
HALDIMAND COUNTY

Report PDD-16-2019 Extension to Temporary Use By-law for Mobile Food Truck - Brown



For Consideration by Council in Committee on May 28, 2019

OBJECTIVE:

To request Council approval to allow for an extension to an existing temporary use by-law. The extension seeks to continue to allow a food truck to be located on a farm for an additional three (3) years.

RECOMMENDATIONS:

1. THAT Report PDD-16-2019 Extension to Temporary Use By-law for Mobile Food Truck – Brown be received;
2. AND THAT application PLZ-HA-2019-045 to extend a Temporary Use By-law for a period of three (3) years to permit a mobile food truck be approved for reasons outlined within report PDD-16-2019;
3. AND THAT the Temporary Use By-law attached to Report PDD-16-2019 be presented for enactment;
4. AND THAT the application is deemed to be consistent with the Provincial Policy Statement 2014, the Provincial Growth Plan and other matters of Provincial interest.

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Reviewed by: Mike Evers, MCIP, RPP, Director of Planning and Development Services

Respectfully submitted: Craig Manley, MCIP, RPP, General Manager of Community & Development Services

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

A mobile food truck was temporarily permitted on the subject lands—3470 Rainham Road—for a period of three (3) years in 2016. The original by-law is set to expire on June 13, 2019, and as such the property owner and operator of the food truck has submitted a temporary use by-law extension to seek permissions for this use to continue on the subject lands for an additional three (3) years. Planning staff were unable to support the original application in 2016 as the use was primarily considered to be inconsistent with provincial policies. However, in the interim, there have been changes that include additional guidance materials from the Province issued and which provide additional clarity and context as to what type of uses can be permitted within the prime agricultural areas. Planning staff are of the opinion that a mobile food truck on a farm would fit within the new policy guidance from the Province as it would be considered an on-farm diversified use that is secondary to the farm use, limited in scale, and does not have a negative impact on the surrounding agricultural community. Therefore, Planning staff are in support of the by-law extension as the extension is consistent with provincial policy; is in conformity with the Haldimand County Official Plan and the associated policies for temporary use by-

laws; and the proposal maintains the intent and purpose of the City of Nanticoke Zoning By-law NE-1-2000.

BACKGROUND:

At the June 7, 2016 Council in Committee meeting, staff presented a temporary use by-law report which sought to establish a food truck on a farm property for a period of one (1) year. This proposal was not initially supported by Planning staff, primarily due to the proposal not being consistent with Provincial policy (as applied/interpreted by the Province at that time). The proposal was subsequently approved by Council and for a period of three (3) years. Since this time, the property owner has found the food truck business (The Hen House) to be successful enough to seek an extension of the use for an additional (limited) amount of time. The previously approved by-law will expire this year on June 13, 2019, thus this application is being advanced at this time to ensure no lapsing of the by-law (and thus permissions) takes place. The property owner has identified for staff that it is unlikely that the operation would be carried on past the additional three (3) years due to personal reasons. As such, the application put forward reflects that timeframe and is not intending to establish a permanent zone permission. Should those plans change and the desire is to continue with the use beyond the three (3) years, it would be more appropriate to approach the proposal from a permanent perspective. This has been conveyed to and understood by the property owner/operator.

The intent of the subject application is to extend the existing temporary permissions on the subject lands for an additional three (3) years. It is further understood that there are no changes to the proposal, as approved in 2016, in relation to the area dedicated to the temporary use. The total area to be used (i.e. for the food truck, designated area of consumption including seating, washrooms, etc.) will continue to be approximately 0.14 hectares (0.34 acres) in size and located within close proximity of the existing accessory structures. A general concept plan can be seen in Attachments 2 and 3. Furthermore, staff is of the understanding that the food truck will be the same size as previously proposed—approximately 6 metres (19.6 feet) by 2.1 metres (6.8 feet) in size—and the hours of operation will continue be 8:00 am to 8:00 pm and the intent is to continue to employ up to four (4) employees.

LOCATION AND DESCRIPTION:

The subject lands are located on the south side of Rainham Road, and are legally described as Geographic Township of Walpole, Concession 1, Part Lot 18. The subject lands are known municipally as 3470 Rainham Road. A location map has been included in this report as Attachment 3. The overall property is approximately 480 metres (1,574.8 feet) in frontage and measures approximately 20 hectares (49.54 acres) in area. These lands contain a single family dwelling, several barns and accessory structures and a natural water course (Dry Creek). The entire site is not the subject of the original temporary use by-law or the subject extension. The area that will be subject to the extension is shown in Attachment 2 and contains an area of approximately 45 metres (147.6 feet) by approximately 31 metres (101.7 feet).

ANALYSIS:

Planning staff have reviewed Provincial and local policy documents and have identified the key planning issues to be as follows:

1. Conformity with Provincial Policy

Provincial Policy Statement (PPS) 2014:

The Provincial Policy Statement (PPS), 2014 provides an overall policy framework on matters of provincial interest relating to land use planning and development within Ontario. Through the PPS, the

Province determines that building strong communities is a provincial interest and is to be addressed, in part, through promoting efficient land use and development patterns that support strong, livable and healthy communities, protect the environment and public health and safety, and facilitate economic growth. Furthermore, identified settlement areas, such as urban areas and hamlets, are where the focus of growth, and vitality and regeneration shall be promoted within the County. With that said, the subject lands are not located within any settlement area, but are located in the prime agricultural area. The PPS also provides policies that seek to protect prime agricultural areas through, to some extent, using prohibitive policies to protect prime agricultural land. Permitted uses within the prime agricultural areas include agricultural uses, agricultural-related uses (such as farm-related commercial and farm-related industrial uses); and on-farm diversified uses (i.e. secondary uses to the principal agricultural use). With the original proposal, Planning staff were of the opinion that a food truck in a prime agricultural area was not a permitted use as the use did not fit within or align with the permitted uses. This position stemmed from information and interpretations of Provincial policy available at that time from the Province.

Since the preparation of the original report, the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) released a guideline document intended to expand on and add clarity to the permitted uses as identified within the Provincial Policy Statement (2014) policies. This document—Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas (Guidelines)—has removed inconsistent (and at times overly restrictive) Provincial policy interpretations as they relate to uses on agricultural lands. The Guidelines – provide clarity for 'On-farm Diversified Uses', which the subject use would fall within, in staff's opinion. Staff also notes that due to the release of these Guidelines, and other associated updates to Provincial policies, as part of the County's Official Plan review process, the Agriculture specific policies will need to be reviewed and amended to align with this new, more flexible, Provincial direction. Further, the County's current Comprehensive Zoning By-law project has also incorporated additional provisions in relation to On-farm Diversified uses to ensure conformity with Provincial Policy.

The Guidelines add that on-farm diversified uses shall be on a farm; be secondary to the principle use (which is the farm); limited in area; includes but is not limited to home occupations, home industries, agri-tourism, and uses that produce value-added agricultural products; and shall be compatible with and not hinder surrounding agricultural uses. Planning staff are satisfied that the subject proposal is consistent with these PPS tests and falls under an on-farm diversified use as the subject lands are on an active farm (horse farm); the use is secondary to the farm; a food truck and the area intended to accompany the use (i.e. area for seating, parking, washrooms, etc.) is limited in scale (i.e. less than half an acre on a 49 acre farm); and, the use is compatible and does not hinder surrounding agricultural uses as it is limited in scale, seasonal in nature, and attracts and caters to travelling tourists (i.e. cyclists). This proposal, in staff's opinion, represents a balance of uses that does not hinder or impact the agricultural uses on site or within this community. Planning staff are of the opinion that the establishment of a mobile food truck on the subject lands, on a temporarily basis, is consistent with the Provincial Policy Statement (2014).

Provincial Growth Plan – Growth Plan for the Greater Golden Horseshoe (2017):

The Growth Plan was also reviewed in relation to the subject application. The Growth Plan's policies, direct municipalities to create complete communities and also supports the protection of agricultural lands, water resources and natural areas. The policies, similar to the PPS, speak to directing growth to settlement areas. Staff also notes that the subject proposal is in proximity of a natural heritage feature (creek); however, the food truck is located approximately 100 metres (328 feet) away, is located within a clustering of existing buildings, is temporary in use and mobile, and the proposal was originally circulated to the Long Point Region Conservation Authority with no objections received. Overall, in staff's opinion the subject application maintains the intent and purpose of the Growth Plan policies as the subject lands are designated as Agriculture, which allows for a variety of uses - agriculture, agriculturally related, and value added (i.e. on-farm diversified uses).

2. Conformity with Local Policy

Haldimand County Official Plan:

Within the Haldimand County Official Plan, the subject lands are identified as being designated as 'Agriculture' with a portion of 'Riverine Hazard Land'. The 'Riverine Hazard Land' designation follows a water course that traverses the subject lands (i.e. Dry Creek). Staff notes that the previous temporary use by-law and subject extension is to be located on the lands designated as 'Agriculture' and is set back significantly from the natural feature (i.e. 100 metres (328 feet)). The Long Point Region Conservation Authority (LPRCA) was circulated on the original application, with no concerns presented, and it was identified by the LPRCA that additional circulation is not required.

Currently, the Haldimand County Official Plan policies in relation to the 'Agriculture' designation do not speak specifically to the full range of on-farm diversified uses (as identified in the PPS). With that said, the Official Plan does include specific policies that allow a temporary use to take place even if it does not conform with the Official Plan. The intent of the subject application is to continue to allow the establishment of a food truck on a farm for a temporary amount of time (i.e. three (3) years).

The County may enact a temporary use by-law (and allow an extension to said by-law) to allow temporary uses of land for the purpose that is otherwise prohibited by the Zoning By-law for the following three specific uses, outlined in the Official Plan:

- i. For a separate housing unit (such as a garden suite), in accordance with the relevant policies in the Official Plan;
- ii. For unfamiliar or uncommon uses on a trial basis that do not necessarily conform to the policies of the Official Plan; and/or
- iii. For a use where it is known that the use will only be established for a brief, defined period.

The subject application would fall under scenarios two and three, as this is an uncommon use that is being proposed to be extended by the applicant and is to be only for a period of three (3) years. Further, prior to the passage of a temporary use by-law, Council must be satisfied that the use is:

- i. Compatible with adjacent uses and/or potential measures to mitigate any adverse impacts are implemented;
- ii. On-site parking is adequate for the use and there are no adverse impacts to traffic; and
- iii. There is a reasonable probability that the temporary use will cease on or before the expiry of the by-laws.

Of the three key provisions above, Planning staff are of the opinion that these specific items are satisfactorily addressed as on-farm diversified uses are permitted in provincial policy documents, subject to criteria, and the scale is limited; there is appropriate on-site parking available for the use (as seen in Attachment 2) as there is a clearly defined area where the entire use (including parking) will take place; and it is understood that the property owner and operator is only seeking an addition three (3) years as it is anticipated the use will cease after the timeframe due to personal reasons. Staff also notes that the use has operated successfully for almost three (3) years without any known incident or any compatibility issues.

As part of the subject application, the property owner (and operator) has submitted a letter, which can be seen in Attachment 5. This letter outlines the success experienced by the business, including how the business has attracted and/or provided service to both local, American and European cyclist groups.

City of Nanticoke Zoning By-law NE-1-2000:

The subject lands have a dual zoning that aligns with the land use designation. The zoning on the subject lands is primarily 'Agriculture (A)' Zone and 'Hazard Land (HL)' Zone where the creek is located.

The use will continue to be located on lands that are zoned as 'Agriculture (A)' Zone within a cluster of existing structures. The land proposed to continue to be utilized on a temporary basis for the food truck and associated parking, eating, washrooms, etc. can be seen in Attachment 2 and totals an area of approximately 0.14 hectares (0.34 acres). Although a food truck is not a permitted use in the 'A' Zone, the Official Plan policies allow for temporary use by-laws and their extension to be permitted, subject to certain criteria. As Planning staff are satisfied that the subject extension meets the Official Plan policies, Planning staff is supportive of the proposed extension. Attached to this report is a temporary use by-law (Attachment 4) for Council's review and consideration.

Public Consultation:

As part of the subject extension, the property owner has completed the required public consultation strategy and contacted neighbouring property owners with no objections received. The proponent has also confirmed that social media (i.e. Facebook) was also utilized to inform neighbours, patrons, etc.

Business Licensing:

In addition to the planning approvals to extend the permissions for a mobile food truck, the operator is also required to obtain a license through the County's Mobile Food Premise business license (administered by Clerks, Citizen & Legislative Services). This licence is required to be received on a yearly basis. This licensing process also requires approval from the Haldimand-Norfolk Health Unit.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

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

Building & Municipal Enforcement Services – No concerns.

Emergency Services – No objections.

Economic Development and Tourism (EDT) – The proposed mobile food premise is close to the following cycling routes: the Waterfront Trail and Orange route. Creating rest areas and amenities for cyclists is part of EDT's cycling strategy. It is also located close to the Wilson MacDonald Memorial School Museum and other tourism related amenities along Lake Erie such as the Waterfront Way, and Selkirk Provincial Park. Creating tourism opportunities along water features within the County is a key component of the Council approved Tourism Strategic Plan. The Division has worked closely with the Hen House by featuring the business in the Haldimand County Culinary Guide, Experience Guide and with travel bloggers.

Haldimand-Norfolk Health Unit (HNHU) – The HNHU's Environmental Health Team has no objections to the proposed application provided the food truck and its operations meet HNHU requirements, including but not limited to, being in compliance with O. Reg. 493/17- Food Premises. Should the applicant have any further questions they may contact our Environmental Health Team at 905-318-6623, ext. 3245 or 3231.

Hydro One (Local) – No objections.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Owner's Sketch (1).
2. Owner's Sketch (2).
3. Location Map.
4. Draft Temporary Use By-law.
5. Letter from Owner.