

****UPDATED AUGUST 14th****

**THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS
COMMITTEE OF ADJUSTMENT
AGENDA**

Wednesday, August 15, 2018, at 5:30 P.M.

Council Chambers, Municipal Office, 3131 Old Perth Rd., Almonte

A. CALL TO ORDER

B. APPROVAL OF AGENDA

C. DISCLOSURE OF PECUNIARY INTEREST

D. APPROVAL OF MINUTES

1. Committee of Adjustment – **Pages 1 to 7**
Committee motion to approve the Committee of Adjustment Minutes from the meeting held on July 18th, 2018.

E. NEW BUSINESS

None.

F. HEARINGS

1. Application A-16-18 – Pages 8 to 15

Owner: Raymond Kamm
Legal Description: Concession 4, East Part Lot 7
Address: 1654 Quarry Road
Zoning: Rural (RU)

The applicant is requesting approval to enlarge a legally non-complying building under Section 45(2)(a)(i) of the Planning Act, R.S.O. 1990, c. P.13; the existing dwelling is within the required setback for sensitive land uses from the 'Mineral Aggregate Quarry (MQ)' Zone. Furthermore, the applicant is requesting for relief from the sensitive land use setback from 500m (1,640ft) to 265m (869ft) to provide flexibility for renovations to the existing dwelling. The application is in response to the immediate expansion of a mudroom/laundry room.

2. Application A-17-18 – Pages 16 to 34 [POSTPONED UNTIL FURTHER NOTICE]

Owner: Dan Cavanagh
Legal Description: Concession 12, Part Lot 8, Plan 26R-836, Part 1
Address: 3561 Timmins Road
Zoning: Rural (RU) & Agricultural (A)

The applicant is requesting approval to recognize a non-conforming use as a legal use under Section 45(2)(a)(ii) of the *Planning Act, R.S.O. 1990, c. P.13*; the existing dwelling/structure is proposed to be categorized as a 'Seasonal Dwelling' use to facilitate meeting Building Code standards for a 'Cottage' which would not require

winter insulation. Furthermore, the applicant is requesting for relief from the front yard setback from 9m (29.5ft) to 7m (23.0ft) and the setback from an Agricultural designation from 150m (492.1ft) to 14m (45.9ft) to legally recognize the existing structure footprint and for flexibility in future development.

G. OTHER BUSINESS

None.

H. ANNOUNCEMENTS

None.

I. ADJOURNMENT

**THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS
COMMITTEE OF ADJUSTMENT
MINUTES**

Wednesday, July 18, 2018, at 5:30 P.M.

Council Chambers, Municipal Office, 3131 Old Perth Rd., Almonte

PRESENT: Patricia McCann-MacMillan (Chair)
Stacey Blair

ABSENT: Christa Lowry

APPLICANTS/PUBLIC: A-09-18: Simon Shearman
A-10-18: Chris Ryan
Darlene Ryan
A-11-18: Sean Quinlan
Chris Quinlan
John Keindel
A-12-18: Billy Houchaimi
A-13-18: Billy Houchaimi
A-14-18: Billy Houchaimi
A-15-18: Billy Houchaimi

STAFF: Andrew Scanlan Dickie, Junior Planner, Recording Secretary
Niki Dwyer, Director of Planning

Planner called the meeting to order at 5:30 p.m.

A. APPROVAL OF AGENDA

Moved by Stacey Blair

Seconded by Patricia McCann-MacMillan

CARRIED

B. DISCLOSURE OF PECUNIARY INTEREST

None

C. APPROVAL OF MINUTES

1. MAY 23rd, 2018 PUBLIC MEETING

Moved by Patricia McCann-MacMillan

Seconded by Stacey Blair

THAT the Minutes be accepted.

CARRIED

D. NEW BUSINESS

None.

E. HEARINGS:

1. Application A-09-18

Owner/Applicant: Simon Shearman
Address: 362 Perth Street
Legal Description: Plan 4005, Lot 36
Ward: Almonte
Zoning: Residential First Density Exception 1 (R1-1)

The applicant requested relief from the interior side yard setback within the Residential First Density Exception 1 (R1-1) Zone from 2.3m (7.5ft) to 1.4m (4.6ft) to legally permit the construction of a carport on the western side of an existing single-detached dwelling within the Gemmill Park Subdivision.

The Committee expressed no issues, nor did members of the public, as the remaining side yard was generous for circulation and maintenance. As noted by Staff, the grading plan would be a condition of the approval. Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Plan 4005, Lot 37, Almonte Ward, Municipality of Mississippi Mills, municipally known as 362 Perth Street, to reduce the minimum required interior yard setback from 2.3m (7.5ft) to 1.4m (4.6ft) to legally permit the construction of a carport on the side of an existing single-detached dwelling, subject to the following conditions:

- 1. That the Minor Variance is approved based on the plans submitted;**
- 2. That a grading plan be submitted to and approved by the Municipality prior to being permitted to construct; and**
- 3. That the owner obtains all required building permits.**

CARRIED

2. Application A-12-18

Owner: 2476342 Ontario Inc (Doyle Homes)
Applicant: Fotenn Planning + Design
Legal Description: Con 10, Pt Lot 14, Plan 27M-78, Lt 9
Ward: Almonte
Zoning: Residential First Density Subzone I (R1I)

The applicant requested relief from the bungalow lot coverage maximum within the Residential First Density Subzone I (R1I) Zone from 45% to 46.41% to legally permit the construction of a single-detached bungalow within the Riverfront Estates Subdivision (Phase 4). The Zoning of the subject lands was originally intended to be permitted to have 50% lot coverage for two-storey dwellings and 55% for bungalows as part of By-law #16-74, but the zoning category was mislabeled and

the coverage requirements reverted back to those of the parent R11 Zone. Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Concession 10, Part Lot 14, Plan 27M-78, Lot 9, Almonte Ward, Municipality of Mississippi Mills, municipally known as 863 Jack Dalgity Street, to increase the maximum bungalow lot coverage from 45% to 46.41% to legally recognize the construction of a single-detached dwelling, subject to the following conditions:

1. That the Minor Variance is approved based on the plans submitted;
and
2. That the owners obtain all required building permits.

CARRIED

3. Application A-13-18

Owner: 2476342 Ontario Inc (Doyle Homes)
Applicant: Fotenn Planning + Design
Legal Description: Con 10, Pt Lot 14, Plan 27M-78, Lt 15
Ward: Almonte
Zoning: Residential First Density Subzone I (R1I)

The applicant requested relief from the bungalow lot coverage maximum within the Residential First Density Subzone I (R1I) Zone from 45% to 47.80% to legally permit the construction of a single-detached bungalow within the Riverfront Estates Subdivision (Phase 4). The Zoning of the subject lands was originally intended to be permitted to have 50% lot coverage for two-storey dwellings and 55% for bungalows as part of By-law #16-74, but the zoning category was mislabeled and the coverage requirements reverted back to those of the parent R11 Zone. Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Concession 10, Part Lot 14, Plan 27M-78, Lot 15, Almonte Ward, Municipality of Mississippi Mills, municipally known as 868 Jack Dalgity Street, to increase the maximum bungalow lot coverage from 45% to 47.80% to legally recognize the construction of a single-detached dwelling, subject to the following conditions:

1. That the Minor Variance is approved based on the plans submitted;
and
2. That the owners obtain all required building permits.

CARRIED

4. Application A-14-18

Owner: 2476342 Ontario Inc (Doyle Homes)
Applicant: Fotenn Planning + Design
Legal Description: Con 10, Pt Lot 14, Plan 27M-78, Lt 16

Ward: Almonte
Zoning: Residential First Density Subzone I (R1I)

The applicant requested relief from the bungalow lot coverage maximum within the Residential First Density Subzone I (R1I) Zone from 45% to 46.83% to legally permit the construction of a single-detached bungalow within the Riverfront Estates Subdivision (Phase 4). The Zoning of the subject lands was originally intended to be permitted to have 50% lot coverage for two-storey dwellings and 55% for bungalows as part of By-law #16-74, but the zoning category was mislabeled and the coverage requirements reverted back to those of the parent R1I Zone. Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Concession 10, Part Lot 14, Plan 27M-78, Lot 16, Almonte Ward, Municipality of Mississippi Mills, municipally known as 866 Jack Dalgity Street, to increase the maximum bungalow lot coverage from 45% to 46.83% to legally recognize the construction of a single-detached dwelling, subject to the following conditions:

1. **That the Minor Variance is approved based on the plans submitted; and**
2. **That the owners obtain all required building permits.**

CARRIED

4. Application A-15-18

Owner: 2476342 Ontario Inc (Doyle Homes)
Applicant: Fotenn Planning + Design
Legal Description: Con 10, Pt Lot 14, Plan 27M-78, Lt 22
Ward: Almonte
Zoning: Residential First Density Subzone I (R1I)

The applicant requested relief from the bungalow lot coverage maximum within the Residential First Density Subzone I (R1I) Zone from 45% to 47.80% to legally permit the construction of a single-detached bungalow within the Riverfront Estates Subdivision (Phase 4). The Zoning of the subject lands was originally intended to be permitted to have 50% lot coverage for two-storey dwellings and 55% for bungalows as part of By-law #16-74, but the zoning category was mislabeled and the coverage requirements reverted back to those of the parent R1I Zone. Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Concession 10, Part Lot 14, Plan 27M-78, Lot 22, Almonte Ward, Municipality of Mississippi Mills, municipally known as 852 Jack Dalgity Street, to increase the maximum bungalow lot coverage from 45% to 47.80% to legally recognize the construction of a single-detached dwelling, subject to the following conditions:

1. That the Minor Variance is approved based on the plans submitted; and
2. That the owners obtain all required building permits.

CARRIED

5. Application A-10-18

Owner: Chris & Darlene Ryan
Address: 3368 12th Concession North Pakenham
Legal Description: Con 12, Part Lot 26, Plan 27R-5441, Parts 1 & 2
Ward: Pakenham
Zoning: Limited Service Residential (LSR)

The applicant requested relief from the 30m setback from the high-water mark of Lake Madawaska in accordance with Section 6.24(2) of the Zoning Bylaw General Provisions. The relief would permit the construction of: (1) a covered front porch (5.2m by 6.7m); and (2) an attached garage structure (7.3m by 4.9m).

The Chair discussed flood proofing of the proposed non-habitable addition and the impact it may have on development creep. To address the possibility of the covered front porch evolving into a habitable space, the Chair recommended to include a condition addressing electrical flood proofing. Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the lands legally described as Part Lot 26, Concession 12; being Parts 1 and 2 on Reference Plan 27R-5441, Pakenham Ward, Municipality of Mississippi Mills, municipality known as 3368 12th Concession North Pakenham, to reduce the minimum required setback from the high-water mark of the shoreline from 30m to 24.3m to accommodate the construction of a covered front porch, and an attached garage to the existing main dwelling, subject to the following conditions:

1. That the Minor Variance is approved based on the plans submitted;
2. That the owners obtain Site Plan Approval from Council of the Municipality of Mississippi Mills;
3. That the porch be flood proofed in terms of electrical outlets in the event the covered porch is converted to habitable space and that the flood proofing comply with electrical safety requirements; and
4. That the owners obtain all required building permits.

CARRIED

6. Application A-11-18

Owner: Sean Quinlan
Legal Description: Con 8, Part Lot 27, Plan 27R-10331, Part 2
Ward: Pakenham
Zoning: Rural (RU)

The applicant requested relief from accessory structure provisions to permit the location of 8 (eight) structures prior to the construction of a permanent dwelling. The structures are proposed to contain equipment, tools, and supplies required for

site preparation of a future year-round residence. Further, the applicant is requesting permission to locate a recreational vehicle and pool on site prior to construction.

The Chair invited members of the public to speak to the application. One individual expressed concerns of: (1) impacts that the aesthetics of so many structures may have on the resale of other properties, and (2) environmental risks associated with the outhouse and pool. The Planner further explained the method of greywater removal and informed the Committee that the Health Unit will be requiring a sewage permit and a further condition as part of a potential approval (see condition #5).

The Committee asked about how the request conforms to the Community Official Plan. The Planner explained that the COP does not comment on nor contemplate when a dwelling must be built in relation to its accessory structures. The intent of the COP allows for temporary zoning and accessory structures to be assessed via the Zoning By-law. The Planner further clarified that the mobile home on site is typically permitted during construction and that the minor variance would provide flexibility in this regard. However, a Development Agreement, to be registered on title, would set out a maximum date for the legal use of structures and the total amount of those structures permitted without a permanent dwelling on the lot.

The Chair questioned whether Site Plan Control would be appropriate for the subject lands as it adds control to how the landowner develops the property. The Planner expressed that requesting Site Plan Control instead of or in conjunction with the Development Agreement would be redundant; the number of buildings has the most impact, which can be regulated by a registered agreement. Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the lands legally described as Concession 8, Part Lot 27, PLAN 27R-10331, Part 2, Pakenham Ward, to recognize existing accessory structures on the lands pre-emptive to the construction of a permanent dwelling on the site, subject to the following terms:

- 1. That the Minor Variance is approved based on the plans approved by the Planning Department; and**
- 2. That the owners execute a Development Agreement with the Municipality within ninety (90) days inclusive of the following terms:**
 - a. That building permit applications, fees and development charges for the permanent dwelling are filed with the Municipality within an established timeframe;**
 - b. That a construction timeline for the permanent dwelling be established;**
 - c. That demolition timelines for the temporary accessory buildings and structures be established; and**
 - d. That all temporary and permanent accessory structures currently located on the site be identified;**

3. That the owners obtain all required building permits and pay all fees owing for the established accessory structures, including occupancy of the Mobile Home;
4. That the owners obtain clearance and acceptance from the Leeds Grenville and Lanark District Health Unit for a sewage system in accordance with the Ontario Building Code; and
5. That a sewage permit application be submitted for approval, reflective of the sewage daily design flows of the proposed new house, subject to a written undertaking agreement that the septic system be approved and installed within 12 months, and to be used as a “temporary” holding tank as an interim measure.

CARRIED

F. OTHER BUSINESS

The Planner shared conversations with MOECC about recommended influence area setbacks from industrial lands (regarding the minor variance for Abramenko A-04-18). As per their correspondence, the Ministry provides recommendations and delegates the finalization of setbacks to the Municipality. The Municipality of Mississippi Mills considers industrial setbacks from uses and not zones; thus, since the home is being placed prior to any industrial use being present, the setback does not apply.

G. ANNOUNCEMENTS

None.

H. ADJOURNMENT

Moved by Stacey Blair

Seconded by Patricia McCann-MacMillan

THAT the meeting be adjourned at 6:24 p.m. as there is no further business before the Committee.

Andrew Scanlan Dickie, Recording Secretary

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

PLANNING REPORT

MEETING DATE: Wednesday August 15, 2018 @ 5:30pm
TO: Committee of Adjustment
FROM: Andrew Scanlan Dickie – Junior Planner
SUBJECT: **MINOR VARIANCE APPLICATION A-16-18 (D13-KAM-18)**
Concession 4, East Part Lot 7
Ramsay Ward, Municipality of Mississippi Mills
Municipally known as 1654 Quarry Road
OWNER/APPLICANT: Raymond Kamm

RECOMMENDATION:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Concession 4, East Part Lot 7, Ramsay Ward, Municipality of Mississippi Mills, municipally known as 1654 Quarry Road, to allow for the expansion of a legally non-complying use and a relief in the setback of sensitive uses from the MQ Zone from 500m (1,640ft) to 265m (869ft) to legally permit renovations and the construction of an addition to the existing single-detached dwelling, subject to the following conditions:

- 1. That the Minor Variance is approved based on the plans submitted;**
- 2. That the Owner register a covenant on the title of the property stating that the lot is adjacent to an aggregate resource and may therefore be subjected to noise, dust, odours and other nuisances associated with aggregate activities;**
- 3. That any proposal to add a dwelling unit or independent living space is not subject to this approval and must be evaluated by a separate application; and**
- 4. That the Owner obtains all required building permits.**

PURPOSE AND EFFECT

The applicant is requesting approval to enlarge a legally non-complying building under Section 45(2)(a)(i) of the *Planning Act, R.S.O. 1990, c. P. 13*; the existing dwelling is within the required setback for sensitive land uses from the 'Mineral Aggregate Quarry (MQ)' Zone. Furthermore, the applicant is requesting for relief from the sensitive land use setback from 500m (1,640ft) to 265m (869ft) to provide flexibility for renovations to the existing dwelling. The application is in response to the immediate expansion of a mudroom/laundry room. The requested relief is outlined in the table below:

Table 1. – Requested Relief from Zoning By-law #11-83

Section	Zoning Provision	By-law Requirement	Requested
6.23(1)(d)	No new building consisting of a sensitive land use may be constructed any closer than:	500m for licensed quarries above or below the water table in the Mineral Aggregate Quarry (MQ) Zone	265m for licensed quarries above or below the water table in the Mineral Aggregate Quarry (MQ) Zone

BACKGROUND

As per the Municipal Property Assessment Corporation (MPAC), the single-detached home subject to the proposed addition was built in 1976 and is, to the best of the Municipality’s knowledge, a lawful dwelling. At that time, Ramsay regulations did not contemplate setbacks between quarries and rural areas. The only related provision belongs to Ramsay By-law no.1545 (approved January 1992), being Section 12.1(b) which states: “[...] no quarry shall be established or made within 150m (492.13ft) of any lot line which abuts a Residential Zone.” Nonetheless, this provision only considers the setbacks a quarry must maintain from a sensitive land use and not the reciprocal relationship.

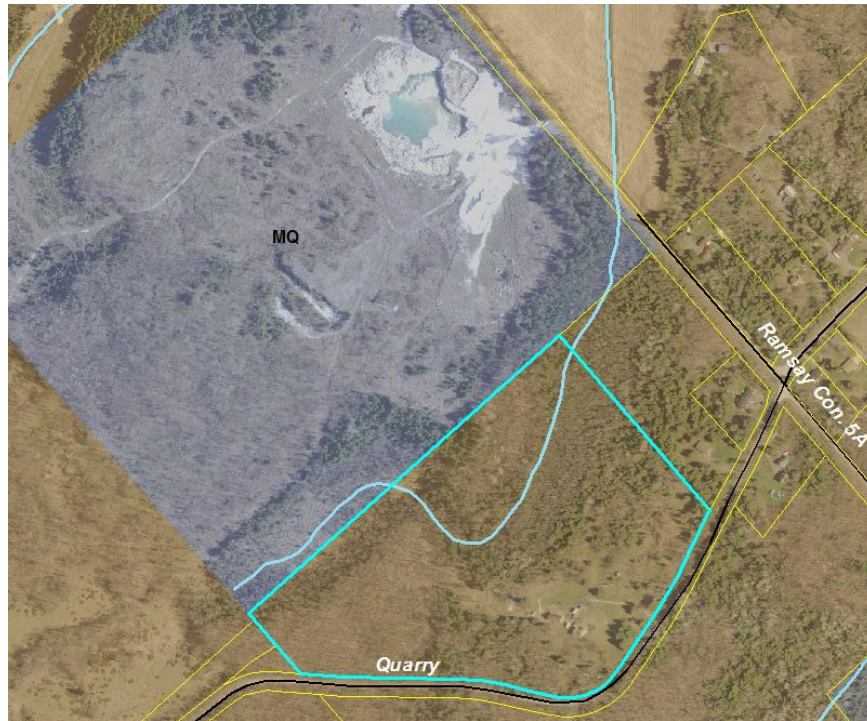
Considering construction occurred in the 1970s and the requirements of 1992 did not contemplate quarry setbacks for rural properties, Staff is of the opinion that the property was legally permitted at the time and has since become legally non-compliant at 265m from the MQ Zone boundary.

The quarry, known as Neilson Quarry, has a Class B Licence to operate as both a pit and quarry with a maximum annual extraction total of 20,000 tons.

DESCRIPTION OF SUBJECT LANDS

The subject property is located along Quarry Road between Ramsay Concession 4A and Ramsay Concession 5A, immediately south of the Neilson Quarry. The property is ±14.0ha (34.7ac) in size with a frontage of ±626m (2,0534ft) along Quarry Road. The property is generally surrounded by non-farm rural residential properties while sitting adjacent to a ‘Mineral Aggregate Quarry (MQ)’ Zone and in close proximity to ‘Mineral Aggregate Pit (MP)’ and ‘Waste Disposal (WD)’ zones. The location of the subject property is depicted in the following aerial photo:

Figure 1. – Aerial Photo of Property (2014)



SERVICING & INFRASTRUCTURE

The subject property is serviced by private water and septic, and has driveway access from Quarry Road, a municipally owned and maintained road. The municipal servicing and infrastructure demands would not change as a result of the application.

COMMENTS FROM CIRCULATION OF THE APPLICATION

COMMENTS FROM INTERNAL CIRCULATION

Comments received based on the circulation of this application have been summarized below:

CAO: No comments received.

CBO: No comments received.

Fire Chief: No comments received.

Director of Roads and Public Works: No concerns or objections.

Recreation Coordinator: No concerns or objections.

COMMENTS FROM COUNCIL

Councillor Edwards: We should not be casual about changes to land within the buffer of quarry operations. A condition should be put on title acknowledging the quarry designation.

EXTERNAL AGENCIES

Cavanagh Construction Ltd: The quarry is used as a reserve and not currently on a regular basis. That being said we cannot predict when we will use it, as it is based on local contracts

and is always an option. We would not promote new development, but would not want to restrict or oppose additions to the current owners.

COMMENTS FROM THE PUBLIC

No comments have been received from the public as of the date this report was prepared.

EVALUATION

Section 45 of the *Planning Act* conveys various powers to the Committee of Adjustment, as per Subsections 45(1) and 45(2). The former grants relief to the requirements of a municipal zoning by-law based on whether the request meets the four (4) tests set out by the *Planning Act*. The latter, specifically 45(2)(a)(i), allows for the enlargement or extension of a building or structure that is lawfully used for a purpose prohibited by the by-law (in other words, legally non-complying). To properly evaluate the requests, the Committee needs to be satisfied that powers of Sections 45(1) and 45(2)(a)(i) are appropriate for the subject application. For the sake of this report, Staff consider the four (4) tests as an appropriate evaluation tool for both *Planning Act* powers. Staff comments on the tests are as follows:

1. Does the proposal maintain the intent of the Official Plan?

The subject property is designated “Rural” in the Municipality’s Community Official Plan (COP). The Rural designation permits agricultural, commercial, industrial, and low-density residential uses, and associated accessory uses. As per the COP’s Section 3.5.4(1), sensitive land uses (i.e. dwellings) must maintain 500m from licensed quarries above or below the water table. However, Section 3.5.4(2) indicates that development may take place on existing lots of record when separation distances cannot be achieved if approved by the Committee of Adjustment. Such development shall be permitted only if:

- (1) The resource use would not be feasible;
- (2) The proposed land uses or development serves a greater long-term public interest; and
- (3) Issues of public health, public safety and environmental impact are addressed.

The existence of a legally non-complying dwelling renders the above criteria generally irrelevant since they are primarily designed to address new construction – nuisances such as odours, noises, and dust maintain the same impact since the residents would be subject to them regardless of the addition. However, there have been instances of quarry blasting (not specific to this quarry) resulting in unintended projectiles which pose a threat to nearby landowners.

Nonetheless, the proposal maintains the intent of the COP since it contemplates the expansion of legally non-complying uses via Section 3.5.4(2). As per comments by Cavanagh Construction Ltd, expanding on existing development is not a concern; however, new development would not be supported. To control the number of individuals living permanently on site and thereby impacted by the quarry operations, it is appropriate to exclude the addition of an accessory apartment as part of the scope of this minor variance approval.

2. Does the proposal maintain the intent of the Zoning By-law?

The subject property is zoned “Rural (RU)” by the Municipality’s Comprehensive Zoning By-law #11-83. The RU Zone permits a detached dwelling, a home-based business, agricultural uses,

and associated accessory structures. Furthermore, the property is directly adjacent to a 'Mineral Aggregate Pit (MQ)' Zone, which involves a 500m setback requirement between it and sensitive uses. As such, the owner is applying to reduce the 500m setback to 265m to permit current and future expansions to an existing dwelling.

Sensitive Land Use vs MQ Zone Setback

The intent of the sensitive land use setback is to ensure that there are no negative impacts to public health and safety within proximity of an aggregate site. Although the 500m setback is a requirement of the COP, it does provide flexibility for development on lots of to receive relief from the setback if not otherwise feasible. In this particular instance the dwelling is legally non-complying. Thus, any expansions to the land are not permitted without approval.

Staff are of the opinion that the construction of the home in 1976 is the most impactful event on the health and safety of the owners – establishing a habitable structure means that individuals or families are rooted permanently within the potential influence area of an aggregate operation and are thus introduced to the possibility of harmful effects associated with it. Consequently, any additions made to an existing dwelling are negligible since the residents are already 'exposed' to the risk – increases in the effect of noise, vibrations, dust, or projectile materials are insignificant. The primary concern is introducing more people to the potential harmful effects of being located within the quarry influence area. To ensure that the Committee and/or Council has the opportunity to evaluate the construction of an accessory apartment or independent living space, recommended approval conditions should exclude added dwelling units from consideration of this application.

3. Is the proposal desirable for the appropriate development of the lands in question?

Although the proposal involves construction within the 500m influence area radius of the MQ Zone, it remains an appropriate development as there are negligible increases to the negative impacts associated with expanding the legally non-complying structure. A residential building footprint, well, and septic are already present on the property and thus already account for any potential effects to public health and safety. Furthermore, the actual quarry is separated more than 500m from the dwelling; is presently held as a reserve operation when demand for aggregate increases, and is separated from the existing dwelling by an approximate 250m tree buffer. To acknowledge that there is a possibility of the quarry expanding and to increase transparency for future landowners, Staff recommend requiring a condition that a covenant be added on title identifying the aggregate resource as being adjacent to the subject lands and that said lands are subject to noise, dust, odour, and other nuisances.

4. Is the proposal minor?

The proposed variance to the setback from the MQ Zone would reduce the requirement from 500m (1,640ft) to 265m (869ft), resulting in a requested relief of 235m (705ft). Furthermore, the proposed variance would permit the expansion of an existing dwelling. Although a sizeable decrease from the original setback, the request is negligible since the structure has existed since 1976 and any additions would insignificantly increase the number of nuisances endured and probability of being struck by larger projectiles originating from the quarry. Granted that the applicant provides an appropriate condition on title and that any addition to the total dwelling units be excluded from the scope of the approval, Staff is of the opinion that the requested variance is considered to be minor in nature.

CONCLUSION

Overall, Staff supports the Minor Variance application. The variances would allow the owners to maximize the use and enjoyment of their property with no foreseeable impacts to any other stakeholders. Staff believes that Minor Variance Application A-16-18 meets the four (4) tests for evaluating a Minor Variance as established under the *Planning Act*. Planning Staff therefore recommends that the Minor Variances be granted, provided the Committee is satisfied that any issues raised at the public hearing do not require additional Staff evaluation and comment, the submission of additional information, or the application of conditions other than those listed at the beginning of this report.

All of which is respectfully submitted by,

Reviewed by,



Andrew Scanlan Dickie
Junior Planner



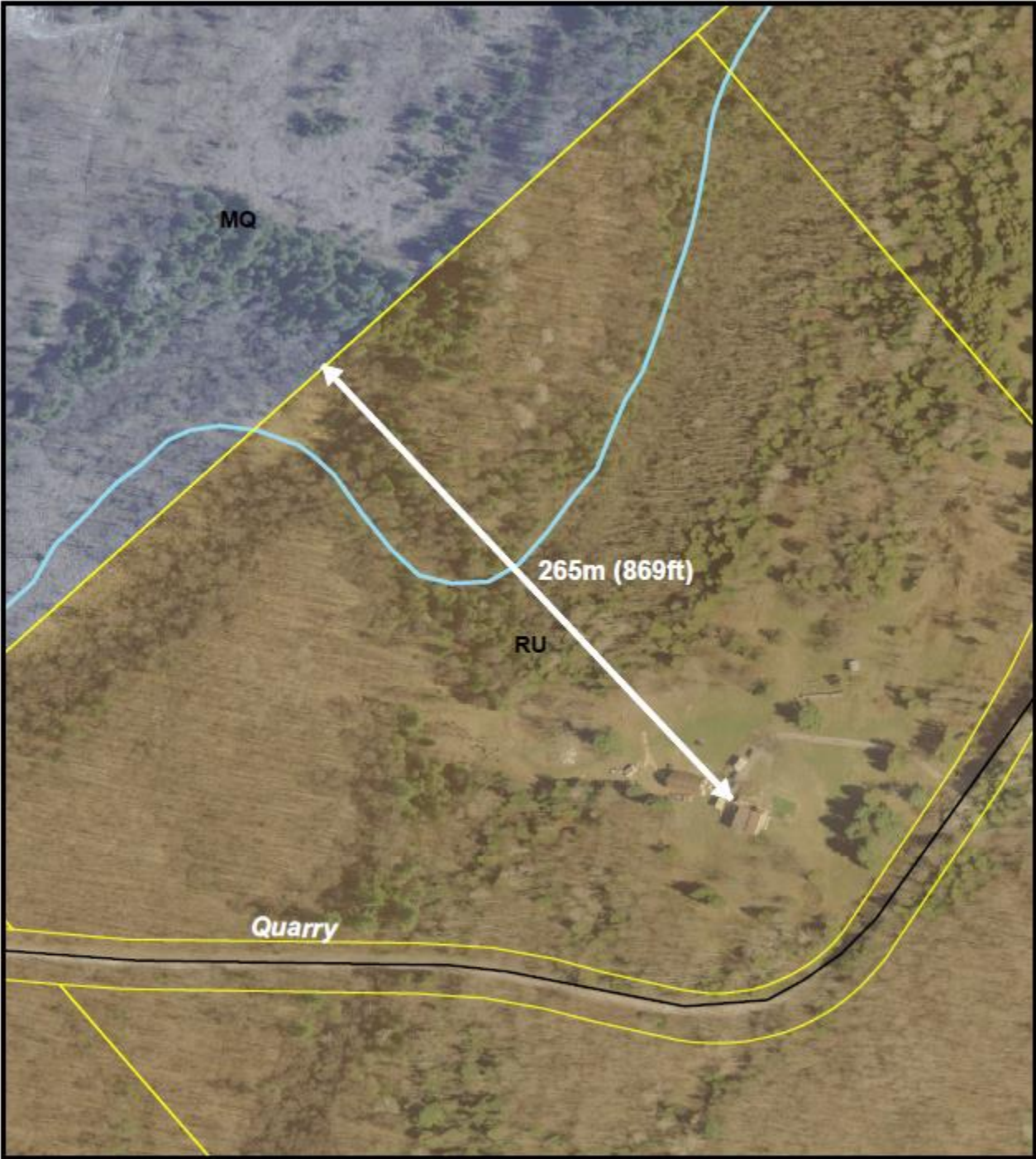
Niki Dwyer, MCIP, RPP
Director of Planning

ATTACHMENTS:


SCHEDULE A – Site Setback

SCHEDULE B – Current Building Expansion Plans

SCHEDULE A – Site Setback



SCHEDULE B – Current Building Expansion Plans



ON-SITE COPY

1654 QUARRY ROAD,
ALMONTE, ON,
K0A 1A0

SUNROOM
ADDITION

DRAWING
SITE PLAN

PROJECT NO.
17-KAM-R

SCALE NTS	DWG NO. 00
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EXCAVATION NOTES:

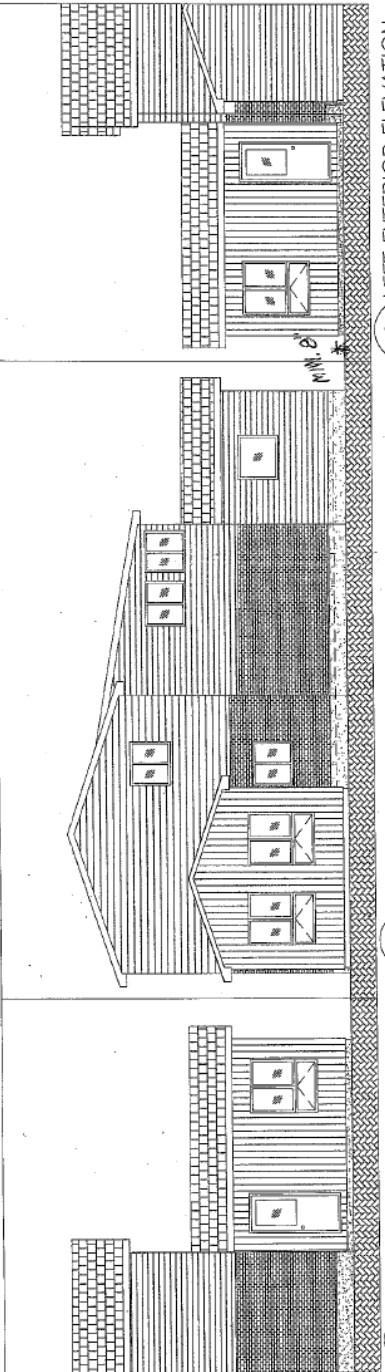
- EXCAVATED MATERIALS TO BE REMOVED FROM PROPERTY.
- DOWNSPOUTS NOT TO BE DIRECTED TOWARDS ADJACENT PROPERTIES.
- MAINTAIN EXISTING GRADING AND DRAINAGE PATTERNS UNLESS NOTED OTHERWISE.

CONSTRUCTION COMPONENTS:

<p>(W1) SUNROOM EXTERIOR WALL 2" CONCRETE BLOCK 1/2" GYPSUM BOARD 1/2" AIR SPACE 1/2" GYPSUM BOARD 1/2" GYPSUM BOARD</p>	<p>(F1) SUNROOM FLOOR 4" CONC. PAD ON GRAVEL (adhering to CBC DIV B 9.15.4) -6 MIL. POLY -MIN. R-10 INSULATION</p>	<p>(R1) SUNROOM ROOF 2" DRYWALL VAPOR BARRIER 2" INSULATION 1/2" GYPSUM BOARD 1/2" GYPSUM BOARD 23 GA. GALVANIZED</p>
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GENERAL NOTES:

- ALL WORK AND MATERIALS TO BE IN COMPLIANCE WITH THE 2012 ONTARIO BUILDING CODE, REGULATIONS AND BY-LAWS.
- DO NOT SCALE DRAWINGS.
- ALL SUBCONTRACTORS TO TAKE THEIR OWN ON-SITE MEASUREMENTS AND BE RESPONSIBLE FOR THEIR ACCURACY.
- ALL BEAMS TO HAVE A MINIMUM 3-1/2" BEARING.
- ALL LUMBER TO BE S.P.F. No. 1 OR 2 UNLESS OTHERWISE NOTED.
- FOUNDATION TO ADHERE TO CBC DIV B. 9.15



1 DO NOT SCALE 2 DO NOT SCALE 3 DO NOT SCALE

WINDOW SCHEDULE: MAX. GLAZING U-VALUE 0.28
OR EMERALD GLAZING 25

NO	QUANTITY	TYPE	WIDTH	HEIGHT	ROUGH OPENING
1	4	PICTURE w/ A/W	4'-0"	5'-0"	4'-1" X 5'-1"

NO	QUANTITY	TYPE	WIDTH	HEIGHT	ROUGH OPENING
1	2	EXTERIOR SWING	3'-0"	6'-10"	3'-1" X 6'-11"

DOOR SCHEDULE:

****POSTPONED UNTIL FURTHER NOTICE****

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

PLANNING REPORT

MEETING DATE: Wednesday August 15, 2018 @ 5:30pm
TO: Committee of Adjustment
FROM: Andrew Scanlan Dickie – Junior Planner
SUBJECT: **MINOR VARIANCE APPLICATION A-17-18 (D13-CAV-18)**
Concession 12, Part Lot 8, Plan 26R-835, Part 1
Pakenham Ward, Municipality of Mississippi Mills
Municipally known as 3561 Timmins Road
OWNER/APPLICANT: Dan Cavanagh

RECOMMENDATION:

THAT the Municipality of Mississippi Mills Committee of Adjustment APPROVES the Minor Variances for setback relief for the lands legally described as Concession 12, Part Lot 8, Plan 26R-835, Part 1, Pakenham Ward, Municipality of Mississippi Mills, municipally known as 3561 Timmins Road, to (1) reduce the front yard setback from 15m to 7m and the Agricultural designation setback from 150m to 14m to legally recognize the current and possible adjusted location of a detached dwelling use, subject to the following conditions:

- 1. That the Owner provide an Environmental Impact Statement and apply for Site Plan Control if the dwelling's footprint is expanded; and**
- 2. That the Owner obtains all required building permits.**

FURTHERMORE, THAT the Municipality of Mississippi Mills Committee of Adjustment REFUSES the Minor Variance recognizing a 'Seasonal Dwelling' as a permitted use within the RU Zone for the lands legally described as Concession 12, Part Lot 8, Plan 26R-835, Part 1, Pakenham Ward, Municipality of Mississippi Mills, municipally known as 3561 Timmins Road.

PURPOSE AND EFFECT

The applicant is requesting approval to recognize a non-conforming use as a legal use under Section 45(2)(a)(ii) of the *Planning Act, R.S.O. 1990, c. P.13*; the existing dwelling/structure is proposed to be categorized as a 'Seasonal Dwelling' use to facilitate meeting Building Code standards for a 'Cottage' which would not require winter insulation. Furthermore, the applicant is requesting for relief from the front yard setback from 9m (29.5ft) to 7m (23.0ft) and the setback from an Agricultural designation from 150m (492.1ft) to 14m (45.9ft) to legally recognize the existing structure footprint and for flexibility in future development. The requested relief is outlined in the table below:

Table 1 – Requested Relief from Zoning By-law #11-83

Section	Zoning Provision	By-law Requirement	Requested
12.1	Permitted Uses (Rural Zone)	N/A	Seasonal Dwelling
12.2	Front Yard, Minimum	9m	7m
12.2	Minimum Separation between non-farm buildings and the Agricultural designation	150m	14m

BACKGROUND

As per the applicant, a mobile home and associated private services were installed on the property around 1977, after which it burnt down in the mid 1980s. In 2007, a 6m by 6m structure lived in by a family was built, connecting to the existing septic, hydro, and well water. A year and a half later, the most recent resident of the property (prior to Mr. Cavanagh) moved in and resided there until Fall 2017.

Prior to purchasing the property, Mr. Cavanagh was made aware that the structure had not received a permit and was in fact illegal since its construction in 2007. Consequently, the applicant has sought out legitimizing the property via a Minor Variance application.

According to available aerials of the subject property, it is clear that the structure definitely existed prior to 2008, which sufficiently confirms the buildings age. Since then, the Building Department has noticed additional structures and vehicles on site. These items are being addressed separate to this application.

DESCRIPTION OF SUBJECT LANDS

The subject property is located at the very end of Timmins Road, a right-of-way that bisects the Municipality of Mississippi Mills and the City of Ottawa to the south of Kinburn Side Road. The property is ±0.82ha (2.02ac) in size with a frontage of ±65m (213ft). The property is generally surrounded by a combination of agricultural lands and forested rural properties.

SERVICING & INFRASTRUCTURE

The subject property is serviced by private water and septic, and has driveway access from Timmins Road, a municipally owned and maintained road (but is not winter maintained). The municipal servicing and infrastructure demands would not change as a result of the application. The location of the subject property is depicted in the following aerial photo:

Figure 1. – Aerial Photo of Property (2017)



COMMENTS FROM CIRCULATION OF THE APPLICATION

COMMENTS FROM INTERNAL CIRCULATION

Comments received based on the circulation of this application have been summarized below:

CAO: No comments received.

CBO: No comments received.

Fire Chief: No comments received.

Director of Roads and Public Works: This gravel road is not maintained in the winter, so as long as the use is seasonal, Public Works has no issues.

Recreation Coordinator: No concerns or objections.

COMMENTS FROM COUNCIL

Councillor Edwards: The reduction from the Agricultural designation does not meet our agricultural policies.

EXTERNAL AGENCIES

Health Unit: Pleas be advised that our comments will be provided once an inspection of the site is completed. We have notified the property owner of the need to complete and submit an application for a Maintenance Inspection to our Office.

MVCA: Comments were not available at the time this report was submitted and may be conveyed to the Committee if applicable.

COMMENTS FROM THE PUBLIC

No comments have been received from the public as of the date this report was prepared.

EVALUATION

Section 45 of the *Planning Act* conveys various powers to the Committee of Adjustment, as per Subsections 45(1) and 45(2). The former grants relief to the requirements of a municipal zoning by-law based on whether the request meets the four (4) tests set out by the *Planning Act*. The latter, specifically 45(2)(a)(ii), allows the Committee to recognize a use that has a purpose that is similar to the purpose for which it was used on the day the Zoning By-law was passed or is more compatible with the uses permitted by said by-law than the purpose for which it was used on the day the by-law was passed.

To properly evaluate the requests, the Committee needs to be satisfied that powers of Sections 45(1) and 45(2)(a)(ii) are appropriate for the subject application. For the sake of this report, Staff will assess the 'Seasonal Dwelling' use and setback reliefs separately. The latter will utilize the four (4) tests.

1A. Is allowing a 'Seasonal Dwelling' within the powers of the Committee?

As per Section 45(2)(a)(ii), a use can be recognized by the Committee if it is similar to the purpose for which it was used on the day the Zoning By-law was passed or if said use is deemed to be more compatible.

As indicated by the Director of Roads & Public Works, Timmins Road is not maintained during the winter months. Nonetheless, the road is an open and municipally owned right-of-way. Although the Community Official Plan (COP) has 'Seasonal Local Municipal Roads' policies (Section 4.6.4.4) – of which Subsection 2 indicates that “the Zoning By-law will regulate new development on seasonally maintained roads” – there is no such enforcement within the Comprehensive Zoning By-law #11-83. Consequently, all-season permanent dwellings are technically permitted even if possibly inappropriate. Subsequently, recognizing a 'Seasonal Dwelling' as a permitted use would be more suitable for the context of the lot compared to its intended historical mobile home and permanent dwelling uses.

Nevertheless, clause 45(2)(a) indicates that a use may be recognized if “[...] any land, building or structure, on the day the by-law was passed, was **lawfully** used for a purpose prohibited by the by-law”. Although the existing structure was constructed unlawfully, case-law – specifically *City of Toronto v. San Joaquin Invts. Ltd.* (see Schedule C for a summary by Wood Bull LLP) – indicates that 'lawfully used' in the context of subsection 34(9), being legal non-conformance, means to use lawfully in the context of only the *Planning Act*. Meaning, whether an owner has complied with other applicable statutes is irrelevant to protection under 34(9), and by association the powers of the Committee under 45(2).

Based on information from the applicant and conversations with the previous landowner, it appears that the land has been used as a non-farm residential dwelling, which was and is permitted within the RU Zone where it is located. On the other hand, a 'Seasonal Dwelling' was not a permitted use at the time of construction, thus it was never lawfully regarded as such and cannot be deemed a conforming use by the Committee.

1B. Are there any other powers of the Committee that can be used?

Section 45(2)(b) states that the Committee, “where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or

structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law.” Specifically, are the definitions for ‘Seasonal Dwelling’ and ‘Detached Dwelling’ general enough that the difference between them is negligible? Although they both are defined as detached dwelling units that can use the same level and types of servicing (i.e. heat, water, or septic), a ‘Detached Dwelling’ is clearly defined as a permanent use; whereas, a ‘Seasonal Dwelling’ is a secondary place of residence. Staff are of the opinion that the definitions are not broad enough to correctly utilize the powers granted by 45(2)(b). As such, Staff recommend refusing the variance request to recognize the structure as a ‘Seasonal Dwelling’.

2A. Do the proposed setback reliefs maintain the intent of the Official Plan?

The subject property is designated “Rural” and “Agricultural” in the Municipality’s Community Official Plan (COP). Both designations permit agricultural, commercial, industrial, and low-density residential uses, and associated accessory uses.

Front Yard Setback

The Municipality’s COP does not specifically address or contain policies related to minimum setbacks from a front lot line within the Rural/Agricultural designations. As such, the requested variance conforms to the general intent and purpose of the COP.

Agricultural Designation Setback

Section 3.3.3(2) of the COP indicates that new non-farm buildings and structures on lands adjacent to the Agricultural designation shall maintain a setback of 150m from its boundary. Further, where development is on an existing lot of record and the 150m setback cannot be achieved, development may take place within the setback subject to the approval of the Committee of Adjustment. As a Minor Variance application being heard by the Committee, the requested variance conforms to the general intent and purpose of the COP.

2B. Does the proposal maintain the intent of the Zoning By-law?

The subject property is zoned as both “Rural (RU)” and “Agricultural (A)” by the Municipality’s Comprehensive Zoning By-law #11-83. Both zones permit a detached dwelling, a home-based business, agricultural uses, and associated accessory structures. The owner is applying to reduce the front yard setback of the RU Zone – where the structure is located – from 9m (29.5ft) to 7m (22.9ft) and to reduce the required setback from the Agricultural designation from 150m (492.1ft) to 14m (45.9ft) to render the structure compliant with the associated setbacks and to provide flexibility if Building Code requirements were to result in expansion or relocation of the structure.

Front Yard Setback

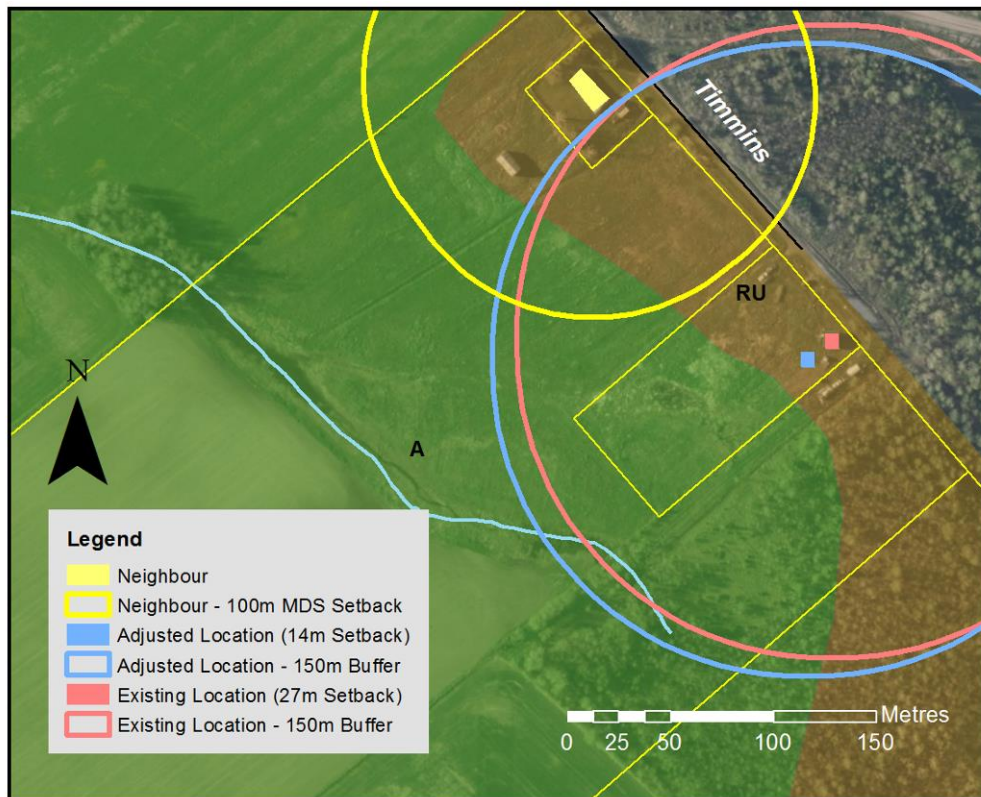
The intent of the front yard setback is to ensure adequate space for parking, conformity with the surrounding neighbourhood, and appropriate buffers between the roadway, its traffic, and a land use. The subject lot’s location – wedged between large agricultural properties and rural forests – is surrounded by few dwellings for which to make a direct comparison. The only comparable dwelling is also located on Timmins Road and it appears to have a similar setback to what is proposed by the applicant. Furthermore, the subject lands are located at the end of a municipal roadway, thereby mitigating any impacts that a road allowance and its use may have on the structure. It is important to note that the site plan submitted as part of the application indicated

a front yard setback greater than 15m (49.2ft), which is well in excess of the 9m requirement. After further review, Planning Staff noticed a discrepancy which resulted in an actual setback of approximately 10m. Concerned that there may be further errors arising from measuring between the structure and the property stakes, the applicant requested the 7m setback for safe measure. Regardless, Staff are of the opinion that the request maintains the intent of the Zoning By-law.

Agricultural Designation Setback

The intent of the Agricultural designation setback is to mitigate land use conflicts between agricultural operations and sensitive land uses (i.e. dwellings). From a numerical standpoint, the request is significant; but when regarded in the context of the surrounding environment the impact is negligible. Figure 2 illustrates what a 150m setback would equate in regards to the existing location and the proposed 14m, as well as a potential MDS II setback of 100m (328.1ft) from the neighbouring dwelling. The 100m was chosen as an example to illustrate an ideal location for a larger scale livestock facility.

Figure 2 – Buffers from Dwellings



It is important to note that although the existing structure was not lawfully constructed as per the *Building Code Act*, it is deemed a conforming use under the *Planning Act*. As such, it retains legally non-complying status for its setback from the Agricultural designation since said provision did not exist within Comprehensive Zoning By-law #01-70 and current non-compliance provisions (Section 6.14) do not specifically require that the structure is legal as under the Ontario Building Code. Consequently, the structure is legally permitted to be 27m from said designation.

The requested setback of 14m, a difference of 13m (42.6ft) from its legal non-complying location, adds minimal impact to the abutting agricultural lands. The neighbouring dwelling already restricts the location of a potential livestock facility and the majority of lands adjacent to the subject structure are forested. Furthermore, the lands that are impacted belong to a 127ac farm property that has frontage on both Timmins Road and 12th Concession South Pakenham (see Schedule D). As such, Staff are of the opinion that request maintains the intent of the Zoning By-law.

2C. Is the proposal desirable for the appropriate development of the lands in question?

Although the proposal does involve requests for the sake of flexibility or margins of error, the variations between the requests and what has been deemed to be legally non-complying are negligible. The RU Zone has permitted and continues to permit a detached dwelling, thereby the use itself is lawful as per the *Planning Act*. Further, the surrounding area is generally vacant rural forested land or large agricultural holdings, and thus allowing for reduced setbacks has minimal impact except for added flexibility for the applicant if they require expanding or moving the structure to meet the Ontario Building Code requirements.

The property sits adjacent to an Area of Natural and Scientific Interest (ANSI) and is thus subject to the COP policies of Section 3.1.2.2. As per Section 3.1.2.2.1(1), the establishment of single dwellings on existing lots of record is permitted without requiring further documentation. However, the structure would be subject to an Environmental Impact Statement (EIS) and Site Plan Control if additions are to be made.

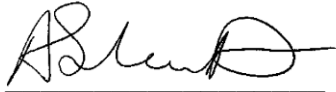
4. Is the proposal minor?

Considering that the use conforms to the By-law and the structure has a legally non-complying Agricultural designation setback, the requested reliefs are minor and do not pose further risk or impact to adjoining lands or agricultural operations. Furthermore, the neighbouring dwelling along Timmins Road already restricts the possible location of a livestock facility as per future MDS II calculations – no facility is known to the Municipality as proposed at this time. Future development of the site would require Site Plan Control and a subsequent EIS to assess any potential impacts to the ANSI – at the time of construction, there were no requirements for either.

CONCLUSION

Overall, Staff supports the setback relief requests but cannot legally support the recognition of a ‘Seasonal Dwelling’ as a permitted use. The supported variances would allow the owner to maximize the use and enjoyment of their property with no foreseeable impacts to any other stakeholders. Staff believes that said variances meet the four (4) tests for evaluating a Minor Variance as established under the *Planning Act*. Planning Staff therefore recommend that the setback relief variances be granted, provided the Committee is satisfied that any issues raised at the public hearing do not require additional Staff evaluation and comment, the submission of additional information, or the application of conditions other than those listed at the beginning of this report.

All of which is respectfully submitted by,



Andrew Scanlan Dickie
Junior Planner

Reviewed by,

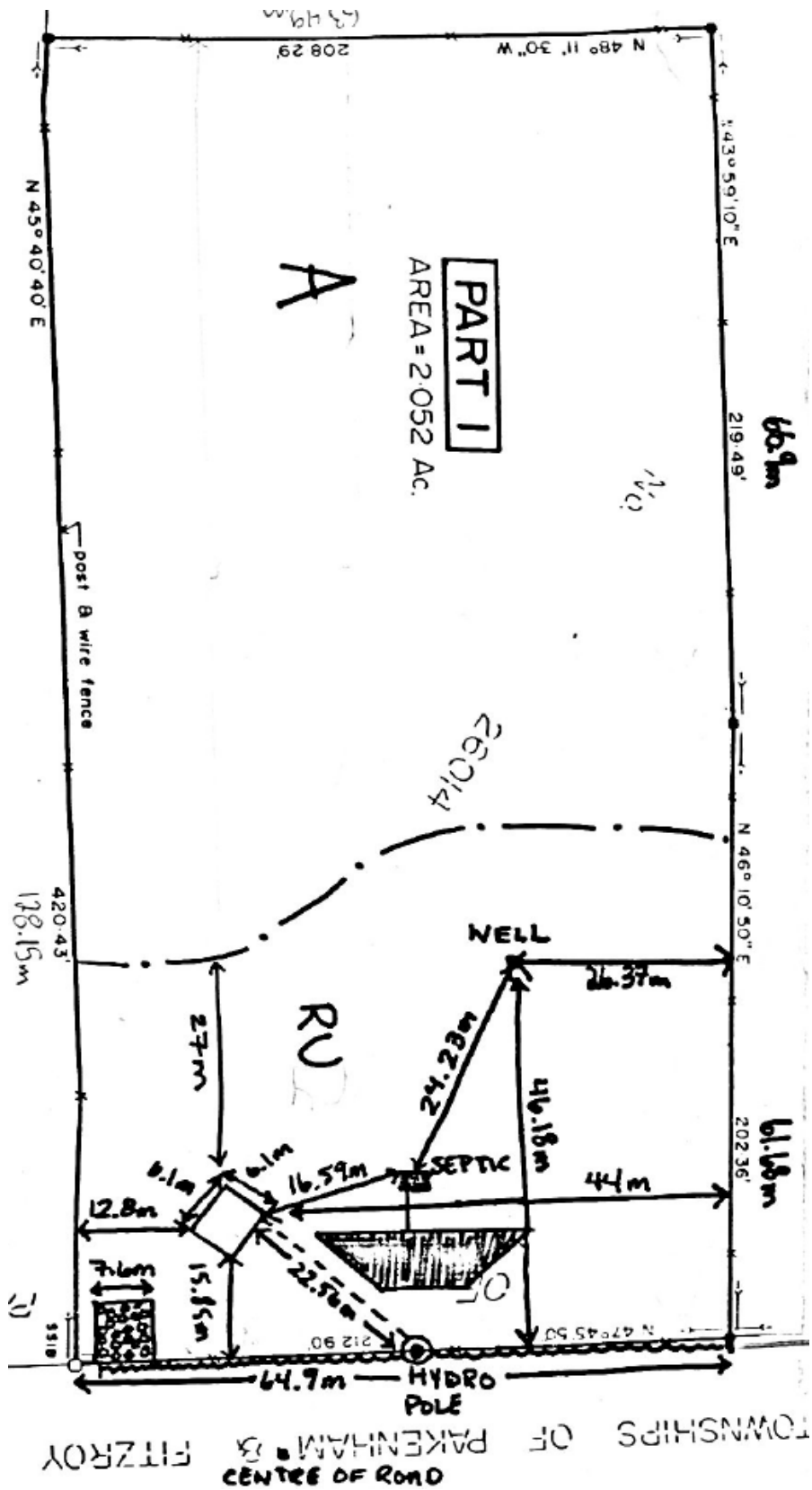


Niki Dwyer, MCIP, RPP
Director of Planning

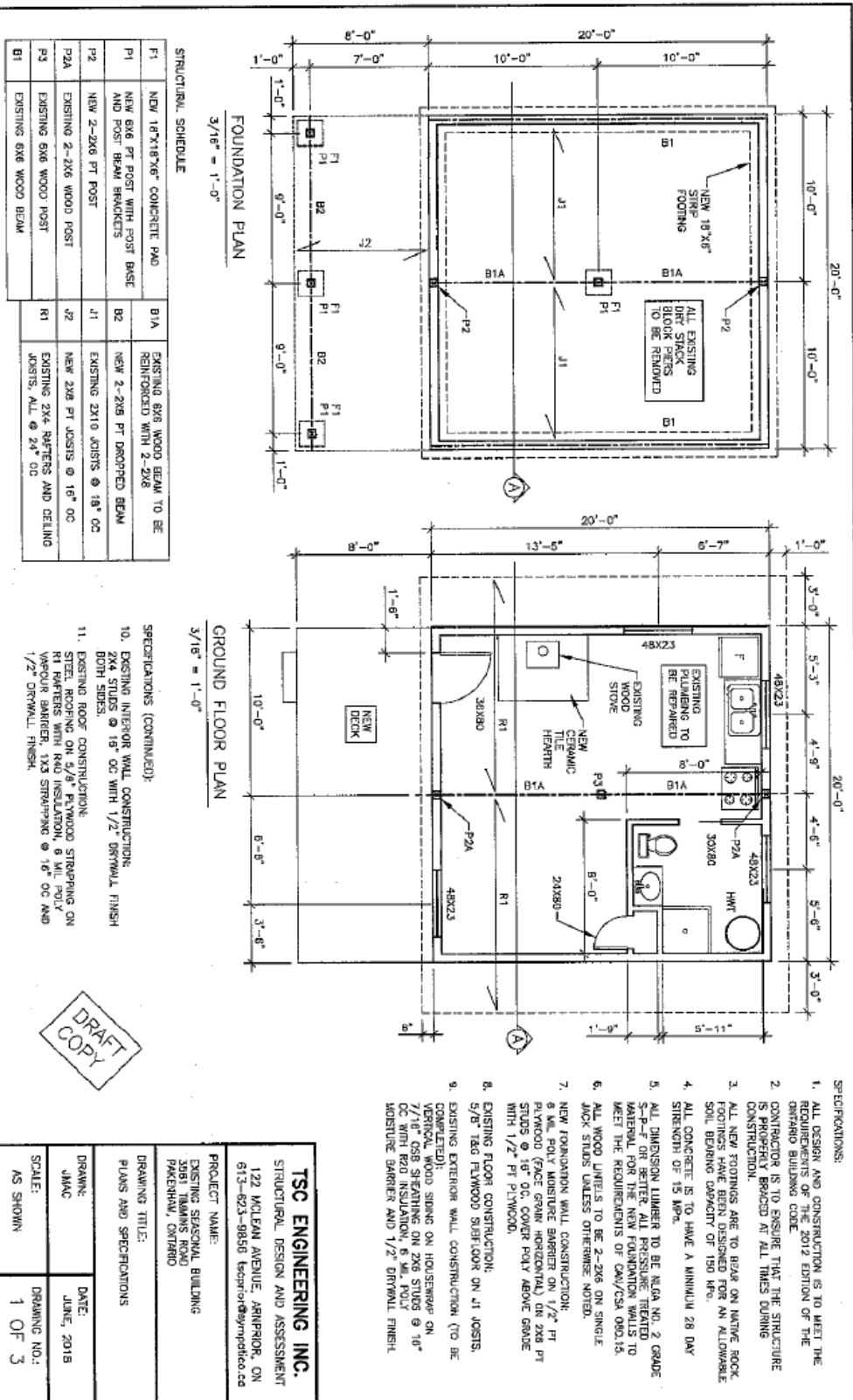
ATTACHMENTS:

- SCHEDULE A – Site Plan
- SCHEDULE B – Building Plans
- SCHEDULE C – Legal Non-conforming Use Commentary – Wood Bull LLP
- SCHEDULE D – Supplementary Aerial (Neighbouring Lands)
- SCHEDULE E – Site Photos
- SCHEDULE F – Comprehensive Zoning By-law #11-83 Rural (RU) Excerpt

SCHEDULE A – Site Plan



SCHEDULE B – Building Plans



DRAFT COPY

TSC ENGINEERING INC.
STRUCTURAL DESIGN AND ASSESSMENT
122 MCLEAN AVENUE, ARLINGTON, ON
613-623-9858 tes@tscengineering.ca

PROJECT NAME:
EXISTING SEASONAL BUILDING
3081 TRAMING ROAD
PICKERING, ONTARIO

DRAWING TITLE:
PLANS AND SPECIFICATIONS

DRAWN: JMAC
DATE: JUNE, 2015

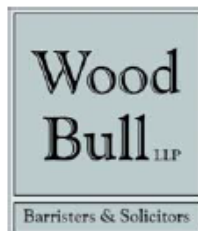
SCALE: AS SHOWN
DRAWING NO.: 1 OF 3

The Planning Act: What's New, What Remains, What You Should Know

Legal Non-Conforming Uses Under the *Planning Act*

by: Dennis H. Wood and Johanna Myers

June 2006



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Legal Non-Conforming Uses Under the *Planning Act*

Dennis H. Wood and Johanna Myers, Wood Bull LLP

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B. Was the Land, Building or Structure Lawfully Used on the Day the By-law was Passed?

The first matter to be addressed in considering the application of subsection 34(9) of the *Planning Act* involves the question as to whether the pre-existing “land, building or structure” was “lawfully used for such purpose on the day of the passing of the by-law.”

(a) Meaning of “Lawfully Used”

“Lawfully used” in the context of subsection 34(9) of the *Planning Act* means to use lawfully in the context of the *Planning Act* only. Thus, whether or not an owner has complied with other applicable statutes will not be relevant in determining whether the owner is entitled to protection under subsection 34(9) of the *Planning Act*.³

Similarly, on the question of the applicability of regulations to the use of land in the context of a legal non-conforming use, the Court in a case called *City of Toronto v. San Joaquin Invts. Ltd.*,⁴ found that:

“Section 35(7) [now subsection 34(9)] provides that no by-law passed under this section applies to prevent the use of the land for any purpose prohibited by the by-law if the land was lawfully used for such purpose on the day of the passing of the by-law so long as it continues to be used for that purpose. In this subsection no reference is made to regulations that

³ 893472 *Ontario Ltd. v. Whitchurch-Stouffville (Town)* (1991), 7 M.P.L.R. (2d) 296 at 306. See also 1218897 *Ontario Ltd. (c.o.b. Castle Auto Collision and Mechanical Service) v. Toronto (City) Chief Building Official*, [2005] O.J. No. 4607 (the previous owner’s failure to acquire the necessary certificate of approval under the *Environmental Protection Act*, R.S.O. 1990, c. E.19 did not amount to using land unlawfully for the purposes of subsection 34(9)(a) of the *Planning Act*); *Town of Richmond Hill v. Miller Paving Ltd.* (1978), 22 O.R. (2d) 779 (Ont. H.C.) (the Court found that a failure to obtain a building permit was irrelevant to the question of whether the land or building was “lawfully used”)

⁴ (1978), 18 O.R. (2d) 730, affirmed 26 O.R. (2d) 775, leave to appeal to Supreme Court refused [hereinafter referred to as *City of Toronto v. San Joaquin Invts. Ltd.*]

Legal Non-Conforming Uses Under the *Planning Act*

may be applicable to the use of such land. The question of regulation was not dealt with in *Central Jewish Institute v. Toronto* or in *O'Sullivan Funeral Homes Ltd. [v. City of Sault Ste. Marie and Evans, [1961] O.R. 413, 28 D.L.R. (2d) 1]* although it is obvious from the *O'Sullivan Funeral Home* case that there were many by-law requirements with respect to buildings, if not zoning, that were required to properly use the funeral home as such. No reference is made in the *Central Jewish Institute* case as to what requirements there may have been with respect to the use of the building as a school.

I am of the opinion that it is the use and not the regulations that are the operative part relating to the exemptions under ss.(7) and I am therefore of the opinion that notwithstanding the failure of the owners to comply with all the regulatory aspects under the then applicable zoning by-law, they in fact had a use of the lands that was a lawful use."⁵ [underline emphasis added]

(b) Was the Use Established on the Day of the By-law?

The onus will be on the owner to establish that the lands, building or structure were being used for a particular purpose at the time of the by-law amendment.⁶ This can be a more difficult task than it sounds, because the "use for the purpose" must, on an examination of the facts as of the day of the passing of the by-law, be occurring. It is not a question as to whether such a use could theoretically been made under the relevant by-law.

This usually involves extensive historical research in the municipal archives as to when the "interfering by-law" was enacted and as to the nature of the use on that date. One way of establishing the nature of the use is to obtain an affidavit from a previous owner or occupant of the property (or a neighbour of long standing) who can give evidence of the use from personal knowledge.

Whether the property was being "used for the purpose" at the time of enactment of the "interfering by-law" sometimes becomes intertwined with the corollary issue of a prior

⁵ *City of Toronto v. San Joaquin Investments Ltd.*, at pp 741-742.

⁶ *City of Toronto v. San Joaquin Investments Ltd.*, at P. 739.

Legal Non-Conforming Uses Under the *Planning Act*

lawful use that ended (even though it remained lawful) before the new by-law was passed. If the use ended prior to the passing of the by-law, the owner will not be entitled to an exemption under the *Planning Act*. Even where the potential to continue the use remained intact up to the time that the by-law was passed, the owner may be disentitled to the protection of subsection 34(9).⁷

(i) Use of Land on the Day the By-law was Passed

The claimant of a non-conforming use of land need not establish that the use was fully developed at the date that the “interfering by-law” was passed. In a decision called *Township of Emily v. Johnson*,⁸ an Ontario Court dismissed an action brought by a municipality against an owner of lands for an injunction to prohibit the owner from operating a go-cart track on his premises. The owner presented evidence to establish that the go-cart operation had commenced, although not yet been fully developed, as of the date of the by-law. On this point, the Court noted:

“... the conclusion is irresistible that there was an embryo in place in 1977. Mr. Johnson had formulated his plans in 1976. He began to execute them in the early part of the summer of 1977 by purchasing two go-carts for commercial use, by grading the proposed site, removing stones, shaping it, that is, giving it a pattern with the use of a grader, chains and go-carts.”

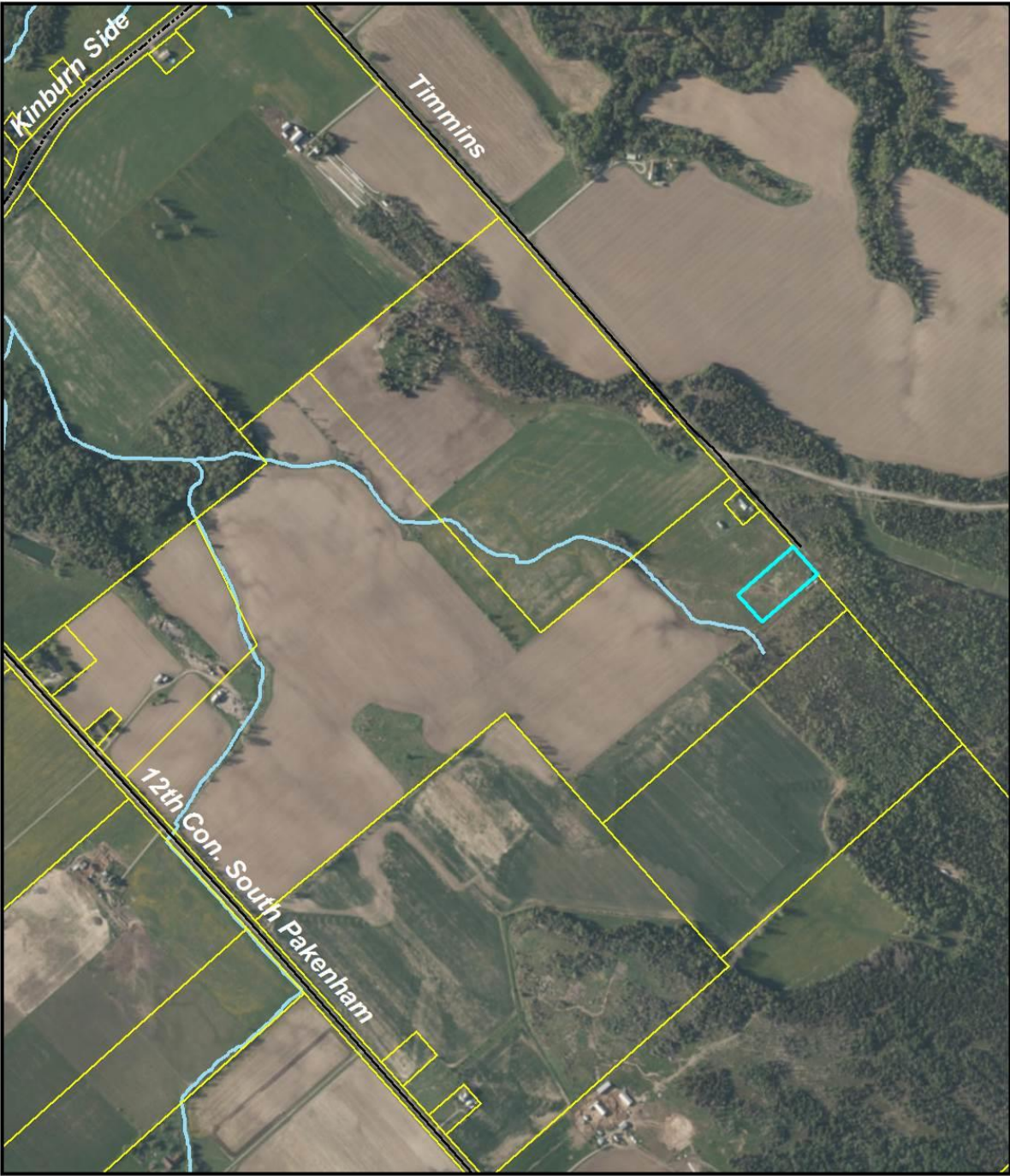
The Court ultimately rejected the municipality’s argument that the use made before the by-law was enacted must be the same, in nature and extent, as the existing use, stating as follows:

“... If the operation was in existence and was a *bona fide* one, even though it was only ancillary in nature, I would be at a loss to set the guidelines that might be called upon to single out certain operations as not being deserving of protection. It is sufficient, in my opinion, that there was an enterprise, probably even better if it was a commercial venture involving

⁷ See *Dennis v. The Township of East Flamboro et. al.*, [1956] O.J. No. 87 (Ont. C.A.) (where a gas station usage terminated prior to the enactment of the by-law, the Court of Appeal found there was no legal conforming use, and even if there had been such a use, the land did not continue to be used for that purpose after the by-law was enacted, even though the infrastructure for the gas station remained substantially in place throughout.)

⁸ (1981), 135 D.L.R. (3d) 465 [hereinafter referred to as *Township of Emily v. Johnson*].

SCHEDULE D – Supplementary Aerial (Neighbouring Lands)



SCHEDULE E – Site Photos

Subject Property



Close-up of Structure



Nearby Outhouse



Surrounding Land



SCHEDULE F – Comprehensive Zoning By-law #11-83 Rural (RU) Excerpt

SECTION 9 – RURAL (RU) ZONE

9.1 USES PERMITTED

No person shall within the “RU” zone use any lot or erect, alter or use any building or structure for any purpose except one or more of the following uses:

(a) Residential Uses

- a single detached dwelling
- single detached dwelling accessory to an agricultural use
- a group home type A within a non-farm single detached dwelling

(b) Non-Residential Uses

- agricultural uses
- specialized agricultural use
- home occupation - domestic and household arts
- home occupation - professional use
- home occupation - rural business
- home occupation - farm vacation
- bed and breakfast
- conservation areas
- forestry
- hunt or fishing camp
- sugarbush
- equestrian school
- private sewage disposal system
- buildings, structures and uses accessory to a permitted use

9.2 ZONE PROVISIONS

No person shall within the “RU” zone use any lot or erect, alter or use any building or structure except in accordance with the following provisions:

<u>Provisions</u>	<u>Rural</u>	<u>Non-Farm Residential</u>
minimum lot area	10 hectares (24.7 acres)	0.4 hectares (1.0 acre)

minimum lot frontage	150 metres (492 feet)	45 metres (147.6 feet)
minimum side yard	15 metres (49.2 feet)	6 metres (19.68 feet)
minimum rear yard	15 metres (49.2 feet)	9 metres (29.5 feet)
minimum front yard	15 metres (49.2 feet)	9 metres (29.5 feet)
minimum exterior side yard	15 metres (49.2 feet)	9 metres (29.5 feet)
maximum height of detached dwelling	11 metres (36.1 feet)	11 metres (36.1 feet)
maximum lot coverage	5 %	15 %
minimum separation from accessory detached dwelling to any structure where animals are housed.	30 metres (98.4 feet)	30 metres (98.4 feet)

9.3 SPECIAL PROVISIONS

- 9.3.1 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-1' on Schedule "A" to this By-law no vegetation shall be materially altered within the 90 metre (295 feet) front yard except for the purpose of a driveway providing access to the lot.
- 9.3.2 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-2' on Schedule "A" to this By-law a gift shop shall be permitted in accordance with the following provisions:
- the gift shop shall be restricted to the area of the garage and basement of the residential dwelling as they existed on May 4, 1993
 - no expansion or extension of the garage or basement for the purpose of enlarging the gift shop shall be permitted without an amendment to this By-law.
- 9.3.3 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-3' on Schedule "A" to this By-law a recording/teaching studio shall be permitted.
- 9.3.4 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-4' on Schedule "A" to this By-law a septage disposal use shall be permitted in accordance with the