

Meeting Date: December 4, 2023
Department: Building, By-law, and Planning
Report No.: BBP-2023-136
Submitted by: Tim Williams, Manager of Planning
Approved by: Jennifer Huff, Director, Building & Planning
Trisha McKibbin, Chief Administrative Officer
SUBJECT: Application for Zoning By-law Amendment
Part of Lot 3, Concession 9, geographic Township of Caradoc
6919 Calvert Drive, Municipality of Strathroy-Caradoc
Owner: Jose and Michell

RECOMMENDATION: THAT: Report BBP-2023-136 regarding ZBA 20-2023 be received by Council for information;

THAT: the rezoning application, ZBA 20-2023 which would rezone the lands municipally known as 6919 Calvert Drive, expand the existing contractor's yard, be denied.

THAT: the reasons for denying the rezoning application include: The proposal is not consistent with the Provincial Policy Statement; and The proposal does not conform to the County of Middlesex Official Plan and the Strathroy -Caradoc Official Plan

SUMMARY HIGHLIGHTS

- Rezoning amendment applications have been submitted on November 6, 2023, to amend the existing site-specific zoning to expand the 'Contractor's Yard or Shop' use.
- The existing site-specific zoning (A1-13) was approved by Strathroy-Caradoc Council in December 2018.
- The application for zoning by-law amendment seeks to expand the Contractors Yard (storage of excavation equipment and materials) on the property from 1,942.5m² (2% of the property) to 4,645 m² (4.8% of the property).
- No comments from the public on the proposal have been received from the public at the time of preparing the report.

- **Staff do not support the rezoning to expand the operations on the property.**

PURPOSE

The purpose of the Zoning By-law Amendment application is to amend the existing site specific 'General Agriculture (A1-13) Zone' to expand the 'Contractor's Yard or Shop' use that was added to the property by rezoning in 2018. The effect of the Zoning By-law Amendment is to allow for the storage of excavation equipment and materials on the property the outside storage proposed to expand from 1,942.5 m² (2% of the property) to 4,645 m² (4.8% of the property).

BACKGROUND

On December 17, 2018, Council approved a rezoning that allowed for the use of 2% of the property for a contractor's yard as a Secondary Farming Operation on the property. The approval included a hold to be removed once the proposal had received site plan approval. The site plan approval and hold removal were approved in early 2019. The site plan approval included a building with an area of approximately 410 m² for the business, parking area and outside storage for a total of 1942.5 m². (attached is the copy of the original site plan).

Since the 2018 approval, the owner has expanded the operation beyond the 2% of the property, including the use of the area along the western portion of the property adjacent to, and within, a 'Significant Woodland' for contractor's yard use (including the storage of aggregate and other landscape materials as well as manure for landscaping) as well as excavating a portion of this area for sand.

In the summer of 2023, staff became aware that the contractor's yard had expanded significantly in size relative to the original approval including the storage area along the western property line as well as the excavation of a section of the property to extract aggregate (sand). It was identified that the aggregate extraction and the expansion of the Contractor's Yard was not permitted, and by-law enforcement action was taken. Regarding the aggregate / sand extraction, any extraction activities require the approval of the Ministry of Natural Resources and Forestry. Rather than pursue a permit from MNRF, the applicant ceased activities. With respect to the expanded contractor's yard, the existing on-site operations were discussed during a zoning pre-consultation meeting and staff noted concern for the impact of storage of landscape materials including aggregate, mulch, and other fertilizers may have on the natural heritage (wetland and woodlands). In response to staff's concerns, the owner is proposing to move the storage area to along the east side of the property, away from the natural heritage features, in an area that is used for an agricultural crop. The owner is proposing to more than double the size of the contractor's yard.

By-law Enforcement has continued to be in contact with the owner to encourage compliance with the existing zoning or apply for a zoning by-law amendment and have issued an information long form charge.

The rezoning application was submitted on November 6, 2023. Planning Staff have circulated the application for agency comments (see below) and scheduled the statutory public meeting for December 4, 2023.

It is noted that during the zone change pre-consultation discussions, the applicants advised staff that shortly after the 2018 and 2019 zoning and site plan approval, the applicant was contacted by a neighbour about dust from the use of driveway access along the easterly property limit. In response, the owner improved the entrance along the westerly portion of the property from an informal farm access to a formal access for the contractor yard (access can be seen on the attached location map) however they did not apply for or receive an access permit for the entrance from the County nor did they modify the approved site plan to reflect the change. This was raised during the preconsultation and the owner has made an application to the County for the access to be upgraded and the County is reviewing the application.

The property is 9.65 ha (23.84 ac) in size and located on the south side of Calvert Drive (County Road 10) between Melbourne Road and Glen Oak Road, within the former Township of Caradoc. Surrounding land uses are predominately agriculture in nature. Calvert Drive is classified as a 'collector road' and is under the jurisdiction of the County of Middlesex. The lands contain a single detached dwelling, as well as a detached garage and associated private services. Since the 2018 zoning approval, the property also contains the contractor's yard which included the outside storage use as well as the use of a building. The remainder of the property is in agricultural production (see attached location map).

The applicant has submitted a preliminary sketch illustrating the location of the shop and outdoor parking area as well as the new driveway and expanded outside storage (see attached site plan). It is the intent of the applicant to continue to use a portion of their property as a contractor's yard to house construction equipment, vehicles, and materials in support of the applicant's excavation business. A formalized outdoor parking area was established to the rear of the new accessory building. The applicants are currently using the property to store dump trucks and several additional pieces of construction equipment. The full break down of areas are found in the below table. In addition to the existing use, the applicants are proposing to expand the outside storage from 1,942.5m² (2% of the property) permitted in the site-specific zoning to 4,645m² (4.8% of the property) which is an increase of 2,702.5 m² as part of their secondary farm occupation.

Area	m ²	% of the lot
Building Area	408	0.42%
Current Storage Area East Building	557	0.58%
Current Outdoor Storage (Rear of building)	1,450	1.50%
Driveway extension (dedicated)	335	0.35%
Driveway (shared with farm access)	362.5	0.38%
New Storage Area	1,532.54	1.59%
Total	4,645.04	4.81%

The proposed site plan is included as an attachment to this report.

From a servicing perspective, the property is on private water and sanitary service.

The application for Zoning By-law amendment were made on November 6, 2023. The application was deemed complete on November 13, 2023. In addition to the application form, the submission included the following supporting documents:

- Planning Justification Report, provided by the owners, received November 2, 2023.
- Site Plan provided by the owner, received November 2, 2023.

The rezoning application is proposing to amend the zoning increase the area permitted to be used be a contractor's yard from 1,942.5m² (2% of the property) to 4,645m² (4.8% of the property).

POLICY AND REGULATION BACKGROUND

The subject lands are located within the Agricultural Area as per the definitions of the Provincial Policy Statement and the County of Middlesex Official Plan. The lands are designated "Agricultural" under the Strathroy-Caradoc Official Plan and within the 'General Agricultural (A-13) Zone' pursuant to the Strathroy-Caradoc Zoning By-law.

Provincial Policy Statement (2020)

According to Section 3 of the Planning Act as amended, where a municipality is exercising its authority affecting a planning matter, such decisions, "shall be consistent with" all policy statements issued under the Act. The PPS provides policy direction on matters of provincial interest related to land use planning and development.

The Provincial Policy Statement (PPS) identifies that new, non-residential uses may be permitted in the prime agricultural where (s.2.3.6.1(b)):

- The land does not comprise a specialty crop area;
- The use complies with MDS;
- There is an identified need within the planning horizon for additional land to accommodate the proposed use; and,
- Alternative locations have been evaluated and there are no reasonable alternatives that avoid prime agricultural areas or lower priority agricultural lands.

The PPS permits agricultural, agriculturally related and on-farm diversified uses within 'Prime Agricultural Areas'. The Province has published a document titled, 'Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas'. This guideline document was created to assist in implementing the Provincial Policy Statement and it contains suggested criteria upon which 'on-farm diversified uses' may be evaluated, including the following:

- The use is located on a farm;

- The use is secondary to the principal agricultural use of the property based on spatial and temporal measurements;
- The use is limited in area (maximum 2% of the total property area is recommended in the guidelines for the use);
- The buildings for the use are occupy a maximum of 20% of the area used for the on-farm diversified use.
- The use includes, but is not limited to home occupations, home industries, agri-tourism and uses that produce value-added agricultural products; and,
- The use shall be compatible with and shall not hinder surrounding agricultural operations.

Comments on Consistency with the Provincial Policy Statement:

- The proposal is located within a prime agricultural area, on lands identified for agriculture, agriculture-related, and on-farm diversified uses and is not consistent with the PPS.
- The expansion of the contractor’s yard is more than twice the size of the recommended area as per the ‘Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas’ which are designed to guide staff in the implementation of the PPS policies.

In light of the above, it is staff’s opinion that the application is not consistent with the PPS policies respecting scale of permitted uses within prime agricultural areas, as the proposed expansion will have an area that nearly 5% of property and the expansion will be occupying lands that were previously used for agricultural crops.

County Official Plan (2023 Consolidation)

The subject lands are within the ‘Agricultural Areas’ designation of the County of Middlesex Official Plan which permits agricultural and related uses as well as farm related commercial and industrial uses in accordance with Section 3.3.5.

The County OP Section 2.3.9 states that “The policies of this Plan are intended to affirm that agriculture is a predominant activity in the County and that local food production is a priority. Non-agricultural activities will be closely scrutinized and directed to Settlement Areas unless the activity is agriculturally related or an on-farm diversified use and a location in proximity to agriculture is necessary.”

Section 3.3.5 states that commercial and industrial development is to be directly related to and supportive of agricultural operations. Further to this there are seven (7) policies to consider in this regard:

- a) the agricultural-related and on-farm diversified uses cannot reasonably be located in a Settlement Area and must be located in proximity to farming activities;
- b) such uses shall be located to conform with the Minimum Distance Separation Formula;
- c) an amendment to the Zoning By-law is approved;
- d) the agricultural-related and on-farm diversified uses shall not require large volumes of water nor generate large volumes of effluent and shall be serviced with appropriate water supply and sewage treatment facilities;

- e) the agricultural-related and on-farm diversified uses shall be located and designed to minimize potential adverse impacts upon adjacent residential or other sensitive uses by buffering measures such as landscaping, berming and building setback and layout;
- f) the agricultural-related and on-farm diversified uses must provide for a minimum sight distance from the access points in either direction along a County or local road; and
- g) the site plan policies of local official plan.
- h) the agricultural-related and on-farm diversified uses shall be in accordance with the Provincial Guidelines on Permitted Uses in Prime Agricultural Areas
- i) for on-farm diversified uses, the relationship of the proposed use to the underlying farm operation;
- j) the agricultural-related and on-farm diversified uses are to remain within the Agricultural Areas land use designation and are permitted without the need to amend this plan;
- k) proposed access to highways under the jurisdiction of the Province of Ontario, or proposed access in proximity of such highways or interchange ramp terminals, shall be subject to the regulations and policies of the Ministry of Transportation and design and construction of these proposed accesses will be subject to the approval of the Ministry of Transportation.

Comments on Conformity with the County of Middlesex Official Plan:

- The applicant is seeking permission to double the size of the existing contractor’s yard, a size that is much greater than the permitted in the ‘Provincial Guidelines on Permitted Uses in Prime Agricultural Areas’.
- The property is within the designated ‘Agricultural Area’ of the County and use could reasonably be located within the settlement boundary.
- The proposed use does not require large volumes of water and will not generate large effluent. The property is currently serviced using private water and sanitary services, and further, is not anticipated to have adverse negative impacts on the surrounding uses.
- The lands are located on Calvert Drive (County Road) and will be accessed using a driveway that has not received an access permit. It is noted that the original driveway access is no longer used due to dust generation which was negatively impacting the neighbour’s property.

In light of the above, it is staff’s opinion that the application does not conform to the County of Middlesex Official Plan policies respecting on farm diversified uses within the designated ‘Agricultural Area’.

Strathroy-Caradoc Official Plan

The subject lands are within the ‘Agricultural’ designation of the Strathroy-Caradoc Official Plan.

The Strathroy Caradoc Official Plan has also been updated through OPA 14 in 2022, however, it has not yet received approval from County. The County’s Committee of the Whole recommended approval to Council on November 21, 2023, and a decision is expected at the subsequent meeting. Considering this it does not influence the evaluation however it does express Council’s direction on planning matters. The changes in OPA 14 will be noted as they relate to each of the policies below.

The Official Plan states (Section 4.2) that the Goals and Objectives for the 'Rural Area' include:

- To preserve and protect prime agricultural land;
- To maintain agriculture as the predominant use of the land;
- To enable those engaged in agriculture the freedom and flexibility to operate their farms effectively and efficiently without undue interference from the intrusion of non-agricultural, conflicting uses;
- To recognize the legitimate needs and requirements of certain non-farm related uses to establish in the rural area;
- To direct non-agricultural uses to locate in settlement areas wherever feasible and possible;

OPA 14 only adds that protections of prime agricultural land are to sustain the agricultural industry and promote local food production.

Section 1.7(h) of the Strathroy-Caradoc Official Plan states that there should be regard for orderly development of safe and healthy communities. OPA 14 has removed this specific reference but instead directs the reader to the PPS that maintains this policy.

Within the Strathroy-Caradoc Official Plan, Section 5.3.1 (Agricultural) identifies the intent of the 'Agricultural' policies is "to ensure the continuation of farming as the predominant use of this area – free in its ability to function and expand in accordance with sound farm management techniques and conservation practices and without the constraints imposed by potentially conflicting land uses. While land uses in addition to farming are permitted under certain circumstances, they are strictly controlled in terms of their type, scale, and location so as not to be detrimental to farming".

Section 5.3.1.1 (Primary Uses) identifies that, within the 'Agricultural' designation, the primary use of land shall be for the cultivation of land, the raising of livestock, and the growing of trees, and further, that a full range of agricultural activities shall be permitted including general farming, livestock farming, cash crop farming, market gardening, tobacco farming, specialty crops, horticulture, and forestry.

Section 5.3.1.2 (Secondary Uses) establishes that secondary uses, such as home occupations, secondary farm occupations, and uses that produce value-added agricultural products from the farm operation on a property may be permitted. Further, farm-related commercial and farm-related industrial uses may be permitted in accordance with the following:

- The use is to be small in scale;
- The use is to be directly related to the agricultural operation; and
- The use is in close proximity to the farm operation.

Secondary farm occupations conducted within a building other than a dwelling may be permitted on a farm in accordance with Section 5.3.1.9, subject to the following evaluation criteria:

- The use remains clearly secondary to the agricultural use;
- The use is agriculturally related or does not adversely affect neighbouring agricultural operations or the rural character;

- The use is operated only by those residing on the property including not more than one assistant; and,
- The building containing the use is in close proximity to existing buildings on the farm.

OPA 14 amended the permitted uses to eliminate the primary and secondary uses specifically addresses subordinate uses in policies. The proposed use in this case would be referred to as “On-Farm Diversified Uses” which would allow for home industrial or in this situation Contractor’s Yard. Section 4.2.1.9 (in OPA 14), requires that the use does not impact agricultural uses on the property or adjacent properties, is a maximum of 2% of the property, that buildings cover only 20% of the lands used by the use. The policies also include the requirement of the zoning by-law to include specific uses and development standards and that site plan approval is required for all such uses.

Comments on Conformity with the Strathroy-Caradoc Official Plan:

- The proposed site-specific use will be expanding into prime agricultural land and has the potential of impacting the farm operation to east of the property as the storage materials will be adjacent to that property line.
- The non-agricultural uses of this size (greater than the 2%) are to be directed to the settlement areas.
- The proposed use does not require large volumes of water and will not generate large effluent. The property is currently serviced using private water and sanitary services.
- The lands are located on Calvert Drive and as noted a new driveway was needed since the original application as a result of it having negative impacts on the adjacent neighbour.
- The use is not likely to have a significant increase in traffic to a point of impacting the County Road.
- The proposed use will be owned and operated by the owner of the agricultural property.
- The proposed use is not a farm related use, so it is subject to strict controls in terms of the type, scale, and location.
- The secondary uses and secondary farm occupations policy evaluation criteria are no longer met with the larger operations and therefore no longer appropriate for the lands.

In light of the above, it is staff’s opinion that the application does not conform to the applicable policies of the Strathroy-Caradoc Official Plan respecting agriculture-related secondary uses within the area designated as ‘Agricultural’.

Strathroy-Caradoc Zoning By-Law No. 43-08

With respect to the Zoning By-law Amendment, the applicant has submitted a zone change application to amend the site-specific zone for the property. The property is currently within the site specific ‘General Agricultural (A1-13) Zone’. The site-specific zone allows for a contractor’s yard that is a maximum of 1942.5 m² of outside storage which is 2% of the land area and 511m² for the Secondary Farm Occupation.

Section 4.27 of the Strathroy-Caradoc Zoning By-law contains provisions guiding Secondary Farm Occupations:

- The use shall be secondary to the primary farming operation of the land;
- The use shall only be permitted on lots greater than 4 ha (9.8 ac);
- A secondary farm occupation must be operated by a person residing on the lot, and at no time shall any secondary farm occupation employ more than 3 persons who do not reside on the lot;
- The size and nature of the secondary farm occupation shall not reduce the ability of the land to be used for agricultural purposes;
- No secondary farm occupation shall create or become a public nuisance, particularly with regard to noise, traffic, parking, light, or night-time operation or shall open storage be permitted in the front or exterior side yard;
- There shall be no product on display or sign permitted other than 1 non-illuminated sign, in accordance with the Municipality's sign by-law;
- Certain uses are prohibited from being considered a secondary farm occupation; and,
- Only 1 secondary farm occupation shall be permitted on a lot.

The proposed expansion of the contractor's yard use will continue to comply with this secondary use, lot area and being only one occupation on the lot. However, it has shown to be a nuisance to the adjacent property and the use has reduced the ability of the land to be used for agricultural purpose. Lastly, with the expansion of the use in it is possible to see how the operation will employ more than 3 people that do not reside on the property in the future as the current, smaller, operation employs two non-resident employees. The impact on the adjacent property would be a concern given that the storage area is abutting the property line as such buffer areas would need to be secured during a site plan approval process.

Site Plan Approval

The property is currently subject to site plan approval that was received in 2019. The current operation, specifically the new access to the Contractor's Yard is not shown on the site plan and will need site plan approval amendment. The current proposal exceeds the limits of the site plan approval and as such if Council were to approve the proposed rezoning it would require a site plan approval amendment.

CONSULTATION

Public Meeting

The application has been circulated to agencies and the public in accordance with the requirements of the Planning Act. This included the circulation of the Notice of Public meeting to property owners within 120 metres of the subject application on November 14, 2023.

At the time of writing the subject report the following department and agency comments were received:

County Safety and Standards Officer advised of no comments.

County Engineer advised that they had no comments on the rezoning. It is noted that the application to permit second access to be upgraded from an agricultural access is being reviewed but is pending this rezoning.

Director of Engineering and Public Works advised no comments but would be pro.

Director of Planning and Building advised while the Official Plan permits small rural businesses on farm properties, called 'on-farm diversified uses', it also seeks to balance supporting on-farm diversified uses with the need to protect agricultural land for agricultural land uses, and avoid agricultural lands becoming alternative sites for the location of large businesses. The purpose of limiting on-farm diversified uses to 2% of the farm is to achieve this balance and to recognize that as such businesses grow, there often comes a point where they become more suitable in settlement areas.

STRATEGIC PLAN ALIGNMENT

This matter is in accord with the following strategic priorities:

- 1) *Economic Development:* Strathroy-Caradoc will have a diverse tax base and be a place that offers a variety of economic opportunities to current and prospective residents and businesses.

This matter is not in accord with the following strategic priorities:

- 1) *Growth Management:* Strathroy-Caradoc will be an inclusive community where growth is managed to accommodate a range of needs and optimize municipal resources.

SUMMARY

Based on the above analysis staff are not supportive of the proposed rezoning as it is not considered to be consistent with the Provincial Policy Statement, not in conformity with the County of Middlesex Official Plan, Strathroy Caradoc Official Plan and does not represent good planning.

FINANCIAL IMPLICATIONS

None

ATTACHMENTS

Location Map

Original Site Plan

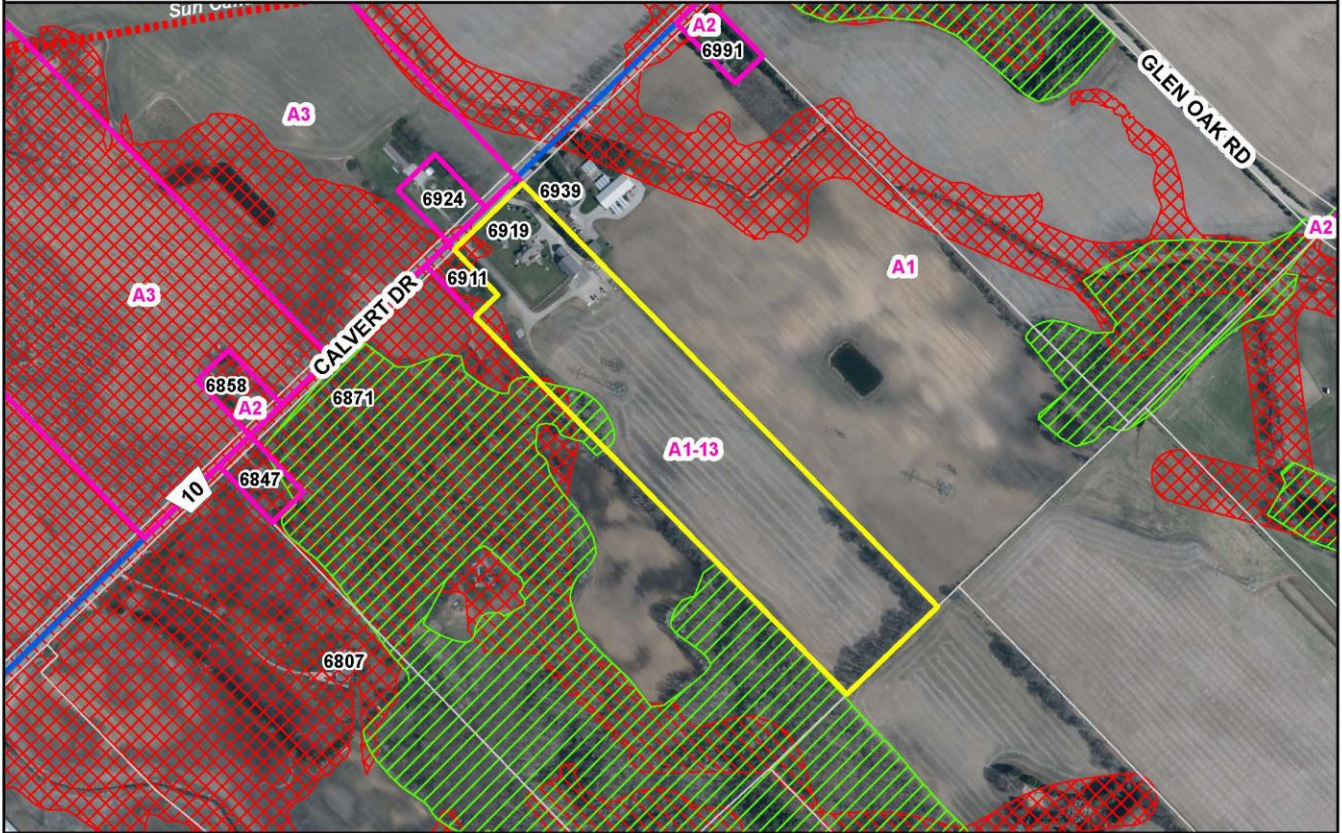
Proposed Site Plan

(Included on the agenda – Planning Justification Report)

Location Map



Location Map - Full Extent
 ZBA 20-2023: Jose & Michelle Luis
 6919 Calvert Dr.



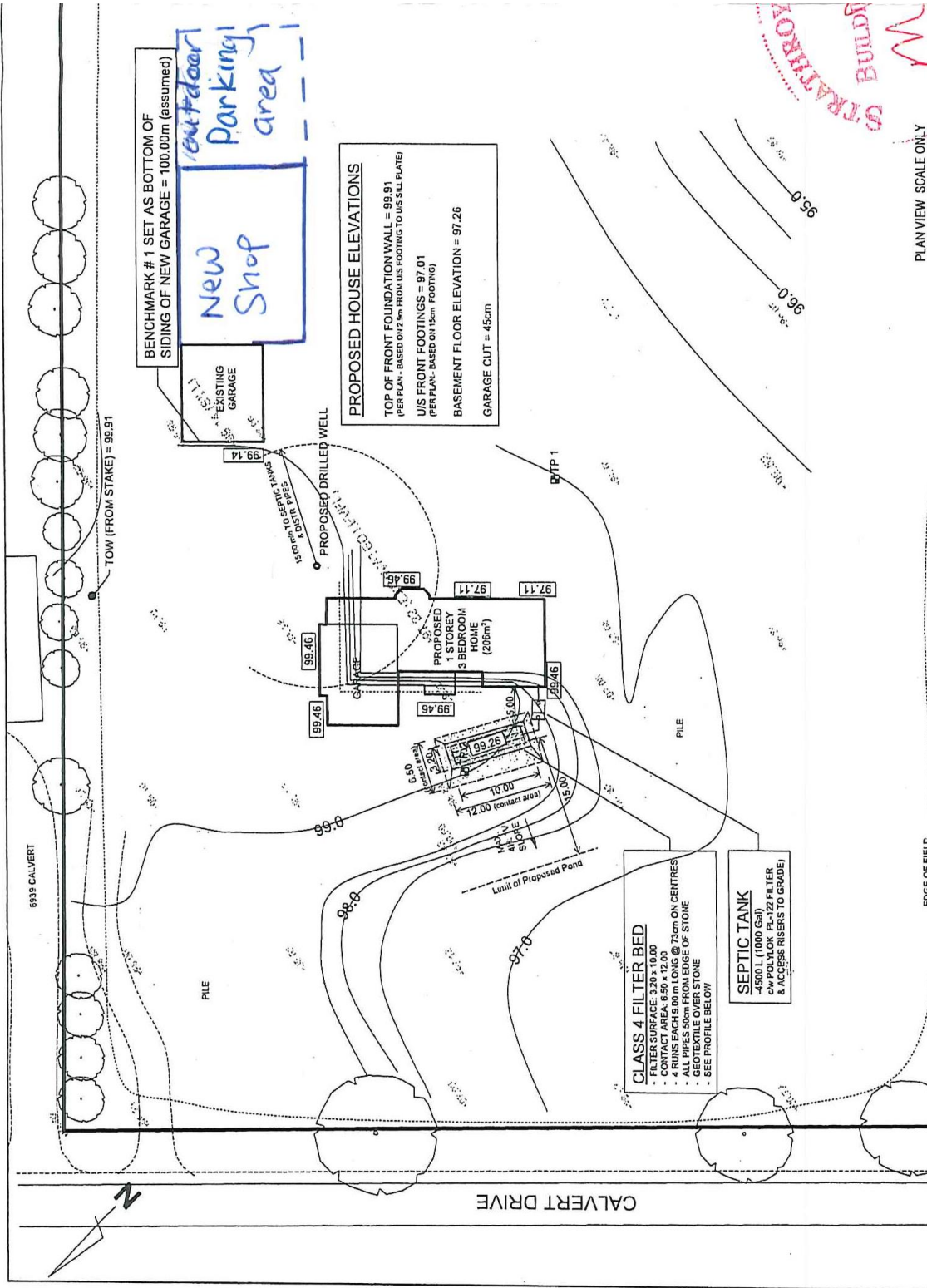
Legend

- Lands subject to zoning amendment
- Zone Boundary
- Parcels
- Conservation Authority Boundary
- Significant Woodlands

Road Classification

- Arterial

Original Site Plan



Proposed Site Plan

