

---

# HALDIMAND COUNTY

## Report PDD-31-2020 Zoning By-law Amendment Application to Permit the Relocation of a Cottage – Parker and Overholdt



For Consideration by Council in Committee on December 8, 2020

---

### OBJECTIVE:

To present the key planning considerations related to a Zoning By-law Amendment application to permit the relocation of an existing cottage across a private laneway with the purpose of moving the cottage away from the lakeshore (erosion) hazards.

### RECOMMENDATIONS:

1. THAT Report PDD-31-2020 Zoning By-law Amendment Application to Permit the Relocation of a Cottage – Parker and Overholdt be received;
2. AND THAT application PLZ-HA-2020-116 to amend the Town of Dunnville Zoning By-law 1-DU 80 to permit the relocation of an existing cottage across a private laneway and to establish site specific provisions for the subject lands be approved for reasons outlined in Report PDD-31-2020;
3. AND THAT application PLZ-HA-2020-116 to amend the Haldimand County Zoning By-law HC 1-2020 to permit the relocation of an existing cottage across a private laneway and to establish site specific provisions for the subject lands be approved for reasons outlined in Report PDD-31-2020;
4. AND THAT the proposal is deemed to be consistent with the Provincial Policy Statement (2020), Provincial Growth Plan (2020), and other matters of Provincial interest;
5. AND THAT the by-law attached to Report PDD-31-2020 be presented for enactment.

**Prepared by:** Ashley Taylor, MCIP, RPP, M.PI, Planner

**Reviewed by:** Shannon VanDalen, MCIP, RPP, CMMI, Manager of Planning & Development

**Respectfully submitted:** Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

Upper Canada Consultants (UCC) submitted a Zoning By-law Amendment application for relocation of the existing cottage at 45 Erie Heights Line to the vacant lot across the private laneway, to move the cottage away from the lakeshore (erosion) hazards. To facilitate the proposal, Planning staff recommends that the vacant lot be rezoned from the 'Agricultural (A)' Zone to the 'Seasonal Residential (RS)' Zone (in Town of Dunnville By-law 1 DU 80) and 'Lakeshore Residential (RL)' in the new County Zoning By-law HC 1-2020 to permit the cottage to be relocated onto the vacant lot and to remove development permissions on 45 Erie Heights Line. It is Planning staff's opinion that the proposal is consistent and conforms to the Provincial and County policy frameworks. Planning staff recommends approval of this Zoning By-law Amendment application and passing of the attached zoning by-laws.

## BACKGROUND:

Upper Canada Consultants (UCC) submitted a Zoning By-law Amendment application on behalf of Terry Parker and Gerald and Ruth Overholdt, property owners, to amend the Town of Dunnville Zoning By-law 1-DU 80 to permit the relocation of the existing cottage at 45 Erie Heights Line to the vacant lot across the private laneway, located between 40 and 48 Erie Heights Line, (herein referred to as the “vacant lot”) with the purpose of moving the cottage away from lakeshore hazards, which is an eroding bank. The vacant lot does not have a municipal address. A Zoning By-law Amendment application is required to permit the relocation of the existing cottage because the Zoning By-law does not permit buildings and structures on lots fronting onto a private road or laneway. The following is proposed to facilitate the proposal:

- 1) To rezone the vacant lot from the ‘Agricultural (A)’ Zone to the ‘Seasonal Residential (RS)’ Zone to permit a cottage on the vacant lot;
- 2) To permit the cottage to be relocated on the vacant lot which fronts onto a private laneway, whereas the Zoning By-law requires frontage on an improved, public street;
- 3) To permit the cottage to be relocated on the vacant lot which has a lot size of 1,514 square metres (16,304 square feet), whereas the Zoning By-law requires a minimum lot size of 1,855 square metres (19,967 square feet); and
- 4) To explicitly rezone 45 Erie Heights Line to remove all development permissions on the lot to reflect the erosion hazards.

## Location and Description:

This Zoning By-law Amendment application affects two properties – 45 Erie Heights Line and the vacant lot (see Attachment 1). Terry Parker and Gerald and Ruth Overholdt own both properties. 45 Erie Heights Line contains an existing cottage which is proposed to be relocated to the vacant lot (Attachment 2) and a shed (which may be removed or relocated). Both properties are located in the former geographic township of Sherbrooke, now in Haldimand County.

45 Erie Heights Line has 33.13 metres (109 feet) of frontage on a private laneway known as Erie Heights Line and is approximately 1,781 square metres (19,170.5 square feet) in size. The vacant lot has 33.13 metres (109 feet) of frontage on the private laneway and is approximately 1,514 square metres (16,304 square feet) in size. Both properties are accessed via Northshore Drive (public road), to Hoto Line (private road), to Erie Heights Line (private laneway). Erie Heights Line does not have a second access point or connection. The agent submitted a legal opinion stating that the vacant lot has legal rights across Erie Heights Line to Hoto Line which extends to and intersects North Shore Drive.

Surrounding land uses include agriculture to the north, residential to the east, Lake Erie to the south, and residential to the west.

## ANALYSIS:

The following planning considerations apply to this proposal:

### Provincial Policy:

#### *Provincial Policy Statement (2020)*

The Provincial Policy Statement (2020) provides policy direction on matters of provincial interest related to land use planning and development. The *Planning Act* directs that decisions affecting planning matters “shall be consistent” with the policies of the PPS.

The PPS identifies that it is a Provincial interest to protect the overall health and safety of the population, including preparing for the impacts of climate change. The PPS directs development away from areas of natural and human-made hazards. This preventative approach supports provincial and municipal financial well-being over the long term, protects public health and safety, and minimizes cost, risk and social disruption. The proposal is consistent with the PPS as it will permit the existing cottage to be relocated further from the lakeshore hazards and will prohibit a new cottage from being constructed in the lakeshore hazards area.

### ***Growth Plan for the Greater Golden Horseshoe (2020)***

The purpose of the Growth Plan is to address challenges related to the forecasted growth and changes in the Greater Golden Horseshoe, and to ensure the protection and effective use of finite resources. The Growth Plan establishes a unique land use planning framework for the Greater Golden Horseshoe that supports the achievement of complete communities, a thriving economy, a clean and healthy environment, and social equity. Planning decisions must conform to the Growth Plan. The proposal conforms to the Growth Plan, as the Growth Plan does not provide direction on this site specific application.

### **County Policy:**

#### ***Haldimand County Official Plan***

The Haldimand County Official Plan (OP) creates the framework for guiding land use changes in the County to 2026 by protecting and managing the natural environment, directing and influencing growth patterns and facilitating the vision of the County as expressed through its residents. The OP also provides the avenue through which Provincial Policy is implemented into the local context. Decisions on Zoning By-law Amendment applications must conform to the OP.

45 Erie Heights Line is designated 'Lakeshore Hazard Lands' in the OP. The vacant lot is designated 'Lakeshore Hazard Lands' on the south portion of the lot, and 'Agriculture' on the north portion of the lot.

The lakeshore hazard lands policies in the OP identify that the Lake Erie shore is subject to fluctuating water levels, seiche episodes, wave action and storms. Consequently, development along the shore is subject to significant damage potential from dynamic beaches, flooding, and erosion. As such, development is generally directed away from the hazardous areas associated with the lake, with development only being permitted in lakeshore hazard lands area following preparation of a study that demonstrates suitability. Notwithstanding, the OP permits the relocation of an existing building or structure presently located within the 'Lakeshore Hazard Lands' designation to a location *further away* from the edge of the bluff on the same lot or another lot farther away from the edge of the bluff. The OP directs that if a structure is relocated to another lot, no replacement structure may be constructed on the lot from which the original structure was moved.

The servicing policies of the OP permit a single detached dwelling to be erected upon any legally existing vacant lot of record provided: the lot has access and frontage on an open public road; the lot is capable of accommodating a water supply system and on-site sanitary system designed and installed as per the Ontario Building Code; and the site has appropriate drainage patterns.

The applicants are proposing to relocate the existing cottage at 45 Erie Heights Line to the vacant lot across the private road with the purpose of moving the cottage away from the eroding bank. The proposal satisfies the lakeshore hazard lands policies of the OP, which exactly anticipate and permit this situation. The proposal also satisfies the general purpose and intent of the servicing policies of the OP. While the vacant lot does not have frontage on an open public road, the proposal is considered to be a "swap" that serves to move the existing cottage further from the lakeshore hazards; no additional residential structures will be added to the private road and laneway system. As such, the current situation (residences on a private road and laneway system) will not be aggravated. Instead, the

existing situation will be improved, as the existing cottage will be moved further from the existing hazard and a new cottage will not be permitted back on 45 Erie Heights Line.

Overall, the proposal conforms to the general intent and purpose of the Official Plan policies.

### ***Town of Dunnville Zoning By-law 1-DU 80***

The Official Plan (OP) sets out the County's general policies for future land use. At the time of writing this report, The Town of Dunnville Zoning By-law 1-DU 80 was still in force and effect. The Town of Dunnville Zoning By-law 1-DU 80 puts the OP into effect and legally controls the use of land in the County by stating how land may be used; where buildings and other structures can be located; the types of buildings that are permitted and how they can be used; and the lot sizes and dimensions, parking requirements, building heights and setbacks from the street. If the proposal does not comply with the Zoning By-law, the Building Inspector cannot issue building permits.

45 Erie Heights Line is zoned 'Hazard Lands (HL)' Zone on the south portion of the lot and 'Agriculture (A)' Zone on the north portion of the lot in the Zoning By-law. The vacant lot is zoned 'A' Zone.

The following is proposed to facilitate the relocation of the cottage:

- 1) To rezone the vacant lot from the 'Agricultural (A)' Zone to the 'Seasonal Residential (RS)' Zone to permit a seasonal cottage on the vacant lot;

**Planning Comment:** The vacant lot is currently zoned 'Agricultural (A)' Zone which does not allow a cottage as a permitted use. The Zoning By-law does not permit development on a private road or laneway to ensure that all new development has frontage on a municipal or provincial road where maintenance (compaction, resurfacing, clearing, etc.), operation (garbage removal and snow plowing), and emergency access can be guaranteed. Seasonal development on private roads and laneways is prohibited as-of-right, but may be permitted on existing lots on a case-by-case basis subject to Zoning By-law Amendment application, where applicants demonstrate that the private road is constructed to a suitable standard for garbage collection and emergency access. Seasonal residential development can be contemplated on private roads and laneways because maintenance, operation, and emergency access are less concerning in the spring through to the fall months. Year round residential development exacerbates these concerns due to inclement winter conditions (snow, ice, etc.).

Given that the vacant lot is accessed via a private road and laneway, Planning staff recommend that the vacant lot be rezoned from the 'A' Zone, which permits a year round dwelling, to the 'RS' Zone, which permits a cottage. This will ensure that permissions for the vacant lot are clear; the existing cottage (to be relocated onto the vacant lot) cannot be converted into a year round dwelling.

- 2) To permit the cottage to be relocated on the vacant lot which fronts onto a private laneway, whereas the Zoning By-law requires frontage on an improved, public street;

**Planning Comment:** As stated under item 1), the Zoning By-law prohibits development on a private road or laneway to ensure that applications for new development on a private road or laneway are reviewed on a case-by-case basis for suitability. In this case, the applicants are proposing to relocate the existing cottage from 45 Erie Heights Line to the vacant lot to move the cottage away from the natural hazards associated with Lake Erie. While the existing private road and laneway conditions are not ideal for general and emergency access, the proposal is to relocate an existing cottage directly across the private laneway; a new cottage will not be added to the private road and laneway system. Point being, the current situation will not be aggravated as the number of residences on the private road and laneway system will remain the same. At the same time, the existing cottage will be moved further from the erosive bank, which will

improve the current situation from a natural hazards, and property and public safety perspective. Related accessory structures (i.e. sheds) will also be permitted.

It is important to recognize that any new development proposals (i.e. new cottages on existing vacant lots) in this area will trigger *Planning Act* applications that may require road upgrades to improve access and egress, and to handle the weight of larger vehicles. Connection of Erie Heights Line into Derner Line to create two (2) means of emergency access to the properties in this area may also be required, should future applications be brought forward and supported. These requirements do not apply to this proposal, as this proposal will not aggravate the current situation (the number of residences on the private road and laneway system is unchanged). It is Planning staff's opinion that relocation of the existing cottage onto an adjacent lot fronting onto the same private laneway is appropriate.

- 3) To permit the cottage to be relocated on the vacant lot which has a lot size of 1,514 square metres (16,304 square feet), whereas the Zoning By-law requires a minimum lot size of 1,855 square metres (19,967 square feet);

**Planning Comment:** The purpose of the minimum lot size provision together with the minimum lot frontage provision (30 metres (98 feet) on a public road) is to ensure that lots are an appropriate size and shape for the permitted development. The agent (UCC) submitted a concept plan that demonstrates that the cottage can be relocated appropriately on the vacant lot, while complying with all other zone provisions (setbacks, building size and height, and parking space requirements). The agent also submitted a septic design prepared by a registered septic installer demonstrating that a new septic system can be accommodated on the vacant lot in accordance with the *Ontario Building Code (OBC)* regulations. Also, there are similarly sized and smaller lots in the area. It is Planning staff's opinion that the lot size is appropriate.

- 4) To explicitly rezone 45 Erie Heights Line to remove all development permissions on the lot.

**Planning Comment:** 45 Erie Heights Line is currently zoned 'Hazard Lands (HL)' Zone on the south portion of the lot and 'Agricultural (A)' Zone on the north portion of the lot in the Zoning By-law. The 'A' Zone permits a year round dwelling provided all other zone provisions are satisfied.

Planning staff are proposing to rezone 45 Erie Heights Line to the 'Agricultural (A)' Zone with a 'Hazard Lands (HL)' Zone overlay in the new Comprehensive Zoning By-law. To ensure that it is clear to the current property owners and future purchasers that development on 45 Erie Heights Line is not suitable and will not be permitted following relocation of the existing cottage in accordance with the lakeshore hazard lands policies in the OP, Planning staff recommend that a special provision be affixed to the zoning of property to remove all development permissions from the property.

Overall, it is Planning staff's opinion that the proposal is appropriate. A zoning deficiency chart has been included as Attachment 3. An amending zoning by-law has been included as Attachment 4. Passage of the amending zoning by-law is required prior to issuance of building permits.

### ***Haldimand County Zoning By-law HC 1-2020***

Council approved the Haldimand County Zoning By-law HC 1-2020 (herein referred to as the "new Zoning By-law") at Council-in-Committee on November 17, 2020 to replace the County's three existing Zoning By-laws (1-DU 80, 1-H 86, and NE 1-2000). Subsequently, Council passed the new Zoning By-law on November 23, 2020 at its Council meeting.

In the new Zoning By-law, both lots are proposed to carry over the 'Agricultural (A)' Zone from the Town of Dunnville Zoning By-law 1-DU 80. Both lots will be subject to the 'Hazard Land' overlay which will

flag that Niagara Peninsula Conservation Authority (NPCA) approval and permits are required to facilitate this proposal. The NPCA is supportive of this proposal.

To ensure that this proposal is captured in the new Zoning By-law during the transition period from the former Town of Dunnville Zoning By-law 1-DU 80 to the new Haldimand County Zoning By-law HC 1-2020, Planning staff recommends that a separate by-law be passed to amend the new Zoning By-law as well. Under the new Zoning By-law the following is required to facilitate the proposal:

- 1) To rezone the vacant lot from the 'Agricultural (A)' Zone to the 'Lakeshore Residential (RL)' Zone to permit a cottage on the vacant lot and to remove permissions for year round living on the lot;
- 2) To permit the cottage to be relocated on the vacant lot which fronts onto a private laneway, whereas the Zoning By-law requires frontage on an improved, public street; and
- 3) To explicitly rezone 45 Erie Heights Line to remove all development permissions on the lot.

The 'Lakeshore Residential (RL)' Zone is proposed to replace the 'Seasonal Residential (RS)' Zone. The 'RL' Zone reduces the required lot size of 1,855 square metres (19,967 square feet) to 925 square metres (9,957 square feet) in recognition that lakeshore lots are typically smaller than rural residential (year round living) lots. Therefore, relief from the 'RL' lot size provision is not required. The remaining analysis from the Town of Dunnville Zoning By-law 1-DU 80 section above carries forward such that additional analysis is not required. An amending Zoning By-law has been included as Attachment 5. Passage of the amending Zoning By-law is required prior to issuance of building permits.

### **Planning Opinion:**

It is Planning staff's opinion that the proposal is consistent with the Provincial Policy Statement (2020), conforms to the Provincial Growth Plan (2020), and conforms to the general intent and purpose of the Haldimand County Official Plan. As such, Planning staff recommend approval of this Zoning By-law Amendment application and passing of the attached Zoning By-law.

### **Public Consultation:**

The agent confirmed that the property owners undertook public engagement in the neighbourhood. The notice of complete application and notice of public meeting were circulated in accordance with the *Planning Act* requirements. At the time of writing this report, Planning staff received no public comments or concerns.

While not a planning matter, it is important to recognize that 45 Erie Heights Line is the only lot on the south side of the laneway in this area containing a cottage or other structure. Relocating the cottage from 45 Erie Heights Line to the vacant lot will open up the view of the lake for the neighbouring properties, which should be favourable.

### **FINANCIAL/LEGAL IMPLICATIONS:**

Not applicable.

### **STAKEHOLDER IMPACTS:**

**Bell Canada** – No comments received.

**Canada Post Corporation** – Please be advised that Canada Post does not have any comments on the relocation of a cottage to the other side of the road as this will not affect mail delivery. Currently, this is a cottage and we do not deliver mail to it.

**Niagara Peninsula Conservation Authority (NPCA)** – No objections.

**Mississaugas of the Credit First Nation** – No comments received.

**Six Nations Council** – No comments received.

**Union Gas** – No comments received.

**Hydro One (High Voltage/Corridor)** – No comments received.

**Hydro One (Local)** – Hydro One has no concerns or comments with regards to the application.

**Emergency Services** – Emergency Services would like to recommend the following: road upgrades to Erie Heights Line (west of Hoto Line) for better access and to handle the weight of potential larger vehicles, and possible connecting of Derner Line to Erie Heights Line, allowing for two (2) means of access to properties in this area (Hoto Line and/or Dickhout Road).

**Solid Waste** – No objections. There is a common collection spot up at Northshore Drive and Hoto Line. Moving their cottage across the road (away from the lake) will not matter for their garbage/recycling.

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

**Forestry Operations** – Forestry does not have any concerns with the proposed application as there will be no negative impacts on any County owned trees or Woodlands regulated pursuant to the Forest Conservation By-law.

**Treasurer/Finance** – No comments received.

**Building & Municipal Enforcement Services** – Ag zoning = 13 m front yard setback, 6 m inside setback, and 13 m rear setback. Conservation approvals required. Front yard setback to cottage not deck. Deck can project 1.5 m into front setback.

**Municipal Property Assessment Corporation** – No comments received.

**Haldimand-Norfolk Health Unit** – No comments received.

## **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

1. Location Map.
2. Owner's Sketch.
3. Zoning Deficiency Chart.
4. Draft, Zoning By-law to Amend 1-DU 80 Zoning By-law.
5. Draft, Zoning By-law to Amend HC 1-2020 Zoning By-law.