

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: February 23, 2022

CASE NO(S).:

PL200445

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Lou Oosterhoff
Subject: Application amend Zoning By-law No. Zoning By-law 61-16- Refusal of Application by the County of Brant
Existing Zoning: Rural Residential (RR) and Natural Heritage (NH)
Proposed Zoning: Site Specific
Purpose: To permit facilitate the creation of new residential building lots
Property Address/Description: 3 West Harris Road
Municipality: County of Brant
Municipality File No.: ZBA37-19-AW
OLT Case No.: PL200445
OLT File No.: PL200445
OLT Case Name: Oosterhoff v. Brant (County)

PROCEEDING COMMENCED UNDER subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Lou Oosterhoff
Subject: Application for Consent - Failure of County of Brant to make a decision
Purpose: To permit facilitate the creation of new residential building lots
Property Address/Description: 3 West Harris Road
Municipality: City of Brantford
Municipality File No.: B30-19-AW
OLT Case No.: PL200445
OLT File No.: PL210226

Heard: November 19, 2021 by video hearing

APPEARANCES:

Parties

Lou Oosterhoff

County of Brant

Counsel

James Hitchon

Jyoti Zuidema

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.A. SILLS ON
NOVEMBER 19, 2021 AND ORDER OF THE TRIBUNAL**

[1] This was a settlement hearing in regard to the consolidated appeals by Lou Oosterhoff (the “Applicant”) from the failure the of the Committee of Adjustment (“COA”) to make a decision on a Consent application within the requisite timeframe, and the refusal by the County of Brant (“County”) of an application to amend Zoning By-law No. 61-16 (“ZBL”) as it pertains to the property described as RANGE 2 SHR PT LOT H RP 2R6256 PART 3 RP 2R6280 PART 1, and municipally known as 3 West Harris Road (the “subject property” / “Site”).

[2] The subject property is zoned Rural Residential (RR) and Natural Heritage (NH) by the ZBL. The ZBL regulates lot size and setbacks and applies the Minimum Distance Separation (“MDS”) Guidelines to ensure that appropriate distances between livestock barns and sensitive land uses are maintained (s. 4.24).

[3] The purpose and effect of the proposed Zoning By-law Amendment (“ZBA”) is to reduce the MDS requirement as established by s. 4.24 (a) of the ZBL from 514 metres (“m”) to 290 m, and to establish site specific regulations for the placement of a new dwelling; to protect a significant portion of the pine plantation; to enhance the privacy of abutting homes; to maintain the character of the area and streetscape; and to prevent any future severances of the subject lands.

Site and Area Context

[4] The subject property is an irregularly shaped parcel located in the south east quadrant of the intersection of Brant School Road and West Harris Road. The Site is approximately 1.6 hectares (“ha”) in area with 189 m frontage along West Harris Road. The east boundary of the property abuts the Fairchild Creek. The property currently maintains a single detached dwelling, beyond which to the north, there is a white pine plantation.

[5] The surrounding area is characterized by a significant number of rural residential lots and dwellings with frontage along the Brant School Road and West Harris Road, with farming activity occurring on the non-residential lands. West Harris Road dead-ends further north of the subject property due to the proximity of the creek.

[6] An existing farm located to the north of the property at the terminus of West Harris Road has a livestock barn (the “Harris Barn”), which is one of the factors influencing the development potential of the subject lands.

The Revised Proposal

[7] The original development proposal called for the creation of two new rural residential lots to the north of the existing home and extending into the white pine plantation. The revised proposal effects the creation of one new building lot with 85 m frontage and a lot area of 1.1 ha, and the development of a single detached dwelling.

[8] A single detached dwelling is a permitted use in the RR Zone and both the severed and retained lots exceed the lot frontage (40 m) and lot area (0.4 ha) zoning requirements established by the ZBL.

[9] The terms and conditions of the settlement agreement are detailed in Minutes of Settlement duly executed by the parties (Exhibit 2).

Concerns of the Participants

[10] Participant Statements were provided by Sandra Vos on behalf of the Brant County Federation of Agriculture (“BCFA”), and Caillin and Deanna Langmann on their own behalf.

[11] The BCFA, which represents and advocates on behalf of its more than 650 members of the farming community in the County, is primarily opposed to the creation of a new lot and the associated ZBA insofar as it effects a reduction to the established MDS.

[12] The written statement provided by the BCFA identified that its concerns are relative to “maintaining and enhancing agricultural systems” and “the creation of lots and effects on MDS”. The BCFA submits that maintaining and enhancing agricultural systems means making it possible to continue farming without the additional stress of wondering when the rules will change. Essentially, the BCFA is concerned about the outcome of more fragmented parcels of rural designated lands and how farmers are to plan their operations knowing that there could be different interpretations of the MDS policy for every single application.

[13] The BCFA is requesting that in the event the current application is successful, that it be viewed as a one-off decision and not seen as establishing a precedent for future applications.

[14] Mr. and Mrs. Langmann also are opposed to a reduction in the MDS because in their view, it effectively allows developers to ignore the density regulations that are a fundamental part of the MDS Guidelines. Their concern is that allowing the application would set a precedent that could potentially permit future developers to utilize MDS I A to bypass MDS I B, effectively rendering the later obsolete.

[15] The purpose and intent of the MDS is to prevent land use conflicts and odour complaints. Following from that, it is their position that increasing residential density increases odour complaints. Odour complaints are a public health issue and mitigating these complaints is costly for farmers.

[16] The Langmann's maintain that a ruling in favour of the application would cause immense changes in the application of the MDS regulations and the by-laws across the County. It is their position that allowing this exemption makes Guidelines 12 and 34 obsolete, and therefore, is a fundamental change in the regulations and the current by-law.

[17] Their concern here is that in allowing these applications, future development in the area around the Harris Farm would also be permitted, resulting in a situation where multiple legal estate residential lots are well within the MDS of this farm, and undoubtedly, will result in more odour complaints, casting significant burden on the owners of the farm property.

PLANNING EVIDENCE

[18] John Ariens was qualified by the Tribunal to tender expert land use planning evidence and opinion. He is a Registered Professional Planner and a Full Member of the Canadian Institute of Planners and the Ontario Provincial Planners Institute.

[19] Overall, it is Mr. Ariens professional opinion that the proposal conforms with and implements the requirements of the *Planning Act*, is consistent with the Provincial Policy Statement, 2020 ("PPS"); and conforms to the Growth Plan for the Greater Golden Horseshoe, 2020 ("GP") and the overall objectives of the Brant County Official Plan ("COP").

[20] The proposal has appropriate regard for the relevant matters of provincial interest set out in s. 2 of the *Planning Act*, which in this case are: the protection of natural areas;

the protection of agricultural resources; the conservation of natural resources; the orderly development of safe and healthy communities; the provision of a full range of housing; the resolution of conflict involving public and private interest; the appropriate location of growth and development; and, adaptation to a changing climate. The proposal satisfies the pertinent criteria set out in s. 51(24) of the *Planning Act*, and the Conditions of Consent Approval are reasonable, have appropriate regard to the nature of the development being proposed and comply with the requirements of s. 51(25) of the *Planning Act*.

[21] The PPS deals with directing and managing land use to achieve efficient and resilient development and land use patterns. The PPS also recognizes the importance of leveraging rural assets and amenities and protecting the environment as a foundation for a sustainable economy. In Mr. Ariens opinion, the current application does both – it allows a planned use to be established while at the same time, protects the agricultural area and the natural heritage features.

[22] The subject property is located within an area that is designated for residential uses and currently maintains numerous rural residential lots. The development proposal is compatible with the rural landscape and can be sustained by rural servicing systems. The proposal represents a more efficient use of the lands and will contribute to the development of a full range and mix of housing.

[23] The proposal protects and conserves key natural features and establishes a self-sustaining vegetated buffer, minimizes the loss of tree cover, provides adequate tree removal compensation and reflects the existing rural character of the area. There are no public health or safety concerns with a new home at this location and there will be no resulting adverse impact to the environmental or natural heritage features. The proposal will not result in the removal of any active farmland. It is his opinion that the current proposal strikes an appropriate balance between protecting agriculture and the provision of housing in an area that is designated for residential development.

[24] An Environmental Impact Study (“EIS”) submitted with the zoning application confirms that there will be no long-term negative impacts to the function of the woodland or slope as a result of the development, and the new lot will not result in any negative impact to wildlife habitat, fish habitat, valley lands or areas of natural and scientific interest. The Grand River Conservation Authority indicated that it had no concerns with the original development scheme. Mitigation measures as recommended by the EIS are included in the Consent Agreement with the County and imposed as a condition of approval.

[25] The Guiding Principles of the GP applicable to the current proposal includes the achievement of complete communities; making efficient use of designated lands; supporting a full range of housing options; protecting and enhancing the natural heritage; protecting prime agricultural areas; and, to integrate climate change considerations into planning and managing growth.

[26] The proposed new lot and reduction to the MDS formulae are in conformity with these Guiding Principles. The proposal contributes to a desirable form of new housing in a suitable location and makes more efficient use of lands designated for rural residential development purposes. The natural wooded area is protected, and tree planting will compensate for the removal of a portion of pine plantation.

[27] No agricultural land is being removed and no further adverse impact on active farming will result. The 30 m buffer from the key natural heritage feature (wooded slope and creek) required by the GP will be maintained as a natural self-sustaining vegetated area. Compensation for the removal of trees is required as a condition of the Consent Approval. The creation of the new lot does not raise any safety issues as the lands identified for the dwelling envelop are not within the flood plain of the creek.

[28] The primary intent of the RR designation of the COP is to recognize existing concentrations of large lot residential development in order to prevent scattered land consumption and the inefficient use of existing infrastructure and non-farm development

in the Agricultural designation. A limited amount of growth and development may occur in the RR designation subject to the policy criteria set out in s. 3.7.3 – Land Use Policies of the COP.

[29] Mr. Ariens provided a detailed analysis of the relevant policy provisions of the COP and the various study outcomes to support his opinion that the development proposal, and in particular the reduction in the MDS, is in conformance with the policies of the COP.

[30] The subject property is within an area that has a concentration of large lot residential development and a single detached residential dwelling is a permitted use in the RR designation. The proposal represents an infill development and only one new lot is being proposed. Private well and septic systems will be provided, and the lot is appropriately sized to accommodate this form of servicing. The pattern of development is logical, and the rural character and similar setbacks will be maintained. The retained and severed lots are consistent in size and nature with surrounding properties and fully compliant with the zoning regulations. The proposed reduction to the MDS formulae through a site specific ZBA is in conformity with the overall intent of the COP.

FINDINGS

[31] In arriving at this disposition, the Tribunal accepts and adopts the planning analysis and uncontroverted land use planning evidence and expert opinions of Mr. Ariens.

[32] The Tribunal finds that due consideration has been had for the matters of provincial interest identified in s. 2, and the applicable criteria set out in s. 51(24) of the *Planning Act*. The proposal results in the creation of a single new lot for residential purposes, and in accordance with s. 53(1) of *the Planning Act*, a plan of subdivision is not required for the orderly development of the municipality. The Tribunal is satisfied

that the overall proposal is consistent with the policy direction established in the PPS and conforms to and aligns with the policies of the GP and the COP.

[33] The proposed severance will result in the creation of a new lot for residential purposes within an area that is designated for this form of development. The Tribunal finds that the Consent application, subject to the fulfillment of the prescribed conditions, warrants approval. The proposed zoning amendments will facilitate the development of the property in the manner being proposed.

[34] The Tribunal has given due consideration to the concern of the Participants regarding the potential for a reduction in the MDS to adversely impact farming operations in the vicinity of the subject property, and specifically, as it relates to the Harris Barn. The Tribunal has not been provided with any tangible evidence to support this concern.

[35] As was explained by Mr. Ariens, the MDS Guideline specifically speaks to the ability to vary/reduce the separation distance in certain circumstances (Guidelines 42 and 43). In this case, the Harris Barn is already constrained by existing homes which are located closer to the structure than the proposed home. The MDS Guidelines also provides specific criteria such as prevailing winds and tree cover which support a reduction to the MDS. In this case, the prevailing winds are from the west and there is an intervening wooded area on the Site and on the lands to the north, both of which are factors that provide justification for the requested reduction in the separation distance.

ORDER

[36] The Tribunal orders that the appeal is allowed in part, and provisional consent is to be given subject to the Conditions set out in Attachment "1" to this Order.

[37] The Tribunal orders that the appeal is allowed in part, and Zoning By-law No. 61-16 of the County of Brant is amended as set out in Attachment “2” to this order.

“M.A. Sills”

M.A. SILLS
VICE-CHAIR

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

PL200445 – Attachment 1**CONDITIONS**

1. That the Applicants of the property enter into an Agreement with the County generally on the terms and conditions herein contained pursuant to the provisions under subsection 53(12) which incorporates subsection 51(26) of the *Planning Act* which allows the County to enter into agreements imposed as a condition to the approval of the consent and allows for registration of the Agreement on title and County Consent Authority receives confirmation that the Agreement has been registered on title.

2. The Applicants agree to provide compensation for the trees to be removed in order to permit the construction of the new dwelling unit along with any accessory structures and appurtenances. The Applicants agree to provide compensation as follows:
 - \$38.87 per tree which includes the cost to supply and plant a comparable native tree for each tree removed.
 - The above amount shall be deposited into a fund specifically ear-marked for tree planting by the County on County-owned property which shall be of benefit as a public amenity space.
 - While the County will make best efforts to have such planting occur in the vicinity of the proposed development, the specific location and timing of such plantings shall be at the sole discretion of the County.
 - Once the compensation funds are provided to the County, the Applicants waive any right they have or may have, to any interest which may or may not accrue on this amount or to any refund, which may or may not be available. The Applicants understand and agree that these monies belong to the County.

3. Proof that taxes have been paid up to date on the subject property to the County of Brant.
4. Portions of the severed lands are to be rezoned Rural Residential with Site Specific Zone "RR-56" by the Applicants to prohibit the construction of a residential dwelling and associated accessory structures.
5. That the following requirements of Development Engineering are agreed to, specifically:
 - a. If a new Entrance is required, then a Public Works Permit will be required.
 - b. A Site Alteration Permit may be required under the County By-Law 130-17 for any fill being brought to or being removed from the Site prior to the execution of the Development Agreement and/or Site Plan Approval.
 - c. Through the Building Permit, the following will be required to be submitted: Sedimentation & Erosion Control Plan, and a Lot Grading Plan.
 - d. And any applicable standard requirements of Development Engineering.
6. That the Applicants provides a copy of the draft reference plan for the severed parcels, including the location of the existing buildings by a licensed surveyor, prior to the finalization of the Consent (i.e., registration of the deed in the appropriate Registry Office).
7. That the Applicants provide draft transfer documents with legal descriptions of the severed lands utilizing an existing reference plan or new reference plan (if required) prior to the finalization of the Consent (i.e., registration of the deed in the appropriate Registry Office).
8. That the Applicant's lawyer shall prepare and register all the necessary documents following review and approval by the County Solicitor, and immediately following the registration, the Applicant's lawyer shall provide a

certificate satisfactory to the County Solicitor that the registrations have been completed properly and in accordance with the approvals provided.

9. That the standard requirements of Energy Plus are agreed to, specifically:
 - a. The Applicants/Owner will be required to satisfy the conditions noted in the severance application prior to construction.
 - b. If relocation or upgrade of existing hydro plant is required as a result of this Application, the Applicants will be responsible for 100% cost. As per Energy+ Inc's Current Conditions of Service, only one service per property is permitted. Early consultation with Energy+ Inc's Service Co-ordinator is recommended.
 - c. The Applicants maybe required to provide a Legal Survey showing all existing dwellings, existing lot lines, existing equipment, proposed dwellings, proposed lot lines, proposed equipment and existing easements at 100 % cost. The Legal Survey would need to include dimensions.

10. That the standard requirements of Union Gas Limited are agreed to, specifically:
 - a. Union Gas does have service lines running within the area which may or may not be affected by the proposed severance.
 - b. Should the proposed severance impact these services, it may be necessary to terminate the gas service and relocate the line according to the new property boundaries. Any Service relocation required due to a severance would be at the cost of the property owner. Also, should future gas service be required to either the severed or retained parcel, a request for gas service needs to be submitted to the District Office.

11. That parkland dedication or monies-in-lieu of parkland will be payable at the time of stamping of the deeds in the amount of \$5,813.51 per new Rural Residential building lot.

12. That a rural firefighting fee of \$600.00 for each new building lot or some other method acceptable to the Fire Department (as required), be provided to the release of the executed Certificate of Official.
13. That the current \$308 Deed Stamping Fee be paid to the County of Brant for each lot, prior to the release of the executed Certificate of Official.
14. That the above conditions must be fulfilled, and the Document for Conveyance be presented to the Consent Authority for stamping within the time prescribed in Subsection 53(41) of the *Planning Act*, R.S.O. 1990, c. P.14 as amended, **otherwise the approval shall lapse.**

PL200445 – Attachment 2

BY-LAW NUMBER xxx-21 –

- of -

THE CORPORATION OF THE COUNTY OF BRANT

To amend By-Law Number 61-16, the Zoning By-Law for the County of Brant, as amended, (Louis Oosterhooff and Irma Oosterhooff, 3 West Harris Road).

WHEREAS an application was received on behalf of Louis Oosterhooff and Irma Oosterhooff, Owners of lands described as RANGE 2 SHR PT LOT H RP 2R6256 PART 3 RP 2R6280PART 1 4.08AC 424.33FR D, in the Former Township of Brantford, known as 3 West Harris Road, County of Brant, to reduce the minimum distance separation from a livestock barn to the north of 3 West Harris Road at the terminus of West Harris Road (the “Harris barn”).

AND WHEREAS the owners, Louis Oosterhooff and Irma Oosterhooff, have agreed to rezone a portion of the subject lands from Rural Residential (RR) to Rural Residential with site specific provision 55 (RR-55) to permit a building envelope with a frontage of approximately 40 metres along West Harris Road, a maximum depth of approximately 106.89 metres, and a total area of approximately 0.43 hectares and to permit a residential building and associated accessory structures as a permitted use; to rezone a portion of the of the subject lands from Rural Residential (RR) to Rural Residential with site specific provision 56 (RR-56) to prohibit any development, including but not limited to residential and accessory structures; and to rezone a portion of the subject lands from Rural Residential (RR) to Rural Residential with site specific provision 57 (RR-57) to permit a residential dwelling and accessory structures as a permitted use and shall have a minimum lot frontage of approximately 40.41 metres, and shall have a minimum area of 0.5 hectares.

AND WHEREAS the *Planning Act* empowers a municipality to pass By-Laws prohibiting the use of land and the erection, location and use of buildings or structures, except as set out in the By-Law;

AND WHEREAS this By-Law is in conformity with the Official Plan for the County of Brant (2012);

AND WHEREAS the Planning and Development Committee of the Corporation of the County of Brant has recommended approval of this By-Law;

AND WHEREAS the Council of the Corporation of the County of Brant deems it to be desirable for the future development and use of the lands described above;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE COUNTY OF BRANT HEREBY ENACTS as follows:

1. **THAT** Schedule 'A' of By-Law Number 61-16, Key Map 75, is hereby amended by changing the zoning on the subject lands from Rural Residential (RR) and Natural Heritage (NH) to Rural Residential with Site Specific Provision 55 (RR-55), Rural Residential with Site Specific Provision 56 (RR-56) & Natural Heritage (NH) and Rural Residential with Site Specific Provision 57 (RR-57), as shown on the Schedule attached to this By-Law.
2. **THAT** Section 9.5 Special Exceptions RR Zone, is hereby amended by adding the following: RR-55

Notwithstanding any provision of this By-Law to the contrary, within any area zoned RR-55 on Schedule "A" hereto, the following site specific provisions shall apply:

- To permit a building envelope with a frontage of approximately 40 metres along West Harris Road, a maximum depth of approximately 106.89 metres, and a total area of approximately 0.43 hectares.
- To permit a residential building and associated accessory structures as a permitted use.
- All other provisions of the By-Law apply. (Map 75)

3. **THAT** Section 9.5 Special Exceptions RR Zone, is hereby amended by adding the following: RR-56

Notwithstanding any provision of this By-Law to the contrary, within any area zoned RR-56 on Schedule "A" hereto, the following site specific provisions shall apply:

- To prohibit any development, including but not limited to residential and accessory structures on the lands zoned as RR-56.
- All other provisions of the By-Law apply. (Map 75)

4. **THAT** Section 9.5 Special Exceptions RR Zone, is hereby amended by adding the following: RR-57

Notwithstanding any provision of this By-Law to the contrary, within any area zoned RR-57 on Schedule "A" hereto, the following site specific provisions shall apply:

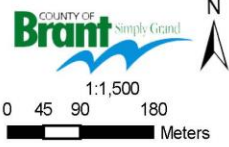
- To permit a residential dwelling and accessory structures as a permitted use.
- Lands zoned as RR-57 shall have a minimum lot frontage of approximately 40.41 metres, and shall have a minimum area of 0.5 hectares.
- All other provisions of the By-Law apply. (Map 75)

5. **THAT** the minimum distance separation between the proposed new dwelling and the Harris barn be reduced from 514m to 290m.

6. **THAT** this By-Law shall come into force on the day the OLT issues its final Order on the appeal.

**MAP 5: ZONING SKETCH
FILE NUMBER
ZBA37-19-AW**

3 West Harris Road
County of Brant
Ontario



Date Printed: 11/8/2021

