

MANITOULIN PLANNING BOARD

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May 26, 2022

MINUTES OF PLANNING BOARD MEETING - May 24, 2022

At an electronic Meeting of the Manitoulin Planning Board held at the Planning Board Office, Gore Bay, Ontario, on Tuesday, May 24th, 2022. The following Members of Planning Board were present:

- | | | | |
|----|-------------|----|--------------|
| 1. | L. Hayden | 5. | I. Anderson |
| 2. | R. Stephens | 6. | R. Brown |
| 3. | K. Noland | 7. | D. Head |
| 4. | D. McDowell | 8. | T. Mackinlay |

Regrets: D. Osborne and E. Russell

Also in attendance for the electronic meeting were:

- B. Rolston applicant, File No. B11-22;
- D. Banger, applicant, File No. B12-22;
- B. Bainborough, applicant, File No. B04-22 - Request for Consideration;
- D. Watts, interested party; and
- T. Sasvari, reporter, Manitoulin West Recorder;

There were no other interested parties or members of the general public or press in attendance.

The Meeting was called to Order at 7:02 p.m. by Chair L. Hayden, who welcomed all present.

The Chair asked if there were any Board Members who wished to declare a conflict of interest with any of the items listed on the agenda or having to do with the previous Board Meeting on April 26th, 2022.

There were no conflicts declared.

1. ORDER OF BUSINESS

The Chair requested the adoption of the order of business.

The Secretary-Treasurer requested two additional items be added; under 5. e) - On-line Workshop June 14th, 2022 and under 5. f) Office Assistance/Temporary Help

MOTION

It was moved by D. McDowell and seconded by I. Anderson that the Order of Business be adopted, as amended,
- Carried

Note: Vice Chair, K. Noland, continued with the electronic meeting as Chair Hayden had been disconnected from the electronic meeting..

2. MINUTES OF PREVIOUS BOARD MEETING - April 26, 2022

The Vice Chair announced that the Minutes of the electronic Board Meeting held on April 26th, 2022 had been circulated to the Board Members and requested that any errors or omissions be stated.

MOTION

A motion was moved by T. Mackinlay and seconded by R. Brown that the Minutes of April 26th, 2022 be adopted,
- Carried.

BUSINESS ARISING FROM THE MINUTES OF THE PREVIOUS BOARD MEETING - April 26th, 2022

There was none.

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3. VARIABLE EXPENDITURES

There were no questions of the variable expenditures as circulated.

MOTION

It was moved by I. Anderson and seconded by D. McDowell that the variable expenditures be accepted as presented,
- Carried.

4. PRESENTATION OF APPLICATIONS FOR CONSENT

Note: Chair Hayden reconnected to the electronic meeting and continued with the agenda during consideration of the Consent to Sever Applications.

The Chair announced that the applications for consent to sever would now be heard.

Note: For the sake of continuity the details and decisions of the presentations will be so recorded in the usual fashion toward the end of the Minutes.

5. GENERAL, REGULAR AND NEW BUSINESS

a) REQUEST FOR CONSIDERATION - CONSENT FILE NO. B04-22

The Secretary-Treasurer explained that the applicants are requesting a waiver of a Zoning Amendment Application fee of \$725.00.

The Board approved the Consent to Sever Application, File No. B04-22, with the following condition:

- ii) *a written confirmation that all minimum yard requirements resulting from the new lot lines conform to Zoning By-law No. 80-19 i.e. written verification from the Ontario Land Surveyor (OLS).*

This is a standard condition to ensure that the new lot and the retained lot conform to the Municipal Zoning By-law.

There were two emails received from the applicants on April 8th, 2022 and May 3rd, 2022, which were attached to the Board Agenda. The emails will be attached as "Appendix A" to the Board Minutes.

The GIS technician had offered assistance to the applicants in preparation of the application (digital) sketch. There was no mention of the existing accessory shed on the application, so this was not put on the sketch. The sketch was prepared indicating a 3.0 metre rear yard setback for the existing dwelling. The minimum rear yard setback requirement for the Town of Gore Bay is 7.5 metres. (Not sure where the 3 metres came from as the Town of Gore Bay Zoning By-law does not have a 3 metre setback for any structures in the R1 Zone). The Consent to Sever application was put into circulation, showing a three (3) metre rear yard setback. The Planning Board did not pick-up on the error, the Town of Gore Bay did not pick-up on the error, nor did the applicants become aware of the error.

In order for condition ii) (above) to be fulfilled the applicants would need to survey the severed lot with the dwelling having a rear yard setback of 7.5 metres. Or they could request an amendment to the Zoning By-law to permit a reduced rear yard setback of 3.0 metres for the dwelling; this would require an application fee of \$725.00 and approval from the Town of Gore Bay. The applicants have chosen to submit a Zoning Amendment Application and are requesting that the application fee of \$725.00 be waived due to the error made.

S. Carr, Clerk for the Town of Gore Bay, advised that the amendment application had been reviewed by the 'General Government Committee' and advised they supported the application 'in principle' but did not comment on the waiver of the application fee.

The following letter, dated March 25th, 2022, was sent to the applicants and copied to the Municipality, Chair Hayden and the R. Halliday, Ontario Land Surveyor (OLS):

' Dear Mr. Bainborough:

*REF: Application for Consent to Sever - File No. B04-22
Location: Part Lot 11, N/S Hall Street
Surveyed as Part 1, Plan 31R-1830
Town of Gore Bay, District of Manitoulin*

Further to our telephone conversation earlier today, I provide the following comments:'

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*Letter to B. Bainborough
March 25, 2022 - Continued*

' Your application for Consent to Sever was conditionally approved by the Manitoulin Planning Board on January 25th, 2022 which states:

' Accompanying the transfer documents shall be:

- ii) a written confirmation that all minimum yard requirements resulting from the new lot lines conform to Zoning By-law No. 80-19, i.e. written verification from the Ontario Land Surveyor.'*

It has come to our attention that the rear yard set back requirement of 7.5 metres for the existing dwelling on the proposed retained land (Agnes Street), does not conform to the Municipal Zoning By-law and that there is a wooden shed located within the proposed severed land (Water Street) that not included on your application; you had indicated that this parcel is vacant land. The wooden shed will not conform to the Zoning By-law if the new lot is created as it would need to be accessory to a dwelling; there is no dwelling currently on the proposed severed land.

Although the Manitoulin Planning Board assisted with your application sketch, for circulation purposes, it is your responsibility to make sure that the application and the sketch are correct. You have signed this section on the application form to this effect.

An error has been made on our part showing a 3 metre setback for the existing dwelling on the sketch when in fact it should have been 7.5 metres. The Town of Gore Bay also missed this error. We are all human and do make mistakes.

In order for the proposed severed and retained lots, to conform to the Zoning By-law No. 80-11 for the Town of Gore Bay and in order for condition ii) of the conditional approval to be fulfilled, there are two possible solutions:

- 1. You could adjust the new boundary line between the severed and the retained land with the dwelling having a rear yard setback of 7.5 metres and the wooden shed having a rear yard setback of 2.0 metres. And have the (new) survey completed this way; or*
- 2. You can request a Municipal By-law Amendment to the Town of Gore Bay to have a reduced rear yard setback from 7.5 metres to 3 metres for the existing dwelling. You will need the support of the Town for this amendment, as they are the approval authority for this application.*

As we discussed, an appointment has been set to meet with me here at the Planning Board Office on Thursday, March 31st, 2022 at 11:00 a.m to complete the Amendment Application.

If you decide to go ahead with Option #1, please advise.

I have attached a copy of the Application sketch, that may help explain.

If you have any questions or need any clarification, please do not hesitate to contact me.

*Kind regards,
Theresa Carlisle, ACST, Secretary-Treasurer '*

B. Bainborough, applicant, was present during consideration of the request and spoke to their application. He explained that the accessory shed is to be removed and that they had not intended to do anything wrong, and that he would prefer to keep a three (3.0) metre rear yard setback, as per the sketch, if possible.

Discussion among the Board resulted in the following motion:

MOTION

It was moved by K. Noland and seconded by R. Brown that the Board will waive half of the Amendment Application fee in the amount of \$362.50,
- Carried Unanimously.

5. b) COOP 2021

The Secretary-Treasurer informed the Board that the COOP 2021 imagery had been received and she had ordered thumb drives. Once the thumb drives have been received, the imagery will be copied for the Municipalities and delivered, which should be by the end of May 2022.

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May 24, 2022 - Continued

5. GENERAL, REGULAR AND NEW BUSINESS - Continued

c) NATURAL HERITAGE SYSTEM (NHS)

The Secretary-Treasurer advised that the draft NHS system has not been completed yet. The Gis Technician is still working on this project. It is hopeful that a draft NHS will be ready for the Board Members at the next Board Meeting.

d) ZONING BY-LAW NO. 96-01

The Secretary-Treasurer informed the Board that a draft updated By-law for the Unincorporated Townships of Robinson and Dawson had been reviewed with Sarah Vereault and Erin Reed from J.L. Richards & Associates Limited on May 11th, 2022 and had been sent back to them with proposed changes for the preparation of a 2nd draft. Tentatively, an Open House is scheduled for Tuesday, June 14th, 2022 at the Silver Water Hall. Depending on when the 2nd draft is received and when staff members have had a chance to review the updated document, will determine if June 14th is a realistic date or not. It is hopeful that the Planning Board Members will have a draft By-law for their review, before June 14th, 2022.

e) ON LINE WORKSHOP - JUNE 14TH, 2022

The Secretary-Treasurer explained that Board Member, R. Stephens had forwarded an email regarding a "Planning Workshop" and has asked that this item be added to the Board Agenda for discussion. The electronic workshop is being offered by the Association of Municipalities of Ontario (AMO) on Tuesday, June 14th, 2022 and is geared toward 'Land Use Planning' and may be beneficial to the Planning Board Staff Members. The cost is \$339.40 including HST per registration.

Discussion among the Board resulted in the following motion:

MOTION

It was moved by K. Noland and seconded by R. Stephens that the Planning Board Staff register for the Workshop,
- Carried Unanimously.

f) OFFICE ASSISTANT - TEMPORARY ASSISTANCE FOR
THE PLANNING BOARD OFFICE

The Secretary-Treasurer had requested this addition to the agenda to obtain clarification from the Board if the budget amount of sixteen (16) weeks for an Office Assistant could be flexible, i.e. less than 35 hours per week; and/or less than 7 hours per day.

Discussion resulted in the general consensus of the Board that the number of hours per week for an Office Assistance could be determined by the Secretary-Treasurer keeping the maximum to 560 hours as per the (2022) budget.

Board Minutes
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Application File No.: B28-21 No. of Members Present: 8
Date of Decision: November 30, 2021 - Adjourned January 25, 2022 - Adjourned
May 24, 2022 - As Amended
Location of Property: Lot 27, Conc. V, excepting Part 7, Hwy Plan T-5140, Township of
Carnarvon, Municipality of Central Manitoulin, District of Manitoulin

DECISION

The purpose of this application, (as originally submitted) made under Section 53(1) of the Planning Act by April and Kyle Watson is to provide for the creation of a new lot having a frontage of ± 74.7 M. on Highway No. 542, a provincially maintained highway, and a depth of ± 82.3 M., thereby containing an area of ± 0.6 Hec. According to the application there are no structures on this land and this proposed new lot is to be conveyed to family members for residential uses, who will be managing the day to day operations of the farm.

The land to be retained has frontages of ± 266 M. and ± 61 M. on Highway No. 542, a provincially maintained highway, and a depth of $\pm 1,005$ M., thereby containing an area of ± 39.4 Hec. According to the application, the applicants' dwelling, and three (3) accessory structures including a collapsed barn are located within this land. Farm related residential are proposed to continue.

The application was adjourned at the Planning Board Meeting held on November 30th, 2021 to allow additional time for the applicants to post signs on the subject land to fulfill the requirements of Ontario Regulation 197/96 and return an affidavit to the Planning Board Office, confirming that this has been done.

The application was also adjourned on January 25th, 2022 to allow additional time for the applicants to re-submit their application for Consent to Sever, as they have advised that they wished to amend their application to sever a larger ± 1.65 Hec lot.

There was no one present during consideration of the application on November 30th, 2021 or on January 25th, 2022, who wished to speak in support or opposition to the application.

May 24, 2022 - As Amended

April Watson visited the Planning Board Office on May 2nd, 2022 and made amendments/changes to the original application and increased the size of the proposed new lot from ± 0.6 Hec. to ± 1.65 Hec.

Due to the increased size of the proposed new lot, (more than double) the application was re-circulated on May 5th, 2022 to the Municipality of Central Manitoulin, Bell Canada, and to all property owners within 60 metres, and by the posting of a notice, clearly visible and legible from a public highway or other place to which the public has access, as required by Ontario Regulation 197/96.

The purpose of this application as amended, made under Section 53(1) of the Planning Act by April and Kyle Watson is to provide for the creation of a new lot having a frontage of ± 184.61 M. on Highway No. 542, a provincially maintained highway, and a depth of ± 89.2 M., thereby containing an area of ± 1.65 Hec. According to the application there is a dwelling under construction within this land and this proposed new lot is to be conveyed to family members for residential uses, who will be managing the day to day operations of the farm.

The land to be retained, as amended, has a frontage of ± 217.4 M. on Highway No. 542, a provincially maintained highway, and a depth of $\pm 1,005$ M., thereby containing an area of ± 38.4 Hec. The applicants' dwelling, garage, wood shed, storage shed, and a collapsed barn are located within this land. According to the application, farm related uses (pasture and hay removal) and residential uses are proposed to continue.

Access for the subject land is via an existing entrance, #5587 Hwy 542, a provincially maintained highway. A new entrance from Hwy 542 is proposed for the new lot.

Following consultation with the Ministry of Transportation, as part of the preliminary review, the following comments were received from Laurel Muldoon via email, on August 10th, 2021:

' Hello,

The Ministry of Transportation of Ontario (MTO) has reviewed the Consent Application located at 5587 Highway 542, Mindemoya, Ontario.

Given the information provided, it is the understanding of the MTO that the intention is to sever one (1) lot from your property with the construction of a new access to the severed lot from Highway 542. Based on our review of the information provided, the MTO has no objection to the proposed severance. However, the entrance for the severed parcel would only be approved in a specific location and you will need to confirm that location with the MTO prior to any construction being initiated. '

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Application File No. B28-21 - continued
May 24, 2022

MTO comments - continued

' Since the property in question is located within the MTO permit control area, you should be aware of the following:

1. *Any buildings, structures, or site alterations proposed within 45 metres of the limit of Highway 542 or within 180 metres of any intersection with the highway, requires a Building and Land Use Permit from the Ministry of Transportation. Also, wells must maintain a minimum setback of 30 metres from the limit of the highway. MTO Sign permit(s) are required for the placement of any signs within 400 m of the limit of the highway.*

2. *MTO Entrance permits will be required for new, modified, or mutual entrance(s), and to reflect any changes in land ownership or land use. Any new access connections to the highway will be a minimum of 30 metres from each other. New access connections or changes in the use of an access connection that require a new culvert shall not impede the existing flow of water within the ditch or cause water to flow onto the highway or shoulder. Access connections should be constructed so they do not:*

- cause water to enter onto the highway or shoulder;*
- interfere with the existing drainage system on the right-of-way or any - municipal drainage system;*
- cause flooding on adjacent lands.*

The highway drainage system is not designed to serve the drainage requirements of abutting or other properties beyond pre-development historical flow rates. Drainage onto the highway right-of-way shall not exceed the pre-development historical flow rates. At their own expense, stakeholders shall provide drainage culverts or structures for the access connection. The type, design, diameter, length, and condition of drainage culverts or structures shall conform to the Ministry drainage design standards.

3. *Please contact Debra Burke, Corridor Management Officer, at debra.burke@ontario.ca or by calling (705) 491-1634 for further information with respect to MTO permit and setback requirements. Permits from the MTO can be obtained by applying online at <https://www.hcms.mto.gov.on.ca/>*

All comments in this e-mail are valid for one year. Please let me know if there are any questions.'

The MTO comments were sent to the applicants, via email, on August 10th, 2021.

The Secretary-Treasurer, during a site visit to the property on October 30th, 2021, observed that an entrance had been built and construction of a dwelling had commenced for the proposed new lot.

The Ministry of Transportation advised via email on November 18th, 2021 that:

' No permits from the Ontario Ministry of Transportation have been issued. MTO will not issue permits until the consent application has been completed.'

The applicants have been in contact with Ms. Burke, MTO, via email (March 2022) and MTO has supported the location of a new entrance from Hwy 542 for the proposed severed land, which is currently illegal as no MTO permits have been issued.

Services for the retained land consist of a private individual septic system and a private well. Services for the severed land will consist of a private individual septic system and a private well. A copy of Permit No. 402-21-SP031, for a new septic system accompanied the application.

The Public Health Unit advised on October 28th, 2021 that they have no concerns as it appears that the proposed severed and retained lots are capable of development for installation of a septic tank and leaching bed system.

The subject land has been designated as Rural Area and zoned Rural (R), Agriculture (A), and Conservation (02). The proposed new lot is located within the Rural Area and Agriculture (A) Zone.

Zoning By-law No. 2002-07 for the Municipality of Central Manitoulin under Section 7.1.1.1 permits a single family detached dwelling in an Agriculture (A) Zone. Section 6.18 - Number of Dwelling Units on One Lot states:

' No more than one (1) single family detached dwelling shall be erected on one lot except in the Agriculture (A) Zone or Rural (R) Zone where a second residence may be erected to provide accommodation for a farm labourer and his or her family.'

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Application File No. B28-21 - continued
May 24, 2022

Official Plan Policy under C.5 - Rural Areas - under C.5.1. 3. states in part:

'service and tourist commercial uses, publicly-owned open spaces, and limited residential development in the form of single detached dwellings may be permitted in the Rural Area without requiring an amendment to this plan.....':

Official Plan Policy under C.5 - Rural Areas - under C.5.2.2. states:

'Development in Rural Areas will be subject to policies of Section E.2.'

Official Plan Policy E.2.3. - PRIVATE WATER AND SEWAGE SERVICES - under 6. states:

'Potable water for new development will be provided in accordance with the Province's guidelines'.

The Provincial D-5-5 Guidelines require a minimum flow rate of 13.7 litres/per minute of potable water to be available for a permanent (year round) residential use. There is an existing well on the proposed retained land.

The Municipality advised that a Building Permit, No. 2021-37 had been issued on September 10th, 2021 and a copy of the Building Permit was provided for a new residential home, for the proposed severed land.

There is a collapsed barn located within the retained land. There are barns located in the surrounding area, within Lot 27, Conc. IV, Lot 28, Conc. IV and Lot 28, Conc. V. The residential building within the proposed severed land, meets the requirements of the Minimum Distance Separation of the existing farm related structures, as required by the Ministry of Agriculture Food and Rural Affairs (OMAFRA).

The Secretary-Treasurer conducted a site visit on May 20th, 2022 and observed that the dwelling was near completion. The area of the proposed severance is bordered by trees, shrubs, and a fence line.

A #3 soil classification is identified within the proposed severed land. However, the subject land has not been identified as Prime Agricultural Land by the Ministry of Agriculture, Food and Rural Affairs (OMAFRA). Due to the location and size of the proposed new lot (±1.65 Hec.) this proposal appears to have no negative impact on agricultural viability.

There is an Unevaluated Wetland towards the south westerly portion of the retained land, which is zoned Conservation (02).

From information available, the subject land does not appear to have any natural heritage features or species at risk (SAR) concerns. The proposal is considered to be in conformity with the PPS 2020.

There is an Industrial site located to the west of the subject land, within Lot 26, Conc. V. It does not appear that there is currently any Industrial type use within this land. The Municipality was contacted to determine what Industrial use or what a past Industrial use of this property was or may have been. The Municipality advised that the Industrial type use is unknown. From information available, it appears that the proposed new lot is outside the 300 metre buffer requirement for a Class 3 Industrial type use.

Mary McCartney, Bell Canada advised on November 3rd, 2021 and again on May 6th, 2022 that Bell Canada has no comments or concerns regarding the application as proposed.

The Municipality of Central Manitoulin advised on November 9th, 2021 that they had no concerns. The Municipality of Central Manitoulin also advised on May 17th, 2022 that they have no concerns and recommends that Consent be granted.

There was no one present during consideration of the application, who wished to speak in support or opposition to the application. The applicants were invited to participate in the electronic meeting. However, they were not present at the meeting.

Consent is tentatively granted subject to the following conditions:

The following documents must be submitted to the Secretary-Treasurer of the Board within two years from the date of the notice of decision for certification:

- a) the Transfer of Land form(s) prepared by a solicitor/lawyer, and
- b) a Schedule to the Transfer of Land form on which is set out the entire legal description of the parcel(s) given conditional approval. This Schedule must also contain the names of the parties identified on the Transfer of Land form.

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Application File No. B28-21 - continued
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Accompanying the transfer documents shall be:

- i) a reference plan of survey, which bears the Land Registry Office registration number as evidence of its deposit therein, illustrating the parcel(s) to which the consent approval relates;
- ii) a written confirmation from the Ontario Ministry of Transportation (MTO) that an entrance permit from Hwy 542 for the severed lot, has been issued or can be issued, satisfactory to the MTO;
- iii) a written confirmation from the Ministry of Transportation (MTO) that a Permit Application for change of ownership for the severed land has been received, satisfactory to the requirements of MTO;
- iv) a fee of \$125.00 for each Transfer of Land submitted for Certification; and
- v) a written confirmation from the municipality that all outstanding municipal taxes have been paid.

Note: Subsection 3 or 5, as the case may be, of Section 50 of the Planning Act shall not apply to any subsequent conveyances of or in relation to the parcel of land being the subject of this application.

Board Minutes
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Application File No.: B11-22 No. of Members Present: 8
Date of Decision: May 24, 2022
Location of Property: Lots 59, 60 and 61, Conc. I, Township of Assiginack, District of Manitoulin

DECISION

The purpose of this application made under Section 53(1) of the Planning Act by Bruce Rolston and Sherri Coburn-Rolston is to provide for right-of-way over Lots 59, 60, and 61, Conc. I, Township of Assiginack, having a minimum width of ± 20 M., and a length of $\pm 1,242.3$ M. thereby containing an area of $\pm 24,845.6$ Sq. M. (± 2.5 Hec.). This right-of-way is an existing private access within the subject land, that traverses south of the municipal road allowance between the Township of Sheguiandah and the Township of Assiginack. The applicants also own the land benefiting from the proposed right-of-way being Lots 7 to 10, Conc. I, Township of Sheguiandah, which contains the applicants' seasonal dwelling, boathouse, sauna, workshop, two guest cabins, two storage buildings, and solar panels.

The land to be retained has frontages of $\pm 1,433$ M. on Lake Manitou and ± 988.8 M. on the unopened municipal allowance, and an irregular depth, thereby containing an area of ± 32.2 Hec. According to the application there are no structures on this land.

By previous Consent to Sever File No's. B07-18 and B08-18 a legal right-of-way was granted over Lot 1, Conc. B, Township of Sheguiandah in favour of Lots 59 to 61, Conc. I, Township of Assiginack and Lots 7 to 10, Conc. I, Township of Sheguiandah.

Access is via the proposed (new) private right-of-way and over the right-of-way surveyed as Parts 1 and 2, Plan 31R-4115 to Monkhouse Road, a maintained municipal road.

No new services are required as a result of this application for right-of-way.

The subject land has been designated Rural Area and Shoreline Area and zoned Rural (R), Shoreline Residential (SR) and Conservation (02).

The Conservation zoning and the satellite imagery available (2016 and 2021) identifies a large wet area within the subject land north of the proposed right-of-way.

This proposal for right-of-way is considered to be in conformity with the Provincial Policy Statement (PPS) 2020.

This application was circulated on May 5th, 2022 to the Municipality of Assiginack, Bell Canada, and to all property owners within 60 metres and by the posting of a notice, clearly visible and legible from a public highway or other place to which the public has access, as required by Ontario Regulation 197/96.

The CAO for the Municipality advised via email on May 20th, 2022 that:

' Council does not meet until June 7th, and they will need to review the application. I have included the Questionnaire but must caution that they may change slightly after Council's learned review.'

Mary McCartney, Bell Canada advised on May 6th, 2022 that Bell Canada has no comments or concerns regarding the application as proposed.

There was an inquiry received from Mr. Pidutti requesting additional information. He advised he had no concerns with the application to grant right-of-way.

There have been no other inquiries or concerns received as a result of circulation to property owners within 60 metres and/or the posting of notice.

Mr. Rolston, applicant, was present during the meeting and provided a summary of his application proposal.

There was no one else participating in the teleconference who wished to speak in support or opposition to the application.

In consideration of the information presented, a motion was made and duly seconded that the application be deferred until the next Planning Board Meeting to allow the Municipality of Assiginack additional time to review the application and to provide comments to the Planning Board.

Mr. Rolston advised, he had no objections to this motion.

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May 24, 2022 - Continued

Application File No.: B12-22 No. of Members Present: 8
Date of Decision: May 24, 2022
Location of Property: Part Lots 14 and 15, Conc. I, Being Part 2, Plan 31R-059 excepting Part 1, Plan 31R3141, Township of Sheguiandah, Municipality of Assiginack, District of Manitoulin

DECISION

The purpose of this application made under Section 53(1) of the Planning Act by Dene Banger and Frances Boegli is to provide for the creation of a new lot having a frontage of ±366 M. on Bidwell Road, a maintained township road, and an average depth of ±61 M. thereby containing an area of ±2.9 Hec. The proposed new lot is surveyed as Part 1, Plan 31R-3870. According to the application there are no structures on this land.

The land to be retained has a frontage of ±508 M. on Bidwell Road, a maintained township road and an average depth of ±83 M., thereby containing an area of ±4.8 Hec. According to the application, this land contains the applicants' dwelling.

There have been three (3) previous applications for Consent to Sever involving the subject land. File No. B48-06 created a new lot surveyed as Part 1, Plan 31R-3141, which was a resubmission of File No. B41-01 which lapsed when conditions of consent approval were not fulfilled within one year as required under the Planning Act.

In 2011 by File No. B42-11 the creation of a new lot was proposed, which also lapsed when conditions of consent approval were not fulfilled within one year as required under the Planning Act. The current application (File B12-22) is a resubmission of File B42-11.

Access is via existing entrances, #525 and #653 Bidwell Road, a maintained township road.

The subject land has been designated Rural Area and zoned Agricultural. An amendment to the Zoning By-law No. 80-20 approved by By-law No. 2012-11, permits a non-farm related use in an Agricultural Zone within the proposed severed land. Non-farm related rural residential uses are proposed to continue.

The application was circulated on August 13th, 2021 to the Wiikwemkoong Unceded Territory and to the United Chiefs and Councils of Mnidoo Mnising (UCCMM), as per Official Plan Policy F.5 - Consultation and Engagement.

John Manitowabi, Wiikwemkoong Unceded Territory, advised via email that they have no comments with the application to sever.

Saul Bombery, UCCMM, advised via email on that they have reviewed the information and that they have no comments to submit at this time.

Services consist of private well and private individual septic system. Private well and private individual septic system are proposed for the new lot.

The Public Health Sudbury and District had advised previousl (File No. B42-11) that they have no concerns and that the severed and retained portions would appear to be capable of supporting the installation of a septic tank and tile bed system.

Official Plan (2018) - Rural Area - under Policy E.2.3. - PRIVATE WATER AND SEWAGE SERVICES - under 6. states:

'Potable water for new development will be provided in accordance with the Province's guidelines.'

The Provincial D-5-5 Guidelines require a minimum flow rate of 13.7 litres/per minute of potable water to be available for a permanent (year round) residential use.

There is a licenced Aggregate Site, No. 616921, located to the south/west within Lot 1, Conc. A.

The Provincial Policy Statement 2020, Section 3.0 - Protecting Health and Safety states:

'Development shall be directed away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards.'

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Application File No. B12-22 - continued
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The Provincial Policy Statement 2020, Section 2.5 - Mineral Aggregate Resources states under:
2.5.1

'Mineral aggregate resources shall be protected for long-term use and, where provincial information is available, deposits of mineral aggregate resources shall be identified.'

2.5.2.1

'As much of the mineral aggregate resources as is realistically possible shall be made available as close to markets as possible.'

Demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral aggregate resources locally or elsewhere.'

2.5.2.2

'Extraction shall be undertaken in a manner which minimizes social, economic and environmental impacts.'

2.5.2.3

'Mineral aggregate resource conservation shall be undertaken, including through the use of accessory aggregate recycling facilities within operations, wherever feasible.'

2.5.2.4

'Mineral aggregate operations shall be protected from development and activities that would preclude or hinder their expansion or continued use or which would be incompatible for reasons of public health, public safety or environmental impact. Existing mineral aggregate operations shall be permitted to continue without the need for official plan amendment, rezoning or development permit under the Planning Act. Where the Aggregate Resources Act applies, only processes under the Aggregate Resources Act shall address the depth of extraction of new or existing mineral aggregate operations. When a license for extraction or operation ceases to exist, policy 2.5.2.5 continues to apply.'

2.5.2.5

'In known deposits of mineral aggregate resources and on adjacent lands, development and activities which would preclude or hinder the establishment of new operations or access to the resources shall only be permitted if:

- a) resource use would not be feasible; or*
- b) the proposed land use or development serves a greater long-term public interest; and*
- c) issues of public health, public safety and environmental impact are addressed.'*

2.5.3.1

'Progressive and final rehabilitation shall be required to accommodate subsequent land uses, to promote land use compatibility, to recognize the interim nature of extraction, and to mitigate negative impacts to the extent possible. Final rehabilitation shall take surrounding land use and approved land use designations into consideration.'

2.5.3.2

'Comprehensive rehabilitation planning is encouraged where there is a concentration of mineral aggregate operations.'

2.5.3.3

'In parts of the Province not designated under the Aggregate Resources Act, rehabilitation standards that are compatible with those under the Act should be adopted for extraction operations on private lands.'

Board Minutes
May 24, 2022 - Continued

Application File No. B12-22 - continued
May 24, 2022

The Official Plan (2018) under Policy D.8.2 MINERAL AGGREGATE RESOURCES states:

1. *'Mineral aggregate resources will be protected for long-term use. As much of the mineral aggregate resources as is realistically possible will be made available as close to markets as possible.*

2. *The following policies apply to Mineral Aggregate Resources:*

2. Development proposals in close proximity to licenced aggregate extraction areas will be evaluated in terms of potential incompatibilities and addressed accordingly in consultation with the Province. Pertinent information regarding surface and groundwater, dust, vibration, noise, traffic routes in connection with the licenced aggregate extraction area, and buffering will be considered to ascertain the effect these existing factors will have on the proposed new development. Residential and institutional development within 300 metres of mineral aggregate resource areas and licenced pits will generally not be permitted. Proposed residential or institutional development within these areas will be supported by studies that demonstrate that any land use conflicts will be fully mitigated.'

The Ministry of the Environment and Climate Change (MOECC) D-6 Series Guidelines, Under Section 1.2.4. - Other Facilities and Section 4.3 - Recommended Minimum Separation Distances: recommends that residential and institutional development within 300 metres of mineral aggregate resource areas and licenced pits will generally not be permitted. Proposed residential or institutional development within these areas will be supported by studies that demonstrate that any land use conflicts will be fully mitigated. i.e. feasibility study.

The subject land falls within the The MOECC D-6 Series Guidelines 300 metre buffer of the aggregate site.

As part of the preliminary review technical advise was requested from the Ministry of Northern Development and Mines, Natural Resources and Forestry (MNDMNRF) on April 25th, 2022, with follow-ups on May 2nd, 2022, and May 13th, 2022, regarding a new residential use within 300 metres of the licenced Aggregate Site. To date no comments/advice has been received from MNDMNRF.

Also, as part of the preliminary review technical advise was requested from the Ministry of the Environment, Conservation and Parks (MECP) on May 18th, 2022. No response from MECP has been received to date.

The following letter was sent to the applicants on August 10th, 2021 and copied to the Municipality:

'Dear Mr. Banger:

In review of your application for Consent to Sever, re: the above location, there is a licensed Aggregate Resource Site identified as being within Lot 1, Conc. A to the south of the subject land, on the south side of Bidwell Road.

As per the Ministry of the Environment (now the Ministry of the Environment, Conservation and Parks (MECP) the D-series guidelines require a minimum setback of 300 metres from the Aggregate Site for a new residential (sensitive) use.

I have attached a sketch identifying the 300 metre buffer; you will note that the subject land is entirely within the 300 metres buffer, as shown in the green hatched area.

Policies of our Official Plan for the District of Manitoulin and the Provincial Policy Statement 2020 do not support new sensitive uses within an Aggregate Resource Area. I have attached a copy of the policies from our Official Plan document and from the Provincial Policy Statement 2020.

If the licence is rescinded, or if a report can be obtained supporting the new residential use, there may be a possibility to proceed with an application for Consent to Sever.

Please advise if you wish to proceed with the application or if you would like me to return the application and application fee. If you have any questions or need any clarification, please do not hesitate to contact our Office. Thank you.'

Board Minutes
May 24, 2022 - Continued

Application File No. B12-22 - continued
May 24, 2022

Despite the concerns made available to the applicants, that the policies that had been provided to them do not support new lot creation within 300 metres of the Aggregate Site, Mr. Banger advised by email on April 22nd, 2022 and May 5th, 2022 that they wished to proceed with putting their application before the Planning Board for their consideration.

Therefore, the application was circulated on May 6th, 2022 to the Municipality of Assiginack, Bell Canada, and to all property owners within 60 metres, and by the posting of a notice, clearly visible and legible from a public highway or other place to which the public has access, as required by Ontario Regulation 197/96.

The CAO for the Municipality advised via email on May 20th, 2022 that:

' Council does not meet until June 7th, and they will need to review the application. I have included the Questionnaire but must caution that they may change slightly after Council's learned review.'

Mary McCartney, Bell Canada advised on May 6th, 2022 that Bell Canada has no comments or concerns regarding the application as proposed.

The Secretary-Treasurer conducted a Site Visit to the property on May 20th, 2022 and observed the civic address #653 on the proposed severed land and #525 on the proposed retained land. She also observed three accessory structures within the proposed retained land that were not indicated on the application.

There have been no inquiries or concerns received as a result of circulation to property owners within 60 metres and/or the posting of notice.

Mr. Banger, applicant, had requested documentation (14 pages) be provided to the Board Members for consideration of their application.

Mr. Banger, applicant, was present during consideration of the application. He provided the History of their property and the History of the Aggregate Site; and explained their dilemma regarding the proposed new lot being within 300 metres of the Licenced Aggregate Site, which is currently not operating.

There was no one else participating in the teleconference who wished to speak in support or opposition to the application.

Discussion among the Board included:

- Provincial Policy regarding Licenced Aggregate Sites - states in part that (residential uses) generally not permitted'; the 300 metre buffer is from the property line not from the active site; policies need to be taken into consideration; if the licence is revoked it would solve the problem; a reduced licence may help; the Ministry is not responding; the Township has not provided their comments; need more information to make an informative Decision.

Although the Board was sympathetic to Mr. Banger's concerns the Board was in favour of deferring their Decision until the Municipality has had a chance to provide their comments.

In consideration of the information presented, a motion was made and duly seconded that the application be deferred until the next Planning Board Meeting to allow the Municipality of Assiginack additional time to review the application and to provide comments to the Planning Board.

Mr. Banger advised he had no concerns with a deferral.

Board Minutes
May 24, 2022 - Continued

PRESENTATION OF APPLICATION FOR CONSENT TO SEVER

The Chair announced that the purpose of this phase of the meeting is:

- (a) to consider applications for consent under Section 52 of the Planning Act,
- (b) to make decision in regard to the applications scheduled to be heard, and, explained that this phase is open to the public and any interested parties will be given the opportunity to speak in support or oppose an application.

The Chair then asked if any Board Members have or wish to declare a "Conflict of Interest", at this meeting or previous meeting. There were none.

Following is the list of Applications for Consent considered at this meeting.

	<u>Moved By</u>	<u>Seconded By</u>
1. B28-21	R. Stephens	D. Head
2. B11-22	R. Brown	T. Mackinlay
	* That this application be deferred, - Carried	
3. B12-22	R. Stephens	T. Mackinlay
	* That this application be deferred, - Carried	

NOTE: Board Member, K. Noland, objected to this application being deferred.

It was moved and seconded that the above applications be conditionally approved, subject to all conditions being fulfilled as stated in the Decision.
- Carried.

The above motion applies to all applications excepting B11-22 and B12-22.

The time now being 8:43 P.M. and all business before the Board having been dealt with, the Meeting was adjourned on a motion moved by T. Mackinlay.

L. HAYDEN, CHAIR



T.A. CARLISLE, SECRETARY-TREASURER

APPENDIX A -1 of 2 - Board Minutes May 24th, 2022

April 08, 2022

Theresa Carlisle, ACST,
Secretary-Treasurer
Manitoulin Planning Board
40 Water Street, Unit 1
P.O. Box 240, GORE BAY, ON
P0P 1H0

Dear Ms. Carlisle:

REF: Application for Consent to Sever - File No. B04-22
Location: Part Lot 11, N/S Hall Street
Surveyed as Part 1 Plan 31R-1830
Town of Gore Bay, District of Manitoulin

Please accept this cover letter as part of the submission in furtherance of the requested amendment to the Severance Application on the above property.

We propose that the Town of Gore Bay permit a variance in the usual rear setback, establishing it at the 3 metre distance from the existing dwelling as initially pre-approved, given these circumstances, and the following factors.

After the public notice and appeal period on this severance application, we were given to understand that everything was in order. We gave instruction to our surveyor to draw plans to divide the lot at 8 Agnes Street, to create a new lot, to be accessed off Water Street. Based on the understanding that our proposed lot lines could go ahead, our surveyor has attended the property and completed site verifications.

However, we have been informed of an error at the planning board in the initial stage of the severance process.

While we had been advised that a 3 metre rear setback (between the existing dwelling and the new north boundary) was satisfactory for the planning agencies, this measurement has proven to be at odds with the planning regulations in the Town of Gore Bay.

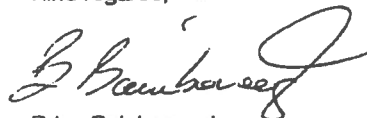
Further, a wooden garden shed near the new boundary line, which is to be removed from the site, confused the issue of the rear setback.

The proposed line for severing this parcel into two parts has been drawn across the lot, from east to west, with several details in mind:

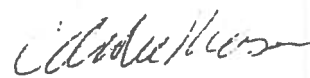
- the desire to create a new lot to the north, off Water Street, that can accommodate a new dwelling
- the understanding that the original dwelling, dating from the 19th century, was placed on the existing lot at a considerable distance from Agnes Street, not in keeping with the siting of more modern neighbouring dwellings; given this uniquely deep setback from Agnes Street, logic would suggest that the new northern boundary line be as close to the rear of the existing dwelling as might be allowed.
- the desire to keep the lots as close to the same size as possible
- noting that the existing dwelling has a substantial front yard
- the desire to preserve on the new lot two clumps of very old cedar trees, which provide separation and shade for the new lot

We respectfully request that the Town of Gore Bay and the Manitoulin Planning Board consider the unique issues of this case and the various factors outlined, and grant the requested amendment.

Kind regards,



Brian Bainborough



Carolee Mason

APPENDIX A - 2 of 2 - Board Minutes May 24th, 2022

2022 05 03

Theresa Carlisle, ACST,
Secretary-Treasurer
Manitoulin Planning Board
40 Water Street, Unit 1
P.O. Box 240, GORE BAY, ON
POP 1H0

Dear Ms. Carlisle:

Zoning Amendment re: Part Lot 11, N/S Hall Street, Surveyed as Part 1, Plan 31R-1830,
Located at #8 Agnes Street.

This request is an addendum to our correspondence of April 8th, requesting the above described zoning amendment.

I understand from your email today that a subsequent meeting has taken place at The Town of Gore Bay, and a motion to approve has been passed.

We did not include in our initial letter the request for a waiver of the second application fee. I had understood that, given the circumstances outlined in our request of April 8th, the recommendation for the waiver of the fee would come from the Planning Board.

However, I do understand that for purposes of the Planning Board meeting, I need to make the request in writing for the waiver of the second fee of \$725.

Given that the issue of the setback wasn't identified as problematic by Planning Board in our consultation over the initial application, we would respectfully submit that a second fee be waived in this case.

Thank you for taking this request to the Planning Board for their consideration.

Kind regards,

Carolee Mason

Brian Bainborough