

To:	Warden and Members of Grey County Council
Committee Date:	June 23, 2022
Subject / Report No:	PDR-CW-23-22 / Appeal Discussion
Title:	Town of The Blue Mountains Consent B03-2022
Prepared by:	Becky Hillyer
Reviewed by:	Scott Taylor
Lower Tier(s) Affected:	Town of The Blue Mountains
Status:	

Recommendation

1. That Report PDR-CW-23-22 regarding an overview of Town of The Blue Mountains Consent application B03-2022 on lands described as Part of Parklot 13, North East Side of Alfred Street, Plan Thornbury, being Part 1 of Plan 16R-9210 (adjacent immediately west of lands locally known as 154 Alfred Street West) be received; and

(Choose either option 1 or option 2)

2. Option 1

That staff be directed to pursue the appeal of consent application B03-2022 to the Ontario Land Tribunal with respect to the Town Committee of Adjustment's decision to exclude the County's road widening request as a condition of consent, on the proposed severed and retained lands.

Option 2

That staff be directed to withdraw the appeal of consent application B03-2022 to the Ontario Land Tribunal.

Executive Summary

Road widening is commonly requested by County staff on County Road consent applications throughout Grey County and is generally considered a standard condition of consent. The opportunity to request road widening for consent applications is provided within the *Planning Act*, with relevant detailed policy noted within the County's Official Plan. The purpose of securing road widenings is to provide a County controlled road corridor of a consistent width to

facilitate the installation of services in the right of way as well as allowing for future road enhancements, should they be required.

The Town of The Blue Mountains' Committee of Adjustment granted provisional approval for consent application B03-2022 to permit a lot boundary adjustment (lot addition) in order to convey an existing driveway to abutting lands at 154 Alfred Street West (this section of Alfred Street west also forms part of Grey Road 113). Grey County Transportation Services staff requested road widening, which was included in the County Planning staff comments and formally submitted through email to The Town on May 16, 2022. During the Committee of Adjustment meeting on May 18, 2022, the Committee provisionally approved the proposed consent application without the County's requested road widening provision

County staff do not object to the proposed lot addition. The County's proposed appeal is very narrow in scope and relates only to the County's written request for road widening along the severed and retained portions of the subject property. Should the approval of Consent application B03-2022 include a condition for road widening as requested by the County, County staff would raise no further issue with the subject consent application.

As per the County's appeal protocol, County staff have submitted a 'placeholder appeal' to the Town's decision on consent application B03-2022. County staff are recommending appeal of this application as it pertains to the County's request for road widening on the proposed severed and retained lands. Should Council not support moving forward with the appeal, it will be withdrawn.

The landowner has provided a response to the County's placeholder appeal which has been linked to in the Attachments section of this report.

Background and Discussion

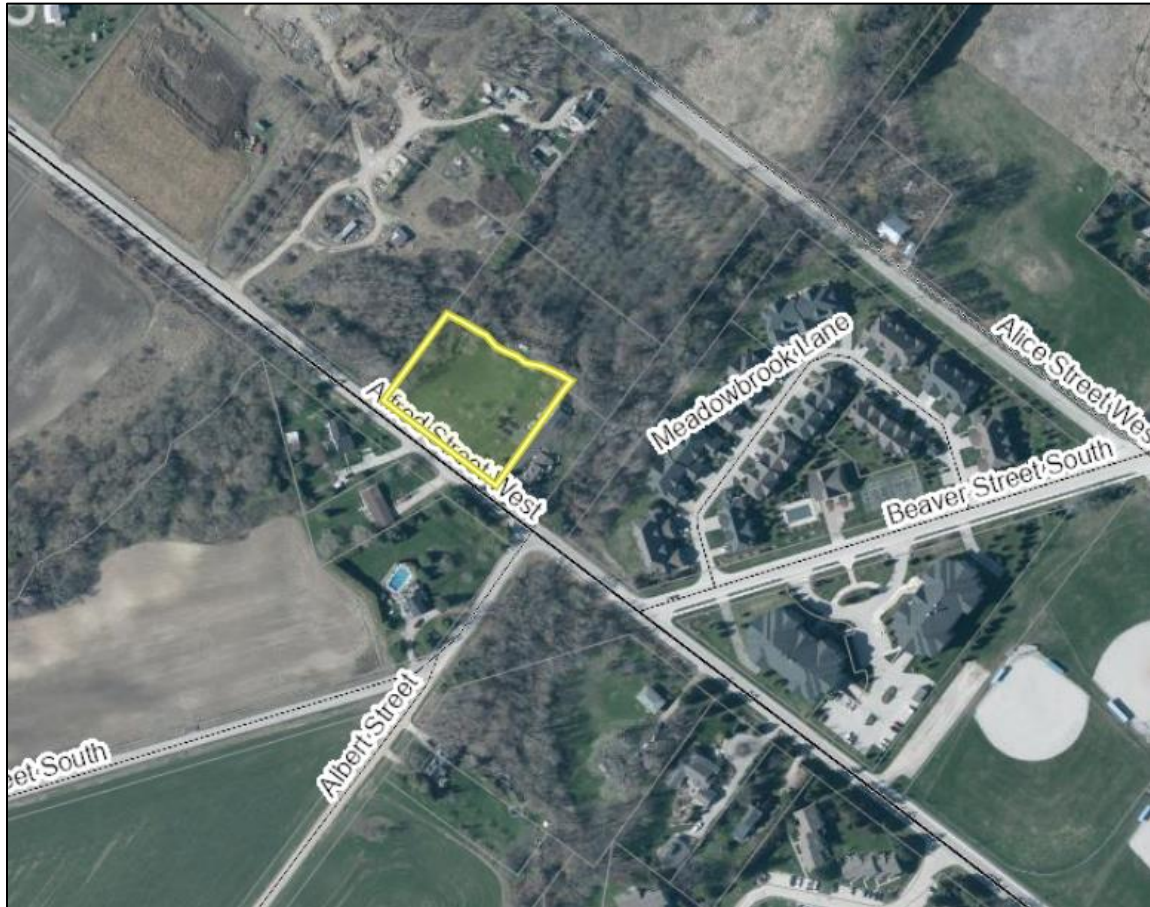
The Town of The Blue Mountains Committee of Adjustment recently approved consent application B03-2022, submitted by the landowner, who is the registered owner of the subject property as well as the adjacent lands that would benefit from the proposed lot addition. The proposed lot addition would convey 2,016 m² of the subject property to the abutting lands to the east, in order to situate the existing parking area on the same property as the landowner's residence. No new lot would be created as a result of this application.

The subject lands are legally described as Part of Parklot 13, North East Side of Alfred Street, Plan Thornbury, being Part 1 of Plan 16R-9210, in the Settlement Area of Thornbury, and are immediately adjacent to lands locally known as 154 Alfred Street West. The subject property is currently vacant and approximately 4400 m² in size. The neighbouring property that would receive the lot addition contains a single residential dwelling and is currently 1,630 m² in size.

The receiving parcel (154 Alfred Street) would have a resulting area of 3,650 m². The retained lands would have a resulting area of 2,940 m².

The subject property has frontage on County Road 113, which is locally known as Alfred Street West. The surrounding lands are predominantly residential in nature, including a medium-density residential development to the east, low-density residential uses to the south, and a combination of vacant lands

and/or low-density residential to the north and west. There is a watercourse and wooded area immediately surrounding the subject property.



Map 1: Location of Subject Lands

County Staff have been in contact with Town staff to request a copy of the submitted planning report and any agency comments related to the application.

The consent application was approved by the Town’s Committee of Adjustment with a number of standard conditions pertaining to the registration and surveying of the lot addition, mortgaging, and timing. The list of conditions did not reflect the County’s request for road widening on the proposed severed and retained lands, as requested through comments communicated by email to Town staff on May 16th.

As noted, it is generally considered standard practice for County Transportation Services staff to request road widening provisions for a variety of *Planning Act* applications, including consents, site plan applications, plans of subdivision, and plans of condominium. It is an important best-practice to strategically acquire these lands when the opportunity arises, to facilitate any upgrading of County Roads in future. Upgrading may include the expansion of lanes, shoulders or sidewalks; and/or the addition of underground infrastructure such as internet cables, services, etc. When road widening is required for County Road projects, and the County has not previously acquired the widening through

development applications, the County is required to pay for those lands. When widening is acquired as a condition of a development application it comes at no cost to the County.

In reviewing a video record of the Committee of Adjustment meeting, it would appear that there was some confusion surrounding the intention of the County's road widening comments, which read as follows:

"No objection to severance. Road widening of 17' or 5.182 m is required on the retained and severed parcels. The proposed widening may or may not come into conflict with an existing porch on the front of the structure. If it does, the line may deviate around said structure."



Map 2: Proposed Lot Addition & Widening (Approximate – not to scale)

As the existing dwelling and porch structure are located on the lot that would benefit from the lot addition, and not the severed or retained portions, the County's road widening request would not apply to the lands containing the dwelling. To clarify, County staff would seek widening on the proposed retained and severed portions only.

The Town Staff Report did not include a recommendation to include the County's road widening request as a condition of provisional consent, as the County's comments were received after the Staff Report was issued. Footage from the meeting indicated that Town staff raised the County's comments but deferred to the Committee for a decision on this matter.

After a considerable discussion on the road widening request, including input from the property owner, the Committee ultimately decided to provisionally approve the consent without a condition for road widening.

The last date to appeal the decision of the Town was June 9, 2022. 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.

The landowner of the consent application is unable to attend the County's Committee of Whole meeting on June 23rd. This landowner has however provided a written response to the County's placeholder appeal, which has been linked to in the Attachments 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 The Town of The Blue Mountains' 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 and the County's request for road widening.

Provincial Legislation – The Planning Act

Section 5(3) of the *Planning Act* provides municipal councils the ability to delegate authority for the giving of consents to a committee of adjustment.

Section 53(12) of the Act provides wording to reflect that a council (or committee of adjustment, if delegated) has the authority to enact conditions on a consent in a similar way to that of a plan-of-subdivision, while Section 53(12.1) reiterates that the powers of a council apply to both the severed and retained portions of a subject property undergoing a consent process. Understanding that a consent process has similar policies regarding conditions to that of a plan of subdivision, Section 51(25)(c) indicates that road widening conditions of the following nature may be added to a plan of subdivision (and therefore a consent):

“(c) when the proposed subdivision abuts on an existing highway, that sufficient land, other than land occupied by buildings or structures, be dedicated to provide for the widening of the highway to such width as the approval authority considers necessary;”

During the Committee of Adjustment meeting regarding the subject consent application, there appeared to be some uncertainty around whether the Committee (and/or the County) had the authority to request road widening in the case of a lot addition, and/or which portions of the land should be included within a condition for widening. Section 53(12.1) above was recently added to the *Planning Act* as a technical amendment to reiterate that councils have the authority to deal with both the severed and

retained portions of a property. In the case of the subject lot addition, staff would emphasize that the *Act* does not authorize council to request road widening on the lands that would receive the lot addition (i.e. 154 Alfred Street West - the residence of the applicant). As a result, the County has only requested the road widening on the severed and retained lands, and not the lands receiving the lot addition.

Given the above, staff are satisfied that The Town of Blue Mountains' Committee of Adjustment is empowered by the *Planning Act* to include a condition for road widening on the retained and severed portions of a property pursuing a consent application, on the County's behalf.

Provincial Policy Statement 2020

Section 1.2 of the PPS speaks to the importance of coordination amongst a wide array of actors involved in the sphere of Planning:

"A coordinated, integrated and comprehensive approach should be used when dealing with planning matters within municipalities, across lower, single and/or upper-tier municipal boundaries, and with other orders of government, agencies and boards."

Such approaches would include:

a) managing and/or promoting growth and development that is integrated with infrastructure planning; [and]

d) infrastructure, multimodal transportation systems, public service facilities and waste management systems;

Section 1.6.7 of the PPS also calls for transportation systems that are "safe," and "appropriate to address projected needs."

In requesting road widening through *Planning Act* applications, the County seeks to acquire land that may in the future, be used for the creation of expanded roadways or servicing infrastructure to facilitate growth, to provide for equitable development, and to provide roadways that are safe to all users.

County of Grey Official Plan

Schedule A of Recolour Grey designates the subject property as 'Primary Settlement Area', with approximately one-third of the land area within the 'Hazard Lands.' New development is generally not permitted within the Hazard Lands designation. In the case of the subject lot addition, County staff did not have significant concerns regarding the Hazard Lands designation, given that no new development is proposed through this application. Nonetheless, staff recommended that further comments be received from the Conservation Authority. As indicated in a previous section, comments were submitted from GSCA, who indicated no concerns with the proposal.

With respect to the Primary Settlement Area Designation, section 3.5(2) 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."

In this case, the subject lands are designated as a “Future Secondary Plan Area” within The Town of Blue Mountains’ Official Plan. Section B3.13 provides policy direction around the development of Future Secondary Plan Areas, noting that these lands have been earmarked for future growth and development, and therefore there are restrictions regarding one-off lot division and land use intensification on existing properties within these areas.

This is of relevance because while there may not be immediate need for road upgrading, the location of the subject lands on the County Road would imply that users of this roadway will increase quite significantly if and when the westward expansion of Thornbury does occur. Therefore, it would likely be in the interest of both the Town and the County to pre-emptively acquire road widening along this portion of Grey Road 113, as opportunities arise, in advance of future westward growth of Thornbury.

As noted, Transportation Services staff regularly request road widening for planning applications throughout the County. The *Planning Act* empowers Councils to seek this widening, and further policy provisions are indicated within the County’s Official plan.

Section 8.3.2(3)(d) of the County’s Official Plan states:

“Where County road right-of-way widths are less than those described above, the County will require as a condition of approval through a consent, plan of subdivision, or site plan application, the dedication of lands for road widening purposes at no expense to the County.”

In this case, the subject lands have frontage on Alfred Street West (County Road 113), which is a ‘County local road,’ per Appendix D of the County’s Official Plan. Section 8.3.2(3)(b) of the OP indicates that County local roads should generally be 30 metre right-of-way width, while the current roadway is closer to 20 metres in width. The County requested a standard widening of 5.182 m, and therefore the request for road widening is within the parameters of the existing Official Plan policy.

Given the above information, staff are of the opinion that the requested 5.182 metres of road widening on the proposed retained and severed portions of the subject property conform to the policies of the County’s Official Plan.

The impact of not acquiring the road widening could mean future costs to taxpayers and/or delays in County Road infrastructure improvement or reconstruction projects. Staff also have concerns that a local Committee of Adjustment decision, which does not include the County’s road widening as a condition of approval, could set a negative precedent for other Committees of Adjustment across the County and result in the loss of additional future widening, at a cost to the County.

County staff have prepared a technical guideline on this topic which is on the County website and is linked to in Attachments section of this report to help educate landowners and developers on this topic.

Should a revised approval of Consent application B03-2022 include a condition for road widening on the severed and retained parcels as requested by the County, County staff would raise no further issue with the subject consent application.

The Town of the Blue Mountains Official Plan

Section 5.6.11 of The Town's Official Plan states:

"The following works, facilities and other phasing requirements shall be addressed as conditions of draft plan of subdivision, condominium or site plan approval:

- b) Road improvements in accordance with the requirements of the applicable road authority, including road widening, turning lanes, traffic signals and external roads improvements."*

As indicated within a previous section of this report, the *Planning Act* offers direction for Council to place conditions on a consent application, similar to those of a plan of subdivision application. County staff might recommend, as the Town is currently in the process of updating their local Official Plan, that revised wording be considered to address road improvement (specifically road widening) conditions through consent applications, in addition to draft plans of subdivision, condominium and site plan approval indicated in Section 5.6.11(b).

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 Consent B03-2022 and more specifically the decision to exclude the County's requested road widening condition.

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 on June 9, 2022, 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.

Legal and Legislated Requirements

The last date of appeal for this application was June 9, 2022, 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, there would be financial and resource implications. Staff recommend proceeding with outside legal counsel if the matter were to go to a contested hearing, which would be funded through legal reserves. Additional Planning and Transportation Services staff time would also be required with respect to any appeals. However, staff are hopeful that a settlement could be reached between the Town, proponent, and the County, using in-house legal resources and staff to negate the need for an Ontario Land Tribunal (OLT) hearing or any significant staff time or legal resources.

Relevant Consultation

Internal: Transportation Services, Legal Services, CAO, Deputy CAO and Planning

External: Town of The Blue Mountains and the proponent

Appendices and Attachments

[Correspondence from the Landowner of 154 Alfred St. West – Consent – The Blue Mountains](#)

[Technical Guideline on Grey County Transportation Services Comments](#)

[County Comments – B03-2022](#)

[Field Report from Transportation Services](#)

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

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