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Date: April 14, 2021

To: Mayor and Council

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Manager, Planning Services

RE: Combined Application for Official Plan Amendment OPA/01/2021 &
Zoning By-law Amendment ZBA/01/2021 by 2610349 Ontario Ltd.
45 and 49 Division St. N., Part of Lots 3, 4 & 5 W Watermill St., Plan

Report No.: PS 2021-018

AIM

To provide the Mayor and Council with details on a requested Official Plan amendment and Zoning By-law amendment to permit the development of a new professional office building on lands located at 45 and 49 Division Street North in the Town of Kingsville.

BACKGROUND

The Town of Kingsville has received the above-noted applications for lands located on the east side of Division St. North, between Pulford St. and Beech St. The subject property is designated 'Central Commercial' (45 Division St. N) and 'Residential' (49 Division) by the Official Plan (see Official Plan Map attached) and zoned 'General Commercial Exception 4 (C4-4)' (45 Division) and 'Residential Zone 1 Urban (R1.1)' (49 Division) under the Kingsville Comprehensive Zoning By-law. (see attached Zoning Map)

Together the subject lands are 2,302 sq. m (24,779 sq. ft.) in area with 40.37 m (132.4 ft.) of frontage. Each of the properties contain single detached dwellings. The dwelling at 45 Division St N is used as an engineering office (N. J. Peralta Engineering Ltd.) with the one at 49 Division St N a vacant residence. The applicant is proposing to remove both buildings and redevelop the lot with a two storey office building, being 8 m (26 ft.) in height and 553 sq. m (5,952 sq. ft.) in area, with associated parking area (see Appendix A).

DISCUSSION

1) Provincial Policy Statement (PPS), 2020:

Part V Policies

Section 1.1.2: Sufficient land shall be made available to accommodate an appropriate range and mix of land uses to meet projected needs for a time horizon of up to 25 years, informed by provincial guidelines. However, where an alternate time period has been established for specific areas of the Province as a result of a provincial planning exercise or a provincial plan, that time frame may be used for municipalities within the area.

Within settlement areas, sufficient land shall be made available through intensification and redevelopment and, if necessary, designated growth areas.

Comment: Smaller communities rarely have a surplus of commercial property. Within that limited inventory there may also be properties that are not well suited or properly located for a given use further limiting the supply and choice. The proposal on the subject property is a limited, localized expansion and intensification to accommodate an existing business which is an important part of the community as a whole and the downtown core.

1.1.3.1 Settlement areas shall be the focus of growth and development.

1.1.3.2 Land use patterns within settlement areas shall also be based on a range of uses and opportunities for intensification and redevelopment in accordance with the criteria in policy 1.1.3.3, where this can be accommodated.

Comment: The proposed use is within the settlement area of Kingsville and in the downtown core. This is a variant area with an existing mix of uses that have co-existed for many years.

1.1.3.3 Planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

Comment: Although the development of the new office building requires additional lands it represents a redevelopment of the two existing properties while maintaining an existing business in the downtown core. The two buildings on the site, one a former rental unit and the other a converted dwelling (current office) will be removed however the dwelling used as the office is proposed to be relocated and repurposed as a new single detached dwelling thus reusing existing building stock and not leading to any net loss of residential stock.

1.1.3.4 Appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety.

Comment: The proposed development does not pose a risk to public health and safety. The building placement and design have been undertaken with recognition of the abutting residential use to the north and east.

1.1.3.6 New development taking place in designated growth areas should occur adjacent to the existing built-up area and should have a compact form, mix of uses and densities that allow for the efficient use of land, infrastructure and public service facilities.

Comment: The subject area around the subject property is very much a mix of uses, densities has a compact form and takes full advantage of the existing infrastructure. The new development will not introduce a new use to the area but will provide the ability of the existing business to grow in place and continue to be part of the surrounding area and economy.

2) County of Essex Official Plan

The County of Essex is the final approval authority for all Official Plan amendments. The subject lands are within the primary settlement area.

Section 3.2.2 Goals of the Official Plan outline the following under item f) To increase the opportunity for job creation within each local municipality by attracting and maintaining industries and businesses closer to where County residents live.

Section 3.2.4 Primary Settlement Areas outlines Downtown/Uptown areas should maintain and/or enhance the existing character of these areas. Mixed-use development and an accessible pedestrian oriented streetscape are encouraged. The preparation of Community Improvement Plans are also encouraged.

Comment: The proposal is particularly supportive of Section 3.2.2 as the expansion of the Central Commercial is what will assist in permitting the new development and a large portion of the staff that will occupy the new building live in Kingsville.

The use on the property is not changing. A new building will be located on the site that will add to the diverse existing character of the area. The area itself has evolved over many years with additions and removals. One of the main reasons the applicant has indicated their preference to remain in this location is its proximity to the downtown and the benefit that has for the business and its employees.

3) Town of Kingsville Official Plan

The Official Plan for the Town of Kingsville designates the property at 45 Division St N as 'Central Commercial.' The property at 49 Division St. N. is within the Residential designation. The proposed Official Plan Amendment will designate the property at 49 Division as 'Central Commercial' and both properties will be placed into a site-specific special policy area to outline specific criteria for the development.

Section 2.1.1 Land Use Planning Principles outlines the following applicable items:

- a) to create more compact development within designated and fully serviced urban settlement areas;
- b) to provide a broad range of housing, employment and leisure opportunities for a growing and aging population;
- c) to promote opportunities for intensification and redevelopment within built-up areas which are supported by the appropriate levels of infrastructure and public service facilities;
- d) to discourage urban type development outside of the designated settlement areas of the Village of Cottam, the Hamlet of Ruthven and the Town of Kingsville;
- e) to create and maintain an improved balance between residential and employment growth;
- f) to maintain and enhance the uptown area of Kingsville and the commercial area of Cottam as focal points where a broad range of community and commercial facilities and services and housing and employment opportunities are available at higher densities in a mixed use environment;
- m) to accommodate future job creation and employment opportunities in an environmentally sustainable and cost effective manner;

Comment: The proposed office development conforms with many of the above noted items.

Section 2.6 Buffering

Adequate buffering will be required between all uses of land where there may be a conflict such that one use will detract from the enjoyment and/or functioning of the adjoining use. Such buffering may include landscaping using local native plantings, screening and greater separation distances between incompatible uses. Required distance separations shall be established in the Zoning By-law that reflect the Ministry of the Environment guidelines regarding appropriate separation distances and buffering between industrial and sensitive land uses.

Comment: The applicant has requested a reduction in the north side yard setback from 6 m (20 ft.) to 4.5 m (15 ft.). The applicant has however consulted with the abutting neighbour on the reduction and agreed that the side yard will remain passive green space. The building is also designed to safeguard privacy through the placement of the window on the north wall and is stepped back in the northwest corner to preserve sight lines for the northerly neighbour. The existing fence along the shared lot line will remain. In addition it is important to consider that the proposed development on the site is not a new use but rather an expansion. It is not anticipated that a significant change will occur in the day-to-day interactions of the subject property and remaining residential use to the north and east. Appendix B includes a variety of elevations for the development.

Section 3.6.1 e) provide older residential neighbourhoods with protection from non-residential redevelopment pressures;

Comment: The area in question is an older area of the community but is not exclusively residential. Both commercial and institutional uses are located to the west and south. Non-residential redevelopment has occurred in the area already. The proposed does not represent a new use in the area. It is an expansion of the use on lands currently owned by the applicant and is being done in a way, sensitive to the residential neighborhood.

Section 8.11.1 Amendment Procedures

Should changing conditions necessitate the need for an amendment of the Official Plan or the Zoning By-law, in accordance with the Planning Act, due regard shall be given to the following criteria:

- a) the need for the proposed use;
- b) the extent to which the existing areas in the proposed categories are developed, and the nature and adequacy of such existing development;
- c) the physical suitability of the land for such proposed use, and in the case of lands exhibiting a potential hazard, consideration shall be given to:
 - i) the existing environment and/or physical hazards;
 - ii) the potential impacts of these hazards; and
 - iii) the proposed methods by which these impacts may be overcome in a manner consistent with accepted engineering techniques and resource management practices;
- d) the location of the area under consideration with respect to:
 - i) the adequacy of the existing and proposed highway system in relation to the development of such proposed areas;
 - ii) the convenience and accessibility of the site for vehicular and pedestrian traffic, and the traffic safety in relation thereto; and
 - iii) the adequacy of the potable water supply and distribution system, sanitary sewage collection and treatment facilities, stormwater management facilities, and other municipal services in view of the policies contained in this Plan;
- e) the compatibility of the proposed use with uses in adjoining areas;
- f) the impact of such proposed use on the surrounding areas with respect to any possible depreciating or deteriorating effects;
- g) the potential effect of the proposed use on the financial position of the Town and its capacity to provide proper municipal services;
- h) the potential effect of the proposed use in relation to the intent and implementing regulations of the Environmental Protection Act, Ontario Resources Act, Pesticides Act, Safe Drinking Water Act and Environmental Assessment Act;
- i) the regulations of the Essex Region Conservation Authority;
- j) compliance with the general development policies and the more specific and relevant land use policies of this Plan, as well as the specific

- requirements for the particular use in the Zoning By-law;
- k) conformity with the County Official Plan and Provincial Policy;

Proposals for expansions to designated settlement areas or for alterations to employment areas for non-employment uses will require an amendment to this plan and shall require a Comprehensive Review in accordance with the provisions the Provincial Policy Statement.

8.11.2 Interpretation

The intent of the Plan shall, in all cases, be considered flexible, and no strict interpretation of any figure or policy statement is intended. Appropriate variations may be made to these and to the other statements herein where, in the opinion of Council, they are deemed to be necessary for the desirable development of the planning area, provided that the general intent of the Plan is maintained. Amendments to the Plan are not required in order to make minor adjustments to the land use boundaries provided the intent of the Plan is preserved and the land use does not exceed the boundaries of the established settlement area.

Comment: The Official Plan is not intended to be a static document. A community should be considered a living breathing thing that has to adapt to change. That is the purpose of the amendment to the Official Plan and the purpose of exercises such as the recently completed five-review process. The initial creation of an Official Plan and the subsequent reviews cannot always anticipate the needs on each individual lot. Amendments can be a significant undertaking and all require a level of justification consistent with the requested change.

The subject amendment represents a need for additional space to expand an existing, established professional office in its existing location. This is not the introduction of a new, untested use with no history of interaction. It is located in an area of mixed use, on an arterial road within the downtown core of Kingsville. The downtown supports and relies on several similar professional businesses which in turn help to keep the downtown economy strong and vibrant.

In addition to staff review of the proposed applications the applicant was required to provide an independent planning rationale report which is attached as Appendix C.

4) Comprehensive Zoning By-law – Town of Kingsville

The subject lands are split zoned at present. 45 Division St N is 'General Commercial Exception 4 (C4-4)' and 49 Division St N is 'Residential Zone 1 Urban (R1.1)'. The application for a Zoning Bylaw Amendment (ZBA/01/2021) would consolidate the lands under one new site-specific commercial zone to establish the proposed professional office use, outline the maximum permitted height 8 m (26 ft.), establish the minimum required north side yard of 4.5 m (15 ft.) along with the passive use of the northerly side yard.

If the requested zoning and official plan amendment are approved the applicant will also be required to submit for site plan approval consistent with the plans included for review with this report.

Discussion Conclusions

While staff remain in support of the proposed development from a planning standpoint, it is important to acknowledge what we see as a couple of valid points raised in the public comment. With all development review applications, there is a concern for the impact of an approval decision on the area where the proposal is located. The subject site does abut residential uses on two sides, to the east and to the north. Although the use is not changing, the scale and character of the proposed office will be a change in the area. The key to the significance of that change is based on the overall plan and how it is executed.

The second point, which is often raised and does have to be given consideration is the issue of precedent. The feedback from the area residents centres on the change in the zoning from residential to commercial. If a resident cannot rely on the designations or the zoning of a property or properties in a given area what assurance is there of making an informed purchase decision. This is always a valid point and is why changes such as that proposed have to be viewed from both the negative and positive impact perspective.

LINK TO STRATEGIC PLAN

Support growth of the business community.

FINANCIAL CONSIDERATIONS

The proposed development will result in an increase in assessment. Development charges and building permit fees will be collected at the permit stage. The applications support the growth of an existing business in the downtown and within the community as a whole. This will continue to maintain existing employment opportunity and potentially lead to additional employment in the future. The business also represents a significant investment in Kingsville for the future.

CONSULTATIONS

Public Consultations

In accordance to O. Reg 545/06 of the Planning Act, property owners within a minimum of 120m of the subject site boundaries received the Notice of Public Meeting (dated March 26th) by mail. The Notice was also posted to the Town's website on the same date. Public comment from both the February 16th and March 16th PAC meeting and comment from the circulation for the April 26, 2021 meeting of Council are included as Appendix D. Comments submitted after the writing of the report have been forwarded to Council as they were received.

The motion from the March 16th PAC meeting is as follows:

PAC – 10 – 2021

Moved by Wayne Latam, seconded by Lorrie Mensch that the applications presented be forwarded to Council for consideration.

Public Comment To Date

Issues raised as part of the discussion to-date include the follow:

i. Buffering, screening and setbacks

Comment: The applicant is requesting one revised reduction to the required northerly side yard setback from the required commercial setback of 6 m to 4.5 m. This reduction was reviewed in follow-up discussion and is acceptable to the abutting neighbour at 57 Division St N subject to the use of the northerly side yard remaining passive green space.

ii. Privacy

Comment: The applicant is aware of the concern related to privacy with the proposed use and have addressed these concerns in the design with the placement of second floor windows, fencing and landscaping to enhance not detracted from the area.

iii. Character and style of building

Comment: The building is modern and consistent with current professional office styles. The area is a wide mix of uses and building styles, including commercial, institutional and residential. The introduction of a new use to an area does not have to dramatically alter the character of the area and does not have to be built in the same style. This area has not remained static over the years and includes additions such as the church, the Red Apple, the recent removal of the dwelling at Sauve Auto, as well as changes and exterior renovations to homes and businesses in the area. A new use in an area can also have a positive impact as it is seen as positive investment which reflects well on the area.

iv. Uses permitted by Zoning

Comment: The current zoning on the properties in question is mixed, residential and commercial. A wide array of uses are permitted and it is understood that the neighbouring property owners would like some level of certainty moving forward that what is being proposed today is what will develop. Amendment requests such as this typically take this into consideration and the site-specific zoning recommended will limit the uses.

v. Impact on abutting residential uses

Comment: The design and placement of the building on the lot has been carefully considered in light of the abutting residential uses to the north and east. The use itself is not changing from what has been in the area for some 40 years so if there has not been a compatibility issue to-date and there is no reason to believe that a new building would change that day-to-day interaction. Expansion of development on the subject lands updates the

properties and will continue to act as a buffer between the commercial to the south and residential to the north.

vi. Noise, light, pollution, security and pests

Comment: The use that is proposed is not changing, there will be a new building, a larger parking lot and appropriate landscaping and buffering. Lighting is required to be full cut-off and dark sky compliant. A photometric plan can also be requested to detail all proposed lighting on the property. There is no indication that garbage will be via a dumpster and is likely handled as road side pick-up, similar to residential uses in the area. The office operates during the day typically 8am to 6pm when many, but not all residents, are at work and not readily impacted by the day-to-day operations. The office may have a security system for their own piece-of-mind and the day-to-day attendance again will not be dramatically changing.

vii. Precedent

Almost all planning decisions set some level of potential precedent that must be considered. It is simply fair that all ratepayers should be given the same level of consideration. That being said it is equally rare to find two proposals and two locations that are identical where a planning decision to approve should be automatic because the same project was already approved at a different location.

For the proposed development the details are as follows:

Existing Use – 45 Division St N contains a single detached dwelling that has been used as a professional office for the last 30 plus years, the dwelling at 49 Division St N is currently vacant;

45 Division St N – Official Plan designation is Central Commercial, Zoning is C4-4, both permit the existing and proposed development on the site;

49 Division St N – Official Plan designation is Residential, Zoning is R1.1 both require amendment to a commercial classification to support the proposed development.

If these circumstances exist elsewhere in Kingsville then it is agreed that a similar level of consideration must be given to the location if Council grants approval of the proposal at 45 and 49 Division St. N. Approval of this project does not establish a precedent that would subject all residential lands within the Town to potential change. Any area abutting a commercial, industrial or even residential land use, particularly in a growing community, can be subjected to potential expansion. However, in all cases that expansion has to be done in an orderly way that minimizes impact to the existing uses.

A key consideration for all decisions where an Official Plan Amendment is considered is, “why here?” Changing land use designations is not a common undertaking and any shift from one land use designation to another should

review if other locations are available. From reviewing the applicants material, speaking with the applicant and reviewing what other commercial lands are available it is clear that there is not a significant inventory of appropriate commercial lands. A large percentage of the professional office space in Kingsville is in the downtown core. Other commercial areas are high traffic, storefront oriented. Most professional offices do not rely on foot or vehicle traffic, need quieter settings and would prefer not to have the unnecessary premium expense that comes with high visibility locations. Supporting the growth of an existing business in its existing location helps preserve commercial lands in other locations that are better suited to different uses.

viii. Heritage Considerations

The existing dwelling at 49 Division St N is included on the Town's list of properties with heritage interest. A request for comment was forwarded to the Heritage Committee as a request for demolition will trigger assessment of the value of retaining or removing the dwelling from the interest list.

Comment: the KHAC, in its advisory role, has recommended (Appendix F) that the dwelling at 49 Division St. N. can be removed from the Heritage Interest List. If Council is in agreement with this recommendation Council must pass a resolution formally accepting the Committee's recommendation, and authorizing that the property be removed from the Heritage Register.

Agency & Administrative Consultations

Outside agencies are circulated at the time the application is submitted. Comments received are included below. In accordance with O. Reg 545/06 of the Planning Act, Agencies also received the Notice of Public Meeting by email.

1) Essex Region Conservation Authority (ERCA)

ERCA has expressed no objection to the proposed zoning and official plan amendments. Their full comment is attached as Appendix E

2) Technical Advisory Committee

Building Services will review the plans for items related to the Building Code at the permit stage.

Infrastructure and Engineering Services (IES) will require a full storm water management plan and servicing drawing at the site plan approval stage for review and comment. Traffic to the site is not anticipated to have any significant impact on the area as it is an existing use. Final driveway geometry will be reviewed at the site plan stage.

RECOMMENDATION

That Council:

Adopt Official Plan Amendment No. 12 (OPA 12) to re-designate lands located at 49 Division St. N., from 'Residential' to 'Central Commercial' in the Town of Kingsville and direct administration to forward the amendment to the County of Essex for final approval.

Approve Zoning By-law amendment application ZBA/10/2021, to implement OPA 12, rezone properties located at 45 and 49 Division St. N., from Residential Zone 1 Urban (R1.1)' and ' General Commercial Zone 4 Exception 4 (C4-4)' to General Commercial Zone 4 Exception 7 (C4-7)' and adopt the implementing by-law subject to final approval of OPA 12 by the County of Essex.

Robert Brown

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