



## Memorandum to Committee of Adjustment Members

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### Minor Variance Application: A23-055M - 5272 Eighth Line

#### General Description of Application:

Under Section 45(2)(a)(i) of the *Planning Act*, the following expansion of a non-conforming use to Zoning By-law 144-2003, as amended, has been requested in order to facilitate the demolition and reconstruction of a single detached dwelling:

1. To allow two dwellings to be located on one lot.

The subject property is located on the west side of Eighth Line, approximately half way between Lower Base Line East and Britannia Road, and is municipally known as 5272 Eighth Line. The subject property contains a single storey dwelling, two-storey dwelling, garden shed, and storage barn. Surrounding land uses include agricultural operations, Natural Heritage Systems (NHS), and single family dwellings located on existing lots of record.

As noted above, the property presently contains two dwellings, whereas the current policy framework and Zoning By-law 144-2003, as amended, only permits one dwelling per lot. The existing single storey dwelling was constructed in 1958, at which time the in-effect Zoning By-law 61-85 did not permit secondary dwellings. In approximately 1989, an amendment was made to Zoning By-law 61-85 that allowed secondary dwellings to be permitted - it is Planning Staff's understanding that the intent of the amendment was to provide opportunity for farm labourers to live and work on site. Following the amendment, a Building Permit was issued in 1989 for the existing two-storey dwelling, currently located on site.

The in-effect Zoning By-law 144-2003, as amended, does not permit two dwellings on one lot. However, given that two dwellings were legally established on the property prior to the date that the current Zoning By-law took effect, the use is considered to be 'Legal Non-Conforming' under Section 45(2) of the Planning Act. Section 4.15 of Zoning By-law 144-2003, as amended, speaks to Legal Non-Conforming uses and notes the following:

*"No land, building or structure shall be used except in conformity with the provisions of this By-law unless such use legally existed prior to the date of passing of this By-law and provided that it continues to be used uninterrupted for such purpose..."*

Therefore, the property owner is permitted to have two dwellings on one lot until such time when the use is ceased (i.e. one dwelling is removed with no intention to replace it). In accordance with a legal opinion provided by the Town solicitor, should any alterations, additions or demolition/reconstruction of either dwelling be proposed, an application under Section 45(2) of the *Planning Act* would be required to determine if the

extension or enlargement is appropriate and that Planning Staff may review the proposal's appropriateness through Section 5.8.3.4 of the Town of Milton Official Plan.

The applicant applied for an expansion of this Legal Non-Conforming Use through the Committee of Adjustment earlier in 2023 - at that time, the application was refused. However, since then, the applicant has revised the proposal to improve the design, reduce the footprint, and revise the siting of the dwelling for consideration.

**Official Plan Designation (including any applicable Secondary Plan designations):**

The subject property is primarily designated as "Agriculture" on Schedule A - Land Use Plan of the Town of Milton Official Plan. It is further designated "Rural Natural Heritage System", primarily towards the rear of the property. It is noted that the rear of the property is also subject to the Greenbelt Plan.

Notwithstanding the above, Planning Staff note that the property was recently identified as 'Employment Area' through the Minister of Municipal Affairs and Housing's decision pertaining to Regional Official Plan Amendment 49 (ROPA 49).

Until such time that the Town undergoes a conformity exercise with respect to ROPA 49, the lands will continue to be designated as Agriculture.

In respect to extension of the Legal Non-Conforming Use, Planning Staff will evaluate the appropriateness of the proposal, in part with Section 45(2) of the Planning Act, against Section 5.8.3.4 of the Town of Milton Official Plan:

"In accordance with the provisions of the Planning Act, Council may amend a by-law passed under Section 34 to permit the extension or enlargement of any land, building or structure prohibited by the Zoning By-law provided the following requirements are met.

- (a) It is not possible to relocate such a use to a place where it will conform to the By-law;
- (b) The proposed extension or enlargement will not unduly aggravate the situation already created by the existence of the use and should, if possible, be designed to alleviate adverse effects of the use such as outside storage;
- (c) The abutting uses will be afforded reasonable protection by the provision of appropriate buffering and setbacks;
- (d) The proposed extension or enlargement should be in appropriate proportion to the size of the non-conforming use;
- (e) Adequate provision will be made for safe access and adequate off-street parking and loading facilities; and
- (f) All services, including private sewage disposal and water supply systems, shall be or can be made adequate.

Section 5.8.3.5: The Town shall not be obligated to grant permission to extend or enlarge a non-conforming use under any circumstances."

Planning Staff have evaluated the proposal in accordance with the aforementioned policy:

- (a) It is not possible to relocate such a use to a place where it will conform to the By-law;

The use cannot be re-located on the property to comply given that the permissions associated with a secondary dwelling are not permitted in the Agriculture designation, Agriculture Zone (A1), nor on a lot without adequate municipal servicing.

- (b) The proposed extension or enlargement will not unduly aggravate the situation already created by the existence of the use and should, if possible, be designed to alleviate adverse effects of the use such as outside storage;**

The existing two dwellings per lot permissions are provided to an existing two-storey dwelling and single-storey dwelling. Through demolition of the existing single-storey dwelling, the applicant has proposed a replacement one-storey dwelling with an attached garage. While the enlargement facilitates an increase in gross floor area, the expansion will not aggravate the situation beyond what currently exists - further, it will not impact any natural features, adjacent landowners or the character of the rural community. As such, Planning Staff are of the opinion that the proposal does conform to this policy.

- (c) The abutting uses will be afforded reasonable protection by the provision of appropriate buffering and setbacks;**

The proposed one-storey dwelling provides adequate setbacks from all lot lines, along with reasonable separation from the existing two-storey dwelling. The proposed dwelling is reasonably sited beyond any buffers associated with any Key Features within the Rural Natural Heritage System.

- (d) The proposed extension or enlargement should be in appropriate proportion to the size of the non-conforming use;**

While Planning Staff recognize that the rural lot is significant in size, the developable area on site - that is the lands not currently in agricultural production and/or not subject to NHS or Conservation Halton regulated area - is limited. The existing bungalow, that is to be demolished, is 155 square metres (1,668 square feet).

Based on the proposed dwelling, the footprint represents a reasonable increase from the existing bungalow. The dwelling is proposed to be one-storey and will have an attached garage, which partially contributes to the increased footprint. Generally, the proposed dwelling is not unreasonable in size and is in proportion to what is existing. As such, Planning Staff are of the opinion that the proposal conforms to this policy.

While Planning Staff also note that the original intent of the amendment to Zoning By-law 61-85 was to enable farm labourers to live on the property in order to support the farming operation, rather than to permit two principle dwellings on a lot, both dwellings will remain under the same ownership on one lot of record - there is no opportunity for land division and the dwellings will remain connected via ownership in perpetuity.

- (e) Adequate provision will be made for safe access and adequate off-street parking and loading facilities; and**

Parking is provided on-site with adequate access from Eighth Line. Planning Staff are of the opinion that the proposal satisfies this requirement.

- (f) **All services, including private sewage disposal and water supply systems, shall be or can be made adequate.**

Existing private servicing systems are located on the lands. Planning Staff are satisfied that private servicing could be maintained through the construction of the proposed second storey dwelling. Should the application be approved, Halton Region would require that a Septic Design Brief and Water Pump Assessment be provided to their satisfaction prior to Building Permit issuance. It is noted that a separate Building Permit would be required for any new septic systems proposed. Planning Staff are of the opinion that the proposal satisfies this requirement.

Based on the aforementioned, Planning Staff are of the opinion that the proposal does conform to Section 5.8.3.4 of the Town of Milton Official Plan meets the threshold of what is considered appropriate as an expansion or enlargement under Section 45(2) of the Planning Act.

### **Zoning:**

The subject property is zoned Agriculture (A1) and partially Greenlands A (GA) under Comprehensive Rural Zoning By-law 144-2003, as amended. The general A1 Zone permits agricultural operations and single detached dwellings, located on existing lots. The general GB Zone also permits single detached dwellings on existing lots subject to the Regional Tree Cutting By-law, where applicable.

Section 4.15 of the Zoning By-law speaks to Legal Non-Conforming Uses and notes that:

“No land, building or structure shall be used except in conformity with the provisions of the By-law unless such use legally existed prior to the date of passing of this By-law and provided that it continues to be used uninterrupted for such purpose, and that such use, when originally established, was not contrary to a By-law passed under Section 34 of the Planning Act, R.S.O 1990, cP. 13 or a predecessor thereof that was in force at that time.”

Based on Building Permit records, Planning Staff are satisfied that the use was existing prior to the date Comprehensive Rural Zoning By-law 144-2003 took effect.

### **Consultation**

#### *Public Consultation*

Notice for the hearing was provided pursuant to the *Planning Act* on, August 16, 2023. As of the writing of this report on, August 23, 2023, staff have not received any comments from members of the public.

#### *Agency Consultation*

Town Building Staff advise that a Demolition Permit would be required to remove the existing one-storey dwelling and Building Permits for the construction of the new dwelling and any private servicing systems.

Halton Region noted no objection to approval of this application provided that the Town of Milton is satisfied that the application is desirable for appropriate development of the site, and will not result in undue adverse impacts on the surrounding property and

neighbourhood, the Region has no objection to approval of this application. However, subject to it's approval, Section 145(5) of the Regional Official Plan requires that any development proposal that has potential to release or discharge contaminants to affect the quality of groundwater be subject to a reviewed by the Region to assess the risk of such uses. As a condition of approval, the Region requests the following: Details of the proposed private servicing, including a septic brief, shall be provided by the applicant to the satisfaction of Halton Region.

Conservation Halton offers no objection to the proposal subject to the applicant obtaining a 'No Objections' letter prior to Building Permit issuance.

#### **Planning and Development Department Comments:**

The applicant is seeking an expansion of a Legal Non-Conforming use under Section 45(2) of the Planning Act to facilitate the demolition of the existing single-storey dwelling and construction of a one-storey replacement dwelling in accordance with the permissions afforded to the property to maintain two dwellings per lot. As a result of this proposal, the existing two-storey dwelling will not be altered.

After review of the proposal to determine if the request to expand the Legal Non-Conforming use is reasonable, it is Planning Staff's professional opinion that it is appropriate.

The proposed gross floor area and overall size of the dwelling, while slightly larger than what currently exists, is appropriate when compared to the current dwelling and intent of the original Zoning By-law 061-85. The inclusion of the garage inherently expands the footprint.

The proposed dwelling is located within reasonable proximity to the existing building envelope and will not disturb surrounding natural features, including agricultural lands.

While planning staff recognize ROPA 49 and existing employment policy, the expansion of the current residential use would not perpetuate future land use conflicts beyond what is currently existing and there is no timing or phasing associated with these future permissions.

Based on the aforementioned, Planning Staff are of the opinion that the proposal satisfies the policies set-out in Section 5.8.3.4 of the Town of Milton Official Plan and meets the threshold for what is considered appropriate under Section 45(2) of the *Planning Act*. As such, Planning Staff support the request for an expansion of the Legal Non-Conforming use under Section 45(2) of the *Planning Act* and have recommended that this application be approved, subject to the conditions set-out.

#### **Recommendation:**

**THAT the application for minor variance BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. That a Building Permit be obtained prior to constructing the proposed one-storey dwelling.
2. That prior to Building Permit issuance that a Septic Design Brief is provided to Halton Region's satisfaction.

3. That prior to Building Permit issuance, a CH “No Objections” letter be obtained from Conservation Halton for the proposed development.
4. That a Demolition Permit be obtained prior to removing the existing bungalow.
5. That prior to Building Permit issuance, a Grading Plan, to the satisfaction of Development Engineering, be provided, specifically including: downspout locations; existing elevations along property lines (which are not to be altered); existing and proposed elevations for the interior property; swale locations, directions and slope; and, proposed elevations at building corners.
6. That the dwelling shall not exceed the proposed footprint, as set-out on the Site Plan date stamped by Zoning Staff on July 20, 2023.
7. That the dwelling be located and constructed in accordance with the Site Plan date stamped by Zoning Staff on July 20, 2023.
8. That the approval be subject of an expiry of two years from the date of decision if the conditions are not met, if the proposed development does not proceed and/or a Building Permit is not secured.

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