704 m to 607 m.

- (c) The barn setback from the nearest Type B land use, i.e. the Ilderton Settlement Area, is sought to be varied from 1,342 m to 964 m.
- (d) The manure storage setback from the nearest Type B land use is sought to be varied from 1,408 m to 1,391 m.
- (e) The barn setback from the nearest lot line is sought to be varied from 30 m to 10 m.

THE EVIDENCE

[10] In support of the proposal, Ben Puzanov and Stephen Cornwall provided expert land use planning evidence.

[11] Mr. Puzanov was the author of the staff report which recommended approval, subject to the Original Conditions, of the proposal when it went before the Committee. In his view, the Requested Variances represent sound land use planning provided the Original Conditions are fulfilled.

[12] Mr. Puzanov was retained by the Proponent and was of the opinion that the proposal is consistent with Provincial Policy Statement, 2014 ("PPS") and meets the four tests set out in s. 45(1) of the *Planning Act* ("Act").

[13] John Ferguson, a Project Manager with GHD, prepared a report and provided expert engineering evidence, in relation to air quality, in support of the relief sought. In his view, the increase in odor is imperceptible to individuals with average sensibility and such increase occurs for only an insignificant period of time.

[14] Jayson McGuffin, a planner with Monteith Brown Planning Consultants, was called by 214 to provide expert land use planning testimony in opposition to the proposal. In his opinion, the variances required are not consistent with the PPS, do not comply with s. 45(1) of the Act and do not represent sound land use planning.

[15] Mark Vanderheyden, a Vice President and General Manager of RWDI AIR Inc., prepared a report and provided expert engineering testimony with respect to air quality in opposition as well. He questioned, *inter alia*, the methodology employed by Mr. Ferguson in relation to odor emission rates and was of the view that potentially, adverse effects, as contemplated by s. 14 of the *Environmental Protection Act*, would result, if the variances in question were authorized.

ANALYSIS AND DISCUSSION

(i) PPS

[16] MDS formulae are land use planning means, generally implemented through comprehensive zoning by-laws, to establish distances between, on the one hand, livestock facilities, including barns and manure storage structures, and surrounding land uses, on the other. Their purpose is to mitigate odor impact from new and expanding livestock facilities on surrounding development.

[17] Section 2.3.3.3 of the PPS states that new or expanding livestock facilities shall comply with the *minimum distance separation formulae*. This phrase is defined in the PPS as “formulae and guidelines developed by the Province, as amended from time to time, to separate uses so as to reduce incompatibility concerns about odour from livestock facilities.”

[18] The applicable Provincial guidelines have been developed by the Ontario Ministry of Agriculture, Food and Rural Affairs (“OMAFRA”). In that regard, guidelines 45 and 46 are instructive. They specifically contemplate minor variance applications concerning MDS calculations and provide guidance as to the relevant considerations to be applied when assessing such applications.

[19] Guidelines 45 and 46 read as follows:

45. The direction of prevailing wind, surrounding topography and presence of trees, berms or other screening do not affect MDS calculations, but could be elements considered in Minor Variance applications.
46. Minor Variances to MDS II distances can be considered on site specific circumstances. Circumstances that meet the intent, if not the precise distances of MDS II, or mitigate environmental impacts, may warrant further consideration.

[20] Although the Municipality's comprehensive by-law ("CZB") does not have specific distance requirements regarding minimum distance separations, the by-law, in s. 4.15 and 5.2 incorporates, by reference, MDS II and the necessary compliance required.

[21] Section 2.3.3.2 of the PPS also prescribes, when dealing with *prime agricultural areas*, such as the subject site, that "all types, sizes and intensities of *agricultural uses* and *normal farm practices* shall be promoted and protected in accordance with provincial standards." The uses and farm practices in this case meet the definitions of those phrases as set out in the PPS.

[22] In view of these PPS provisions and the attendant OMAFRA guidelines, I am satisfied that the relief in question is consistent with the PPS. I also reject the arguments advanced by 214 that the variances are premature in view of insufficient milk quota and problematic because of the language of the CZB. In my view, Sections 4.15 and 5.2 of the CZB, clearly and efficiently, incorporate MDS II requirements and calculations. Moreover, the current absence of the requisite milk quota on the part of the Proponent to complete the expansion contemplated, is not a planning reason to prevent the Requested Variances from being authorized.

(ii) Section 45 (1)

[23] The subject livestock operation is located in an agricultural area of the community and is a significant dairy facility by Provincial standards.

[24] The County of Middlesex (“County”) Official Plan, in s. 2.39, states quite emphatically that “Agriculture is the cornerstone of the County’s economy and culture” and that “The policies of this Plan are intended to affirm that agriculture is a predominant activity in the County”.

[25] The General Agricultural Goals found in s. 2.1 of the Municipality’s OP also reflect the importance of Agriculture within the Municipality. Section 2.1 (a) stipulates that Agriculture be preserved as the primary land use, outside of settlement areas, within the Municipality and s. 2.1 (d) makes reference to enhancing the viability of farm operations wherever possible to ensure their continued economic strength.

[26] The decided emphasis on Agriculture in these official plans underscores the significance of Agriculture in the Municipality. Such emphasis cannot be overlooked or treated lightly. What is being proposed is, in my estimation, in conformity with the intent and purpose of the Municipality’s OP as well as the County’s.

[27] As I have already mentioned, the CZB incorporates MDS II provisions to ensure sufficient separation distance is maintained between livestock facilities and surrounding land uses.

[28] The evidence in this case is that, among other things, the Proponent makes use of advanced technology by way of a state of the art anaerobic digester/methane power generation facility (“Anaerobic Digester”). By capturing a significant portion of methane gas from the decomposition of site-generated livestock waste, odors from the manure storage facilities will be reduced in contrast to similar farm operations without the ability to capture methane.

[29] Because 214’s property is to the southwest of the subject site and since the prevailing wind direction is west to east, the potential for odor impact is further reduced.

[30] Advanced technology and wind direction are, in my estimation, the types of considerations which should be taken into account when assessing the merits of a

minor variance to the MDS II requirements. In fact, wind direction is specifically referenced in the OMAFRA guidelines.

[31] Provided the conditions I refer to later in this decision are met, I am satisfied that the requisite intent and purpose of the CZB are met.

[32] As to whether the proposal is minor and is desirable for the appropriate development or use of land, I would reiterate my comments as set forth above.

(iii) Engineering Evidence

[33] The engineering evidence presented in this case by 214 fell short of conclusively refuting the conclusions drawn by Mr. Ferguson. Suggesting that the proposal has the potential for creating adverse effects is not the type of expert testimony that persuades me to resist the definitive conclusions reached by Mr. Ferguson. However, during this proceeding, I did not hear any evidence that the report/study of Mr. Ferguson was satisfactory for purposes of the Municipality. Furthermore, the Odor Condition makes no mention of OMAFRA involvement and I believe it should.

[34] Accordingly, my disposition of this matter not only restates the Odor Condition but adds slightly to it.

DISPOSITION

[35] Based on all of the foregoing therefore, it is ordered that the Requested Variances are hereby authorized, subject to the following conditions:

- (a) That, for each building permit that depends upon Minor Variance A-2/13, the Proponent shall undertake an odor study to confirm that there would be no significant increase in odor impacts on land uses within the MDS II setbacks that would otherwise apply but for Minor Variance A-2/13 and that the said odor study be to the satisfaction of the Municipality, following peer review by OMAFRA. The odor

study should specifically address how the manure management practices and technology used on the subject site would avoid any significant increase in odor impacts on land uses within the MDS II setbacks that would otherwise apply but for Minor Variance A-2/13.

- (b) That for each building permit that depends upon Minor Variance A-2/13, the Proponent enter into a Site Plan Agreement with the Municipality to address, among other items, the availability of well water to service the number of livestock proposed as well as the existing residents and uses in the area that rely on the same water supply; the ability of roads in the area to accommodate the anticipated increase in farm vehicle traffic resulting from the Proponent's expansion; the establishment of a fire route on the subject property; and the implementation of the findings and recommendations of the odor study identified in condition (a) above.
- (c) Any dairy farming operation on the subject site shall include the use of an Anaerobic Digester or such other process or equipment which mitigates odor at least as favorably as the Anaerobic Digester.

"Steven Stefanko"

STEVEN STEFANKO
VICE-CHAIR

If there is an attachment referred to in this document,
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Ontario Municipal Board

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