



County of Brant – Planning and Development Report

To: To the Chair and Members of the Planning and Development Committee
From: Shannon Labelle, Planner
Date: May 3, 2022
Subject: RPT-22-98
Zoning By-Law Amendment Application ZBA5/22/SL
77 Maple Avenue South, Geographic Township of Burford
Purpose: **Recommendation Report for Approval**

That Application **ZBA5/22/SL** from Thomas Komienski, Owner of lands legally known as Concession 13 Part Lot 4 Part Lot 5 Part Lot 6, municipally known as 77 Maple Avenue South, geographic Township of Burford, County of Brant, proposing to rezone the subject lands from Agriculture (A) to Agriculture with Site Specific Provision 9 (A-9) to prohibit a dwelling, in order to facilitate a surplus farm dwelling severance, **BE APPROVED.**

The following site specific provision is being recommended for approval:

1. To prohibit a dwelling as a condition of approval of a surplus farm dwelling severance.

THAT the reason(s) for approval are as follows:

- The application is in conformity with the policies of the Growth Plan for the Greater Golden Horseshoe and consistent with the policies of *Provincial Policy Statement*.
- The application is in conformity with the general intent of the policies of the Official Plan and Zoning By-Law.

Key Strategic Priority

Sustainable and managed growth.

Financial Considerations

None.

Executive Summary / Proposal

The purpose of this report is to provide Council and the Public with information from the applicants and staff regarding the details of an application to amend the County of Brant Zoning By-Law 61-16.

The applicant is undertaking a rezoning application as a condition of approval of severance application B73-21-AW. The applicant sought a surplus farm dwelling severance as the lands municipally known as 77 Maple Avenue South contained a dwelling deemed surplus to their existing farming operation. The retained lands are to be consolidated with the existing farming

operation, and permanent residence of the applicant located at 1877 Windham Road 2, Norwich. This severance application was presented to and conditionally approved by the Committee of Adjustment in August 2020, the conditions were not cleared within the allotted time, as a result the proponent was required to resubmit. The severance application was presented to and conditionally approved by the Committee of Adjustment in January 2022. There was a concurrent minor variance application, A40-21-AW that was presented to and approved by the Committee of Adjustment in January 2022, to address deficient setbacks to an accessory structure and an agricultural structure on the retained lands.

The proposed rezoning application is proceeding straight to a recommendation report rather than having an information meeting.

The planning analysis focuses on literature review of applicable policy (i.e. *Planning Act, Provincial Policy Statement (2020)*, Growth Plan for the Greater Golden Horseshoe (2020), Brant County Official Plan (2012) and Zoning By-Law 61-16, consultation with departments and discussions with both the agent/public. As outlined in this report, I am of the opinion the proposal represents good planning and am recommending approval of the application.

Location

The subject lands are located on the west side of Maple Avenue South, having frontage along the west side of Maple Avenue South, within the Geographic Township of Burford. The lands municipally known as 77 Maple Avenue South are rectangular in shape, having an area of approximately 53 hectares (131 acres). The subject lands are surrounded by agricultural lands and related uses in all directions. Based on aerial imagery, and a site visit to the property by County Staff on April 13th, 2022, there did not appear to be any livestock barns on the subject lands, or within 500 metres of the proposed severance. The subject lands are currently occupied by an existing single detached dwelling, detached garage, one seasonal dwelling, three storage structures, one shed, two trailers and six dryers. The single detached dwelling and detached garage will be severed with the surplus dwelling. All other structures will remain with the retained lands as they are agricultural structures.

The retained lands are expected to have an area of approximately 52.8 hectares (130.5 acres) and a broken frontage of approximately 280 metres (918.6 feet). The retained lands will be farmed as part of a larger farming operation.

The severed lands are expected to have an area of approximately 0.2 hectares (0.5 acres) and a frontage of approximately 52 metres (170.6 feet). The severed lands, being the surplus farm dwelling, will not be occupied by the current owner.

The subject lands are privately serviced.

Report

Planning Act R.S.O (1990)

Section 34(10) of the *Planning Act* provides policy direction to be considered when reviewing Zoning By-Law Amendment applications.

Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of Provincial interest regarding land use planning and development and sets the policy foundation for regulating land use and development of land. All decisions affecting planning matters shall be 'consistent with' policy statements issued under the Planning Act.

Section 2.3.4.1 of the PPS describes how the creation of lots in prime agricultural areas is discouraged and may only be permitted for:

- (a) *agricultural uses*, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations
- (b) *agriculture-related uses*, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*
- (c) a *residence surplus to a farming operation* as a result of farm consolidation, provided that
 1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate *sewage and water services*; and,
 2. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective

The lands to be severed through approved severance application B73-21-AW are expected to have an area of approximately 0.22 hectares (0.5 acres) and is able to accommodate private servicing. The retained lands are to be rezoned to prohibit a residential use. The retained lands will continue to be farmed as part of a larger farming operation.

Section 2.3.4.3 of the PPS describes show the creation of new residential lots in prime agricultural areas is not permitted except in accordance with policy 2.3.4.1(c).

No new residential lot is being created as the retained lands through the rezoning will prohibit a residential use. The severed lot is occupied by an existing dwelling.

Section 6.0 includes the definition for “residence surplus to a farming operation”

- means an existing habitable farm residence that is rendered surplus as a result of farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation).

The surplus farm dwelling severance application B73-21-AW which was approved by the Committee of Adjustment in January 2022 satisfied this policy as the retained lands acquired by Thomas Komienski are to be farmed as part of a larger farming operation located at 1877 Windham Road 2, Norwich.

It is my opinion that the proposal is consistent with the policies in the Provincial Policy Statement (2020) for the following reasons:

- ***The dwelling is considered surplus by the applicant through farm amalgamation.***
- ***The proposed severance meets the definition for residence surplus to a farming operation as the applicants will continue to farm as one larger farming operation.***
- ***The lot established for the surplus farm dwelling is limited to the minimum size needed to accommodate appropriate sewage and water services.***
- ***The retained farm parcel will be rezoned to prohibit a residential dwelling.***

Growth Plan for the Greater Golden Horseshoe (2020)

The Growth Plan is a framework that provides policy direction to implement strong and prosperous communities and how to manage growth in Ontario to 2051. The Planning Act requires that all decisions that affect a planning matter shall 'conform with' Provincial plans, including but not limited to the Growth Plan.

Section 2.2.1.2 (b) of the Growth Plan describes how growth will be limited on lands that are not serviced by existing or planned municipal water and wastewater system.

A new residential building lot is not being created by the proposed severance. The dwelling is existing and is being severed as surplus to the farming operation as a result of farm amalgamation. The severed and retained lands will continue to be privately serviced.

Section 2.2.9.1 of the Growth Plan describes how Municipalities are encouraged to plan for a variety of cultural and economic opportunities within rural settlement areas to serve the needs of rural residents and area businesses.

The applicant was able to proceed with a surplus farm dwelling severance application as the farmlands were surplus to the applicant as a result of farm operation amalgamation. The retained lands will continue to be farmed as part of a larger farming operation which will in turn contribute to the economic vitality of the County of Brant.

Section 4.2.6.4 of the Growth Plan describes how the geographic continuity of the agricultural land base and the functional and economic connections to the agri-food network will be maintained and enhanced.

To facilitate the surplus farm dwelling severance, only the minimum amount of land was severed to accommodate the existing dwelling and private servicing needs. No actively farmed land was removed to facilitate the severance. The retained lands are expected to have an area of approximately 52.8 hectares (130.5 acres) and will be farmed as part of a larger farming operation.

Section 4.2.6.5 of the Growth Plan speaks to the retention of existing lots of record for agricultural uses is encouraged, and the use of these lots for non-agricultural uses is discouraged.

The retained lands will continue to be farmed as part of a larger farming operation and no new residential building lots will be created as they are being proposed to be rezoned to prohibit a dwelling.

It is my opinion that the proposal is in conformity with the policies in the Growth Plan for the Greater Golden Horseshoe (2020) for the following reasons:

- ***No new residential development is proposed for either the severed or retained lands. The retained lands are to be rezoned with a site specific provision prohibiting a dwelling.***
- ***The existing single detached house is surplus to the applicant's needs through the amalgamation of additional farmland into their farm operation.***
- ***The subject lands will continue to be farmed as part of a large farming operation located at 1877 Windham Road 2, Norwich.***

Source Water Protection

Source protection plans contain a series of locally developed policies that, as they are implemented, protect existing and future sources of municipal drinking water. Municipalities, source protection authorities, local health boards, the Province and other, are responsible for implementing source protection plan policies.

The subject lands are not located within a Source Water Protection Area.

County of Brant Official Plan (2012)

The County of Brant Official Plan sets out the goals, objectives and policies to guide development within the municipality. The Planning Act requires that all decisions that affect a planning matter shall 'conform to' the local Municipal Policies, including but not limited to the County of Brant Official Plan.

The subject lands are designated as Agriculture in the County of Brant Official Plan (OP).

Section 1.11.2.6.2(a) of the County of Brant Official Plan recognizes the agricultural industry as an important component of the County's economic base and as a contributor to the County's rural character.

To facilitate the surplus dwelling severance, no actively farmed land has been removed. The retained lands will continue to be farmed as part of a larger farming operation.

Section 1.11.2.6.2(b) of the County of Brant Official Plan speaks to protecting the County's prime agricultural area for long term agricultural purposes.

The severed and retained lands will continue to be designated as Agriculture. The retained lands will continue to be farmed as part of a larger farming operation. Further, the retained lands are proposed to be rezoned to prohibit a residential use. No new residential building lots are being created.

Section 1.11.2.6.2(c) of the County of Brant Official Plan speaks to protecting the right to farm based on normal farm practices.

The retained lands are being farmed as part of a larger farming operation and no actively farmed lands were removed to facilitate the surplus farm dwelling severance.

Section 1.11.2.6.2(e) of the County of Brant Official Plan restricts the creation of new residential lots and other non-farm development in the County's Agricultural areas.

No new residential buildings lots have been created. The existing dwelling was severed through a surplus farm dwelling severance.

Section 1.11.2.6.2(i) of the County of Brant Official Plan requires the development of urban and nonfarm-related land uses to the County's Primary and Secondary Urban Settlement Areas and Hamlets and Villages, or areas specifically intended for the proposed land use, in order to protect the long-term operation and economic role of agriculture.

The retained lands will continue to be farmed as part of a larger farming operation, with no non-farm related land uses proposed.

Section 1.11.2.6(j) of the County of Brant Official Plan ensures the protection of agricultural operations through the incorporation of Minimum Distance Separation Formulae in order to prevent adverse effects from odour.

The Minimum Distance Separation Formulae (MDS) is able to be met. No livestock operations were identified within 500 metres of the proposed lot.

Section 1.11.2.6.2(k) of the County of Brant Official Plan speaks to permitting farming operations that will help the County as a whole adjust to changing economic and technological conditions.

To facilitate the severance the minimum amount of land was severed. All actively farmed land will continue to be farmed as part of a larger farming operation.

Section 3.3.1(a) of the County of Brant Official Plan describes how the primary form and predominant use of land in the Agriculture designation shall include all types of farming and normal farm practices, including the growing of crops, the raising of livestock and other animals for food, fur, or fibre; associated on-farm buildings and structures, including accommodation for associated full-time farm labour as required based on the size and nature of the operation; agricultural research operations; uses connected with the conservation of water, soil, wildlife and other natural resources; and resource extraction and resource-based uses.

The retained lands will continue to be farmed as part of a larger farming operation.

3.3.1(c) of the County of Brant Official Plan describes how in general, one residential dwelling unit shall be permitted per lot on lands designated as Agriculture.

There is an existing dwelling on the severed lot, and the retained lands are proposed to be rezoned to prohibit a residential use.

3.3.2.1(a) of the County of Brant Official Plan speaks to Minimum Distance Separation (MDS) Formulae be used to establish appropriate standards for separating proposed uses from existing livestock facilities (MDS I) and for applying appropriate standards for the separation of new or expanding livestock facilities from existing adjacent uses (MDS II). The County Zoning Bylaw shall establish separation distances between livestock operations (to be defined within the By-Law) and non-agricultural land uses in accordance with the Minimum Distance Separation Formulae.

The subject lands do not have any livestock facilities. If any livestock facilities were to be constructed, they would be required to satisfy MDS.

Section 6.8.2.1(a) of the County of Brant Official Plan speaks to consents for the diversion of land in the Agriculture designation being discouraged. No consent shall be allowed within the Agriculture designation which may have the effect of creating lots that are not primarily related to agriculture, or agriculture-related commercial/industrial, or as specified by this Plan.

As a condition of severance, the applicant is proposing to rezone the retained lands to prohibit a dwelling.

Section 6.8.2.1(b) of the County of Brant Official Plan speaks to consent applications being denied for the following reasons:

- i. the lot does not front on a public road;
- ii. the lot is situated in an area where the County of Brant (or its designated agent) believes is unsuitable for sanitary services;
- iii. the lot is entirely contained within the Natural Heritage System designation or Provincially significant woodlands; or
- iv. the lot is entirely contained within an area identified as a primary aggregate resource area.

The subject lands have frontage along the west side of Maple Avenue South. The severed and retained lot will continue to be privately serviced. The lands are designated as Agriculture.

Section 6.8.2.1(c)(iv) of the County of Brant Official Plan speaks to when previous or current farm consolidations have rendered a residence surplus to a farming operation, or where an established farm has more than one habitable dwelling which is considered surplus to the needs of the farm operation, a consent may be considered to sever the surplus farm dwelling from the farm unit, provided that, in addition to the general consent policies of this Plan, all of the following conditions are met

1. The lot severed for non-farm use is large enough to accommodate the use and on-site servicing (i.e. subsurface sewage disposal and well) while ensuring that as little acreage as possible is taken out of productive agricultural land and shall generally be less than 0.6 hectares in size
2. the Minimum Distance Separation Formulae can be met with the formulae applied as if the property was zoned or designated as a residential lot
3. the lot severed, for the non-farm use, shall neither create nor add additional dwelling units; and
4. the remnant parcel of farmland created by the severance is rezoned to prohibit the future construction of a new dwelling.

The severed lot is large enough to accommodate private servicing, and no actively farmed lands were removed to facilitate the surplus farm dwelling severance. The proposed lot has an area of approximately 0.22 hectares (0.5 acres). The Minimum Distance Separation (MDS) Formulae is able to be met. No new residential building lots are being created and the retained lands are to be rezoned to prohibit a residential use.

It is my opinion that the proposal conforms to the policies in the County of Brant Official Plan (2012) for the following reasons:

- ***Through the severance, no new residential building lots are being created***
- ***The lot severed for non-farm use is large enough to accommodate the use and on-site private servicing (i.e. subsurface sewage disposal and well) while ensuring that as little acreage possible is taken out of productive agricultural land.***
- ***The retained lands are expected to be farmed as part of a larger farming operation.***
- ***The severed and retained parcels have frontage along Maple Avenue South.***
- ***The Minimum Distance Separation Formulae has been satisfied.***
- ***The retained lands will be rezoned to prohibit a residential use.***

County of Brant Zoning By-Law 61-16

The subject lands are zoned Agricultural (A) and Natural Heritage (NH) within the County of Brant Zoning By-Law 61-16. The Lands to be severed are not within the Natural Heritage (NH) zone.

Section 14, Table 14.1.1 speaks to the permitted uses on lands zoned as Natural Heritage (NH). Permitted uses include:

- Agricultural Use
- Boat Dock
- Boat House
- Boat Ramp
- Conservation and Flood or Erosion Control Projects
- Forestry
- Public Park or Private Park
- Small-scale structures for passive recreational uses
- Stormwater Management Facility

- Wildlife Management

The lands that were severed through a surplus farm dwelling severance are not zoned as Natural Heritage (NH). The retained lands have a portion to the west that are zoned as Natural Heritage (NH) and are not being rezoned, and will continue to be farmed, which is a permitted use.

Section 6.1, Table 6.1.1 speaks to the permitted uses on lands zoned as Agriculture (A). Permitted uses include but are not limited to the following:

- Agricultural Use
- Agriculture-Related Use in accordance with Section 4.23
- Dwelling, Single Detached
- Farm Production Outlet in accordance with Section 4.10
- Forestry Uses
- Greenhouse in accordance with Section 4.12
- On-Farm Diversified Use in accordance with Section 6.4
- Shipping Container in accordance with Section 4.35

The lands that were severed through a surplus farm dwelling are zoned as Agriculture (A) and contain an existing single detached dwelling and detached garage which is permitted and its associated accessory structures.

Section 4.29 of the County of Brant Zoning By-Law speaks to requiring a frontage of 20m for surplus farm dwellings on lands zoned as Agriculture.

This policy has been satisfied as the surplus farm dwelling is expected to have a frontage of approximately 52.1 metres (170.6 feet).

Section 6.2, Table 6.2.1 of the County of Brant Zoning By-Law speaks to the development requirements for lands zoned as Agriculture. See chart below for analysis of development standards.

Development Standard	Required – Dwelling	Requested – Surplus Dwelling	Requested – Retained Farmlands
Lot Area, Minimum (ha)	40ha 0.6ha or less – Surplus Farm Dwelling	0.22ha	52.8ha
Lot Frontage, Minimum (m)	150m 20m – Surplus Farm Dwelling	52.1m	280m
Street Setback, Minimum (m)	10m	13m	
Interior Side Yard Setback, Minimum (m)	4m	13.4m	

Rear Yard Setback, Minimum (m)	10m	11.7m	
Lot Coverage, Maximum	30%	10%	

It is my opinion that the proposal maintains the intent of the County of Brant Zoning By-Law 16-61 for the following reasons:

- ***Through the severance, no new residential building lots are being created.***
- ***The retained lands are expected to be farmed as part of a larger farming operation.***
- ***The severed and retained parcels have frontage along Maple Avenue South.***
- ***The retained lands will be rezoned to prohibit a residential dwelling.***
- ***The severed lot satisfies the development standards of the Agriculture (A) zone.***

Interdepartmental Considerations

Development Engineering:

- The existing driveway from the severed to the retained is required to be blocked off to restrict access to the retained or a Right of Way created across the severed parcel for access to the retained lands.
- The sketch for the severance application prepared by Jewitt and Dixon Ltd on February 18th, 2020, indicates that the severed parcel area of 0.5 acre (2023 square metres), not 1 acre as shown on the plan.
- The sketch for the severance application prepared by Jewitt and Dixon Ltd on February 18th, 2020, does not indicate the Road name on the plan, Maple Avenue South.

Environmental Planning:

- No comment.

Fire:

- No concerns. Rural firefighting fee to be collected for the new lot.

Operations

- No comment.

Long Point Region Conservation Authority

- No objection.
- A portion of the subject property (within the retained lands) is regulated under Ontario Regulation 178/06. A permit is required prior to any development within the regulation limit.

Tax Department

- No Comment

The following departments/agencies did not provide any comments with regard to this application:

- Building Division
- Hydro 1

- Energy plus
- Canada Post
- Union Gas
- Infrastructure Ontario
- Six Nation/New Credit
- Grand River Conservation Authority
- Parks and Facilities
- Source Water

Public Considerations

Staff are to visit the site for inspection on April 13th, 2022 and post the public notice sign in accordance with the *Planning Act*.

6 notices are to be mailed on April 13th, 2022.

At the time of writing this report, no public comments had been received.

Conclusions and Recommendations

As a condition of severance application B73-21-AW the applicant is seeking to rezone the subject lands from Agriculture (A) to Agriculture with Site Specific Provision 9 (A-9) to prohibit a dwelling in order to facilitate a surplus farm dwelling severance.

The surplus farm dwelling severance application B73-21-AW was first heard by the Committee of Adjustment in August 2020 and was conditionally approved, the applicant failed to complete the conditions within the allotted time and subsequently had to reapply. The surplus farm dwelling severance application B73-21-AW was heard again by the Committee of Adjustment in January 2022 and was conditionally approved. Conditions of approval included rezoning the retained parcel to prohibit a dwelling through Site Specific Provision A-9. There was a concurrent minor variance application A40-21-AW that went forward to the Committee of Adjustment in January 2022 and was approved, in order to recognize deficient setbacks to an accessory structure, and an agricultural structure on the retained lands.

The subject lands are designated Agriculture within the County of Brant Official Plan. The intent of the Agricultural designation is ensure that prime agricultural land and the agricultural activities and lifestyle of the County of Brant are protected and have the opportunity to flourish. The purpose of the County's land use policies for the Agriculture designation is to encourage and promote agricultural land for agricultural activities. Provincial policy requires that agricultural land be protected for agricultural uses unless appropriate justification is provided for alternative uses. It is my opinion the proposed rezoning is in conformity with the Official Plan as the retained lands will continue to be farmed as part of a larger farming operation and new residential building lots are being created.

The severed lands are zoned as Agriculture (A) and the retained lands are zoned as Agriculture (A) and Natural Heritage (NH). The County of Brant Zoning By-Law 61-16 requires a minimum lot area of 40 hectares (approx. 100 acres), and a minimum frontage of 150 metres for the creation of new lots within the Agriculture (A) zone. For surplus farm dwelling severances, the Zoning By-Law requires a minimum frontage of 20 metres. The subject lands meet the Zoning

By-Law requirements for lot area, and frontage, and through the rezoning the retained lands will be rezoned to prohibit a residential use. It is my opinion the proposed rezoning is in conformity with the County of Brant Zoning By-Law 61-16 as all development standards are being satisfied.

I am supportive of the rezoning application as it is consistent with the *Provincial Policy Statement*, in conformity with the Growth Plan for the Greater Golden Horseshoe, conforms to the County of Brant Official Plan and meets the intent of the County of Brant Zoning By-Law 61-16, and therefore recommend approval of the application

Attachments

- 1. Aerial Figure
- 2. Official Plan Figure
- 3. Zoning Figure
- 4. Site Plan
- 5. Draft By-Law

Copy to

- 1. Pam Duesling, General Manager of Development Services
- 2. Mat Vaughan, Director of Planning
- 3. Alysha Dyjach, Clerk/Director of Council Services
- 4. Alyssa Seitz, Planning Administrative Assistant
- 5. Applicant/Agent

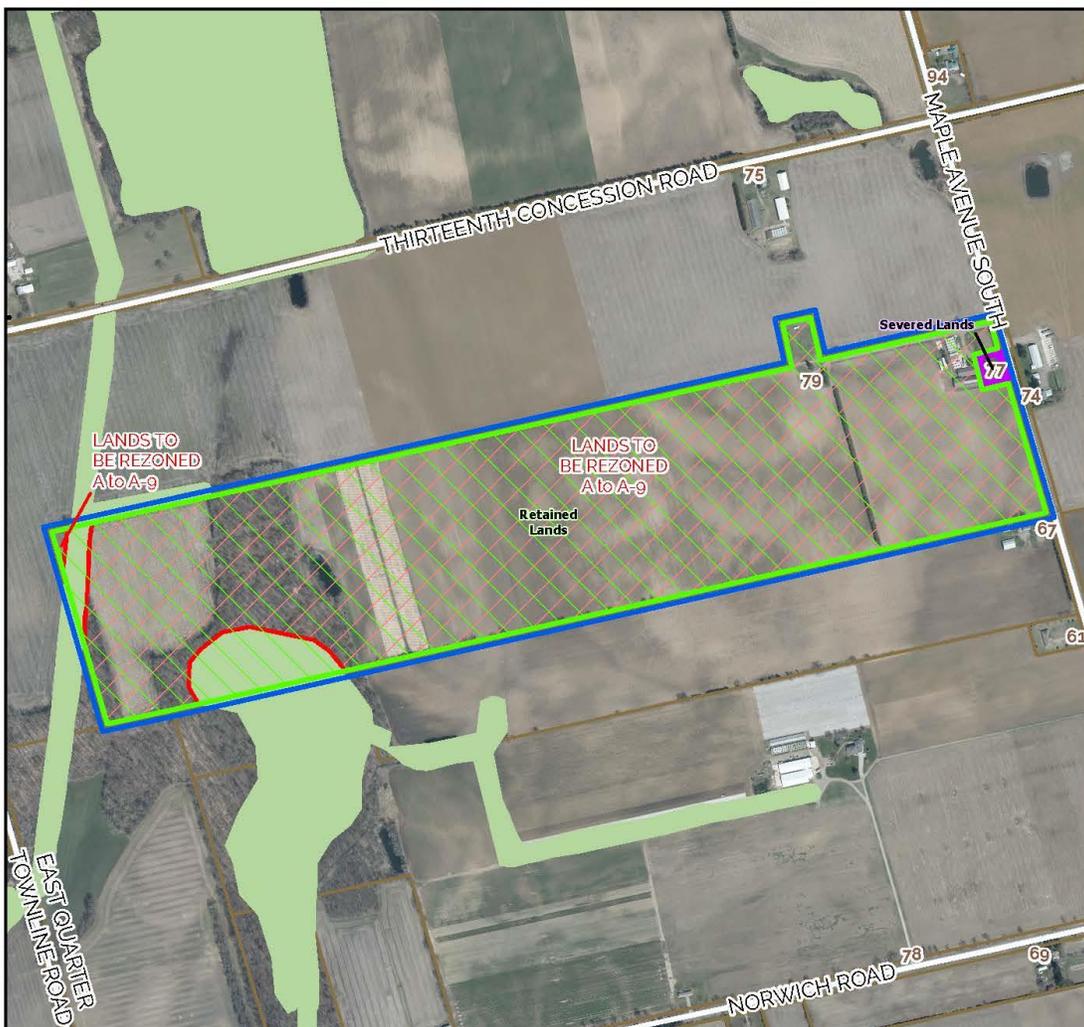
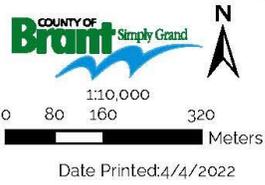
File # ZBA5/22/SL

In adopting this report, is a bylaw or agreement required?

- By-Law required (Yes)
- Agreement(s) or other documents to be signed by Mayor and /or Clerk (No)
- Is the necessary By-Law or agreement being sent concurrently to Council? (Yes)

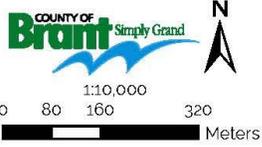
MAP 3: AERIAL IMAGERY 2020
FILE NUMBER
ZBA5-22-SL

77 MAPLE AVENUE
County of Brant
Ontario



**MAP 2: OFFICIAL PLAN
FILE NUMBER
ZBA5-22-SL**

77 MAPLE AVENUE
County of Brant
Ontario



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