
HALDIMAND COUNTY

Report PED-PD-34-2018 Zoning By-law Amendment to Fulfill a Condition of Consent-Hamel



For Consideration by Council in Committee on September 18, 2018

OBJECTIVE:

To request Council's consideration to amend the Town of Dunnville Zoning By-law 1-DU-80 to facilitate the fulfillment of a condition of consent related to a residential severance application within the Hamlet of Lowbanks.

RECOMMENDATIONS:

1. THAT Report PED-PD-34-2018 Zoning By-law Amendment to Fulfill a Condition of Consent-Hamel be received;
2. AND THAT application PLZ-HA-2018-111 to amend Zoning By-law 1-DU 80 from Hamlet Commercial (CHA) Zone and Hamlet Residential (RH) Zone to a site specific Hamlet Residential (RH) Zone be approved for the reasons outlined in report PED-PD-34-2018;
3. AND THAT the Zoning By-law Amendment attached to Report PED-PD-34-2018 to amend the Town of Dunnville Zoning By-law 1-DU 80 be presented for enactment;
4. AND THAT the proposal is considered consistent with the Provincial Policy Statement 2014, the Provincial Growth Plan 2017 and other matters of provincial interest.

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Reviewed by: Mike Evers, MCIP RPP, Manager, Planning and Development

Respectfully submitted: Craig Manley, MCIP, RPP, General Manager of Planning and Economic Development

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

The intent of the subject application is to facilitate the fulfillment of a condition related to a severance application, which is specifically for a residential infill lot within the Hamlet of Lowbanks. There are currently two dwellings (a house and a cabin) on the subject lands, with the subject lands being identified as Part 1 and Part 2 within Attachment 1. The intent is to divide the property into two parcels and construct a new dwelling on Part 2 which will replace the cabin. In order to facilitate this proposal, the proposed Zoning By-law amendment seeks to rezone a portion of the subject lands (i.e. Part 1 on Attachment 1) from Hamlet Commercial (CHA) Zone to a Hamlet Residential (RH) Zone and to establish site specific provisions that reflects the existing location of the two storey dwelling on Part 1, allows for unique provisions related to the proposed lot size and frontage for both Part 1 and Part 2, and permits a reduced front yard setback for the proposed dwelling on Part 2 and allows the deck on Part 2 to project further than permitted within the front yard setback. Both Part 1 and Part 2 can be seen in Attachment 1. The subject lands are

appropriately designated and the proposed relief is, in staff's opinion, appropriate and maintains the intent and purpose of the Haldimand County Official Plan and the Town of Dunnville Zoning By-law 1-DU 80 and allows sufficient area for private services and lot functions (grading/drainage). In addition, staff is of the opinion that this proposal also maintains the character of the existing neighbourhood, is consistent with all levels of provincial policy and represents an infill development within an established neighbourhood that efficiently utilizes existing infrastructure and services. Planning staff recommends that this application be approved.

BACKGROUND:

The subject Zoning By-law amendment is related to a severance application, PLB-2018-064, which was conditionally approved at the May 8th, 2018 Committee of Adjustment meeting. The related severance application proposed to sever the subject lands into two parcels-identified as Part 1 and Part 2 within Attachment 1-with the intent being to retain the existing, two storey dwelling on Part 1 and remove and replace the existing cabin on Part 2. In order to fulfill a condition of the aforementioned, related severance application, the subject Zoning By-law Amendment application is required. The Zoning By-law Amendment application therefore seeks to fulfill a condition of consent by:

- I. Rezoning Part 1 (Attachment 1) of the subject lands from Hamlet Commercial (CHA) Zone to Hamlet Residential (RH) Zone to ensure both properties are in a consistent zone for the intended uses;
- II. Request a reduction for the minimum required front yard setback, interior side yard (left) setback, minimum lot frontage, and minimum lot area for Part 1 (Attachment 1); and
- III. Request a reduction from the required minimum lot area, minimum lot frontage, minimum front yard setback and allow a deck to project further into the front yard than permitted for Part 2 (Attachment 1).

The requested relief would seek to legalize the proposed lots in relation to the Zoning By-law and bring the subject lands into conformity, while also supporting residential infill within the identified Hamlet of Lowbanks. This application, if approved, will also allow for the redevelopment of Part 2 of the subject lands.

Site History:

The subject application is partially triggered by the historical uses (i.e. commercial) on the subject lands operated by previous owners. More specifically, based on information obtain from the Municipal Property Assessment Corporation (MPAC), the existing two storey dwelling was constructed in the 1950's and had been used for residential purposes and as a service garage on the lower level and the cabin, which was constructed in the 1940's, had previously been used for retail use. Additional information submitted by the current property owners, in support of the related severance and subject application, identified that there was also a previous gas station on Part 2 that was operational in the 1980's. The subject lands and existing dwelling and cabin have been used for residential purposes (only) for a substantial amount of time and the intent is for the uses of the subject lands to remain residential in nature; as such, the subject application is required to remove the historical zoning and place the subject lands in an appropriate zone for the intended, continued use.

Land Location and Description:

The subject lands are located on the north side of North Shore Drive within the Hamlet of Lowbanks and is legally described as Moulton Con 1LE PT Lot 6 RP 18R5973 Parts 1 and 2

Irregular; Haldimand County. The subject lands are known municipally as 2695 Northshore Drive and currently contains a two storey single family dwelling and an existing accessory structure, both of which are to be retained, and a second small dwelling (to be removed). Part 1 measures approximately 18.29 metres (60 feet) by 47.93 metres (157.2 feet) and will contain an area of approximately 0.08 hectare (0.21 acre) and Part 2 will measure approximately 27 metres (88.5 feet) by 50.98 metres (167.2 feet) and contain an approximate area of 0.13 hectares (0.34 acres). Both properties have direct access and frontage onto North Shore Drive. Surrounding land uses consists of residential to the east and west, Lake Erie to the immediate south and agricultural lands to the north.

ANALYSIS:

Planning Staff has identified the following key planning issues, as noted in the body of this report, that have arisen during the review of this proposal. The key planning issues are as follows:

Provincial Policy:

Provincial Policy Statement (2014)

Within the Province of Ontario, the Provincial Policy Statement (PPS) establishes a policy framework that provides policy direction on matters of Provincial interest in relation to land use planning and development within Ontario. The policies within this document focuses on multitude of issues identified as being of Provincial interest, including but not limited to, building healthy, livable, safe and strong communities by promoting efficient development and land use patterns; accommodating an appropriate range and mixture of uses, including but not limited to residential (i.e. affordable housing, housing geared towards older persons etc.) and institutional uses. The PPS specifically provides policies that promote settlement areas, including hamlets such as Lowbanks, to be the focus of growth and development, and further requires that the vitality and regeneration of settlement areas are to be promoted. Land use patterns within settlement areas are to be based on a mix of uses and densities which are appropriate for, and efficiently use, land, resources, and existing infrastructure and public service facilities that are planned or available, and avoid the need for unjustified and/or uneconomical expansions. The PPS also sets out that planning authorities shall identify and promote opportunities for intensification and redevelopment where it can be accommodated by taking into account existing building stock or areas and the availability of suitable existing or planned infrastructure and public service facilities.

The proposed application seeks to bring the subject lands, which consists of Part 1 and Part 2 within Attachment 1, into a consistent zone (i.e. Hamlet Residential (RH) Zone with a site specific provision) which will fulfill a condition of the related severance application. This will ultimately result in the creation of an additional lot intended for residential purposes and remove any potential incompatibilities that could be created if the existing zoning (i.e. Hamlet Commercial (CHA) Zone) was to remain in place on Part 1. This development is considered to be an opportunity for residential infill that efficiently uses land, existing infrastructure and public service facilities. Further, this proposal would improve and intensify the use of an underutilized parcel of land within a settlement area. Based on the above, the proposal is consistent with the principles of the PPS.

Provincial Growth Plan (2017)

Similar to the Provincial Policy Statement, the Provincial Growth Plan is an additional policy framework that speaks to how land is developed, resources are managed and the focus of investments through policies that focus on supporting complete communities, prioritize

intensification to efficiently use lands and infrastructure, and support a range and mixture of housing options to serve all sizes, incomes and ages, amongst other integral policies. The subject proposal is in conformity with the Provincial Growth Plan as the proposal will efficiently utilize land and existing infrastructure.

Haldimand County Official Plan:

The subject lands are designated as Hamlet with a small amount of Lakeshore Hazard Land designation along the frontage. Within the Hamlet designation, the predominant land use shall be low density residential housing, including single and semi-detached dwellings and apartments associated with commercial uses. Limited, appropriately scaled commercial, industrial and institutional and agriculturally related uses are also permitted. The subject proposal is permitted within this land use designation as the intent is to facilitate low density, residential development.

With that said, any development within this designation is subject to Development Criteria that considers the following details when reviewing development proposals within the 'Hamlet' designation:

- i) The traditional form of servicing in the Hamlet areas has been individual water services and on-site sanitary sewage systems designed and installed as per the *Ontario Building Code*;

Planning Comment:

Both Part 1 and Part 2 (Attachment 1) are proposed to be serviced via on-site, private water and sanitary. As part of the related severance proposal, a septic evaluation was required for both the severed (Part 1) and retained lands (Part 2). This evaluation has since been completed by a licensed septic installer, confirming the intent to establish a new, septic system on both parcels and confirming that both parcels are of an appropriate size to accommodate said systems. This evaluation has been reviewed and accepted by the County's Building Controls and By-law Enforcement Division. Further, the main dwelling, which is located on Part 1, currently utilizes a cistern and the future dwelling on Part 2 will utilize a well. Both lots will be able to accommodate the traditional form of servicing for a Hamlet. Staff would note that the irregular shape of Part 1, as seen in the attachments (i.e. Attachment 1-3 and the maps within the proposed by-law) is specifically necessitated due to the need to ensure the existing cistern is located wholly within the lot is services (i.e. Part 1). The proponents have confirmed for staff that alternatives have been investigated (i.e. replacement of cistern, jogging of the line to make it straight, etc.); however, this is the most cost effective approach and does not further reduce either one of the proposed lot sizes/areas.

- ii) Availability and provision of adequate stormwater management facilities and legal and adequate drainage outlets;

Planning Comment:

There are no municipal sewer systems and there are no ditches within this area. As a condition of severance, the owner is required to direct drainage toward the lake and not impact adjacent lands.

- iii) New development should be a logical extension of the existing built-up area;

Planning Comment:

The subject proposal represents linear, infill development within an established, residential neighbourhood, as there is existing residential uses on either side of the subject lands. This

proposal represents a logical development, within the existing built-up area. Staff notes that Part 2 (Attachment 1) will require an entrance permit and County Roads Operations staff will be required to complete a site visit to determine the appropriate location of a new entrance.

- iv) In-depth development, rather than linear development along the roads, is the preferred form of development;

Planning Comment:

As mentioned in the above comment, this proposal is a form of linear, infill development within an established neighbourhood that is currently built-up on either sides of the subject lands. The opportunity for in-depth development is not applicable in this proposal due to the existing location of the subject lands, the existing parcel boundary line, and due to the nature of the area. As such, this proposal represents development that is appropriate due to these existing factors.

- v) Appropriate access from main roads to second or third tiers of lots behind existing development shall be provided;

Planning Comment:

This particular policy is not applicable to this development as this proposal is small scale and is an infill proposal. Based on the size of the subject lands, there is no opportunity for additional lots. However, staff would note that the subject lands do have direct frontage and access onto a municipally maintained road (North Shore Drive).

- vi) Potential impacts on Natural Environmental Areas, Hazard Lands, and cultural heritage resources should be addressed; and

Planning Comment:

The subject lands are located within a settlement area; however, there is a small portion of Lakeshore Hazard Land designation along the frontage of the property. The Niagara Peninsula Conservation Authority (NPCA) has been circulated on both the severance application and the subject Zoning By-law amendment application, with no concerns identified. In addition, staff would note that any development will be located outside of this hazard area as the subject lands are located north of Lake Erie, on the north side of North Shore Drive. With regards to cultural heritage resources, staff also note that the subject lands are considered to be disturbed, as there have been two structures on the site for a substantial amount of time (i.e. 1940's – 1905's); therefore, there is no requirement for an archaeological review to support this development proposal.

- vii) The separation of residential uses from existing, new or expanding livestock facilities.

Planning Comment:

The subject lands are located within an identified settlement areas; therefore, the Minimum Distance Separation Formulae does not apply.

Planning staff would note that a report by Amec Earth and Environmental Limited, dated June 6th 2003, was submitted with the related severance application. Within this report, it identifies that a portion of the subject lands (i.e. Part 2, Attachment 1) was previously used as a gas station which had been operational in the late 1980's. This study concluded that the underground storage tanks were removed and soil testing ultimately confirmed that the soil was of a standard appropriate for residential use, as per the Ministry of Environment's guidelines. Based on the study provided and information provided by the current property owner, staff is satisfied that the soil is of a standard

appropriate for the intended uses. Staff further notes that the affected lands are currently zoned as Hamlet Residential (RH) Zone, and is not proposed to change in use (i.e. residential is existing, permitted in the zoning, and proposed in the future). As there is no change in use, there are no additional requirements regarding site remediation or obtaining a Record of Site Condition required at this time.

Overall, Planning staff are of the opinion that the subject application represents an appropriate opportunity to introduce residential infill within a settlement area, that is consistent with the Hamlet designation Development Criteria, is compatible with adjacent land uses, and efficiently uses land.

Town of Dunnville Zoning By-law 1-DU 80:

The subject lands are currently in a dual zone—Hamlet Residential (RH) Zone and Hamlet Commercial (CHA) Zone. The intent of the subject application is to facilitate residential, infill lot creation by rezoning the subject lands and establishing a site specific provision on both parts. The subject application seeks to fulfill a condition of consent by:

- i) Rezoning Part 1 (Attachment 1) from Hamlet Commercial (CHA) Zone to Hamlet Residential (RH) Zone;

Planning Comment:

A portion of the subject lands is currently zoned as CHA which allows for a variety of uses including but not limited to automobile service station, vehicle sales, a dry cleaning distribution centre, restaurant, etc. This zone also permits a dwelling in accordance with the RH Zone provisions. The existing, two storey dwelling has been in place since the mid 1950's and has been used for residential purposes and as a service garage, as identified within information at the Municipal Property Assessment Corporation (MPAC). Despite the historical use, the site has been used by the present owners as a dwelling and this use is proposed to continue. The subject amendment is, in staff's opinion, an opportunity to remove a historical zoning on the property to align the zoning with the existing use and to remove the permissions in place that may result in some incompatible uses being introduced on site within this established neighbourhood and on a lot that is now proposed to be further reduced in sized. This application is, in staff's opinion, a housekeeping amendment that will clean up the zoning on the property and legalize the proposed lots under the Zoning By-law. Overall, the suggested zoning change is not objected to by the property owners, as the intent is to use the subject lands for residential purposes only.

Staff would note that a soil study was completed by Amec Earth and Environmental Limited (dated June, 2003) and related primarily to the lands identified as Part 2. This portion of the site has previously been used for retail in the 1940's (based on information from MPAC) and also contained gas tanks due to a previous use on the site. These tanks have since been removed as confirmed via the submitted soil study and discussions with the property owner, and the soil determined to be appropriate for residential use. In staff's opinion, although this application seeks to remove the commercial zone, and ultimately the potential for commercial uses, the site has historically been used for residential purposes and the existing Zone already permits a residential dwelling. Therefore, in staff's opinion, this development does not represent a change to a more sensitive land use, thus does not warrant further, additional study to be completed.

- ii) Request relief from the required minimum lot area of 1,855 square metres (19,967.1 square feet) to permit a reduced lot area for Part 1 (attachment 1) of 689.2 square metres (7,418.4 square feet) and 1,376.4 square metres (14,815.4 square feet) for Part 2 (Attachment 1);

Planning Comment:

Although both lots are proposed to be smaller than the minimum lot size, Planning staff is in support of this reduction. The minimum lot size within the Hamlet Residential (RH) Zone is the same lot size within the Agriculture (A) Zone and this size has historically been determined as generally appropriate to incorporate a dwelling and the associated on-site services (including a septic system); however, with the advancements in septic system designs, there is more flexibility when it comes to lot sizes and development on smaller lots. In support of the related severance, the proponent has completed a septic evaluation (by a licensed septic installer) for both Part 1 and Part 2. It has been confirmed via these evaluations that both proposed lot sizes are sufficiently sized to contain a septic system appropriate for both the existing and proposed dwelling that will also meet the *Ontario Building Code* requirements related to setbacks from structures and property lines. Further, there are several lots in the immediate area and generally along the lakeshore that are similar in size, thus confirming that the proposed lots will not be out of character with the surrounding area. Based on the aforementioned items, Planning staff is in support of the proposed reduced lot sizes as the lots are still large enough to maintain appropriate setbacks and amenity space for existing and future use.

- iii) Request a reduction of lot frontage from the required 30 metres (98.4 feet) to 18.29 metres (60 feet) for Part 1 (Attachment 1) and 27 metres (88.5 feet) for Part 2 (Attachment 1);

Planning Comment:

The reductions proposed for frontage are further, in staff's opinion, appropriate reductions as the resultant lots are still appropriately sized for existing and continued use. The lot sizing and frontages within the immediate area and the lakeshore as a whole sees a variety of lot frontages, including smaller frontages within the immediate area. Although proposed to be reduced, the reduction will, in staff's opinion, still maintain appropriate lot sizing, access, setbacks of existing and proposed structures, and will not impede the usability of the subject lands. The reduction further supports residential infill and an efficient use of land.

- iv) Request a reduction in the front yard setback from the required 9 metres (29.5 feet) to 5.48 metres (17.9 feet) for Part 1 (Attachment 1), to recognize the existing location of the dwelling and to 8.2 metres (26.9 feet) for the proposed new dwelling on Part 2; and

Planning Comment:

The requested front yard setback reduction for Part 1 is specifically triggered by the location of the existing, two storey, single family dwelling, which has been in existence since the mid 1950's. As the structure has been in existence, prior to the current by-law coming into force and affect, the existing dwelling has been legally allows to exist as a non-conforming uses. Due to the related severance, this non-conforming status is spoiled, and the need to now recognize the historical location is required. The existing building location also allows for parking to be located on the right side of the dwelling. Although the current building is closer than permitted, the dwelling still maintains a healthy setback from the road, there are no perceived site line concerns, parking is not negatively impacted and the existing dwelling location ultimately allows for more amenity space in the rear of the property. Planning staff is further of the opinion that this historical setback is appropriate and does not represent a safety concern.

With regards to the reduction in the front yard setback for Part 2, this is specifically triggered by the proponent's need to construct a new dwelling on the subject lands, as seen in Attachment 2, that will also be setback from an existing, mature tree on the site as the mature

tree is intended to be retained on the property and not removed to facilitate construction. The reduction, in staff's opinion, is minor in nature, maintains an appropriate setback from the road, the proposed dwelling will still be located further back from the front lot line than the existing dwelling on Part 1, the proposal does not offend the character of the neighbourhood or the established building line, and will ultimately result in the retention of a mature tree and will not result in its unnecessary removal from the site. Planning staff is also of the opinion that this reduction request is appropriate.

- v) Request relief from the required interior side yard (left) setback of 3 metres (9.8 feet) to permit a reduced interior side yard (left) setback of 0.16 m (0.54 feet) to recognize the existing dwelling setback (Part 1, Attachment 1); and

Planning Comment:

As noted in the previous point, the existing two storey dwelling has been constructed and used for a dwelling for a substantial amount of time. The dwelling is situated on a slight angle in relation to the interior side yard (left) property line, as such, the dwelling (at its closest point) is approximately 0.54 inches (0.04 feet) from the property line. The eaves of the dwelling then project over the property line. Due to this long standing, legal non-conforming issue, staff seeks to recognize the location of the dwelling by way of this application. However, the legalization of the aerial encroachment (i.e. the building eaves) cannot be addressed through zoning or via a reduction to the Zoning By-law. This matter is largely, in staff's opinion, a historical, civil matter that could be addressed via an encroachment agreement between property owners or through a boundary adjustment application. As this item has not been raised as concern by the adjacent property owner, Planning staff is not requiring this particular matter to be addressed as part of the subject land use permissions proposal.

- vi) Request relief from the Exemption from Yard Provisions in relation to unenclosed porches and steps being permitted to project 1.5 metres (4.9 feet) into the front yard setback to allow for a deck that project 3 metres (9.8 feet) into the front yard setback.

Planning Comment:

The proponents have provided Planning staff with a concept plan, as seen in Attachment 2, that shows a unenclosed porch along the entire front of the dwelling that is proposed to be 3.0 metres (9.8 feet) in width (from the closest portion of the dwelling from the front lot line). Within the Town of Dunnville Zoning By-law 1-DU-80, an unenclosed porch, steps, balconies, canopies and awnings are permitted to project 1.5 metres (4.9 feet) into any required front, rear, or exterior side yard or setback. The general intent of this provision is to allow these typical features of a dwelling to be constructed as of right, but to limit the size to ensure there is an appropriate setback from property lines, retain access to the property, to allow for appropriate stormwater drainage, and generally ensure these uses do not engulf an entire property and result in conflicts. Although the request is to double the projection of the deck; in staff's opinion, this request is minor in nature, as there will still be a substantial setback to the front lot line (i.e. approximately 5.18 metres (17 feet)); the porch will maintain a similar setback as the existing dwelling on Part 1, thus not offending the character of the neighbourhood or existing building line; there is still sufficient access to the property; and this permission will allow for additional usable space for the outdoor enjoyment of the proponents.

Planning staff notes that in the context of a Zoning By-law amendment that is related to new lot creation, staff typically applies a holding (H) provision when certain technical matters, such as grading, servicing, etc., are not yet addressed. However, Planning staff does not propose the introduction of a holding provision in the context of this proposal as the main technical items have

been addressed already (i.e. a grading plan is not required to be completed and the septic evaluations have been completed and accepted by the County).

As part of this report, Planning staff have completed a Zoning Review Chart, which can be found in Attachment 5. The chart has been used to develop the amending zoning by-law which is included as Attachment 4. This amendment, if approved, will facilitate the fulfilment of a condition of consent and facilitate the redevelopment of Part 2. It is Planning staff's opinion that this proposal represents appropriate development that is minor in nature, maintains the general intent and purpose of both the Haldimand County Official Plan and the Town of Dunnville Zoning By-law 1-DU 80, and this development maintains the character of the surrounding land uses. This proposal will ensure that the zoning on the lots is consistent with the intended uses and will bring the existing dwelling and the new lots in conformity with the Zoning By-law.

Community Engagement:

The proponent has confirmed for staff that additional public consultation has been taken and that they've discussed the subject Zoning By-law amendment with their immediate neighbours with no concerns or objections noted.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

Building Controls and By-law Enforcement: As per the septic evaluation submitted with severance application PLB-2018-064, a new system for both properties will be required when new cottage/dwelling is added to the RH lot.

Planning Comment:

A septic evaluation for both Part 1 and Part 2 have been completed and accepted by the County. Both parcels will require new, class form septic systems, and are appropriately sized to contain said systems, as per the septic evaluation.

Planning and Development (Development and Design Technologist): No objections.

Niagara Peninsula Conservation Authority: No objections.

Emergency Services: No objections.

Roads Operations: Entrance Permit and Excavation Permit required. On-site visit required if new driveway is proposed. Location must be approved by Road Operations.

Waste Management: No objections.

Canada Post: Please be advised that Canada Post does not have any comments on this application for severance. Should a dwelling be constructed, please have the customer register for mail delivery at the Dunnville Post Office.

Hydro One: Severance of this land may create an aerial trespass of the existing Hydro feed to the existing dwelling over the severed lands. If so, the customer would be responsible for costs associated with rectifying this issue.

Planning Comment:

This comment has been provided to the applicant. This matter can potentially be addressed in different ways (i.e. underground services, an easement, etc.). The proponent has confirmed that Hydro One staff have been on-site and that each parcel will be able to be appropriately serviced and an easement is not required. The proponent has also confirmed they understand there are associated costs related to hydro services connections, disconnections, etc.

No comments received from: Mississaugas of New Credit Council, Six Nations Council, Union Gas, Municipal Property assessment Corporation (MPAC) or the Haldimand-Norfolk Health Unit.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Location Map.
2. Owner's Sketch (1 of 2).
3. Owner's Sketch (2 of 2).
4. Draft Zoning By-law Amendment to the Town of Dunnville Zoning By-law 1-DU-80, including Maps A and B.
5. Zoning Review Chart.