

To:	Warden and Members of Grey County Council
Committee Date:	December 9, 2021
Subject / Report No:	PDR-CW-02-22 / Appeal Discussion
Title:	Hanover Minor Variance A3-21
Prepared by:	Scott Taylor
Reviewed by:	Randy Scherzer
Lower Tier(s) Affected:	Town of Hanover
Status:	Recommendation adopted by Committee as presented (Option 2a) per Resolution CW09-22; Endorsed by County Council January 13, 2022 per Resolution CC11-22

Recommendation

1. That Report PDR-CW-02-22 regarding an overview of Town of Hanover minor variance application A3-21 on lands described as Part of Lot 10, Concession 1 North of the Durham Road, in the geographic Township of Bentinck, Town of Hanover, municipally known as 651 23rd Avenue, be received for information; and

(Choose either option 1 or options 2(a) or 2(b))

Option 1

2. That staff be directed to pursue the appeal of minor variance A3-21 to the Ontario Land Tribunal with respect to condition (g) of the decision regarding an entrance onto Grey Road 28.

Option 2(a)

3. That staff be directed to withdraw the appeal of minor variance A3-21 to the Ontario Land Tribunal; and
4. That should minor variance A3-21 get appealed by another party, that staff be directed to seek party status at the Ontario Land Tribunal proceeding as it pertains to defending the County's interest with respect to Grey Road 28.

Option 2(b)

5. That staff be directed to withdraw the appeal of minor variance A3-21 to the Ontario Land Tribunal and seek no further status at any potential Ontario Land Tribunal proceeding with respect to this file.

Executive Summary

The Town of Hanover recently approved minor variance application A3-21 to permit two six-storey apartment buildings at 651 23rd Avenue. County staff submitted planning and transportation comments on this application. The Town approved the minor variance with a condition of approval referencing an entrance onto Grey Road 28 (24th Avenue). Staff do not object to the use of the site for apartments, but entrances to this property are required by the Town and County Official Plans to be located on Town streets, rather than onto Grey Road 28. As per the County's appeal protocol, County staff have submitted a 'placeholder appeal' to the Town's decision on minor variance A3-21. County staff are recommending appeal of this application as it pertains to the entrance onto Grey Road 28. Should Council not support moving forward with the appeal, it will be withdrawn.

Background and Discussion

The Town of Hanover recently approved minor variance application A3-21 submitted by 2854116 Ontario Ltd. to permit two six-storey 71 unit apartment buildings on the subject lands. This minor variance application proposes to vary the height, density, and parking provisions in the Town's zoning by-law. County staff submitted comments on this application on November 2, 2021. A link to those comments can be found in the Attachments section of this report.

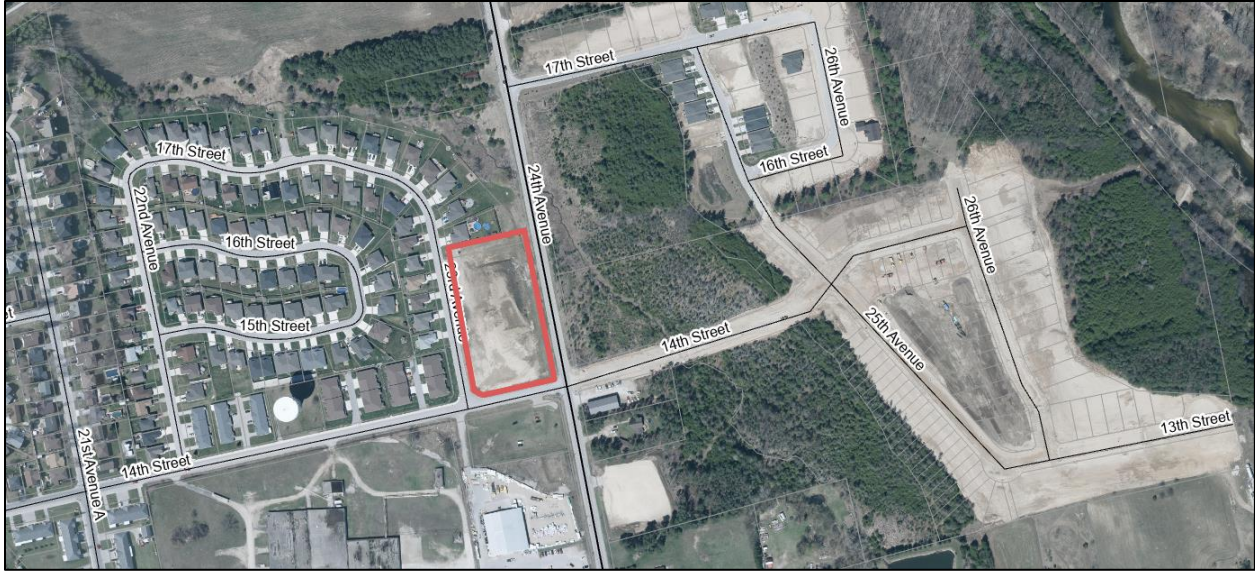
The subject lands are legally described as Part of Lot 10, Concession 1 North of the Durham Road, in the geographic Township of Bentinck, Town of Hanover, municipally known as 651 23rd Avenue. This site is approximately 1.01 hectares in size and is framed by three existing streets, 23rd Avenue, 14th Street, and Grey Road 28 (also known as 24th Avenue). The proposed development will be serviced by Town water and sewer services. This development will also require site plan approval from the Town of Hanover. A decision has not yet been rendered by the Town on the site plan.

The minor variance was approved conditional upon ten conditions lettered (a) – (j). The Town has addressed a number of the County's comments including the need for road widening and a daylight triangle through conditions (e) and (f) respectively. County staff generally have no concern with the proposed use of the subject lands, but do have a concern with condition (g) which reads as follows:

(g) "that the Owner enter an agreement with the Town for a future entrance be provided on 24th Avenue when the need arises due to traffic flow exceeding acceptable levels of service;"

In the County's comments on this application, and through subsequent discussions with Town staff, the County made it known that an access to this development would not be supported directly off Grey Road 28 (24th Avenue).

Map 1 below shows the subject lands highlighted in red and the surrounding area, while Map 2 shows the proposed conceptual site plan.



Map 1: Location of Subject Lands

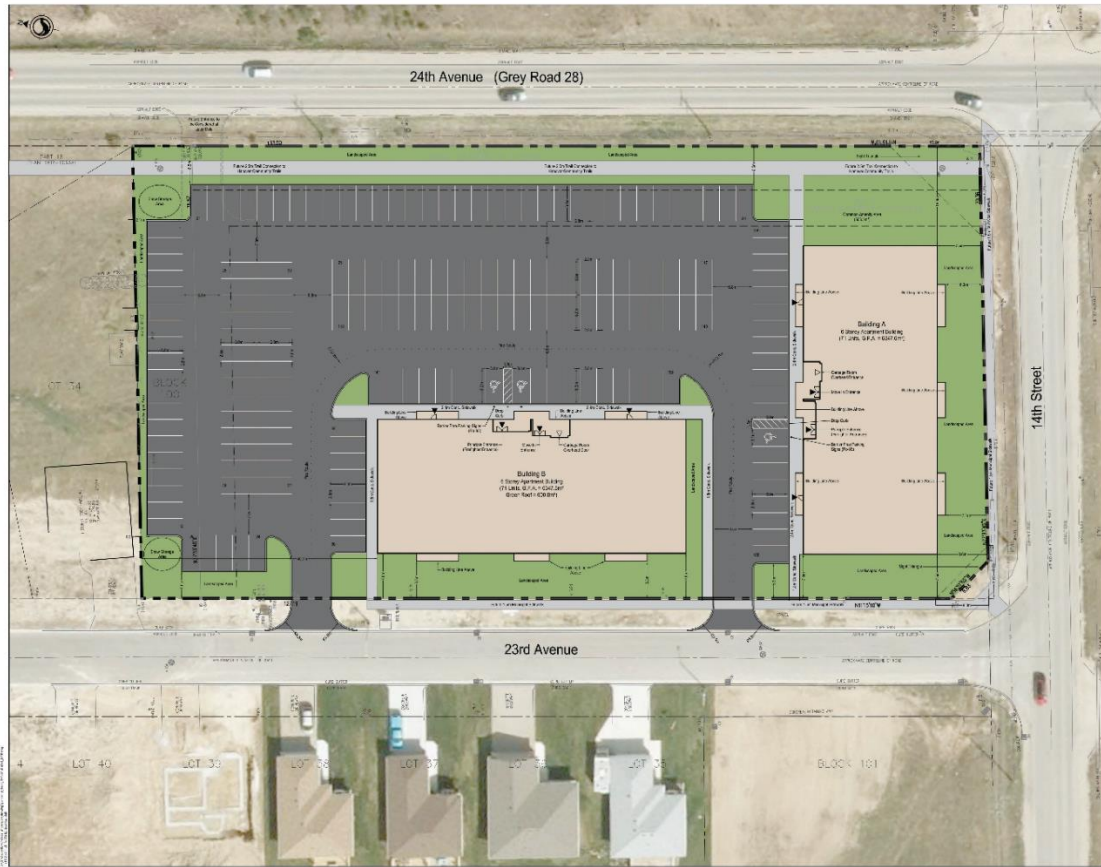
Surrounding the subject lands;

- to the west is an established plan of subdivision which has now finished construction,
- to the north is the proposed Saugeen Cedar Heights West subdivision,
- to the south is the Home Hardware Building Centre, and
- to the east are some hazard lands and further east is the Bren Lea and Saugeen Cedar Heights East subdivisions, both of which are currently under construction.

When A3-21 was circulated on October 21, 2021, the proposed draft site plan showed no new entrances onto Grey Road 28 and two entrances coming off 23rd Avenue. Map 2 below shows a similar layout, but also includes a notation in the northeast corner of the site noting a “Future Entrance to be Considered at Later Date”.

A number of comments were received on this application, including comments from Town staff, their Planning Advisory Committee, the Saugeen Valley Conservation Authority (SVCA), and numerous members of the public.

County Transportation Services and Planning staff met with Town staff on November 18, 2021 to discuss the County’s comments. County staff acknowledge that the Town is seeking the possible entrance onto Grey Road 28 to alleviate traffic on 23rd Avenue and in response to neighbours’ concerns. Transportation Services staff noted that an entrance here would not meet their policies and could impact future road operations. Having the traffic for these apartment buildings go through the current stop-controlled intersection is preferable from a safety and road operations standpoint, versus allowing direct accesses onto Grey Road 28 for each new development. In the future, the intersection of 14th Street and Grey Road 28 may necessitate future traffic signals or other traffic improvements. Minimizing the direct accesses, where there are local road alternatives, provides the greatest flexibility in the future for such improvements to happen.



Map 2: Proposed Conceptual Site Plan

(Map 2 Courtesy of Stantec)

The last date to appeal the decision of the Town was December 6th. In accordance with the County's appeal protocol, linked to in the Attachments section of the report, County staff have submitted a 'placeholder appeal' to preserve the County's right of appeal for this matter. Should Council not support moving forward with this appeal, it can be withdrawn immediately. More on the County's legal options will be provided in the Legal and Legislated Requirements section of this report.

Analysis of Planning Issues

When rendering a land use planning decision, planning authorities must have regard to matters of Provincial Interest under the *Planning Act*, be consistent with the Provincial Policy Statement (PPS) 2020, and conform to any Provincial Plans as well as any County or Municipal Official Plans that govern the subject lands. In this case, the County of Grey Official Plan and Town of Hanover Official Plan have jurisdiction over the subject property. There is no Provincial Plan in place for these lands.

A detailed planning analysis has not been provided here, but rather the following policy analysis will generally focus on the policies as they relate to the County Road.

Provincial Legislation – The Planning Act

Section 45 of the *Planning Act* provides municipalities the ability to use their committee of adjustment to authorize minor variances. Following pre-submission consultation with the Town, the proponent submitted a minor variance application. In reviewing minor variance applications across our nine member municipalities, County staff do not undertake a detailed analysis of the provisions of the *Planning Act*. County staff defer to municipal staff to undertake that analysis and process the application in accordance with the legislation.

The *Planning Act* sets out provisions for how to give notice of the application and the decision of the committee of adjustment. County staff received formal notice of decision on November 24, 2021, with the last date of appeal being December 6, 2021. Based on when we received this notice, it was not feasible to add a discussion to the November 25, 2021 Committee of the Whole meeting agenda.

Staff would further note that although there is to be a site plan application associated with this development. The County does not have an appeal right on the site plan to the Ontario Land Tribunal.

Provincial Policy Statement 2020

Section 1 of the PPS generally directs new development to settlement areas where municipal services are provided. Numerous policies in the PPS speak to the efficient use of land and infrastructure within settlement areas, such as sections 1.1.3.2 (a) and (b). The subject lands will be serviced via municipal water and sewer services. Within settlement areas, intensification is also promoted, as is the provision of a variety of housing types. The County and the Town are in need of additional rental housing.

Section 1.6.7 speaks to the safe and efficient movement of people and goods via transportation systems that address a community's projected needs. The County's concern with this application relates to the County's ability to maintain an efficient County Road network, which works in concert with the municipal and provincial road networks.

Sections 2 and 3 of the PPS speak to the protection of natural heritage features and directing new development away from hazardous areas. The County Official Plan does not map any significant natural heritage features on-site. County staff defer to the Saugeen Valley Conservation Authority with respect to the Hazard Lands on-site.

County of Grey Official Plan

Schedule A of Recolour Grey designates the subject property as 'Primary Settlement Area' and a small portion of 'Hazard Lands'. New development is generally not permitted within the Hazard Lands designation. With respect to the Primary Settlement Area Designation, section 3.5(2) and 3.5(5) of the Official Plan states the following:

"2) Land use policies and development standards in areas designated Primary Settlement Areas will be in accordance with local official plans and/or secondary plans.

5) For the City of Owen Sound and the Town of Hanover, it is recommended that a minimum development density of 25 units per net hectare will be achieved for new

development. For all other Primary Settlement areas, a minimum development density of 20 units per net hectare will be achieved for new development. The County encourages new development to be of a form and density which is supportive of future transit needs in accordance with the Province's Transit Supportive Guidelines, or to develop similar municipal guidelines that achieve the same objective."

The above-noted density policies represent minimum targets to be achieved and the County has no maximum density policies in Primary Settlement Areas. The County Plan generally defers to detailed municipal planning documents for development standards within Primary Settlement Areas. County staff defer to Town staff for their interpretation of the Town's planning documents and their development standards.

Section 8.3.2 of the County Plan provides policies on County Roads. This section of Grey Road 28 has been classified as a County Arterial Road on Appendix D to the County Official Plan.

Notable to this minor variance application, section 8.3.2(9) and (10) of the Plan states:

"(9) New access to County roads that are classified as County Arterial or County Collector roads will be discouraged where development sites have suitable access to a County local road or a municipal local road in order to preserve the key function of the County road in the complete transportation system. New accesses on to all County roads will only be permitted where traffic safety concerns related to sight lines at curves, hills, and intersections can be addressed.

(10) New development that requires access to a County Arterial, County Collector or County Local Road as identified on Appendix D will be considered subject to:

- a) The development is permitted in the County Plan or the local official plan or secondary plan;*
- b) No appropriate access is available from a County local road or a municipal local road;*
- c) The proposed use meets the setback requirements of the County's Road Setback By-law;*
- d) The necessary road widening is provided as required;*
- e) That an entrance permit is obtained from the County Transportation Services Department as a condition of approval."*

In this case there is access available from 23rd Avenue, and as such access is not needed onto Grey Road 28 (24th Avenue). County staff would further note that the developer's Traffic Impact Study was based on the two entrances onto 23rd Avenue and did not assess an access onto Grey Road 28.

In the County's comments on this application County Transportation Services staff provided the following comments:

- 1. "From a traffic and operations standpoint there are generally no concerns, provided an entrance is not proposed onto the County Road (24th Avenue).*
- 2. In making the above comment, County staff have assumed that new or increased drainage will not be directed towards the County Road. If this is not the case, County staff may have additional comments or concerns.*

3. *At the future site plan stage County Transportation will require the following:*
 - a. *A 0.3 metre reserve along the County Road,*
 - b. *Road widening along the County Road, and*
 - c. *A daylight triangle at the intersection of 14th Street and 24th Avenue.”*

County Transportation Services staff have noted that aside from the County Official Plan policies, their own policies would not support a new direct access to Grey Road 28 in this location.

County staff are of the opinion that condition (g) to the approved minor variance conflicts with the County Official Plan and comment # 1 above from the Transportation Services department. Should condition (g) be removed and the proposed site plan be amended to remove the notation to a future access off Grey Road 28, this would remove the conformity issue to these sections of the County Official Plan.

Town of Hanover Official Plan

The subject lands are designated as ‘Large Format Commercial’ and ‘Hazard’ in the Hanover Official Plan.

Schedule C to the Town Plan classifies both Grey Road 28 and 14th Street as arterial roads, while 23rd Avenue is classified as a local road. Section D2.4.17 of the Town Plan provides policies on medium and high-density residential development. Subsection (e) of this section states:

“(e) The following shall be taken into consideration when reviewing the appropriateness of a new medium or high density development:

- i. The proposed use shall generally be compatible with existing uses in close proximity of the subject lands. The word “compatible” does not necessarily mean the same as or similar to existing nearby built form. Being compatible shall mean that the proposed use can co-exist with the existing nearby built form without causing undue adverse impacts with regard to dwarfing of buildings, shadowing, existing views, increased noise, traffic, etc.*
- ii. Adequate buffering, landscaping and building setbacks shall be provided to protect the privacy of the adjacent residential properties.*
- iii. The roads in the area shall have the ability to handle the expected traffic increase. Medium and high density housing will generally be encouraged to locate in areas near arterial or collector roads in order to minimize traffic congestion and facilitate access to commercial areas.*
- iv. Municipal water and sanitary sewer capacity shall be available to service the proposed development.*
- v. Adequate off-street parking shall be provided to serve the proposed development.”*

County staff would note that section D2.4.17(e)(iii) notes that such residential development should locate near arterial or collector roads but does not require such development to be accessed directly from arterial or collector roads. Section E3.1.1(a) of the Town Plan goes onto state:

“(a) Arterial Roads

- i. Arterial Roads are main traffic routes intended for large volumes of passenger and commercial traffic moving to destinations within and through the Town.*
- ii. It is the intent of this Official Plan to limit access to/from properties along Arterial roads. All proposals for new development along Arterial Roads must consider the impact of the proposed use on the functioning of the Arterial road. Shared access points may be required.*
- iii. Where the County of Grey is the approval authority for access onto an Arterial Road, the County may grant or refuse access. All development along a County Road shall be in accordance with the County’s policies and standards. The County shall be involved in the review of Site Plan Control Agreements involving access onto a County Road.*
- iv. Where development or redevelopment is proposed for a property having frontage on both an Arterial Road and either a Collector or Local Road, access shall be gained from the Collector or Local Road.”*

County staff would note that subsection (iii) acknowledges the role of the County in providing or refusing to provide access to County Roads within the Town. Subsection (iv) clearly states that access to a development is to come from a local road, where there is access to both a local and arterial road.

County staff are of the opinion that condition (g) to the approved minor variance conflicts with the Town Official Plan provisions noted above. Should condition (g) be removed and the proposed site plan be amended to remove the notation to a future access off Grey Road 28, this would remove the conformity issue to these sections of the Town Plan.

County staff are recommending option 1, to carry forward with the appeal, specific to condition (g) only. Staff believe that should this appeal move forward, there would be the opportunity to explore a settlement, versus having to go to a contested hearing. Should Council not support the recommendation for option 1, then County staff would recommend option 2(a) to still seek party status to any other appeals to this file, to protect the County’s interests with respect to Grey Road 28. Option 2(b) is not recommended at this time, based on the potential for impacts to Grey Road 28.

County Appeals Process

Based on the County’s appeal protocol, linked to in the Attachments section of this report, County staff have notified Town staff of the County’s intent to appeal minor variance A3-21 and more specifically condition (g). While the County’s appeal policy and procedure refer to the Ontario Municipal Board (OMB), the OMB has since been replaced by the Ontario Land Tribunal (OLT). An appeal has been submitted to the Town prior to December 6, 2021, which is the last date of appeal. Should Council decide not to proceed with the appeal, County staff will withdraw the appeal filed with the Town.

County staff would further note that there were some public concerns with this application. Should a member of the public decide to appeal this matter to the OLT, staff are recommending that the County also seek party status to the OLT proceedings on this matter. Should the County appeal A3-21 then the County would have party status. However, should the County not

appeal, then the County would have to specifically request party status. This status would be on the basis that the County has an interest in Grey Road 28, and would not want to see OLT issue a decision that was contrary to the County's interests in this regard (e.g. approve the development with both entrances coming out onto Grey Road 28). A link to the County's Ontario Municipal Board Attendance Report has been included in the Attachments section of this report.

Legal and Legislated Requirements

The last date of appeal for this application was December 6, 2021, based on the notice of decision from the Town and the provisions of the *Planning Act*.

Financial and Resource Implications

Should the County proceed with an appeal or seek party status to an appeal, there would be financial and resource implications. Staff recommend proceeding with outside legal counsel, which would be funded through legal reserves. Additional Planning and Transportation Services staff time would also be required with respect to any appeals. Staff do not believe this would result in a significant amount of time, and are hopeful that a settlement could be reached which negates the need for an OLT hearing or any significant staff time or legal resources.

Relevant Consultation

- Internal: Transportation Services, Legal Services, CAO, and Planning
- External: Town of Hanover and the proponent

Appendices and Attachments

[County Comments on A3-21](#)

[PDR-PCD-04-13 Land Use Planning Appeal Policy and Procedure](#)

[PDR-PCD-08-13 Ontario Municipal Board Attendance](#)