



The Town of Niagara-On-The-Lake

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1593 Four Mile Creek Road
P.O. Box 190
Virgil, Ontario
L0S 1T0

Report: COA-70-2021 Committee Date: November 18, 2021

Report To: Committee of Adjustment
Subject: 9 Dee Road
Consent Applications B-14/21 and B-15/21

1. RECOMMENDATION

It is respectfully recommended that:

1.1 Consent Application B-14/21 (Part 1) for 9 Dee Road be approved, subject to the following conditions:

- 1.1.1 That the owner/applicant provides a legal description of Part 1, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent;
- 1.1.2 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 1, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
- 1.1.3 That the owner/applicant, at their own expense, obtains and submits an appraisal for the purposes of payment of cash-in-lieu of parkland dedication, by a qualified appraiser, which is to be based on the fair market value of Part 1 using the direct comparison approach, to the satisfaction of the Director of Corporate Services; and that the owner/applicant pays to the Town a cash-in-lieu of parkland dedication, which shall be 5% of the appraised value of Part 1 to the satisfaction of the Director of Corporate Services;
- 1.1.4 That no demolition, grading or other soil disturbances shall take place on the subject property prior to the Ontario Ministry of Tourism, Culture and

Sport confirming that all archaeological resources concerns have met licensing and resource conservation requirements; and that a copy of the Ministry letter is submitted to the Town, to the satisfaction of the Director of Community and Development Services;

1.1.5 That the owner/applicant enters into a Development Agreement with the Town, and that said Development Agreement be registered on the title of Part 1, to the satisfaction of the Director of Community and Development Services, in which the owner/applicant shall agree:

- a. That Urban Design Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be consistent with the Town's Official Plan, Queenston Secondary Plan and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;
- b. That Municipal Heritage Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be consistent with the Town's Official Plan, Queenston Secondary Plan and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;
- c. That the detailed design drawings and the proposed grading plan be reviewed by a qualified geotechnical engineer prior to the issuance of a building permit to ensure that the plans conform with the recommendations of the Slope Stability Assessment prepared by WSP Canada Inc., dated October 5, 2021, WSP reference 211-10920-00, and confirm that the detailed design will not negatively impact the slope, all approved to the satisfaction of the Niagara Peninsula Conservation Authority;
- d. That the owner/applicant provide a lot grading plan prior to the issuance of a building permit, to the satisfaction of the Niagara Peninsula Conservation Authority and the Town's Chief Building Official; and
- e. That any agreements of Purchase and Sale, which may be negotiated, shall contain a clause notifying the purchaser of the Development Agreement and the requirement to comply with the Development Agreement;

1.1.6 That the owner/applicant enter into a servicing agreement with the Town, to permit the installation of a watermain on Dee Road, which shall have a minimum diameter of 150mm, to a point 3 metres west of the easterly boundary of Part 1 of the proposed severance;

- 1.1.7 That the owner/applicant provide separate water and sanitary sewer services wholly fronting Part 1, by way of a completed application for applicable services, to the satisfaction of the Director of Operations;
 - 1.1.8 That the owner/applicant obtains approval in the form of a municipal entrance permit from the Town's Operations Department for a driveway on Part 1; and
 - 1.1.9 That Consent Applications B-14/21 and B-15/21 be finalized concurrently.
- 1.2 Consent Application B-15/21 (Part 2) for 9 Dee Road be approved, subject to the following conditions:
- 1.2.1 That the owner/applicant provides a legal description of Part 2, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent;
 - 1.1.2 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 2, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
 - 1.2.3 That the owner/applicant, at their own expense, obtains and submits an appraisal for the purposes of payment of cash-in-lieu of parkland dedication, by a qualified appraiser, which is to be based on the fair market value of Part 2 using the direct comparison approach, to the satisfaction of the Director of Corporate Services; and that the owner/applicant pays to the Town a cash-in-lieu of parkland dedication, which shall be 5% of the appraised value of Part 2 to the satisfaction of the Director of Corporate Services;
 - 1.2.4 That no demolition, grading or other soil disturbances shall take place on the subject property prior to the Ontario Ministry of Tourism, Culture and Sport confirming that all archaeological resources concerns have met licensing and resource conservation requirements; and that a copy of the Ministry letter is submitted to the Town, to the satisfaction of the Director of Community and Development Services;
 - 1.2.5 That the owner/applicant enters into a Development Agreement with the Town, and that said Development Agreement be registered on the title of

Part 2, to the satisfaction of the Director of Community and Development Services, in which the owner/applicant shall agree:

- a. That Urban Design Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be consistent with the Town's Official Plan, Queenston Secondary Plan and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;
 - b. That Municipal Heritage Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be consistent with the Town's Official Plan, Queenston Secondary Plan and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;
 - c. That the detailed design drawings and the proposed grading plan be reviewed by a qualified geotechnical engineer prior to the issuance of a building permit to ensure that the plans conform with the recommendations of the Slope Stability Assessment prepared by WSP Canada Inc., dated October 5, 2021, WSP reference 211-10920-00, and confirm that the detailed design will not negatively impact the slope, all approved to the satisfaction of the Niagara Pensinsula Conservation Authority;
 - d. That the owner/applicant provide a lot grading plan prior to the issuance of a building permit, to the satisfaction of the Niagara Peninsula Conservation Authority and the Town's Chief Building Official; and
 - e. That any agreements of Purchase and Sale, which may be negotiated, shall contain a clause notifying the purchaser of the Development Agreement and the requirement to comply with the Development Agreement;
- 1.2.6 That the owner/applicant enter into a servicing agreement with the Town, to permit the installation of a watermain on Dee Road, which shall have a minimum diameter of 150mm, to a point 3 metres west of the easterly boundary of Part 2 of the proposed severance;
- 1.2.7 That the owner/applicant provide separate water and sanitary sewer services wholly fronting Part 2, by way of a completed application for applicable services, to the satisfaction of the Director of Operations;
- 1.2.8 That the owner/applicant obtains approval in the form of a municipal entrance permit from the Town's Operations Department for a driveway

on Part 2; and

1.2.9 That Consent Applications B-14/21 and B-15/21 be finalized concurrently.

2. PURPOSE / PROPOSAL

The Applications propose to create two new lots, Part 1 and Part 2, for the construction of new single-detached dwellings. Part 3 would be retained for continued residential use.

The application drawing is attached as **Appendix I** of this report.

3. BACKGROUND

3.1 Site Description and Surrounding Land Uses

The subject lands are known municipally as 9 Dee Road, lying on the south side of Dee Road, west of Queenston Street in the urban area of Queenston. The location of the subject lands is shown on **Appendix II**.

Part 1 of the subject lands is vacant and has a lot area of 760 square metres and 18.28 metres of frontage on Dee Road. Part 2 is also vacant and has a lot area of 741 square metres and 18.28 metres of frontage on Dee Road. Part 3 contains a two-storey, single detached dwelling and has a lot area of 1,138 square metres and 27.79 metres of frontage on Dee Road.

Sanitary services are available at the subject lands. Municipal water service extends along Dee Road from Queenston Street, but terminates at the existing dwelling (9 Dee Road). Extension of the water service would be required. A storm sewer was installed along Dee Road in 2011.

The subject lands are sloped. The slope feature is not regulated by the Niagara Peninsula Conservation Authority (NPCA), according to the Town mapping system. However, the NPCA reviewed the Applications and provided comments.

The subject lands are adjacent to two buildings that are designated under Part IV of the *Ontario Heritage Act*: Willowbank Estate (14487 Niagara River Parkway) and the Hamilton-Kormos House (93 Queenston Street). Dee Road is listed on the Municipal Heritage Register.

Surrounding lands contain residential and institutional uses (Willowbank School).

3.2 Previous Applications

In 1999, Consent Applications B-322/99, B-323/99 and B-324/99 were submitted to the Town to create three new lots on the subject lands. Minor Variance Application A-62/99 was also submitted to recognize a reduced front yard setback of an existing dwelling (3 Dee Road). Town Staff supported the applications, but the applications were refused by the Committee of Adjustment. The owner appealed the applications

to the Ontario Municipal Board (OMB) (now called the Ontario Land Tribunal).

The OMB Case Officer provided the following conclusions:

The creation of three new lots... is over development of the site and out of character with the surrounding neighbourhood. Not a reasonable form of residential intensification. The intent of the local official plan and the Region's official plan have not been maintained. But the Board is prepared to approve the severance of one new lot on the site as appropriate and desirable and in character with the area. One new lot is an appropriate infill in these circumstances.

The conclusions and decision of the OMB were made based on the following reasons:

- The proposed three severed lots are located on Dee Road which has a grade of at least 12%. Serious flooding problems now exist on the Kormos and O'Hara properties located to the east of the site. Three new lots will likely create even more serious flooding problems to the abutting neighbours properties even through a storm water management plan will be implemented.
- Not satisfied that there will be proper water runoff from the three new lots. But the Board finds that one new single lot created on the subject property can through proper storm water management and handle water runoff.
- Not satisfied from the evidence that Dee Road which in effect, is currently a rural laneway, will be wide enough to handle the additional traffic generated from the three new lots. Parts of the road will not be improved or widened and the Board has serious concerns relating to emergency vehicle access and snow removal where the road meets Queenston Street.

In 2000, the OMB approved the creation of one lot on the subject lands (instead of three new lots), with conditions, and approved the minor variance. The new lot has been created and a single-detached dwelling has been constructed (9 Dee Road).

A number of Provincial, Regional and Town planning policy documents and Zoning By-laws have been updated and/or amended since the OMB decision in 2000:

- Growth Management policy updates to Town Official Plan, 2011
- Queenston Secondary Plan, 2011
- Zoning Requirements for Queenston, 2011
- Proposed Town Official Plan, 2019 (not in effect)
- Provincial Policy Statement (PPS), 2020
- A Place to Grow: Growth Plan for the Greater Golden Horseshoe (Growth Plan), 2020
- Niagara Escarpment Plan, 2017
- Regional Official Plan, 2014

In 2012, Consent Application B-25/12 was submitted to create one new lot on the subject lands. Minor Variance Application A-18/12 was submitted to request relief from the maximum height for a proposed dwelling. Town Staff supported the Applications and the Committee of Adjustment granted approval of the Minor Variance Application and conditional approval of the Consent Application. No appeals were received. The owner did not satisfy the conditions of consent within one year, as required by the *Planning Act*, therefore, the Consent Application lapsed and was deemed refused. The Minor Variance Application is considered void as the proposed dwelling was not constructed.

4. DISCUSSION / ANALYSIS

Section 3(5) of the *Planning Act*, R.S.O. 1990, c. P.13 states that a decision of Council, in respect to any planning matter, shall be consistent with the Provincial Policy Statement and conform with the Provincial plans.

Section 53(12) of the *Planning Act* further states that Council, in determining whether a provisional consent is to be given, shall have regard to the matters under Section 51(24), and that conditions of consent may be imposed as set out in Sections 51(25), 51(26) and 51.1.

4.1 Provincial and Regional Planning Policy

The subject lands are within a "settlement area" with respect to the policies of the PPS and Growth Plan, and a "Minor Urban Centre" with respect to the policies of the Niagara Escarpment Plan. In the Niagara Regional Official Plan, the subject lands are designated "Urban Area" and "Built-Up Area."

The Niagara Region and Niagara Escarpment Commission reviewed the applications against Provincial and Regional planning documents and had no objections.

4.2 Town Official Plan

The subject lands are designated "Established Residential" and "Built-Up Area" in the Town's Official Plan (2017 Consolidated, as amended).

The Growth Management policies under Section 6A include the following relevant objectives and policies:

3.2 Growth Management Objectives

Growth Strategy Objectives

The objectives of the Town's growth strategy are to:

- d) *Direct urban growth and development to the Town's existing Urban Areas.*
- e) *Direct a minimum of 15% of the Town's future residential development to the Built-up Area located in Virgil, the Old Town, St. Davids, and Queenston through appropriate intensification.*

- g) *Optimize existing infrastructure to provide for efficient use of infrastructure.*
- j) *Require growth in stable neighbourhoods within residential designations shall meet the "Residential" objectives and policies of the Official Plan.*
- l) *Develop compact, complete communities...*

4.4 Intensification Objectives

Objectives

The objectives of the intensification policies of this Plan are to:

- c) *Provide a policy framework that supports intensification and infilling throughout the Town's Built-up Area; and,*
- e) *Direct intensification to the Built-up Areas where development will not impact designated heritage areas, adjacent heritage resources and/or heritage resources on the property, estate lots and the residential character of the property or the surrounding area.*

Built-Up Area Intensification Policies

The Town will support appropriate infilling and intensification within the limits of the Built-Up Area. The following policies apply:

- b) *The predominant built form for intensification and redevelopment within the residential areas of the Built-up Area will be single detached... buildings subject to the relevant development and compatibility policies of this plan.*
- e) *The Town will update zoning standards to ensure that the zoning requirements provide sufficient opportunities to support and encourage growth and intensification through redevelopment.*

4.6 Land Use Compatibility Policies

Residential Neighbourhoods

Neighbourhoods are stable but not static. There is a degree of change that occurs within neighbourhoods over time and the policies of this provide that this change will be appropriate and compatible within the Town's neighbourhoods and throughout the entire Built-Up Area.

Compatibility and Appropriate Infrastructure

Notwithstanding the requirements for a severance..., intensification development within the Built-up Area should be compatible with surrounding existing and planned land uses... Intensification and/or redevelopment should be consistent with:

- a) *The existing and/or planned built form and heritage of the property and surrounding neighbourhood;*
- b) *The existing and/or planned natural heritage areas of the site and within the surrounding neighbourhood;*

- c) *The existing and/or planned densities of the surrounding neighbourhood; and,*
- d) *The existing and/or planned height and massing of buildings within the surrounding neighbourhood.*
- e) *Development proposals will demonstrate compatibility and integration with surrounding land uses by ensuring that an effective transition in built form is provided between areas of different development densities and scale. Transition in built form will act as a buffer between the proposed development and existing uses and should be provided through appropriate height, massing, architectural design, siting, setbacks, parking, public and private open space and amenity space.*
- f) *Intensification and/or redevelopment shall be compatible and integrate with the established character and heritage of the area and shall have regard to: ...*
 - *Lot frontages, lot area, depth*
 - *Building Setbacks*
 - *Privacy and over view*
 - *Lot grading and drainage*
 - *Servicing*

4.7 Implementation Strategy

The strategy for implementing the intensification policies include:

- a) *Updating the Zoning By-law within three years of the approval of the Official Plan.*
- b) *Preparation of secondary plans (where applicable);*
- c) *Preparation and adoption of urban design guidelines for intensification areas.*

Section 9 of the Official Plan provided the following relevant objective and policies for Residential designated lands:

9.2 GOALS AND OBJECTIVES

- (3) *To ensure that new development or redevelopment is appropriately located, is compatible with surrounding land uses, incorporates energy efficient aspects in its design, retains to the greatest extent feasible desirable natural features and uses land in an efficient manner.*
- (7) *To encourage infill residential development of vacant or underutilized parcels of land in residential areas where such development will be compatible with existing uses and where it will contribute to the more efficient use of sewer and water services and community facilities.*
- (11) *To encourage the development of well-designed and visually distinctive forms.*

The subject lands are within the Built-Up Area of Queenston. Municipal sanitary, storm and water services are available (an extension to water the water service

would be required). Single-detached dwellings are being proposed on the new lots, which are consistent and compatible with surrounding land uses. While the proposed lot area and lot frontage are less than the abutting lots along Dee Road, the lots have a similar area and frontage to multiple neighbouring lots in the same block and adjacent blocks.

A Cultural Heritage Impact Assessment (CHIA) was submitted with the Applications. The CHIA concludes that constructing three additional single-detached dwellings should have little impact on the adjacent heritage resources. The conclusions also recommend that vegetation along Dee Road be preserved, and the proposed dwellings have sympathetic building materials, colours and design features as well as site planning to help mitigate impacts. The Town's Heritage Planner had no objections to the conclusions of the CHIA. As a condition of approval, Staff recommend that the owner enter into a development agreement with the Town to require the proposed dwellings to be reviewed by the Urban Design Committee and the Municipal Heritage Committee.

An Arborist Report was also submitted with the Applications. The arborist assessed 17 trees (12 are Town owned) and concluded that two trees are proposed for removal (both are Town owned), three trees may be damaged (one is owned by the Town), and 12 trees are proposed for full protection. Dwelling designs were not submitted and may change. Tree removal would be subject to the Tree Removal By-law.

The Queenston Secondary Plan provides a policy framework that informs growth and development within Queenston. The Queenston Secondary Plan was subject to extensive public consultation and was approved by the OMB in 2011. There are no development criteria specifically identified for Dee Road. The proposed 2019 Official Plan, approved by the current Town Council (but not yet in effect), also includes the Queenston Secondary Plan. Further analysis of the Secondary Plan policies is provided below.

The Zoning requirements for Queenston were updated in 2011 to implement the policies of the Queenston Secondary Plan. The Zoning By-law amendment was also subject to a public consultation process. Further analysis of the zoning provisions is provided below.

Grading and drainage were previously identified by the OMB as potential issues. Storm sewers were installed within Dee Road in 2011 (see **Figures 1-3**). A Slope Stability Report and lot grading plan were submitted with the Applications. The Building Department had no objections to the grading plan. The NPCA had no objections to the Slope Stability Report and recommended that a geotechnical engineer review the future building plans and a grading plan be submitted for each lot at the time of building permit. Building Staff would also require a grading plan to be submitted with building permit applications. Staff have recommended a condition to reflect NPCA and Building Department comments. The proposed lots comply with

all other land compatibility criteria.



Figure 1: Drainage culvert on subject lands adjacent to existing dwelling (9 Dee Road)



Figure 2: Culvert outlet and catch basin on the subject lands (9 Dee Road) adjacent to Dee Road



Figure 3: Catch basin on abutting property (3 Dee Road)

4.3 Queenston Secondary Plan

The subject lands are also designated "Established Residential" in Special Policy Area A-1 (Queenston Secondary Plan).

2.0 Community Development Principles

2.2 Strengthen Existing Neighbourhoods

- a) *Ensure new infill development respects and enhances the character of the neighbourhoods and Village as a whole*
- b) *Encourage compatible development on vacant and under-utilized land*

3.0 General Policies

- 3.2 *The Town of Niagara-on-the Lake will ensure development and redevelopment in the Queenston Secondary Plan area respects the type, scale and character identified in this Plan.*

4.1 Policies Pertaining to All Residential Designations

- 4.1.2 *When creating new residential lots, a Streetscape Study will be completed to ensure that the application is consistent with Urban Design Policies of this Plan.*
- 4.1.3 *New buildings shall generally reflect and complement existing adjacent development in terms of scale, height, building location*

and architectural character.

4.3 Established Residential

This designation corresponds to the core of the Village, generally located east of the Niagara River Parkway, characterized by neighbourhood housing located on a traditional urban street and block pattern. The variety of lot sizes, architectural styles and lot frontages in the Village core exhibits an attractive and unique urban character which shall be respected.

- 4.3.3 The density of development shall not exceed 9 units per acre (30 units per hectare) residential net density.*
- 4.3.4 Newly created single detached lots shall have minimum dimensions of 18m in width by 36m in depth, and should be similar in overall size, width and depth to adjacent and neighbouring residential lots.*

7 Infrastructure Improvements

- 7.3 Dee Road should remain unpaved and should be kept in a good state of repair.*
- 7.7 In order for new development to proceed, adequate storm water treatment management shall be provided subject to approval by the Town, Region and local Conservation Authority.*
- 7.10 Access points to Queenston from the Niagara River Parkway perceived as dangerous, including... Dee Road, should be examined from a safety and operational perspective when any municipal or regional road reconstruction is to occur. The Niagara Parks Commission is the agency with jurisdiction over intersections involving the Niagara River Parkway network.*

Appropriate infill is encouraged in Queenston. The proposed lots meet the minimum lot frontage and lot area requirements of the Queenston Secondary Plan. The proposed net density is 4.62 units per acre. Therefore, the proposed infill is considered appropriate.

Single-detached dwellings are permitted. To provide for a more compatible dwelling form and design, Staff recommend, as a condition of approval, that the owner enter into a development agreement with the Town to require the proposed dwellings to be reviewed by the Urban Design Committee and Municipal Heritage Committee.

Despite the policies of the Queenston Secondary Plan, Dee Road has been widened and paved as part of capital improvement projects, including the installation of an irrigation pipe in 2003 and the construction of a storm sewer in 2011. Based on a review of Google Streetview imagery, the entrance to Dee Road from the Niagara Parkway was reconstructed between 2015 and 2018 (see **Figures 4-6**). The Operations Department and Fire and Emergency Services had no objections with respect to access, traffic, safety, or road condition/quality.



Figure 4: Intersection of Dee Road and Niagara Parkway



Figure 5: Intersection of Dee Road and Queenston Street



Figure 6: Dee Road in front of the subject lands

4.4 Zoning By-law

The subject lands are zoned "Queenston Community Zoning District - Established Residential (ER1) Zone." The proposed and retained lots comply with all provisions of the ER1 Zone.

4.5 Town, Agency, and Public Comments

The Applications were circulated to all appropriate Town Departments and external agencies, and public notice of the applications was provided as required by the *Planning Act*. The following responses were received:

Town Departments

Building – No objection.

Corporate Services – No objection.

Fire – No objection.

Heritage – No objection. The property has been cleared of archaeological potential.

Operations – No objection. Conditions requested regarding servicing and entrance permits.

Urban Design – No objection.

Agencies

Enbridge – No objection.

Hydro One – No objection.

Niagara Escarpment Commission – No objection.

NPCA – No objection. Conditions requested regarding lot grading and geotechnical review.

Niagara Region – No objection. Condition requested regarding the Ministry archaeological letter.

Public

At the time this report was prepared, the Town has received six (6) objection letters. The matters outlined in the objection letters are summarized as follows:

- Drainage and grading issues
- Traffic, access, and road conditions
- Archaeology and preserving the heritage landscape
- The proposal does not respect or enhance the character of the neighbourhood.
- OMB Decision from 2000

5. STRATEGIC PLAN

Not applicable.

6. OPTIONS

The Committee may approve, refuse or modify the requested application.

7. FINANCIAL IMPLICATIONS

Not applicable.

8. COMMUNICATIONS

Once the Committee of Adjustment makes a decision on the applications, notice of the decisions will be given as required in the *Planning Act*. The decisions of the Committee are subject to a 20-day appeal period following notice of the Committee's decisions. If no appeals are received during the appeal period, the decisions of the Committee are final.

9. CONCLUSION

Community & Development Services staff recommend approval of Consent Applications B-14/2021 and B-15/21, subject to the recommended conditions, as the applications meet the *Planning Act* requirements for lot creation, are consistent with the Provincial Policy Statement, and conform with the Growth Plan, Niagara Regional Official Plan, Town Official Plan, and Queenston Secondary Plan.

Respectfully submitted,



Mark Iamarino, MCIP, RPP
Senior Planner

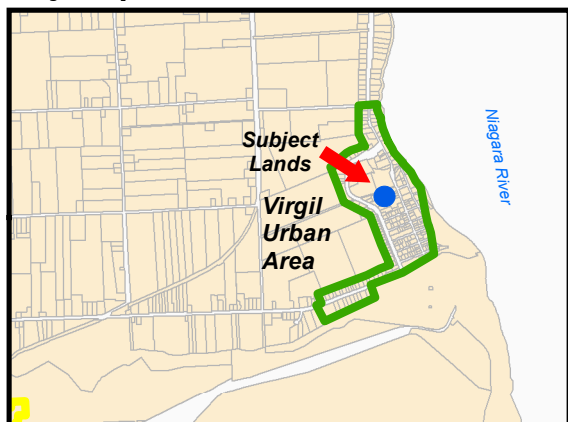
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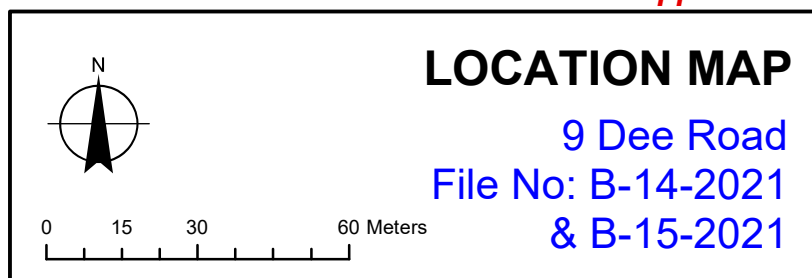
Appendix I_Application Drawing.pdf Appendix II_Location Map.pdf

First Capital of Upper Canada - 1792

Key Map



Appendix II



1:1,500

NiagaraLake
-on-the-
EST. 1781



Planning and Development Services

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
905-980-6000 Toll-free: 1-800-263-7215

Via Email Only

August 23, 2021

File No.: D.06.05.CS-21-0072
D.06.05.CS-21-0073

Natalie Thomson
Secretary Treasurer, Committee of Adjustment
Town of Niagara-on-the-Lake
1539 Four Mile Creek Road, PO Box 100
Virgil, ON L0S 1T0

Dear Ms. Thomson:

**Re: Provincial and Regional Comments
Proposed Consent Applications
Town File No.: B-14/21 and B-15/21
Agent: John Perry, RPP, Professional Planning Services Inc.
Address: 9 Dee Road
Town of Niagara-on-the-Lake**

Regional Planning and Development Services staff reviewed the information circulated with the above-noted consent applications for the subject property municipally known as 9 Dee Road in the Town of Niagara-on-the-Lake. The applications propose to sever $\pm 1,501$ sq.m of land (shown as Part 1 and 2) to create two (2) new lots with frontage on Dee Road. If approved, the lots will measure ± 760 sq.m (Part 1) and ± 741 sq.m (Part 2) and will accommodate proposed single-detached dwellings. The retained lot (Part 3), containing the existing single-detached dwelling, will measure $\pm 1,138$ sq.

A pre-consultation meeting for the proposal was held on November 12, 2019 with staff from the Region and Town in attendance. The Region received the subject applications on August 4, 2021 and the associated fees were arranged on August 11, 2021.

Regional staff provide the following comments from a Provincial and Regional perspective to assist the Committee of Adjustment in considering the applications.

Provincial and Regional Policies

The subject property is located within a Settlement Area as identified by the The Provincial Policy Statement, 2020 (PPS) and within the Delineated Built-up Area under A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (Growth

Plan). Provincial policies direct growth and development to these areas and encourage the efficient use of land, resources, infrastructure, and public service facilities. The Niagara Escarpment Plan also designates the subject property Minor Urban Area however, the property is located outside of the area of development control as designated by Ontario Regulation 826/90 under the *Niagara Escarpment Planning and Development Act*.

The Regional Official Plan (ROP) designates the subject property Urban Area where the policies permit a full range of uses subject to the availability of municipal services and infrastructure. In conformity with Provincial policies, the ROP generally supports intensification and infill development in Urban Areas. As proposed, the consent applications will facilitate the development of two (2) new residential lots in an established urban neighbourhood and will contribute to the Town's 15 percent annual residential intensification target. From a Provincial and Regional perspective, the proposal represents an efficient use of urban land and aligns with the intent of growth management policies. Subject to the discussion provided below, Regional staff is satisfied that the consent applications are consistent with the PPS and conform with the Growth Plan and ROP.

Archaeological Resources

The PPS and ROP provide direction for the conservation of significant cultural heritage and archaeological resources. Specifically, Section 2.6.2 of the PPS and Policy 10.C.2.1.13 of the ROP state that development and site alteration are not permitted on lands containing archaeological resources or areas of archaeological potential, unless significant archaeological resources have been conserved. During the pre-consultation meeting, Regional staff indicated that the subject property exhibited high potential for the discovery of archaeological resources due to the property's identification on the Town's Archaeological Potential Map, proximity to registered archaeological sites, and previous archaeological assessments conducted for the property that recommended further assessment.

Regional staff reviewed the Stage 4 Archaeological Assessment prepared by Detritus Consulting Ltd. dated August 12, 2021, submitted with the consent applications. The Stage 4 report provided an overview of the previous archaeological assessments conducted for the property including:

- A Stage 1 assessment conducted by Archaeological Services Inc. in 2013;
- A Stage 2 assessment conducted by Archaeological Services Inc. in 2013, which identified AgGs-378 and 26 pieces of chipping detritus;
- A second Stage 2 conducted by Detritus Consulting Inc. in 2015, which recovered 354 pieces of detritus and 9 Euro-Canadian artifacts; and,
- A Stage 3 assessment conducted by Detritus Consulting Inc. in June 2016, which recovered 223 chert flakes and 5 bifacially worked tools.

As described in the Stage 4 report, Detritus Consulting Ltd. conducted an additional Stage 3 archaeological assessment in October and December 2020 to document disturbance that occurred on the property from mechanical excavations in August 2016.

This Stage 3 assessment found that the excavations destroyed approximately 80% of the site and through consultation with the MHSTCI and participating First Nations communities, recommended the completion of a Stage 4 assessment for the remaining portion of AgGs-378.

Detritus Consulting Ltd. conducted the Stage 4 mitigation of AgGs-378 between May 17 and May 26, 2021. The Stage 4 assessment consisted of hand extractions of twenty eight (28) 1 m units surrounding the test units from the Stage 3 assessment. The remainder of the site, including the two gravel parking pads and disturbed area, was subject to mechanical topsoil removal. The Stage 4 hand excavations yielded 224 pre-contact Aboriginal artifacts consisting of pieces of chipping detritus from Onondaga chert. Although the Stage 4 excavations and mechanical topsoil removal did not recover any tools or projectile points, Detritus Consulting Ltd. acknowledged that the core of the site was removed in 2016. Based on the findings, Detritus Consulting Ltd. interpreted that the excavation block at AgGs-378 was the southern edge of a larger campsite that covered the elevated bank in the northwestern corner of the study area. The Stage 4 report concluded that the cultural heritage value or interest of AgGs-378 was fully documented and the site retained no further cultural heritage value or interest.

Regional staff note that in accordance with the *Ontario Heritage Act*, as amended, the Stage 4 Archaeological Assessment prepared by Detritus Consulting Ltd. (dated August 12, 2021) must be submitted to the Ministry of Ministry of Heritage, Sport, Tourism, and Culture Industries (MHSTCI) for review and filing on the Ontario Public Register of Archaeological Reports. As a condition of consent, Regional staff require a copy of an acknowledgement letter from the MHSTCI confirming that the Stage 4 assessment met licensing and resource conservation requirements, and that all archaeological concerns were addressed to the satisfaction of the MHSTCI. As of the date of this letter, Regional staff is not in receipt of an acknowledgement letter from the MHSTCI.

Waste Collection

Niagara Region provides curbside waste and recycling collection for developments that meet the requirements of Niagara Region's Corporate Waste Collection Policy. The proposed residential lots are eligible to receive Regional curbside waste and recycling collection provided that the owner bring the waste and recycling to the curbside on the designated pick up day, and that the following curbside limits are met:

- Recycling: Weekly Collection of Blue/Grey Boxes;
- Organics: Weekly Collection of Green Bins;
- Garbage: 2 Garbage Bags/Cans Collected Every-Other-Week.

Conclusions

From a Provincial and Regional perspective, Regional Planning staff have no objections to the proposed consent applications, which will facilitate the creation of two (2) residential lots. Subject to the satisfaction of any local requirements and the following condition, the consent applications are consistent with the PPS, and conform with Provincial plans and the ROP.

August 23, 2021

1. That the owner receive an acceptance letter from the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) for the archaeological assessment titled "Stage 4 Mitigation of Impacts AgGs-378, 9 Dee Road Niagara-on-the-Lake", prepared by Detritus Consulting Ltd. (dated August 12, 2021). Please note that no demolition, grading or other soil disturbances shall take place on the subject property prior to the issuance of a letter from the MHSTCI confirming that the completed archaeological assessment met licensing and resource conservation requirements.

Should you have any questions or wish to discuss these comments, please contact the undersigned at siobhan.kelly@niagararegion.ca or Lola Emberson, MCIP, RPP, Senior Development Planner, at lola.emberson@niagararegion.ca.

Please send a copy of the staff report and notice of the Committee's decision on these applications.

Kind regards,



Siobhan Kelly
Development Planning Student

cc: Lola Emberson, MCIP, RPP, Senior Development Planner, Niagara Region
Aimee Alderman, MCIP, RPP, Senior Development Planner, Niagara Region
Robert Alguire, CET, Development Approvals Technician, Niagara Region

From: [Tansony, Cheryl \(MNRF\)](#)
To: [Natalie Thomson](#)
Subject: RE: 9 Dee Road Consent Application
Date: Friday, September 3, 2021 4:18:05 PM
Attachments: [image002.png](#)
[image003.png](#)

CAUTION: This email originated from outside the Town of Niagara-on-the-Lake. Use caution when clicking on a link or opening an attachment unless you know that the content is safe. If unsure, forward the email to IT to validate.

Good afternoon Natalie,

This is in response to the Request for Comments for a proposed consent application at 9 Dee Road. NEC staff understand the applicant is proposing to create two new lots from 9 Dee Road.

The subject lands are within the Niagara Escarpment Plan (NEP) area, however are not subject to Development Control. Development on the lands does not require a Niagara Escarpment Development Permit.

The property is located within the Queenston Minor Urban Centre, with an underlying designation of Escarpment Rural Area. Subject to Part 2 of the NEP, the creation of new lots in a Minor Urban Centre will be determined by an approved official plan and/or secondary plan not in conflict with the NEP, and subject to the Development and Growth Objectives of the Minor Urban Centre designation.

Minor Urban Centre Development and Growth Objectives

- Part 1.6.8.3: *Development and growth should avoid Escarpment Protection Areas and be directed to Escarpment Rural Areas in a manner consistent with Escarpment Rural Area Objectives and Part 2, the Development Criteria of this Plan.*
 - The subject proposal is within the Escarpment Rural Area designation.
- Part 1.6.8.4: *Development and growth should be limited to minimize land use conflicts (e.g., with agriculture) and all development should be of a design compatible with the scenic resources of the Escarpment. Where appropriate, provision for adequate setbacks, and maximum heights for buildings, structures and screening shall be required to minimize the visual impact of development, consistent with any applicable provincial guidance.*
 - A Cultural Heritage Impact Assessment was submitted in support of the application that addresses the impact on nearby heritage resources. NEC staff support these recommendations in order to minimize the visual impact of development.
- Part 1.6.8.5: *Development within Minor Urban Centres should encourage reduced energy consumption, improved air quality, reduced greenhouse gas emissions (consistent with provincial reduction targets to 2030 and 2050) and work towards the long-term goals of low carbon communities, net-zero communities and increased resilience to climate change, through maximizing opportunities for the use of green*

infrastructure and appropriate low impact development.

- NEC staff encourage the applicant to implement green infrastructure and low impact development through more detailed designs in subsequent applications.
- Part 1.6.8.6: *Development and growth should be minor only, relative to the size and capacity of the settlement to absorb new growth, so that the community character is maintained.*
 - NEC staff understand from the submitted documents that the proposal is consistent with the Town's Official Plan and Zoning By-law. Town staff should be satisfied the development is considered minor and maintains community character.
- Part 1.6.8.9: *Growth and development in Minor Urban Centres shall be compatible with and provide for:*
 - a. *the protection of natural heritage features and functions;*
 - b. *the protection of hydrologic features and functions;*
 - c. *the protection of agricultural lands, including prime agricultural areas;*
 - d. *the conservation of cultural heritage resources, including features of interest to First Nation and Métis communities;*
 - e. *considerations for reductions in greenhouse gas emissions and improved resilience to the impacts of a changing climate;*
 - f. *sustainable use of water resources for ecological and servicing needs; and*
 - g. *compliance with the targets, criteria and recommendations of applicable water, wastewater and stormwater master plans, approved watershed planning and/or subwatershed plan in land use planning.*
 - NEC staff have reviewed the arborist report, archaeological assessment, cultural heritage impact assessment, slope stability report and streetscape study submitted in support of the application.
 - NEC staff have no concerns with the tree protection plan, subject to the implementation of the proposed mitigation measures. As recommended, trees should be retained and protected to protect the cultural heritage landscape and scenic resources.
 - Through subsequent applications it will need to be demonstrated that the development would not negatively impact drainage.
 - The slope stability report was submitted in 2013 for a previous severance of the property and concludes that the construction of a new dwelling would not impact slope stability. It does not appear to address the impact of an additional two dwellings on slope stability and as such Town staff should be satisfied that slope stability would not be negatively impacted by additional construction.
- Part 1.6.8.10: *Municipal sewage and water services will be the preferred form of servicing. Where municipal sewage services and municipal water services are not provided, the use of private communal sewage services and private communal water services may be permitted. Individual on-site sewage services and individual on-site water services may only be permitted where municipal or private communal services are not available.*
 - Municipal servicing is proposed for the development.

NEC staff have no objection to the application, subject to meeting the above objectives.

Please let me know if you have any questions or require clarification on the above.

Have a great long weekend. Kind regards,

Cheryl Tansony, MES

Senior Planner

Niagara Escarpment Commission

232 Guelph Street | Georgetown, ON | L7G 4B1

Tel: 905-703-5354 **Website:** www.escarpment.org

Please let me know if you require communication supports or alternate formats.



In order to ensure a safe and secure environment for staff and clients and in response to recommendations by health professionals, the NEC offices are closed to the public until further notice. The NEC is continuing to provide services via email and telephone. Updates can be found on our website: <https://www.escarpment.org/Commission/COVID19>

From: Natalie Thomson <natalie.thomson@notl.com>

Sent: September 1, 2021 3:35 PM

To: Tansony, Cheryl (MNRF) <Cheryl.Tansony@ontario.ca>

Subject: Re: 9 Dee Road Consent Application

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Hi Cheryl,

I originally circulated the application a few weeks ago and somehow I missed adding you to the original email. My apologies for that.

I understand this is last minute, but would you be able to provide comments by next Tuesday September 7?

Supporting documentation for the application: <https://notl.com/content/committee-adjustment-public-notice>

Thank you,

Natalie Thomson

Secretary/Treasurer Committee of Adjustment

From: [Nicholas Godfrey](#)
To: [Natalie Thomson](#)
Cc: info@jonathanfast.com
Subject: RE: 9 Dee Road - Consent Application
Date: Tuesday, October 19, 2021 3:54:27 PM

CAUTION: This email originated from outside the Town of Niagara-on-the-Lake. Use caution when clicking on a link or opening an attachment unless you know that the content is safe. If unsure, forward the email to IT to validate.

Good afternoon Natalie,

The NPCA has reviewed the 'Slope Stability Assessment - 9 Dee Road, NOTL' (dated October 5, 2021) by WSP. The NPCA has no objection to the conclusion that the proposed construction of the 2 new lots will not negatively impact the global stability of the slope.

Prior to construction, the NPCA will require that a geotechnical engineer review the detailed design drawings and the proposed grading plan in order to ensure that they conform with the recommendations of this report and confirm that the detailed design will not negatively impact the slope.

Please let me know if you have any questions.

Best,

Nicholas Godfrey, M.A.
Watershed Planner
Niagara Peninsula Conservation Authority (NPCA)
250 Thorold Road West, 3rd Floor, Welland, ON, L3C 3W2
905-788-3135, ext. 278
ngodfrey@npca.ca
www.npca.ca

Due to the COVID-19 pandemic, the NPCA has taken measures to protect staff and public while providing continuity of services. The NPCA main office is currently closed with limited staff, please refer to the [Staff Directory](#) and reach out to the staff member you wish to speak or meet with directly. Our Conservation Areas are currently open, but may have modified amenities and/or regulations.