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Date: March 2, 2018

To: Mayor and Council

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

RE: Zoning By-law Amendment ZBA/24/17 &
Site Plan Amendment SPA/21/17
1552843 Ontario Ltd.
950 Seacliff (County Road 20)
Pt. Lot 6, Concession 1 ED, Part 1 & 2 RP 12R 23813

Report No.: PDS 2018-009

AIM

To provide the Mayor and Council with information on a requested zoning by-law amendment to update and provide clarification of the existing site-specific zoning on the property which permits a contractor's yard, shop and office and provided details of a requested site plan amendment.

BACKGROUND

The Town of Kingsville has received the above-noted application for lands located on the north side of Seacliff Drive, west of Graham Side Road. The subject parcel is designated 'Agriculture' by the Official Plan and is zoned 'Agricultural (A1-22)' under the Kingsville Comprehensive Zoning By-law.

The subject parcel contains a building which houses a contractor's shop and office with the surrounding lands used as a contractor's yard. In March of 2008 Council approved a zoning amendment on the property to permit a contractor's yard, office and shop in a detached accessory building. This zoning was predicated on the basis that the use would be subject to site plan approval, which was granted later in 2009 (see Appendix 'A') and that the property owner enter into an agreement with the Town that a single detached dwelling was to be constructed within 2 years of April of 2010.

March 22, 2017 – Planning & Development Services Report

In March of 2017 a report was provided to Council on the status of the dwelling construction on the property. (See Appendix 'B'). The recommendations of the report were for Council to receive the report for information purposes and to have the property owner submit an application for consideration of a zoning amendment to address the use and continued operation of a contractor's yard and shop on the subject lands at 950 Seacliff Drive (County Road 20). Council did receive the report however did not adopt the second recommendation and directed staff to enforce the terms of the 2010 agreement.

The property owner was contacted and several consultations have taken place to review the issue and direct him to fulfill the terms of the agreement. However, the dwelling has not been completed and the applicant has provided an outline as to the reason. (See Appendix 'C').

At present there are affectively three issues in play:

- 1) A zoning amendment request to clarify the current zoning.

Comment: The zoning amendment portion of the application was suggested as a requirement by Planning staff as what is currently in the zoning by-law is both unclear, not consistent with the regulations in the current zoning by-law and contains a number of errors. The requested zoning amendment is a separate issue from that of the outstanding agreement and should be addressed regardless of any other conclusions.

- 2) An amendment of the existing site plan approval to permit the relocation of the contractor's shop portion shown on the 2009 site plan to the rear of the property as shown on the revised site plan, and

Comment: The 2009 approved site plan (Appendix 'D') showed a 6,000 sq. ft. office and showroom area and a 9,600 sq. ft. shop and indoor storage area as part of a single building. The as-built site plan (Appendix 'E') shows only a 6,400 sq. ft. building which combines all three uses. The proposed amendment would see the original proposed shop and indoor storage area moved to a new detached structure toward the rear of the lot. The existing building would then house the existing business office on the main floor along with a showroom area for the display of items used and available to home owners seeking the services of the business. The existing second floor area would then be converted to house a dwelling unit as a possible alternative to the construction of a stand-alone detached dwelling.

- 3) What actions Council wishes to take regarding the existing agreement.

Comment: The direction from Council in early 2017 was to enforce the agreement and direct the property owner to construct the single detached dwelling immediately to comply with the terms of the agreement. Council will recall that in that report it was noted that a legal opinion at the time concluded that enforcement of the agreement could be problematic particularly without some form of significant securities to provide the Town with resources that may be necessary to enforce. In Appendix C the applicant has outlined

the rationale for the current circumstances and it will be up to Council to determine what actions it wished to take. The options are as follows:

- i) Enforce the existing agreement to require the construction of a single detached dwelling;

Comment: As noted there are no financial securities in place to offset the cost of forcing the terms of the agreement to be fulfilled and the agreement was never legally tied to the original zoning approval or site plan approval.

- ii) Consider the conversion of the existing second floor office area into an accessory dwelling unit to be in keeping with the spirit of the original agreement which then fulfills the agreement;

Comment: The applicant is prepared to move forward immediately with this proposal. The site plan amendment also allows for the collection of a financial security which can be directly related to the completion of both the new building and office area conversion to residential. In reviewing the existing agreement (Appendix H) it is also unclear as to whether this action wouldn't fulfill the terms of the agreement as 'residence' was not defined as a separate building. Although the site plan did show something on it at the time the dwelling agreement and site plan agreement were never linked or dependent on one another.

- iii) Scrap the agreement altogether and simply move forward with the existing use of the lot.

Comment: This would not be ideal as this can be interpreted in the future as a method to circumvent the terms of an agreement and also viewed as precedent setting.

DISCUSSION

1) Provincial Policy Statement (PPS), 2014:

There are no issues of Provincial significance raised by the proposed zoning by-law amendment.

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 amend the existing zoning on the parcel is consistent with the policies of the Kingsville Official Plan.

4) Comprehensive Zoning By-law – Town of Kingsville

The subject parcel is zoned 'Agricultural, (A1-22)' by the Kingsville Zoning By-law, and reads as follows:

““7.1.22 ‘AGRICULTURE EXCEPTION 22 (A1-22)’ (A1-36)

For lands known as A1-22 as shown on Map, Schedule “A” of this By-law.

a) Permitted Uses

- i) Uses permitted in Subsection
- ii) one home occupation in a detached accessory structures for a contractor’s office (including display and storage) and a contractor’s shop and yard.

b) Permitted Buildings and Structures

Those buildings and structures permitted under Subsection 7.1.

c) Zone Provisions

All lot and building requirements for the permitted buildings and structures shall be in accordance with Subsection 7.1 of this By-law with the exception of the following special provisions:

- i) only one dwelling per lot.
- ii) the required lot area shall be 7.0 hectares.”

The proposed amendment would delete the current ‘A1-22’ and replace it as follows:

“7.1.22 ‘ AGRICULTURE EXCEPTION 22 (A1-22)’ (A1-33 S – 43-2008)

For lands known as A1-22 as shown on Map 59, Schedule “A” of this By-law.

a) Permitted Uses

- i) **Those** uses permitted in Subsection 7.1
- ii) **A contractor’s yard, shop, office including display and storage**

b) Permitted Buildings and Structures

- i) Those buildings and structures permitted under Subsection 7.1 **including those for the permitted uses;**
- ii) **Buildings and structures accessory to the permitted uses.**

c) Zone Provisions

All lot and building requirements for the permitted buildings and structures shall be in accordance with Subsection 7.1 of this By-law with the exception of the following special provisions

- i) The required lot area shall be **as given on the date of passing of this by-law**
- ii) **The required rear yard setback shall be 3.0 m, minimum**

- iii) **All development on the subject parcel, excluding the construction of a single detached dwelling shall be subject to site plan approval in accordance with the Town's site plan control by-law.**

LINK TO STRATEGIC PLAN

Manage growth through sustainable planning.

FINANCIAL CONSIDERATIONS

The expanded development will result in an increase in assessment on the subject property once completed. As with other agricultural based commercial uses the tax classification of the property is based on the use not the zoning, as such the subject property is assessed and taxed on a commercial basis.

CONSULTATIONS

Public Consultations

In accordance to O. Reg 545/06 of the *Planning Act*, property owners within 120m of the subject site boundaries received the Notice of Open House/ Public Meeting by mail.

At the time of writing, one public comment was received from a Mr. Henry Vriesen, 1341 Briarwood Crescent, Kingsville, and is attached as Appendix E.

Agency & Administrative Consultations

In accordance with O. Reg 545/06 of the *Planning Act*, Agencies and Town Administration received the Notice of Public Meeting by email.

Agency or Administrator	Comment
Essex Region Conservation Authority Watershed Planner	<ul style="list-style-type: none">• Comment is attached as Appendix F• No objections
County of Essex	<ul style="list-style-type: none">• Indicated that all development on the property must maintain a minimum setback from the centre line of County Road 20 of 32 m (105 ft.).
Town of Kingsville Management Team	<ul style="list-style-type: none">• Collectively management has expressed concern that the maintenance on the site has not been upheld to a standard necessary based on its location to nearby residential lands to the south. <p>Comment: with the proposed amendment to the existing site plan agreement additional on-site details have been requested on the plan and wording is amended to more directly address ongoing maintenance on the site. In addition the amendment will now bring the agreement</p>

	<p>under the terms of the new 2015 site plan control by-law which has significantly stronger enforcement language and financial penalty provisions.</p> <ul style="list-style-type: none"> • The management team also discussed the enforcement of the existing agreement with the general opinion that while enforcement remains an option it would prove to be difficult and have the potential for significant financial impacts to the Town if the issue were forced particular since no financial securities were collected to cover cost in the event that enforcement was necessary.
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RECOMMENDATION

It is recommended that Council:

Approve Zoning Amendment application ZBA/24/17 to amend the existing 'Agricultural Zone 1 Exception 22, (A1-22)' to correct the noted errors, provide greater clarification as to the permitted uses on the site and adopt the implementing by-law.

Approve Site Plan Amendment application SPA/21/17 to permit the relocation of a proposed shop and indoor storage building to the northeast corner of the lot as shown on the attached site plan, and

Authorize the Mayor and Clerk to sign the amending site plan agreement and have said agreement registered on title.

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