



## COMMITTEE OF ADJUSTMENT

Department of Planning and Building Services  
3540 Schmon Parkway, P.O. Box 1044  
Thorold, ON L2V 4A7  
905-227-6613 ext. 252

January 10, 2022

**TO:** Chairperson and Members of the Committee of Adjustment

**SUBJECT:** Consent Application D10-03-2022 (concurrent with D-13-04-2022 and D-13-05-2022)

6 York Street Thorold, Ontario

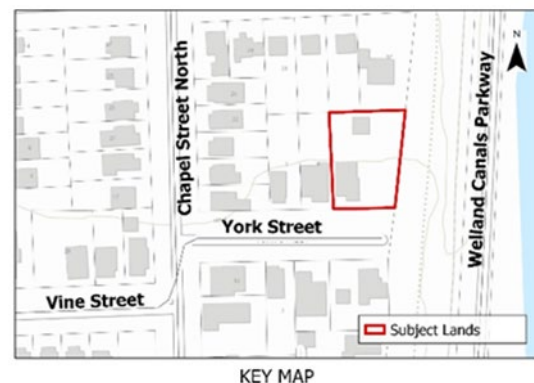
PLAN 10816 PT LOT 3 PT LOT 4;

### PROPOSAL:

An application has been submitted for consent for the purpose of creating a new lot.

The subject parcel is shown as Part 1 and 2 on the drawing submitted. Part 1 is proposed to be severed and Part 2 is the retained parcel for the construction of One (1) new single detached dwelling (in conjunction with minor variance applications D13-04-2022 and D13-05-2022).

The subject lands are designated Urban Living Area in the City of Thorold Official Plan and are zoned Residential Second Density Special 'R2S' in accordance with Comprehensive Zoning By-law 2140(97).



### CONTEXT:

#### Site Description

The subject lands are located on the north side of York Street, east of Chapel Street North. There is an existing single detached dwelling, and accessory structure on the lands. The lands are surrounded by residential uses, and has a railway to the east.

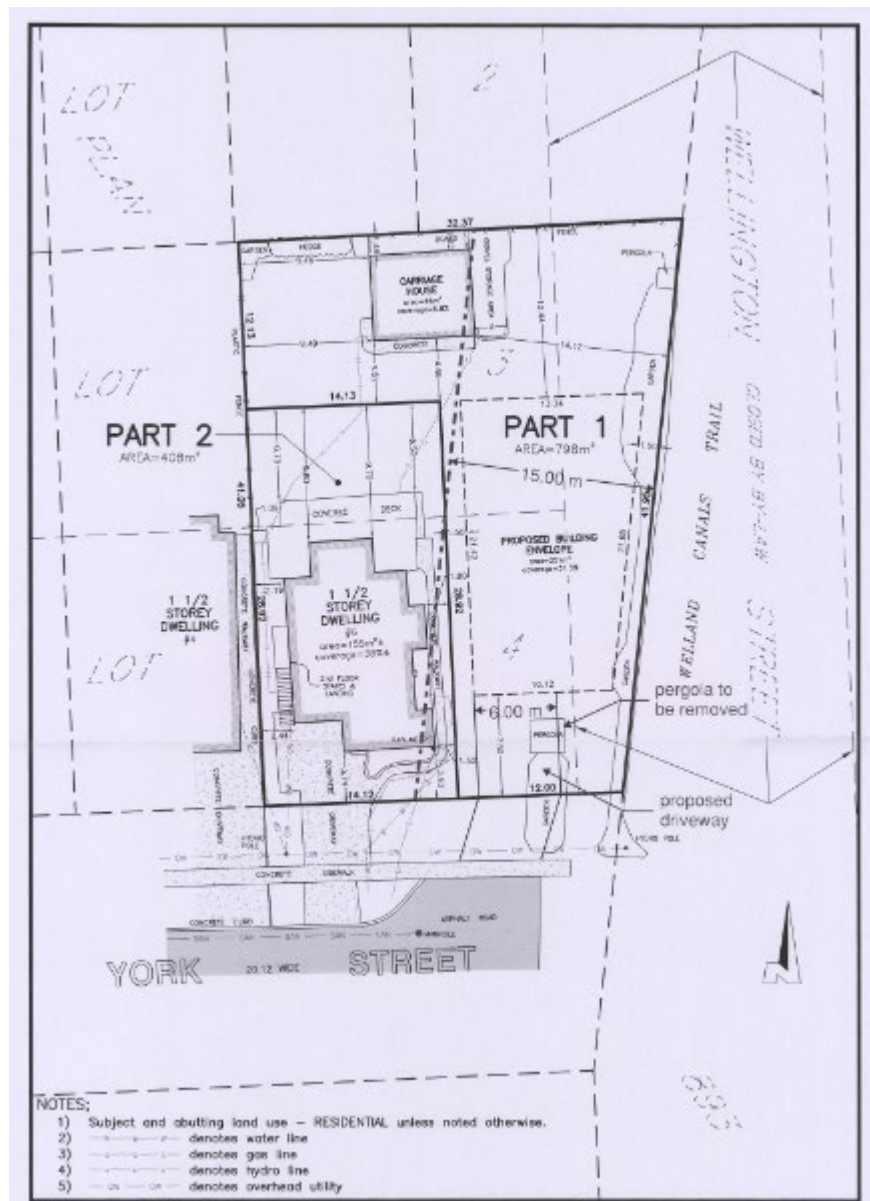


Figure 1: Severance Sketch

### Planning Act

In making its recommendation, Planning staff have considered all of the criteria outlined in Section 51 (24) of the Planning Act, R.S.O. 1990, c. P.13 as amended.

### Planning Policy Documents

The application was reviewed with consideration of applicable policies in the *Provincial Policy Statement (2020)*, *A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)*, the *Regional Official Plan*, and the *City of Thorold Official Plan*.

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The subject lands are within a “settlement area” according to the PPS. Settlement areas are to be the focus of growth and development.

The Growth Plan also directs development to settlement areas. Within settlement areas, the Growth Plan states that growth will be focused in “built-up” areas.

As per the Regional Official Plan (ROP), the subject lands are within the “Urban Area Boundary” and “Built-up Area”. A range of uses including residential uses are permitted and encouraged within such areas, in a manner that makes efficient use of existing services.

Staff are of the opinion that the proposed consent would conform to the PPS, Growth Plan, and ROP.

#### City of Thorold Official Plan

The subject property is designated as “Urban Living Area” within the City’s Official Plan (OP). Single detached dwellings are permitted within this designation. The OP also allows for the consideration of proposals for residential intensification within the Urban Living Area that are respectful of, compatible with, and designed to be integrated with the community or neighbourhood where they are proposed. Staff are of the opinion that the application would facilitate compatible lots that can accommodate built form that is respectful of its context.

Proposals for the creation of new lots by consent are assessed against the criteria of Policy D4.2.1 of the OP. Staff are of the opinion that both proposed lots would meet all relevant criteria of the aforementioned policy. The new lots would front on an existing public road, utilize existing municipal services, and would not create negative impacts in terms of traffic congestion or drainage.

With regards to Policy D4.2.1 c), which states *that the Committee of Adjustment shall be satisfied that the proposed lot is in keeping with the intent of the relevant provisions and performance standards of the zoning by-law*. The consent application is in conjunction with minor variance application D13-04-2022 and D13-05-2022. Both applications generally meet the intent of the zoning by-law, and have been supported by staff. In order to facilitate the consent, both minor variance files D13-04-2022 and D13-05-2022 must be approved.

The consent application conforms to the City’s Official Plan.

#### Comprehensive Zoning By-law 2140 (97)

The subject lands are designated Urban Living Area in the City of Thorold Official Plan and are zoned Residential Second Density Special ‘R2S’ in accordance with Comprehensive Zoning By-law 2140(97). Minor Variance applications D13-04-2022 and

D13-05-2022 have been submitted to address any deficiencies. Staff note the existing lot is an oversized residential lot, with an area of approximately 1,210 square metres, where 550 square metres is required. The proposed lots have a size of 408 m<sup>2</sup> and 798 m<sup>2</sup>. Multiple nearby lots do not meet the minimum 550 square metre lot size, and therefore the size of the proposed lots are in keeping with the character of the neighbourhood, and will be addressed through the submitted minor variance applications. Additionally, a minor variance for reduction of minimum lot frontage was also submitted to reduce from 15 metres to 12.0 metres and 14.12 metres. The variances propose a compatible reduced minimum lot frontage that would pose no impact on the streetscape or surrounding residential properties. The surrounding neighbourhood contains a variety of lot frontages, both larger and smaller than the 12.0m.

### **COMMENTS:**

The application was circulated in accordance with the requirements of the Planning Act to property owners within 60 metres of the subject lands. The application was also circulated to internal departments and external agencies for comments, which are summarized below.

#### CN Railway

- Safety setback of dwellings from the railway rights-of-way to be a minimum of 15 metres.
- The Owner shall install and maintain a chain link fence of minimum 1.83 metre height along the mutual property line.
- The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300m of the railway right-of-way: "Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."
- Any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway and be substantiated by a drainage report to the satisfaction of the Railway.
- The Owner shall be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.

As a result of the above comments, a condition of consent was included to obtain written approval from the rail line indicating their requirements have been met to their satisfaction.

Bell Canada

- No comments or concerns.

Hydro One

- No comments or concerns.

Building Division

- No concerns. Building permits required prior to construction of buildings.

Cogeco

- Cogeco has no concerns with this application.

Engineering Division

- Water and sanitary services must be installed from the mainline in the ROW to the property line.

Finance Division

- No comments or concerns.

MTO

- The property is located outside of the MTO Permit Control Area, and therefore, an MTO Building & Land Use Permit from this office is not required. At this time, this office has no further comments.

Niagara Region

- The subject site is located within a “Settlement Area” under the Provincial Policy Statement, 2020 (“PPS”), designated “Delineated ‘Built-Up’ Area” in A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 Consolidation (“Growth Plan”) and designated “Urban (Built-Up) Area” in the Regional Official Plan (“ROP”).
- The ROP, PPS and Growth Plan together direct for development to take place in urban areas to support intensified development where appropriate servicing and infrastructure exists. Both Regional and Provincial policies encourage infill development that complements the urban fabric of existing stable neighbourhoods and foster complete communities that provide for a mix of housing options, improved social equity and quality of life, expanded access to multiple forms of transportation and urban amenities. A full range of residential, commercial and

industrial uses are permitted generally within the Urban Area designation, subject to the availability of adequate municipal services and infrastructure and other policies relative to land use compatibility and environmental conservation.

- Staff note that the proposal will facilitate residential infill development within the urban area of the City of Thorold that will support the City in achieving its annual minimum intensification target (15%) as set out in the ROP. The proposal will make more efficient use of existing designated urban lands and available municipal infrastructure. As such, Regional staff is satisfied that the proposed application is consistent with Provincial and Regional growth management policies, subject to the comments of this letter below.
- Regional staff identified the requirement for a Noise and Vibration Study to evaluate impact(s) from the abutting rail line on the proposed development. Regional staff have reviewed the Railway Noise and Vibration Assessment prepared by Gradient Wind Engineers & Scientists (dated October 14, 2021), which was conducted in accordance with NPC-300. The report concluded that the noise impacts from the railway line, with respect to indoor noise levels, would be acceptable subject to the use of “standard building components in conformance with the Ontario Building Code (2020)” for the construction of the new dwelling and that the Outdoor Living Area would be in compliance with MECP noise limits. The estimated vibration levels were also below the required levels.
- As such, no mitigation measures have been recommended. Regional staff, however, recommend that the City look to the railway operator(s) for confirmation of any applicable mitigation measures deemed necessary (i.e. safety setbacks, berming etc.).
- Niagara Region provides curbside waste and recycling collection for developments that meet the requirements of Niagara Region’s Waste Collection Policy. The subject property is 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 limits are not exceeded:
  - No limit blue/grey containers;
  - No Limit green containers; and,
  - Two (2) garbage containers per unit, collected bi-weekly

The rail operator has confirmed that they have no concerns with the reduced setback to the rail line subject to a number of conditions being met. As a result, a condition of consent is for the Owner to obtain written approval from the rail line that all of their requirements have been met.

### GIO Railway

- Ground-borne vibration transmission to be evaluated in a report through site testing to determine if dwellings within 75 metres of the railway rights-of-way will be impacted by vibration conditions in excess of 0.14 mm/sec RMS between 4 Hz

and 200 Hz. The monitoring system should be capable of measuring frequencies between 4 Hz and 200 Hz,  $\pm 3$  dB with an RMS averaging time constant of 1 second. If in excess, isolation measures will be required to ensure living areas do not exceed 0.14 mm/sec RMS on and above the first floor of the dwelling.

- The Owner shall install and maintain a fence of minimum 1.83 metre height along the mutual property line.
- The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300m of the railway right-of-way: "Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."
- Any proposed alterations to the existing drainage pattern affecting railway property must receive prior concurrence from the Railway and be substantiated by a drainage report to the satisfaction of the Railway.
- The Owner shall through restrictive covenants to be registered on title and all agreements of purchase and sale or lease provide notice to the public that the safety berm, fencing and vibration isolation measures implemented are not to be tampered with or altered and further that the Owner shall have sole responsibility for and shall maintain these measures to the satisfaction of CN.
- The Owner shall enter into an Agreement stipulating how CN's concerns will be resolved and will pay CN's reasonable costs in preparing and negotiating the agreement.
- The Owner shall be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.

As noted above and as a result of the above comments, a condition of consent was included to obtain written approval from the rail line indicating their requirements have been to their satisfaction.

## **CONCLUSION:**

It is the recommendation of Planning staff that consent application D10-03-2022 be approved subject to the following conditions:

- 1) That the applicant provides the Secretary-Treasurer with a legal description, acceptable to the Registrar, of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate

of Consent.

- 2) That the owner provides a lawyers undertaking, to the satisfaction of the City, to forward a copy of documentation confirming the transaction has been carried out, the document to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first.
- 3) That a final certification fee of \$190 payable to the City of Thorold, be submitted to the Secretary-Treasurer and that all conditions of consent be fulfilled.
- 4) Final approval of Minor Variance Applications D13-04-2022 and D13-05-2022 is granted.
- 5) That the payment of 5% of the value of the new lot, being Part 1, of the submitted severance sketch be made to the City of Thorold in lieu of dedication of land for park purposes pursuant to Section 53(13) of the Planning Act, R.S.O. 1990, as amended.
- 6) That the Owner provide to the City a letter from GIO railway indicating all of their requirements have been met to their satisfaction, and that the consent may be registered.
- 7) That the Owner provide to the City a letter from CN railway indicating all of their requirements have been met to their satisfaction, and that the consent may be registered.

Prepared by:

Electronically signed  
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Respectfully submitted by:

Electronically signed  
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