

TOWNSHIP OF WELLINGTON NORTH

PUBLIC MEETING - MINUTES

Monday, April 8, 2013

The Public Meeting was held Monday, April 8, 2013 at 7:00 p.m. at the Township of Wellington North Council Chambers, Kenilworth to consider two Zoning Amendment applications.

Present:

Mayor: Raymond Tout
Councillors: Sherry Burke
Mark Goetz
Andy Lennox
Dan Yake

Also Present:

C.A.O./Clerk: Lorraine Heinbuch
Executive Assistant: Cathy Conrad
Township Planner: Mark Van Patter

Mayor Tout called the meeting to order.

Declaration of Pecuniary Interest:

None declared.

Owner/Applicant: Kenneth and Elizabeth McDougall and Colleen Newell

Location of the Subject Land

The location of the subject land is described as Survey Crown, Part Park Lot 5, Part 1 – RP 60R1496, and is municipally known as 321 Smith Street, Arthur Village. The property is approximately 1.85 acres in area

The Purpose and Effect of the Application

The Purpose and Effect of the amendment is to rezone the property from Residential (R3H) to an appropriate zone to permit redevelopment of the site for a gas bar with associated convenience store and drive-thru restaurant. For some time, the property has been used for an automobile repair establishment.

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Please note – Section 34 (12) of the Planning Act.

Information – At a meeting under subsection (12), the Council shall ensure that information is made available to the public regarding the power of the Municipal Board under subsection (14.1) to dismiss an appeal if an appellant has not provided the Council with oral submissions at a public meeting or written submissions before a By-law is passed.

1. Notice for this public meeting was sent to property owners within 120 m and required agencies and posted on the property on March 15, 2013.

2. Presentation by:

Mark Van Patter, Senior Planner, reviewed his comments dated April 3, 2013.

Council's task is to consider the merits of allowing a similar or more compatible use, than the existing auto repair operation. The Official Plan provides criteria for Council to consider in making such a decision. Would it be better to have a gas bar / convenience store / drive-thru restaurant? There is some risk that another purchaser could be found and the existing auto repair operation could just continue. The main impacts will likely be some increase in evening noise and light impacts, particularly on the dwellings to the east. The commercial user will be required by the by-law to provide a vegetative buffer / fence to mitigate impacts. I may have additional comments after the public meeting.

The subject property is described as Survey Crown, Part Park Lot 5, Part 1 – RP 60R1496, and is municipally known as 321 Smith Street, Arthur Village. The property is approximately 1.85 acres in area, 204.3 feet of frontage on Smith Street (Hwy 6).

The purpose of the amendment is to rezone the property from Residential (R3H) to an appropriate zone to permit redevelopment of the site for a gas bar with associated convenience store and drive-thru restaurant. For some time, the property has been used for an automobile repair establishment.

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The property is designated Residential in the Official Plan. The property is zoned Multi-Residential Holding (R3H).

Planning considerations include:

Official Plan Conformity of Proposed Use

The proposed gas bar / convenience store / drive-thru restaurant are all permitted within the Highway Commercial (C2) zone. Normally, rezoning to C2 would not be possible in this location as it would not conform to the Residential Official Plan designation.

“Legal” Non-Conforming Use

Notwithstanding the above, the property has been used for some time as an Automotive Service Station (permitted within Highway Commercial zone) and an Automotive Body Repair Shop (permitted within the Industrial zone). I am assuming that these uses were legally established - permitted and on-going prior to the property being designated and zoned for residential purposes (i.e. the existing use at the time was grandfathered in and allowed to continue). Council should satisfy itself, that this is the case. My own recollection over the last twenty years is that these uses have been on-going.

Non-conforming uses have their own body of law that protects them. They are allowed to continue indefinitely until they cease. Section 6.21 of the Wellington North Zoning By-law deals with such uses:

“6.21 Non-Conforming Uses

- a) This By-law shall not apply to prevent the use of any land, building or structure for any purpose prohibited by this By-law if such land, building or structure was lawfully used for such purpose on the day of passing of this By-law, and provided that it continues to be used for that purpose.

- e) Where, for any reason, a non-conforming use has ceased and is not resumed within a twelve (12) month period from the date of ceasing, such non-conforming use shall not be permitted to resume and any future use of land, building or structure shall thereafter conform to the permitted uses of the zone relating to the subject land.”

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Once the non-conforming use ceases on a property for a 12 month period, it shall not be permitted to resume. Then, only Residential uses would be permitted as specified in the Official Plan and Zoning By-law. However, within the 12 month period, there would be nothing to stop the auto repair / auto body operation from continuing should a new owner wish to carry on.

Status Zoning

The Wellington Official Plan in Section 13.8.1 notes that “*non-conforming status can impose serious hardship on a property owner*”. Section 13.8.2 goes on to allow Council to recognize a non-conforming use “*as a permitted use in the Zoning By-law, in accordance with its current use and performance standards. A Council may also consider zoning the property to allow a similar or more compatible use ...*”.

This is the basis of the current, proposed zoning amendment. Council’s task is to consider the merits of allowing a similar or more compatible use. The Official Plan, in Section 13.8.2, sets out a list of criteria that Council shall have regard for. I have added some preliminary comments below each.

- a) *the need for the change or extension of use;*

There is one gas provider north of the downtown that I am aware of, a card lock operation north of the subject property and on the other side of the Hwy. 6. I don’t know if there are any convenience / variety stores in the neighbourhood. I don’t know of any drive-thru restaurants north of the downtown.

- b) *the proposed use is not offensive with regard to noise, vibration, smoke, dust, fumes, odour, lighting and complies with the Health Protection and Promotions Act;*

It’s my impression that the existing auto repair and body shop pretty much kept 8 to 5 hours. On occasion, when I drove by in the evening, I don’t recall any activity. The proposed rezoning involves three separate uses. I am not sure of the hours of operation. There might be the potential for increased noise and lighting impacts in the evening.

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c) *compatibility;*

The following land uses are present, starting with the rear of the subject property and proceeding clockwise:

Rear - Zoned Residential R1B - Vacant on unopened road

West - Zoned Open Space OS - Township park and trees

Northwest Across Road - Zoned Neighbourhood Commercial (C3)
Dwelling / automotive?

North Across Road - Zoned Residential (R1B) - Dwelling

Northeast Across Road - Zoned Residential (R1B) - Dwelling

East - Zoned Residential (R1B) - Dwelling

Southeast - Zoned Residential (R1B) - Dwelling

The last two dwellings are the closest to the site, with the most potential for compatibility issues. The dwelling to the east is about 35 feet setback from the subject property, and has existing trees in the side yard. This dwelling currently experiences some noise and light impacts from Highway 6. The dwelling to the southeast is about 75 feet to the subject property. The site plan does not show the direction of drive-thru restaurant vehicles. However, the “menu board” is on the west side of the proposed building, so I am assuming vehicles will head from west to east on the drive-thru lane. Having the speaker on the west side is good for noise reduction. However, car headlights will sweep over the properties to the east.

d) *the need for landscaping, screening, buffering and setbacks;*

Section 6.3 of the zoning by-law requires the commercial use to provide a buffer area, where the interior sideyard abuts a residential zone. The buffer should extend far enough to the south to mitigate noise and light impacts for the east and southeast dwelling.

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e) *traffic impacts and parking;*

The applicants have a Traffic Impact Study (Crozier & Associates) to support their application. *“The proposed development is expected to add 64 and 55 primary commercial trips to the boundary road system in the a.m. and p.m. peak hours, respectively.”* Sight distances are adequate. Queuing for the drive-thru restaurant is not expected to create any problems for Smith Street. *“It is concluded that the traffic generated from the proposed commercial re-development will not materially affect the operations of Smith Street...”*

f) *the adequacy of services;*

I would recommend that Council receive comments from CBO Darren Jones and Barry Trood with respect to municipal sewage and water capacities. Stormwater management can be addressed later, during site plan review; at which point the Township’s consulting engineer should be circulated for comments.

g) *impacts on the natural environment*

There are no lands zoned Natural Environment in the immediate vicinity of the subject property. The property is not within a wellhead protection area.

The applicants indicate in their letter of February 17 that a Phase 2 Environmental Assessment will be undertaken, once the zoning is approved.

The property is subject to site plan control and Mr. Van Patter will be providing related comments to CBO Jones at the appropriate time.

3. Review of Correspondence received by the Township:

- Fred Natolochny, Supervisor of Resource Planning, GRCA
- No objection

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4. The by-law will be considered at the Regular Council Meeting following the public meeting. Mayor Tout asked those wishing to receive further notices regarding this application to make their request in writing.

5. Mayor Tout opened the floor for any questions/comments.

The Applicants were present to answer any questions.

Colleen Newell, prospective purchaser, explained that conditions of the purchase include the rezoning and passing of environmental. The purchaser has a similar gas station in Markdale. They try to get along well with their neighbours. Menu boards are situated away from neighbouring residences. Consideration is given to down cast lighting to minimize the effect on neighbours.

6. Comments/questions from Council.

Mayor Tout asked if the proposed development will utilize the full lot. This business would be a great asset on the north end. The residential area is subserviced from what is being offered.

Ms. Newell explained that there is a conceptual plan showing that they can meet the setback requirements. The stormwater management area will be at the rear of the property. They are planning to demolish the existing building down to below site.

Councillor Lennox expressed concern with children and traffic on the sidewalk as the property north of the subject property is a playground.

Ms. Newell stated that a fence will be in place to encompass the property and the fence will be maintained. Sidewalk traffic could be addressed through site plan control.

Mr. Van Patter suggested that the traffic study may address this issue.

Mayor Tout commented that this business may help to draw people to the park.

Adjourn 7:14 p.m.

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7:15 p.m. - Owner/Applicant: Ruby Martin and John Martin

The location of the subject land is described as Part of Lot 4, Concession 3 and is municipally known as 8172 Line 2. The property is approximately 4.8 acres in area.

The purpose and effect of the amendment is to change the zoning of the property to permit the expansion of a tile drainage business. The applicants are proposing to construct a 9,600 sq. ft. building. The property is currently zoned Agricultural Exception (A-104), which limits the business to the existing 3,200 sq. ft. building for storage and repair of machinery.

Please note – Section 34 (12) of the Planning Act.

(12) Information. – At a meeting under subsection (12), the council shall ensure that information is made available to the public regarding the power of the Municipal Board under subsection (14.1) to dismiss an appeal if an appellant has not provided the council with oral submissions at a public meeting or written submissions before a By-law is passed.

7. Notice for this public meeting was sent to property owners within 120 m and required agencies and posted on the property on March 15, 2013.
8. Presentations by:

Mark Van Patter, Senior Planner, reviewed his comments dated April 3, 2013

This proposal is to allow the expansion of a tile drainage business on the subject lands. A 9,600 sq. ft. building is proposed. The business is considered an agricultural-related use as per the Provincial Policy Statement definition. The Agriculture First policy, of Section 6.4.2 of the Official Plan, states that “*As a general rule, land use activities that support agriculture will be encouraged and land use activities that do not support agriculture will be discouraged*”. We believe the proposal would maintain the general intent and purpose of the Official Plan and Zoning By-law.

The subject land is legally described as Part of Lot 4, Concession 3 and is municipally known as 8172 Line 2. The property is approximately 4.8 acres in area and is occupied by a residence and storage building.

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This purpose of the amendment is to amend the zoning of the property to Agricultural Commercial (AC) to permit the expansion of a tile drainage business on the subject lands, including the construction of a 9,600 building.

Under the Provincial Policy Statement the subject property is considered to be within a PRIME AGRICULTURAL area. Within prime agricultural areas, permitted uses include agricultural uses, secondary uses and agriculture-related uses.

Secondary uses *“means uses secondary to the principal use of the property, including but not limited to, home occupations, home industries, and uses that produce value-added agricultural products from the farm operation on the property.”*

Agriculture-related uses include *“farm related commercial and industrial uses that are small scale and directly related to the farm operation and are required in close proximity to the farm operation”*.

Under the Wellington County Official Plan the subject lands are designated PRIME AGRICULTURAL in the County of Wellington Official Plan. Agriculture-related uses are permitted in Prime Agricultural Areas and Section 6.4.5 of the Official Plan states *“Small scale agricultural-related businesses as required to serve agriculture and directly related to farm operations may be allowed in appropriate locations and subject to zoning provisions, where they are needed in close proximity to farms.”*

The property was rezoned by the applicants in 2011 to Agricultural Exception (A-104), to permit use of the existing 3,200 sq. ft. accessory building to store drainage equipment and machinery. The proposed draft by-law will rezone the property to Agricultural Commercial (AC) to provide for the expansion of the business.

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Planning Considerations include:

Agricultural Commercial Range of Uses

The proposed Agricultural Commercial (AC) zone, Section 23.1, would permit a wider range of uses on the property:

- Agriculturally related Commercial or Industrial use
- Agricultural products Processing, Storing and Sales
- Companion Animal Office
- Commercial Greenhouse and/or Nursery
- Farm Implement Sales and Service
- Farm Supply Outlet
- Farm Produce Sales Outlet
- Fertilizer Processing Establishments
- Grain Drying Establishments
- Livestock Yards
- Veterinarian Clinic
- Accessory residential dwelling unit
- Accessory Uses, Buildings and Structures to the above permitted uses.

The nearest dwelling is to the west, at about 230 metres from the Martin lot line. There is another dwelling across the road to the southeast, at about 330 from the Martin lot line. Given the distances, it is my opinion that the permitted uses would be compatible with the neighbouring dwellings.

Compliance with Agricultural Commercial Regulations

The property has a frontage of 366.58 feet and an area of 4.85 acres. I have reviewed the regulations of the Agricultural Commercial (AC) zone and the subject property would comply with yard setbacks and other requirements of Section 23.2.

Location of 9,600 Square Foot Building

The application does not identify the location of the proposed 9,600 sq. ft. building. It will have to be situated so as to meet the yard requirements of the AC zone.

This proposal will be subject to Site Plan Control approval.

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9. Review of Correspondence received by the Township:
 - Fred Natolochny, Supervisor of Resource Planning, GRCA
 - No objection

10. The by-law will be considered at the regular council meeting following the public meeting. Persons wishing notice of the passing of the By-law must submit a written request.

11. Mayor opens floor for any questions/comments.

Bruce Fulcher, agent for the applicant, explained that two years ago the owners felt the building would be large enough for the use. The business has grown and needs expansion. They may consider a smaller building of 6,000 sq. ft. The new building will be located in the front part of the property and the house will be screened or fenced off to show the yard as a commercial entity. An Agricultural Commercial zone would allow for up to 30% coverage of the lot.

12. Comments/questions from Council.

Mayor Tout questioned the reason for going to Agricultural Commercial. Tax wise, will they get the benefit of an agricultural assessment.

Mr. Van Patter suggested that there could be some benefit.

Council Goetz questioned if this was a previous surplus farm dwelling severance. He expressed concern that we may see more of this happening.

Councillor Lennox commented that the lot was created about 1990 with the remaining farmland being purchased by an adjoining farm. The agricultural related business gets preferential treatment and the dwelling would be a secondary use in an Agricultural Commercial zone.

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13. Adjournment 7:34 p.m.

C.A.O./CLERK

MAYOR