

Subject: Sarah Properties Ltd., Non-decision Appeal of Applications, File: OPZ 5-19

Department: Infrastructure Services

Division: Planning

Report #: INS-2021-042

Meeting Date: 2021-06-28

Recommendations

That report INS-2021-042, Sarah Properties Ltd., Non-decision Appeal of Applications, File: OPZ 5-19, be received;

And that staff and the Town's legal counsel be directed to attend any Local Planning Appeal Tribunal (LPAT) Pre-Hearing and/or Case Management Conference(s) convened for the appeals filed by Sarah Properties Limited for their applications to amend the Town's Official Plan and Zoning By-law, based on a decision not being made within the timeframes prescribed by the Planning Act;

And that staff and legal counsel report back to Council as necessary, with respect to any update(s) concerning the status of these appeals.

Background

On August 14, 2019, site-specific applications to amend the Town's Official Plan ("OP") and Zoning By-law were submitted by Sarah Properties Ltd, the owners of lands legally described as Blocks 62, 63 and 64 on Registered Plan 7M-47. The subject lands consist of three (3) separate properties situated on opposite sides of Parkinson Crescent, south of Hansen Boulevard and east of Veteran's Way (County Road 16). The subject lands are currently vacant with no municipal addresses assigned and have a combined lot area of approximately 9.3 hectares (23 acres). A location map of the subject lands is included in Attachment 1.

1. Development Proposal

Official Plan and Zoning By-law amendment applications were submitted to facilitate a mixed-use development comprised of the following:

- i) 104 bungalow townhouses situated within the southern portion of the subject properties;
- ii) Three (3) eight-storey apartment buildings situated at the southwest corner of Hansen Boulevard and Parkinson Crescent, containing a total of 270 dwelling units; and
- iii) a neighbourhood commercial site at the southeast corner of the Hansen Boulevard and Parkinson Crescent intersection, containing 3,140 square-metres (33,800 square-feet) of commercial floor space.

Access to the proposed development would be provided through a series of internal private roads and site entrances off Parkinson Crescent.

2. Official Plan and Zoning By-law Amendments

The subject lands are designated as “Employment Area”, within the “Veterans’ Way South Community Policy Area” (the “Veteran’s Way Policy Area” or “Policy Area”) in the Town’s OP. Consistent with the OP land use designation, the lands are zoned “General Industrial (M1)” in the Town’s Zoning By-law.

A range of traditional employment uses, industrial uses and limited commercial uses such as restaurants and accessory office and retail uses, are permitted “as-of-right” by the OP and Zoning By-law land use framework that applies to the subject lands. The Veteran’s Way Policy Area contemplates additional limited “commercially-oriented” uses within the Employment Area designations located in this policy area, but such uses are subject to restrictions and are only allowed if they are approved through a Zoning By-law amendment application process. The Policy Area framework also encourages residential uses above any such commercial uses, which would also only be permitted to proceed through the approval of a Zoning By-law amendment application.

The proposed development does not conform to the OP and Zoning By-law framework applicable to the site. Therefore, the OP amendment proposes to re-designate the subject lands from “Employment Area” to ‘Low Density Multiple’, ‘High Density Residential Special’ and ‘Neighbourhood Commercial’, designations. Similarly, the Zoning By-law amendment application proposes to rezone the subject lands from the current ‘General Industrial (M1) Zone’ to ‘Residential Fifth Density (R5)’, ‘Multiple Residential High Density (RM2) Zone’, ‘Neighbourhood Commercial (C2) Zone’, and ‘Open Space – Conservation (OS2) Zone’ with Special Provisions (SP 24.XXX) and a Holding (H) Symbol. This would permit the proposed apartment and townhouse dwelling types, as well as the proposed stand-alone commercial uses on the subject properties.

3. Review and Consultation

The applications were deemed to be a complete submission on October 15, 2019 and were circulated for review and comment. A public meeting was held on [January 27, 2020](#) and a staff report (Report No. IS-PL-2020-003) included with the [meeting agenda](#) provided an explanation of the development proposal and applicable planning policy framework, as well as comments received from agencies and Town divisions. Several

residents participated in the meeting and raised concerns about potential impacts of the proposed development related to: traffic; land use compatibility with respect to increased density and building design; environmental protection; and financial aspects concerning property values and property tax contributions.

The circulation review generated technical comments requiring additional information and/or clarification from the applicant regarding their submission studies. In addition, Planning Division staff expressed concerns with the applications constituting a re-designation or “conversion” of lands within an employment area to permit exclusively non-employment uses. Further analysis was requested to address provincial (i.e. Provincial Policy Statement (PPS) and Growth Plan), County and Town Official Plan policies concerning conversions of employment lands to non-employment uses. These policies require conversions of employment lands (i.e. lands within an employment area) to be considered only through the completion of a municipal comprehensive review (MCR). Moreover, Provincial policies require that the MCR process be conducted by a single/upper-tier municipality. Recent amendments to the Growth Plan and PPS now allow for an employment conversion to be considered in advance of an MCR, provided that specific criteria are met with respect to the proposed conversion.

The County of Dufferin is currently undertaking an MCR of its Official Plan to bring it into conformity with recent amendments to the Province’s Growth Plan and PPS. The amendments to the Growth Plan introduced new population and employment growth projections for upper and single-tier municipalities to 2051 and there are now requirements for employment areas to be designated in upper/single-tier municipal Official Plans. Currently, the County Official Plan (County OP) does not identify employment areas because this requirement was not in place when the County OP was prepared in 2015. Instead, municipal OP’s identify and designate employment areas at the municipal level.

The ongoing County MCR work will implement the latest Growth Plan and will provide updated employment and population growth direction for municipalities to 2051. It will also designate employment areas in the County OP. Essentially, this will re-examine current municipally-designated employment areas in local official plans, in terms of confirming the amount of land needed and available throughout the County to accommodate its employment growth forecasts to 2051. Because this MCR work is ongoing, the County has discouraged municipalities from making any immediate decisions in their official plans with respect to employment land conversions until the MCR is complete. On September 15, 2020, the planning consultant retained by the County to complete the MCR issued a letter to this effect for County staff and member municipalities. A copy of this letter is included as Attachment 2.

Notwithstanding the foregoing, the applicant submitted addendum documentation to address initial submission review comments regarding servicing, access, and stormwater management/groundwater infiltration. Planning comments were also responded-to and a draft Terms-of-Reference was submitted for an Employment Land

Impact Assessment. This Assessment study has not been submitted and the development proposal has remained unchanged from its original submission.

The review of the submission materials and discussions with the applicant have progressed with the objective to determine a satisfactory resolution to the outstanding concerns with the applications. However, without any revision to the development proposal and with the current County MCR underway to assess whether the subject lands may be needed to serve the Town's future employment forecasts, a decision on the current applications is premature at this time.

4. Appeal

On February 3, 2021, the applicant filed a notice to the Town for their submission of an appeal to the Local Planning Appeal Tribunal (LPAT) with respect to their applications. This appeal was submitted based on a failure of the Town to make a decision on the Official Plan and Zoning By-law amendment applications within the statutory timelines prescribed by subsections 22(7) and 34(11) of the Planning Act (being 120-days for official plan amendments and 90-days for zoning by-law amendments).

The appeal submission indicates a willingness to continue working with Town staff and interested stakeholders to resolve outstanding issues, however they are seeking to resolve such matters in an expeditious manner and have filed their non-decision appeal on this basis.

A Case Management Conference (CMC) has been scheduled for Wednesday June 30, 2021. The purpose of the CMC is to address preliminary procedural matters, which generally include the following:

1. **Identification of Parties in the appeal:** "Parties" are those who are involved through the entire duration of the appeal adjudication process and have the ability to present evidence, question evidence and testimony of other parties and participate in the determination of any issues to be addressed through the appeal.
2. **Identification of Participants:** "Participants" are those who do not wish to have the same level of involvement as a Party in the appeal, but may wish to attend a hearing and make a verbal or written submission to the Tribunal concerning their interest in the matter.
3. **Identification of Issues** to be addressed through the appeal adjudication process.
4. **Determine the possibility of settlement and/or mediation** of any or all of the issues of the appeal.
5. **Other procedural matters:** including a potential start date and duration of a hearing, further scheduling of subsequent CMC's and/or pre-hearing events, directions for determining the extent of expert witnesses and coordinating their submissions of evidence, etc.

Staff is proposing to attend the CMC with the Town's legal counsel to represent the Town in this appeal. As part of the LPAT process to reach a final determination and decision on the appeal, there may be opportunities for mediation and/or a future settlement. Going forward, Council will be kept apprised of any significant progression of this appeal process and will have further opportunity to provide direction to staff and counsel as necessary.

Strategic Alignment

Orangeville Forward – Strategic Plan

Priority Area: Sustainable Infrastructure

Objective: Plan for Growth

Sustainable Neighbourhood Action Plan

Theme: Land Use and Planning

Strategy: Co-ordinate land use and infrastructure planning to promote healthy, liveable and safe communities.

Notice Provisions

The Notification requirements of the Planning Act have been satisfied for these applications as follows:

1. A Notice of Applications was issued on October 24, 2019 via:
 - i. circulation to all property owners within 120 metres of the subject property;
 - ii. advertisement in the Orangeville Citizen newspaper
 - iii. publishing on the Town website; and
 - iv. posting of notice signs along the Hansen Boulevard road frontages of the subject properties.
2. A Notice of the January 27, 2020 public meeting was issued on January 2, 2020 in the same manner as described above.

In accordance with the direction and requirements given by the Tribunal, on May 27, 2021, the appellant issued Notification for the June 30, 2021 CMC to the following:

- i. all required public agencies;
 - ii. all landowners within 120 metres of the subject lands; and
 - iii. any individual who has submitted a request to the Town to be notified or kept apprised of any future Council decision or consideration of the applications
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Financial Impact

There are financial impacts anticipated, with respect to the Town's legal counsel representation and attendance at the upcoming Case Management Conference and their role in providing legal support for the Town in this appeal matter.

Respectfully submitted

Douglas G. Jones, M.E.Sc., P.Eng.
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Attachment:

1. Location Map
2. Dufferin County (WSP) Memo dated September 15, 2020