



County of Brant Council Report

To: The Mayor and Members of County of Brant Council
From: Denise Landry, Nethery Planning Services
Date: December 3, 2024
Report #: RPT-0489-24
Subject: ZBA22-24-DN - 304 East River Rd Zoning Bylaw Amendment Application
Purpose: For Approval

Recommendation

THAT Zoning By-Law Amendment Application ZBA22-24 received by Matt Reniers & Associates, on behalf of Kelley Vandenberg, Owner of the lands legally described as Part of Lot 1 Concession 4, Geographic Township of St. George, County of Brant, municipally known as 304 East River Road, County of Brant, proposing to amend the Rural Residential-53 (RR-53) zone from Rural Residential (RR-53) to Rural Residential (RR), be APPROVED.

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

- a. The proposed Zoning By-Law Amendment application is consistent with the PPS, 2024, conforms to the County's Official Plan, 2012, is appropriate for the subject lands and is compatible with the surrounding area.
- b. The proposed Zoning By-law Amendment application meets the intent of the Minimum Distance Separation Document, 2017.

Executive Summary

The purpose of this report is to provide Council and the public with information and a recommendation for the application to amend the County of Brant Zoning By-Law 61-16.

The application (ZBA22-24-DN) proposes to amend the existing Rural Residential-53 (RR-53) Zone to permit a minimum required street setback of 20 metres. The Rural Residential-53 (RR-53) zone requires a minimum setback of 49.4 metres (along the north property line) and 75 metres (along the south property line).

The subject lands were created through consent in 2021, and a Zoning Bylaw Amendment was required to implement the minimum distance separation setback calculations.

The application was received and deemed complete prior to the provincial approval of the New 2023 Official Plan. As such, the subject application will be reviewed under the 2012 Official Plan.

The planning analysis focuses on literature review of applicable policy, including the Planning Act, Provincial Planning Statement (2024), County of Brant Official Plan (2012) and County of Brant Zoning By-Law 61-16, consultation with departments, and an inspection of the surrounding area.

For the reasons outlined in this report, it is my professional recommendation that Zoning By-Law Amendment Application ZBA22-24-DN, as proposed, be APPROVED.

Strategic Plan Priority

Strategic Priority 1 - Sustainable and Managed Growth

Impacts and Mitigation

Social Impacts

No social impacts have been identified as part of this application.

Environmental Impacts

No environmental impacts have been identified as part of this application.

Economic Impacts

No economic impacts have been identified as part of this application.

Report

Location/Existing Conditions

The subject lands are legally described as Part of Lot 1 Concession 4, Geographic Township of St. George, County of Brant. The subject lands are currently vacant, having an area of approximately 0.4 hectares (0.988 acres) and a frontage of 40 metres along East River Road.

The surrounding land uses include agricultural land to the east and west and rural residential land to the north and south (Figure 1).

The subject lot is located outside of the urban settlement area boundary and is designated Rural Residential in the County's 2012 Official Plan as Rural Residential.

Background

The subject property has been the subject of several consent and zoning by-law amendment applications since 2020, which will be summarized in chronological order below.

The subject lands were formerly located within 310 East River Road. The lands were rezoned from Rural Residential-45 (RR-45) to remove the site-specific provisions and leave the lands as Rural Residential (RR). The purpose of this zoning by-law amendment (file ZBA1-20-AW-2020) was to facilitate the severance of the property. This rezoning application was approved by County Council in 2020.

Subsequently, consent application B41-20-AW was applied for to transfer lands from 310 East River Road to the adjacent property at 304 East River Road, the subject lands. At that time, no development was proposed for the lands being merged to 304 East River Road. The Committee of Adjustment approved the severance application for the lot adjustment in 2020.

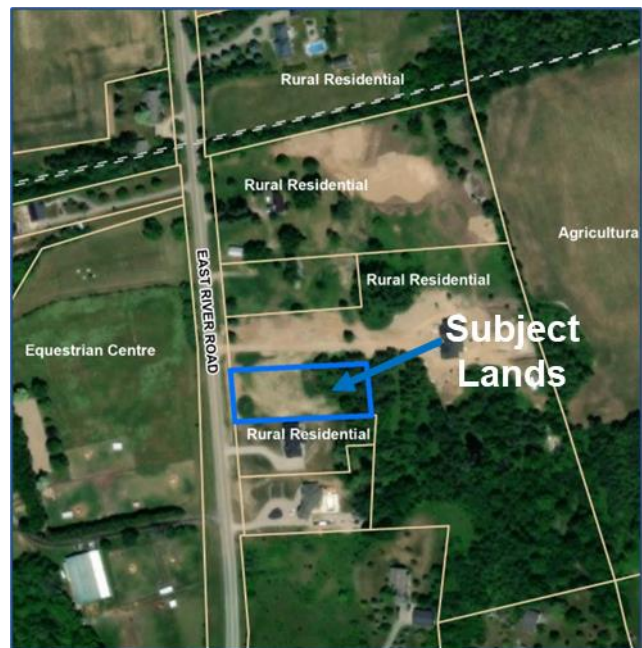


Figure 1 Location Map

In 2021, applications B1-21-AW and B2-21-AW were submitted to sever and create two residential building lots. The Committee of Adjustment, in February 2021, approved the severance application, with conditions.

One of the conditions for the severance approval was that 304 East River Road be rezoned (files ZBA16/21/AW & ZBA17/21/AW-2021) to reflect the MDS calculations from the equestrian centre at 301 East River Road. To implement the MDS calculations, the street setback to the southerly property line of 304 East River Road was proposed to be 75 metres and the street setback to the northerly property line was proposed to be 49.4 metres.

In addition to establishing site-specific setbacks for the subject property, the application also proposed to rezone the rear 10 metres of property as Natural Heritage (NH) to protect the existing woodlot. The Natural Heritage zone does not permit any buildings, structures and/or site alteration.

The rezoning application was presented to the Planning and Development Committee in June, 2021. Subsequently, County Council approved Bylaw 77-21 to amend the County's Comprehensive Zoning Bylaw 61-16 to zone the subject lands Rural Residential-53 (RR-53).

All of the conditions of consent were cleared and the two lots were legally created.

Planning Analysis

Planning Legislation

Planning staff reviewed these applications with consideration of several planning documents including the Planning Act, R.S.O., 1990, as amended, the Provincial Planning Statement, 2024 (PPS), the County of Brant Official Plan (2012) and the County of Brant Comprehensive Zoning By-law 61-16. For the application to be supported by Staff, it must conform to or be consistent with the aforementioned plans.

Planning Act R.S.O. (1990)

Section 2 of the Planning Act (the "Act") outlines matters of provincial interest.

Section 3 of the Act requires that, in exercising any authority that affects a planning matter, planning authorities "shall be consistent with the policy statements" issued under the Act and "shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be".

Section 34(10) of the Act allows for the consideration of amendments to the Zoning By-law

Provincial Planning Statement (2024)

The PPS provides policy direction on matters of provincial interest related land-use planning and development. The PPS is a policy statement issued under the authority of Section 3 of the Planning Act and came into effect on October 20, 2024. The PPS applies to all decisions in respect of the exercise of any authority that affects a planning matter made on or after October 20, 2024. Decisions affecting planning matters should be 'consistent with' policy statements issued under the Act.

It is my professional planning opinion that the recommendation is consistent with the policies of the PPS.

- The subject lands are located on rural lands as per the PPS and Policy 2.6.1(c) of the PPS permits residential development, where site conditions are suitable for the provision of appropriate sewage and water services. The suitability of the subject lands

to accommodate private services would have been assessed through the consent process and further confirmed at the building permit stage.

- Policy 2.6.5 of the PPS, states that ‘new land uses... shall comply with the minimum distance separation (MDS) formulae’. The PPS defines ‘minimum distance separation formulae’ meaning formulae and guidelines developed by the Province, as amended from time to time, to separate uses so as to reduce incompatibility concerns about odour from livestock facilities. The MDS Document permits planning authorities to consider reductions to the MDS calculations, where it is deemed appropriate. Further analysis of the application as it applies to the MDS Document is provided below.

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 New 2023 Official Plan, ‘A Simply Grand Plan’, was adopted by County of Brant Council on May 30, 2023. The plan was approved by the Ministry of Municipal Affairs and Housing on October 18, 2024. However, the transition provisions provided in the New Official Plan (Section 1.5.1) indicate that all applications deemed complete prior to Provincial Approval of the New Official Plan shall be reviewed under policies of the 2012 County of Brant Official Plan. As this application was received and deemed complete prior to provincial approval of the New 2023 Official Plan, the subject application will be reviewed under the 2012 Official Plan. Furthermore, the applicant has not requested that the application be considered under the County’s New 2023 Official Plan.

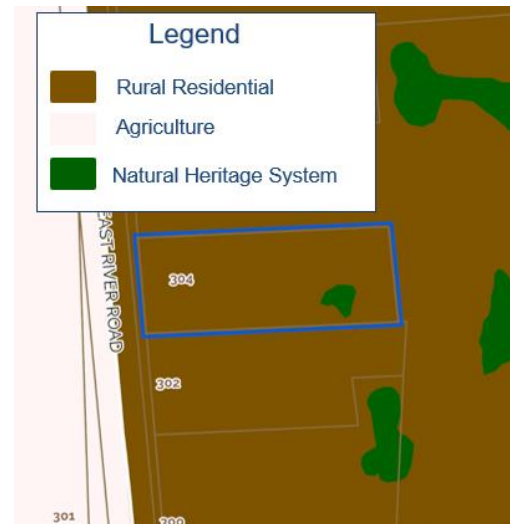


Figure 2 – Official Plan (2012) Mapping

Land Use Designation

Schedule ‘A’ of the County of Brant Official Plan (2012) designates the subject lands as Rural Residential and Natural Heritage System (Figure 2).

Rural Residential areas consist of existing clusters of large lot residential development serviced by private water and sanitary sewage systems (Section 2.2.3.3). Further, Section 2.2.3.3 indicates that the ‘Rural Residential Areas will not accommodate significant additional growth and development during the course of the planning horizon.’ Proposed development is to comply with the Minimum Distance Separation Formula.

Section 3.7 indicates that the ‘primary intent of the Rural Residential designation is to only recognize existing concentrations of large lot residential development in order prevent scattered land consumption, inefficient use of existing infrastructure, and non-farm development in the Agriculture designation’. Single detached residential dwellings are a permitted use in the Rural Residential designation (Section 3.7.2). The existing lot is considered infill development and is within an area concentrated with rural residential lots.

The objectives of the Agricultural Section 1.11.2.6 speak to ‘ensuring that agricultural operations are protected from surrounding land uses by incorporating the Minimum Distance Separation Formulae in order to prevent adverse effects from odour.’

The MDS Document provides guidance on requests to reduce the minimum distance separation between land uses. An assessment of the subject application to reduce setbacks established per the MDS Document is provided below.

A portion of the subject land is designated Natural Heritage System as there is an existing woodlot at the rear of the property. Those lands are zoned Natural Heritage, prohibiting development and the zoning is not proposed to change.

It is my professional planning opinion that the recommendation conforms with the policies of the County of Brant Official Plan

County of Brant Zoning By-Law 61-16

Schedule ‘A’ of the Zoning By-Law 61-16 identifies that the subject lands are zoned as Rural Residential 53 (RR-53) and Natural Heritage.

Proposed Zoning Amendment

The subject application proposes to amend the Rural Residential-53 (RR-53) zoning to permit a minimum street setback of 20 metres, where a minimum setback of 49.3 metres (along the north property line) and 75 metres (along the south property line) is required.

No change is being requested for the natural heritage zone on the subject property.

It is my professional planning opinion that the proposal meets the intent and is in compliance with all other applicable policies outlined in the County of Brant Zoning By-Law 61-16.

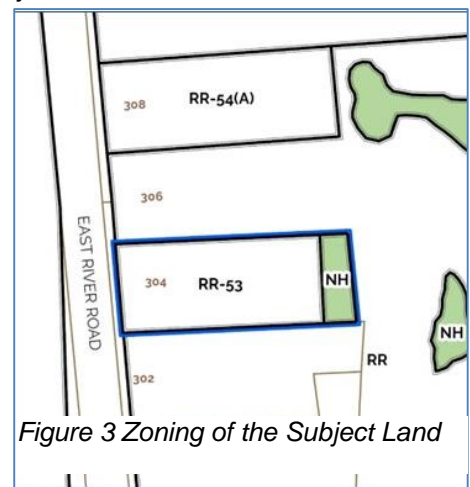
Minimum Distance Separation Document, 2017

The MDS Document is a land use planning tool developed by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) and represents the Minimum Distance Separation Formulae as defined in the PPS. The intent of this document is to prevent land use conflicts and minimize nuisance complaints from odour. The MDS Document provides technical guidance for implementing both the MDS Formulae and Implementation Guidelines as required in the PPS and other applicable provincial plans.

Section 8.2 of the MDS document discusses reducing MDS setbacks where the intent of the MDS Document is maintained. It suggests that it is appropriate to consider the tests for a minor variance that are described in Section 45(1) of the Planning Act, as a mechanism to assess specific situations and potential reductions to MDS setbacks.

The four tests are:

1. Does the reduction in the MDS setback keep with the intent of the Official Plan?
2. Does the reduction in the MDS setback keep with the intent of the Zoning By-law?
3. Is the reduction in the MDS setback desirable and appropriate for the area?
4. Is the reduction in the MDS setback minor in nature?



It is my professional opinion that the proposal meets the four tests, noted above for the following reasons:

- The County Official Plan, 2012 speaks to the protection of agricultural lands and to implementing MDS setbacks to protect existing livestock operations from sensitive land uses (such as residential development). The Official Plan also aims to ensure that farm operations are not hindered from further expansion. South and northeast of the equestrian centre are existing dwellings that are located closer to the equestrian centre than the proposed setback would permit on the subject lands. Written comments and verbal comments provided at the public meeting confirm that the residents in the vicinity of the equestrian centre have not had odours concerns. The County By-law Division has also confirmed that odour complaints have not been received as a result of the equestrian centre.
- The expansion potential of the equestrian centre or change in livestock on the property is already impacted by the dwellings located south and east of the equestrian centre. A reduction in the street setback to a proposed dwelling on the subject lands would not further impact expansions or a change in livestock.
- There are several dwellings located to the south and north of the subject lands on East River Road and on Scenic Drive. The proposed setback of 20 metres from the street will align with the setbacks of the two homes to the south of the subject lands.

Interdepartmental Considerations

No comments were received from other departments on this application.

Public Considerations

A Statutory Public Meeting was held on November 12, 2024 to receive feedback and questions from members of the public and Council on the subject application.

Written comments and oral comments provided to staff were also received and are included in the agenda package.

The following summarizes the comments received in favour of the application:

- Aesthetics of the neighbourhood and backyard privacy. If a future dwelling is built on the property within the current zoning limits the immediate neighbours privacy would be impacted;
- Concerns that if the dwelling is built further back on the subject property the existing trees would be cut down causing environmental concerns;
- The farm located across the road has never presented any foul odours since 2020 when the resident purchased their property;

The following summarizes comments received in opposition of the application:

- Dwellings are being built across the road from the resident and as a result their farm is being impacted;
- The resident previously requested that their lands be redesignated from Agriculture to Rural Residential but the application was not approved; and
- The resident would like the County to protect agriculture.

As identified in this report, there are already existing dwellings that are located closer to the equestrian centre than the subject lands. The ability for the existing equestrian centre to

expand or for the barn to accommodate a different type of livestock will not be impacted by the subject application.

Previous decisions of Council on Planning Act applications for neighbouring properties are not an appropriate consideration when forming a planning opinion for the subject application.

The subject lands are designated and zoned for rural residential purposes and therefore, will not result in the loss of any agricultural lands.

Agricultural Advisory Committee Meeting

The Agricultural Advisory Committee met on October 28, 2024 to receive information from staff on the subject application.

The Committee had two questions for staff;

- How do we know for certain that the equestrian centre won't be negatively impacted in its ability to expand? (And related, how does that change if they were to change livestock); and
- What types of crops are being planted to the east of the subject property?

Staff returned to the Agricultural Advisory Committee Meeting on November 25, 2024 to provide additional information on the application and to address the questions received at the prior meeting. Staff indicated that the lands to the east of the subject property are on a crop rotation of corn and soybeans and explained that expansion of the equestrian centre or a change in livestock is already constrained by the existing dwellings to the south and east of the subject lands.

The Committee passed the following motion:

“That the Agricultural Advisory Committee provides the following comment regarding Application Number ZBA22-24-DN, located at 304 East River Road:

- That any dwelling constructed at 304 East River Road be built outside of the MDS setback from the equestrian centre located at 301 East River Road, as per the attached map”

The map referenced in the motion shows conceptually the MDS setback from the barn to neighbouring properties. The current Rural Residential-53 (RR-53) zoning implements the MDS setbacks for the subject lands.

Summary and Recommendations

It is the opinion of Planning staff that the proposed Zoning By-Law Amendment application from Rural Residential (RR-53) to Rural Residential (RR) is consistent with the PPS, 2024, conforms to the County's Official Plan, 2012, is appropriate for the subject lands and is compatible with the surrounding area.

Planning staff recommend that Council approve the application.

Attachments

1. Draft By-Law and Schedule 'A' Mapping

Reviewed By

1. Jeremy Vink, Director of Planning
2. Alysha Dyjach, General Manager of Development Services

Copied To

1. Sunayana Katikapalli, Director of Council Services, Clerk
2. Sarah Dymont-Smith, Planning Administrative Assistant
3. Applicant/Agent/Owner

By-law and/or Agreement

By-law Required	Yes
Agreement(s) or other documents to be signed by Mayor and /or Clerk	No