



2021 Division Road North
Kingsville, Ontario N9Y 2Y9
(519) 733-2305
www.kingsville.ca
kingsvilleworks@kingsville.ca

Date: July 4, 2019

To: Mayor and Council

Author: Robert Brown, H. Ba, MCIP, RPP
Manager, Planning Services

RE: Application for Zoning By-law Amendment ZBA/10/19 by
2073834 Ontario Limited
795 Road 3 E
Part of Lots 5 & 6, Concession 3 ED

Report No.: PS 2019-022

AIM

To provide Council with information regarding a request for a zoning amendment to permit a medical marihuana production facility as a permitted use and address relief or exemption from certain provisions under Section 4.46 of the Kingsville Zoning By-law.

BACKGROUND

In April of 2014 Council approved new Official Plan policies to address the pending changes to Federal legislation governing the growing of medical marihuana which was transitioning from individual or designated growers to a commercial based industrial type of format. The ultimate intention of the change was to provide better quality control and reduce the amount of 'surplus production' from the individual or designated growing be diverted to the illegal drug trade. This change in the legislation was eventually challenged by individual and designated growers as reducing access to medical marihuana. The courts ruled in their favour and the Federal government was required to amend the new legislation to incorporate regulations for both the new commercial production, or Part 1 licensing and individual or designated growers, or Part 2 licensing under what was the Access to Cannabis for Medical Purpose Regulations (ACMPR). The ACMPR was replaced by the Cannabis Act in late 2018. While the Act continues to have different classes of licenses it continues to permit the former Part 2 operations with little to no regulatory ability at the municipal level. Part 1 or commercial operations do however require operators to comply with municipal regulations.

In Kingsville, Official Plan Amendment No. 3 established policies in the Official Plan for consideration of cannabis (medical marihuana) production. The implementing zoning by-law (129-2015) outlines the specific regulations.

DISCUSSION

The subject property is located on the south side of Road 4 E, just east of Hwy 3. It is a 13.25 ha (32.75 ac.) farm with an existing 6.68 ha (16.5 ac.) greenhouse facility. There is an existing approved site plan on the subject parcel. The applicant is seeking a zoning amendment to add a cannabis (medical marihuana) production facility as an additional permitted use utilizing the existing on-site greenhouse. Relief from certain provisions of the Medical Marihuana Production Facility regulations of Section 4.46 in the Kingsville Zoning By-law will be required, the details of which are outlined in the zoning section of this report.

From the end of 2017 into early 2018 there was a considerable level of interest from greenhouse growers resulting in several applications being filed for zoning approval to add medical marihuana as an additional permitted use. This interest sparked a couple of different directions from Council.

At the March 12, 2018 Council meeting Motion 222-1018 was brought forward and approved as follows:

That Administration review the Town's existing policies, by-laws and the Official Plan in relation to the production of medical marihuana and provide a report back to Council to provide recommendations as to whether Council should:

- Amend The Zoning By-law to allow for the production of medical marihuana in newly-constructed greenhouses that have proper odour control and security facilities, and if so, what is the process, the cost to undertake said amendment, and the implications of such an amendment; and
- Consider medical marihuana as a legitimate greenhouse crop.

Council received the report and three additional recommendation as follows:

Council direct the Manager of Planning Services to include a discussion and review of the current Official Plan policies on Medical Marihuana Production Facilities in the 5 year Kingsville Official Plan Review;

Council endorse the continued use of the existing Medical Marihuana Production Facility regulations in the Kingsville Zoning By-law and Kingsville Official Plan, and

Council direct the Manager of Planning Services to review and research the use of zoning regulations in combination with site plan approval to bolster odour regulations for medical marihuana production facilities.

As interest continued and concerns persisted Council put forward Motion 456-2018, as follows "That Council ask Administration to develop and present an interim control by-law that would place on hold any further or future zoning changes related to medical marihuana growing applications until such time as the Council of the Day can actually see

and smell the success of the 'no smell' and 'no night light effects' at property lines as promised in current applications.” While it was outlined that an interim control by-law was not a potential options moving forward Council still has the ability to defer or refuse further approval requests.

Two operations have submitted and received final site plan approval and started retrofitting or constructing but are still likely several months away from being licensed and in production. The subject application was received in May of this year and thus subject to Council’s direction on future approvals.

One added items that was raised during the initial rush of applications in 2018 was whether the applications were being filed purely on the basis of speculation to add value to an existing greenhouse operation. While several of the initial applications were actively seeking licenses there were also applicants that were not. There has been some consideration by staff that future applications should only be presented to Council for approval if a property owner is actively seeking a Health Canada license to produce. With recent changes to the Health Canada application process this could be very difficult to implement. The other factor is that this is not a planning rationale for refusal or deferral as many planning applications are made where a property owner is seeking the initial approval of something in an effort to increase value, interest or attract a specific development. The principle difference with cannabis production is the limited long-term knowledge of daily operations, their potential impact and regulatory uncertainty.

1) Provincial Policy Statement (PPS), 2014:

Both the Ministry of Municipal Affairs and Ontario Ministry of Agriculture, Food and Rural Affairs have recognized that medical marihuana production can be considered an agricultural use similar to a greenhouse or winery. As such the proposed zoning amendment would be consistent with Provincial Policy Section 2.3.

2) County of Essex Official Plan

There are no issues of County significance raised by the application.

3) Town of Kingsville Official Plan

The subject property is designated ‘Agriculture’. The proposed application to rezone the parcel is for the retrofit or replace of an existing greenhouse operation which is consistent with the MMPF policies develop through Official Plan Amendment #3. The proposed use has also been assessed in the context of the policies outlined in OPA # 3 and is consistent with those policies.

4) Comprehensive Zoning By-law – Town of Kingsville

The subject parcel is zoned ‘Agriculture Zone 1, (A1)’ by the Kingsville Zoning By-law. The specific zoning amendment required for the subject property is as follows:

- i) permit medical marihuana as a permitted use in the agricultural zoning specific to the subject property;

Comment: The Official Plan Amendment #3 specific to MMPF outlined that for an existing greenhouse facility to be used for medical marihuana production a site-specific zoning amendment would be required to permit that use. The Kingsville Zoning By-law was specifically amended as part of the implementation of the MMPF Official Plan policies to clearly outline in the Zoning By-law that medical marihuana production was not included as an agricultural use. Therefore, an amendment is necessary to add it to the specific zoning on the subject property.

Grant relief or exemption from the following Sections of 4.46 (Medical Marihuana Production Facilities - MMPF):

- i. item d) which prohibits a MMPF as a secondary /accessory use;

Comment: Anything of an agricultural nature, growing crops, raising livestock etc. is not considered an accessory use or even secondary it is part of a diversified agricultural operation. However, since the applicant may continue to utilize the other greenhouse facilities in the interim for continued vegetable production it is important to clarify this point.

- ii. item e) outlines that secondary/accessory uses must be 100% associated with the MMPF;

Comment: By definition the proposed facility on the subject property will not have any secondary or accessory uses associated with the MMPF.

- iii. item g) which requires a minimum distance separation of 100 m (328 ft.) between a MMPF and any structure currently used for residential or institutional purposes (dwellings, schools, churches etc.)

Comment: The 100 m (328 ft.) setback was established based on an MOECC best practices standard for the location of light industrial uses which is 70 m (230 ft.) This was then rounded to 100 m as a precautionary measure given the absence of real world potential impact from a MMPF. As there has been some limited experience with Part 2 operations in Kingsville and the Aphria operations in Leamington the principle impact has become evident in the form of odour generation. This has more recently been further confirmed in consultation with other areas that also see interest in or development of medical marihuana facilities.

The closest single detached dwelling is approximately 58 m north of the existing greenhouse on a rural residential parcel owned by the applicant. As such the amendment will recognize that the 100 m setback will not be applicable to an off-site dwelling under the same ownership at the applicant.

There are three other dwellings in the area however all are located a minimum of 100 m or more from the subject greenhouse.

- iv. item i) require that the use of a MMPF on a lot not co-exist with any other use on the lot.

Comment: This is a limiting provision in the context of the definition of a MMPF. During the original development of the MMPF policies it was assumed that these facilities would be in industrial areas in large industrial buildings utilizing 100% artificial growing environments. These types of facilities draw a significant amount of energy through the use of grow lights. Now that greenhouse growing has become a possible alternative, utilizing nature light and supplementing with artificial it provides an alternative crop for greenhouse growers. However, as with any business, particularly farming, restrictions, which limit production to a single crop, limit the owner's ability to diversify the business. The limitation also would appear to be inconsistent with Provincial Policy that notes in Section 2.3.3 Permitted Uses, 2.3.3.1 states that, 'In prime agricultural areas permitted use and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses. Section 2.3.3.2 also noted, 'In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.'

With the above items in mind the zoning on the property will be amended to permit a MMPF on the subject lands. The amendment will also address each of the provisions in Section 4.46 which require relief or amendment as follows:

- i) item c) will be amended to permit residential uses accessory to or supportive of the agricultural uses on-site, including a MMPF;
- ii) item d), e) and i) will not be applicable to the subject property, and
- iii) item g) will not be applicable to an off-site dwelling under the same ownership as the applicant.

As a final note regarding the zoning it is important to understand that the approval of the requested zoning on the property does not automatically permit a MMPF to start operations. Item a) of Section 4.46 requires the applicant to have a current valid Part 1 license issued by Health Canada prior to starting production. The applicants are aware of this and would need to proceed with the licensing process if the requested amendment is approved and then move forward with establishment of a MMPF.

More recently Health Canada established new application requirements that outline a prospective grower must fully establish a facility, i.e. be fully able to operate, prior to even the submission of a licensing application. Although there is some speculation that this may be a temporary measure to assist in the backlog of applications at Health Canada it represents a significant control measure, even if temporary.

This can result in one of two options moving forward:

- i) grant the zoning approval, as it is highly unlikely, because of the speculative nature of the investment, that a facility would become operational on the subject property, or

- ii) granting any approval at this time to permit an MMPF is premature because the applicant, or any land owner is zoning the property purely on a speculative basis and not actively pursuing a Part 1 license.

Site Plan Approval

As per Section 4.46 b) site plan control is to apply to an MMPF. The site has an existing site plan approval and associated site plan agreement. If plans to develop an MMPF on the site proceed a new site plan approval will be required. At that time issues such as fencing, lighting and odour control would be incorporated as part of the amending agreement.

LINK TO STRATEGIC PLAN

Manage growth through sustainable planning.

FINANCIAL CONSIDERATIONS

There will be an increase in assessment as a result of the application.

CONSULTATIONS

Public Consultations

Property owners within 200m of the subject site boundaries received the Notice of Public Meeting by mail. The notice was also posted again to the Town website along with the plans and elevations.

Agency & Administrative Consultations

Municipal Staff and outside agencies have been provided with information on the proposal and their comment is outlined as follows:

Agency or Administrator	Comment
Essex Region Conservation Authority Watershed Planner	<ul style="list-style-type: none">• ERCA comment is attached as Appendix 'C'.
Town of Kingsville Management Team	<ul style="list-style-type: none">• Similar to other application for zoning approval for MMPF's the Town can address issues such as lighting, fencing, buffering and security details through the site planning process
County of Essex	<ul style="list-style-type: none">• No comment has been received• Any modifications to existing access would require a permit from the County• Any new buildings on the site would need to comply with County Road setbacks.

RECOMMENDATION

It is recommend that:

Council defer zoning by-law amendment application ZBA/10/19 to rezone lands outlined in Appendix A attached, to permit a medical marihuana production facility as an additional site-specific permitted use until such time as:

the Greenhouse Policy Review Committee has concluded and any recommended policy updates approved by Council, and

Council has lifted the moratorium on further zoning approvals to permit medical marihuana production facilities.

Robert Brown

Robert Brown, H. Ba, MCIP, RPP
Manager, Planning Services

Peggy Van Mierlo-West

Peggy Van Mierlo-West, C.E.T.
Chief Administrative Officer