
HALDIMAND COUNTY

Report PDD-21-2021 Temporary Use By-law Amendment Application for an Animal Kennel – Canine Bond



For Consideration by Council in Committee on March 30, 2021

OBJECTIVE:

To present the key planning considerations related to a temporary use Zoning By-law amendment application for a dog training business located in the prime agricultural area of the County.

RECOMMENDATIONS:

1. THAT Report PDD-21-2021 Temporary Use By-law Amendment Application for an Animal Kennel – Canine Bond be received;
2. AND THAT application PLZ-HA-2020-186 to pass a temporary use by-law for a period of twenty (20) months to December 31, 2022 to permit an animal kennel to temporarily operate with conditions on the subject lands be approved for reasons outline in Report PDD-21-2021;
3. 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;
4. AND THAT the Temporary Use By-law attached to Report PDD-21-2021 be presented for enactment.

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

EXECUTIVE SUMMARY:

Carrie Rottaris, owner of Canine Bond, is requesting passage of the attached Temporary Use By-law to permit her to continue to operate her dog training business on the subject lands for the next twenty (20 months) to December 31, 2022 with an exemption to the required setbacks listed in the Haldimand County Zoning By-law HC 1-2020. It is Planning staff's opinion that the proposal is consistent and conforms to Provincial and County policy frameworks. Planning staff recommends approval of this application and passing of the attached Temporary Use By-law, which includes conditions of operation and an expiry date. Approval of this application is required to permit the applicant to continue operating her dog training business on the subject lands.

BACKGROUND:

Location and Description:

The subject lands are known municipally as 4149 River Road, front onto the west side of River Road, and are located in the former Geographic Township of Oneida (Attachment 1). The subject lands contain a single family dwelling, detached garage, and fenced dog training area with an accessory building for dog training (Attachment 1). The dog training area is located behind the existing dwelling and is approximately 0.16 hectares (0.39 acres) in size. The subject lands are a rural residential lot and are clustered among four (4) other rural residential lots within the prime agricultural area of the County. Surrounding land uses include agricultural and rural residential uses in all directions. The abutting properties to the north and south are rural residential properties and have in-ground pools in their backyards.

Proposal:

The applicant is operating a dog training business on the subject lands which as constituted does not meet all of the requirements of the Haldimand County Zoning By-law HC 1-2020, in particular setbacks from neighbouring dwellings and property lines. The applicant is requesting that Council pass a temporary use by-law to permit her to continue to operate her dog training on the subject lands on a temporary basis until December 31, 2022 under the following conditions:

1. The dog training business shall operate between the hours of 10 a.m. to 1 p.m. from Monday to Friday on the subject lands;
2. Notwithstanding, puppy classes may operate between 10 a.m. to 1 p.m. on Saturdays on the subject lands;
3. A maximum of twenty (20) dogs shall be permitted to be trained on the subject lands during the permitted hours;
4. A maximum of four (4) employees shall be permitted to train dogs during the permitted hours on the subject lands; and
5. No overnight boarding is permitted.

While the Zoning By-law permits animal kennels (including dog training) within the 'Agricultural (A)' Zone, they are not permitted to be located within 125 metres (410 feet) of any residential use located on a separate lot or 30 metres (100 feet) from any lot line. The applicant's dog training business is located within 20 metres (66 feet) of adjacent houses and 0 metres (0 feet) from both interior property lines and the rear property line. Passage of the attached Temporary Use By-law is required to permit the applicant to continue to operate her dog training business on the subject lands for a temporary period of time.

Evolution of the Application:

The applicant contacted staff in late 2018 to discuss starting-up a dog training business on the subject lands. Staff and the applicant discussed that the dog training business would not be permitted on the subject lands due to zoning noncompliance relating to proximity of the dog training business to neighbouring houses and property lines, and discussed options. Staff became aware that the applicant had started the dog training business on the subject lands without land use approvals in place via a by-law complaint in late summer of 2019. It is significant to this application to note that the neighbours did not file the by-law complaint regarding the use and that County staff have not received any formal by-law complaints from the neighbours regarding noise or dog issues relating to the existing dog training business. A list of options (cessation of the business, minor variance application, zoning amendment application, or temporary use by-law amendment application) were provided to the applicant. Staff have continued to work with and check-in with the applicant to bring the land use of the subject lands into conformity with the Zoning By-law.

In late 2020, the applicant submitted a Zoning By-law Amendment application to request relief from the Zoning provisions to permit the dog training business on the subject lands in perpetuity. Through the public circulation process, some of the neighbours submitted concerns primarily relating to:

1. loss in property value resulting from an approved animal kennel operating next to their rural residential properties if the Zoning By-law Amendment application was approved in perpetuity; and
2. transferability of land use permissions for an animal kennel from the applicant to future owners of the subject lands.

Through a virtual neighbourhood meeting facilitated by Planning staff on February 24, 2021, the neighbours voiced support for the applicant's specific dog training business for a limited time period with conditions and check-ins but objected to a future property owner retaining the rights to operate a dog training business on the subject lands on a permanent basis.

To address the neighbours' primary concerns, the applicant amended her request from a Zoning By-law Amendment application to a Temporary Use By-law amendment application. Through the neighbourhood meeting, the applicant and neighbours agreed that the applicant should be permitted to continue to operate her dog training business for a time frame of twenty (20) months to December 31, 2022 before cessation of the business on the subject lands or a request for extension is made (which includes a public process and Council approval).

ANALYSIS:

Through the review of this proposal, Planning staff have identified the following key planning matters:

Planning Act:

The *Planning Act* is the provincial legislation that sets out the ground rules for land use planning in Ontario. It sets out Provincial interests, policy statements, planning applications, and planning processes and timelines that must be followed.

The *Planning Act* authorizes Council to pass a by-law to authorize the temporary use of land, buildings, or structures for any purpose that is otherwise prohibited by the Zoning By-law. The *Planning Act* requires the temporary use by-law to define the area to which it applies and to specify the period of time for which the authorization shall be in effect, which cannot exceed three (3) years from the day of passing of the temporary use by-law. Prior to expiry of the temporary use by-law, the *Planning Act* authorizes Council to grant extensions for not more than three (3) years per extension. The extension request would be circulated to neighbours for input and feedback, and would require Council's approval. Upon expiry of the temporary use by-law, the use is no longer permitted on the subject lands.

In this case, Council is authorized (should they choose) to pass a temporary use by-law to permit the applicant to operate her dog training business until December 31, 2022 – a period of approximately twenty (20) months on a portion of the subject lands. If Council approves the applicant's request and passes the temporary use by-law, the applicant could submit an application to request an extension to the temporary use by-law; Council could extend the temporary use by-law for any timeframe up to three (3) years. The applicant could continue to request extensions prior to expiry as the *Planning Act* does not limit the number of times that Council can extend a temporary use by-law. The extension request would be circulated to neighbours and would involve a public consultation component prior to Council making a decision. Upon expiry of the temporary use by-law, the dog training business would no longer be permitted on the subject lands.

It is significant to this proposal to note that the neighbours requested that the permissions to operate the dog training business be temporary and that the approval to operate the business be approved for the applicant only and not to extend to any potential future property owners. As discussed above, the

Planning Act permits Council to approve temporary zoning via temporary use by-laws. However, the *Planning Act* does not permit Council to zone for people and their personal circumstances. Instead, the *Planning Act* permits Council to zone for land use. Passage of the temporary use by-law would reduce the likelihood of transferability of land use rights for the dog training business should the owner sell the subject lands by virtue of its expiry. More specifically, if the applicant sells the property, the temporary zoning permissions will expire shortly thereafter without an extension request.

If Council approves the applicant's request and passes the temporary use by-law, the by-law reference would be included in the zoning maps for the subject lands for the timeframe when it applies to the subject lands. This would indicate to current and future property owners in the area (should they review area zoning) that a temporary use by-law is in place for a dog training business on the subject lands.

Provincial Policy:

The Provincial Policy Statement (PPS) (2020) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) are high level planning documents that provide direction on matters of provincial interest related to land use planning, development, and growth. These policy frameworks require the long-term protection of prime agricultural lands. The subject lands are located in the prime agricultural area; the proposal is not expected to have any adverse impacts on the surrounding farms.

These policy frameworks are general, as they apply province wide; they do not drill down into all local circumstances, issues, and policies. This is the function of the Haldimand County Official Plan (OP). As such, the proposal is consistent with the PPS and conforms to A Place to Grow.

County Policy:

Haldimand County Official Plan:

The Official Plan (OP) creates the long-term 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 temporary use by-law applications must conform to the OP.

The subject lands are designated 'Agriculture' and are located in the prime agricultural area of the County. The OP states that the predominant use of lands within the 'Agriculture' designation shall be for agriculture and agriculturally related uses. A single family dwelling and land uses compatible with agriculture, including animal kennels, are also permitted in the 'Agriculture' designation. The OP states that separation distances for animal kennels and other uses which are a potential nuisance with respect to the creation of noise, odour and/or dust are set out in the Zoning By-law. The existing dog training business does not satisfy the required setbacks in the Zoning By-law which necessitates this Temporary Use By-law application.

The OP elaborates on the *Planning Act* legislation and states that Council may enact temporary use by-laws to allow the temporary use of land for the purpose that is otherwise prohibited by the Zoning By-law under the following circumstances:

- a) For unfamiliar or uncommon uses on a trial basis that do not necessarily conform to the policies of the OP; and/or
- b) For a use where it is known that the use will only be established for a brief period of time.

Planning staff recommend that the land use permissions for the dog training business be approved via a temporary use by-law rather than a zoning by-law. This will address the neighbour's concerns and allow for regular 'check-ins' with the applicant and neighbours to ensure the business is compatible with the surrounding rural residential uses and eventual discontinuation of the business on the subject lands.

Further, the OP states that prior to passage of the temporary use by-law, Council shall be satisfied that:

- a) The temporary use permitted is compatible with adjacent uses or alternatively, that appropriate measures to mitigate any adverse impacts are implemented;

Planning Comment: This is the crux of this planning application – compatibility between the dog training business and the surrounding rural residential properties, which are in close proximity to one another. Planning staff consulted with the Manager of Building and Municipal Enforcement Services who holds a certificate from the Ministry of Environment, Conservation and Parks (MECP) in Environmental Sound (EPA) on this application. It is the Manager’s opinion that based on the location of the dog training area on the subject lands and the in-ground pools on the neighbouring properties there would be a definite noise impact and possible loss of enjoyment.

Further, the dog training business is considered to be an animal kennel as dog training services are offered. However, the existing dog training business does not provide daytime or overnight boarding services and operates midday. To ensure that the applicant’s dog training business is compatible to the greatest extent possible with the neighbouring rural residential properties, the applicant is running her business based on the following conditions:

1. The dog training business operates between the hours of 10 a.m. to 1 p.m. from Monday to Friday on the subject lands;
2. Notwithstanding, puppy classes operate between 10 a.m. to 1 p.m. on Saturdays on the subject lands;
3. A maximum of twenty (20) dogs are trained on the subject lands during the permitted hours; and
4. A maximum of four (4) employees train dogs during the permitted hours on the subject lands.
5. No overnight boarding is permitted.

Since submission of the application, the applicant has removed problem dogs from her program and continues to check-in with her neighbours to improve noise impacts.

Based on the foregoing and the neighbour’s agreement to temporary land use permissions provided the above conditions are placed in the temporary use by-law, the proposal is considered appropriate.

- b) On-site parking is adequate for the use and no adverse impacts on traffic or transportation facilities will result; and

Planning Comment: The applicant’s employee’s park to the west of the detached garage. The applicant and her employees typically pickup and drop-off dogs as part of the dog training program. However, dog owners can also drop-off and pickup their dogs; in this case, the applicant and her employees assist dog owners with completing a three-point turn in her driveway. The dog training business is not considered to be a significant traffic generator and is unlikely to cause adverse impacts on traffic.

- c) There is a reasonable probability that the temporary use will cease on or before the expiry of the by-law.

Planning Comment: To address the neighbour’s concerns related to loss of property value, transferability of land use rights to the future property owners of the subject lands, and to ensure that regular “check-ins” are in place, the temporary use by-law is the best planning tool to permit the property owner to continue her dog training business on the subject lands while mitigating the neighbour’s concerns. It is reasonable to expect that the business will discontinue at some point in the future.

Haldimand County Zoning By-law HC 1-2020:

The OP sets out the County's general policies for future land use. The Haldimand County Zoning By-law HC 1-2020 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; parking requirements, etc. If the proposal does not to comply with the Zoning By-law, it is not permitted.

The subject lands are zoned 'Agricultural (A)' Zone in the Zoning By-law. The 'A' Zone permits a number of uses including a single detached dwelling, related accessory structures subject to provisions, and an animal kennel subject to conditions. The Zoning By-law broadly defines an animal kennel as a place where domestic pets are kept, raised, boarded or trained and is permitted no closer than:

- a) 600 metres from an urban zone that permits a residential use;
- b) 300 metres from a 'Hamlet' residential (RH) or 'Lakeshore Residential (RL)' Zone;
- c) 125 metres from a 'Community Institutional (IC)', 'Neighbourhood Institutional (IN)', 'Rural Institutional (IR)', or 'Open Space (OS)' Zone or any residential use located on a separate lot, however, this shall not apply to an abandoned cemetery; or
- d) 30 metres from any lot line.

The purpose of these zone provisions is to ensure that an animal kennel is compatible with the surrounding area and minimize potential noise concerns. If an animal kennel satisfies these zone provisions it is permitted to start-up and operate from a land use perspective without any County land use review or public consultation.

The existing dog training business complies with items a) and b), but does not comply with items c) and d). As such, the existing dog training business is not permitted on the subject lands and is operating in contravention to the Zoning By-law.

It is planning staff's opinion that it is reasonable to approve the applicant's request to continue to operate her dog training business for a temporary period of twenty (20) months to December 31, 2022 subject to conditions (midday operation, maximum number of dogs and employees, etc.) for the following reasons:

1. The subject lands are located in the prime agricultural area rather than an urban area where land uses are compact;
2. The By-law complaint was not made by one of the applicant's neighbours and no formal noise or dog related complaints have been made through the Building & Municipal Enforcement Services Division;
3. The applicant has worked with her neighbours to lessen the noise impacts from her dog training business and continues to check-in with them;
4. The applicant has worked with her neighbours to submit an application (temporary use by-law application for a limited timeframe) that the applicants and neighbours can agree to;
5. The zoning permissions will expire should:
 - a. The applicant not submit an application for extension, or
 - b. Council does not approve subsequent extensions based on feedback from the neighbours;
6. The temporary use by-law application process will allow for regular check-ins with the applicant and neighbours to determine if an extension is desirable from a land use compatibility (enjoyment of property) perspective; and
7. The Temporary Use By-law will reduce the likelihood of transferability of land use rights to future owners.

A Temporary Use By-law has been prepared and included with this report as Attachment 3 for Council to pass.

Planning Opinion:

It is Planning staff's opinion that Council is authorized by the *Planning Act* to pass temporary use by-laws to permit the temporary use of land and buildings that is otherwise prohibited by the Haldimand County Zoning By-law HC 1-2020. It is Planning staff's opinion that the proposal generally conforms to the Haldimand County Official Plan policies relating to temporary use by-law amendment applications. As such, Planning staff recommend approval of this application and passing of the attached Temporary Use By-law (Attachment 3).

Public Consultation:

As part of the application process, Planning staff circulated a Notice of Complete application in late 2020 to neighbours within 120 metres (400 feet) of the subject lands. The purpose of the Notice was to notify neighbours that an application was submitted to Council. The Notice provided application details, the location map (Attachment 1), and public consultation process. Following distribution of the Notice, Planning staff received a letter (Attachment 2) in objection and email in support of the application. Other inquiries were made for general information relating to the application. The neighbour that provided the objection letter abuts the subject lands to the north.

On February 24th, 2021, Planning staff facilitated a virtual neighbourhood meeting to introduce the application to the neighbours, to discuss the proposal together, and receive feedback in a formal setting. Three neighbours attended the virtual neighbourhood meeting and ultimately agreed with the applicant to the proposal put forth in this report. The neighbour that provided the objection letter attended the neighbourhood meeting and agreed to this proposal.

Prior to Council making a decision, a Notice of Public Meeting will be mailed to the neighbours and a Public Meeting will be held, in which Council will receive any additional feedback.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

Manager of Building & Municipal Enforcement Services – There will definitely be a noise impact and possible loss of enjoyment to neighbouring properties.

Building Inspector – No concerns. Any proposed changes to existing structures or proposed new structures may require permits and must meet any applicable by-laws.

Municipal Enforcement Officer – No complaints regarding this property from any of the neighbours, regarding noise, or dog issues related to the business.

Canada Post – Please be advised that Canada Post does not have any comments on this application for a dog kennel/training area as this will not affect mail delivery.

CP Rail – No concerns.

Development & Design – No concerns.

Emergency Services – No objections.

Enbridge Gas – We have no comments regarding the zoning application.

Finance – Finance has no comments to make this request.

Forestry – Forestry doesn't have any concerns with the proposed zoning amendment since there will be no impact on any Woodlands or County owned trees.

Hydro One (Local) – No objections.

Mississaugas of the Credit First Nation – No concerns.

Trans-Northern Pipeline Inc. – TNPI has no comments for this request as the development is approximately 1.6km away from the TNPI pipeline.

No comments were received from CN Rail, Hydro One (High Voltage), Six Nations Council, Solid Waste, Municipal Property Assessment Corporation (MPAC), and Haldimand-Norfolk Health Unit.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Location Map.
2. Letter of Objection.
3. Draft Temporary Use By-law.