
HALDIMAND COUNTY

Report PDD-12-2023 Temporary Use By-law to Permit 7 Dogs at 945 Concession 2 Walpole

For Consideration by Council in Committee on May 2, 2023



OBJECTIVE:

To consider a Temporary Use By-law for a period up to December 31, 2024 to allow a maximum of 7 dogs to be kept at 945 Concession Road in the Hamlet of Cheapside.

RECOMMENDATIONS:

1. THAT Report PDD-12-2023 Temporary Use By-law to Permit 7 Dogs at 945 Concession 2 Walpole be received;
2. AND THAT application PLZ-HA-2023-004 to pass a Temporary Use By-law for a period up to December 31, 2024 to permit an animal kennel (with no commercial permissions and only 7 dogs) to temporarily operate on the subject lands be approved for the reason outlines in Report PDD-12-2023;
3. AND THAT any kennel licence issued for 945 Concession 2 Walpole for the years 2023 and 2024 include the conditions outline in Report PDD-12-2023;
4. AND THAT the proposal is deemed to be consistent with the Provincial Policy Statement (2020) and conforms with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) and Haldimand County Official Plan;
5. AND THAT the Temporary Use By-law attached to Report PDD-12-2023 be presented for enactment.

Prepared by: Spencer Skidmore, MCIP, RPP, M.PI, Senior 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:

The Zoning By-law Amendment—Temporary Use By-law is required to permit an animal kennel—to a maximum of 7 dogs on the subject lands. The property is zoned “Hamlet Residential (RH)” and is subject to the County’s Animal Control By-law (By-law #1396-13) based on the number of dogs located on the subject lands. The proponent does not operate a commercial operation and does not breed, board or train any external animals; the seven (7) dogs on the property are personal animals. The owner simply owns 7 dogs, and keeps them on the property both within the existing dwelling, and outside in the rear yard within an enclosed dog run.

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 passage of the attached Temporary Use By-law to December 31, 2024.

BACKGROUND:

This application was triggered by a by-law complaint whereby the owner was previously illegally breeding animals on the lands, the proponent has since ceased all commercial operations and has taken steps to legalize the existing personally owned dogs. In January of 2023, Lori and David Turpin submitted a Zoning By-law Amendment Application to permit a temporary use for an animal kennel at 945 Concession 12 Walpole ("the Lands") in the Hamlet of Cheapside. Animal Kennels are not currently permitted as a use within Hamlets. The proponent is not operating a commercial kennel, and no boarding, breeding or training for commercial purposes is occurring on the Lands. The property is however, classified as a "Kennel" under the County's Animal Control By-law (By-law 1396-13) based on the number of dogs 'seven (7)' located on the premises; whereas only 3 dogs would be permitted on the lands per the Animal Control By-law. Accordingly, the owner would be subject to the issuance of a Kennel Licence under the Animal Control By-law; the County only issues such a license when the use is permitted in the Zoning By-law. This is what triggered the subject Temporary Use By-law to permit a "Kennel" on a temporary basis.

Approval of this Temporary Use By-law would permit the owners to keep the 7 dogs that they own on the subject lands for a period up to December 31, 2024. No commercial uses related to dogs would be permitted on the lands. The Temporary Use By-law contains an expiry date and the dog kennel licence will contain conditions of the proposed animal kennel (maximum number of dogs (7)), no commercial boarding, no commercial training, no commercial breeding, all dogs kept on the property must be owned by the property owner). As the Animal Control By-law currently stands, the owner is permitted to keep a maximum of 3 dogs on her property as-of-right. If the owner wishes to keep a maximum number of seven (7) dogs on her property beyond December 31, 2024, prior to expiry of the Temporary Use By-law, the owner must apply for an extension and receive Council approval before obtaining a dog kennel licence for the years beyond 2024, or they must bring the property into conformity with the by-law (own a maximum of 3 dogs). The dog kennel licence must be applied for annually through the Corporate & Social Services Department. In discussion with Planning staff, the proponent has advised that they plan to bring the lands into conformity with all applicable by-laws prior to the Temporary Use By-law expiring. This would include only keeping a maximum of 3 dogs on the Lands.

Location and Description:

The subject lands are known municipally as 945 Concession 2 Walpole, in the Hamlet of Cheapside. The lands front onto the north side of Concession 2 Walpole, and are legally described as Plan 332, Part C North Queen Street, Geographic Township of Walpole. The subject lands contain a single-family dwelling, detached garage/accessory structure, and fenced dog run area (Attachment 1) towards the rear of the lands. The dog run area is located behind the existing dwelling and is approximately 185 square metres ($\pm 2,000$ square feet) in size. The subject lands are a large 0.4 hectare (1 acre) hamlet residential lot and are surrounded by residential uses to the north, east, south and west. The lands are located toward the western edge of the Hamlet of Cheapside.

Application – PLZ-HA-2023-004

The owner is requesting that Haldimand County Council pass a Temporary Use By-law to permit an 'Animal Kennel' on the subject lands and to allow for them to obtain a dog kennel licence from the County on an annual basis over the next two (2) years (2023 and 2024). Conditions of this license, as per the attached Temporary Use By-law, limit the proposed animal kennel to a maximum of seven (7) dogs, with no commercial boarding, breeding or training permitted on the lands. Furthermore, all dogs

kept on the property must be owned by the owner of the lands. The Temporary Use By-law would allow the owner to continue to keep up to a maximum of 7 dogs that they own on their property on a temporary basis while recognizing that the Temporary Use By-law would expire after December 31, 2024, and the owner would be required to bring the property into compliance or apply for an extension. The owner would also be subject to an annual kennel licence which would contain the following conditions:

1. That the owner shall be permitted to keep a maximum of seven (7) dogs on the subject lands;
2. That all dogs must be individually licensed pursuant to the County's Animal Control By-law under the ownership of the owner of the lands; and
3. That at no time shall any commercial operation related to dogs be permitted on the lands, including commercial breeding, boarding or training of dogs.

With respect to the application for a Temporary Use By-law, a Notice of Complete Application was circulated to all neighbouring property owners within 120 metres (400 feet) of the subject lands on January 23, 2023 in accordance with *Planning Act* requirements. With the submitted application, the proponent has submitted letters of support for the proposed Temporary Use By-law from the owners of the two properties immediately adjacent to the property to the east, north and west. These are the lands that stand to be the most impacted by the subject temporary use. A letter of support was also received from a neighbour on the opposite side of Concession 2 Walpole.

Planning staff received three (3) phone calls as a result of the circulation of the Notice of Complete Application, one of which was supportive, and two of which were opposed. Details of these discussions and Planning staff's responses are discussed within the Stakeholder Impacts section of this report.

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. Extension requests are to be circulated to neighbours for input and feedback, and require Council's approval. Upon expiry of the Temporary Use By-law, the use is no longer permitted and must cease. In this particular case, Council may authorize the temporary use until December 31, 2024 via approval of application PLZ-HA-2023-004 and passage of the attached Temporary Use By-law.

Further, from feedback received through the Notice of Complete Application circulation on the proposed Temporary Use By-law, the owner's neighbours requested that the permissions sought to keep up to 7 dogs on the subject lands only apply for the current owner and not extend to any potential future owners. The *Planning Act* permits Council to approve temporary zoning via Temporary Use By-laws, however, does not permit Council to zone for people or 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 should the owner sell the subject lands by virtue of its expiry. More specifically, if the owner sells the subject lands, the temporary zoning permissions will expire shortly

thereafter without an extension request. Any extension request by a future owner would be evaluated on its own merit.

If Council approves the owner's request and passes the Temporary Use By-law, the By-law reference would be included in the zoning maps of the subject lands for the duration of the temporary use period. 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 keeping of up to a maximum of 7 dogs on the 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. The subject lands are located within the Hamlet of Cheapside, which is a settlement area on private servicing.

These policy frameworks are general, as they apply province wide; they do not provide detailed guidance on all local circumstances, issues, and policies, including dog kennels and animal control. This is the function of the Haldimand County Official Plan (OP), Haldimand County Zoning By-law HC 1-2020, and Animal Control By-law 1396-13. 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 by protecting and managing the natural environment, directing and influencing growth patterns, and facilitating the vision of the County as expressed through its residents. Decisions on Temporary Use By-law applications must conform to the OP.

The subject lands are designated 'Hamlet' and are located within the Hamlet of Cheapside. The OP states that the predominate use of land within the Hamlet designation shall be low density residential housing, including single and semi-detached dwellings, and apartments associated with commercial uses. Limited, appropriately scaled commercial, industrial, institutional and agriculturally related uses are also permitted. 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 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 proposed animal kennel business be granted via a Temporary Use By-law rather than a Zoning By-law Amendment. This will address the neighbours' concerns, allow for regular 'check-ins' with the owner and neighbours to ensure the keeping of seven (7) dogs is compatible with the surrounding hamlet residential uses, and will ensure eventual discontinuation of animal kennel on the subject lands. The intent is for the proponent to eventually bring the property into compliance with all County ordinances. It also allows the County to not approve the extension of the temporary use, should it no longer be deemed compatible with the surrounding area.

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: Compatibility between the subject lands and surrounding residential properties within the hamlet, which are in close proximity to one another, is the primary planning consideration for the subject application. Planning staff have received letters of support from 3 neighbours, two of which were submitted by the property owners directly adjacent to the subject lands. Both letters expressed strong support and stated that the dogs on the property are not of any nuisance to them, and that any barking from the property is intermittent and only when they are playing outside with the owner. Staff have followed-up with the adjacent neighbours who submitted the letters via phone call, who continued to express strong support. A third letter of support was received from a neighbouring property owner across the street, who stated that the dogs have never created any problematic or persistent barking, or any other noise or actions that have prompted concerns. Staff also receive a phone call from a fourth neighbour, who stated they did not have any concerns and supported the application.

In discussions with the owner and with the adjacent neighbours, it was determined that the owner keeps the dogs in the dwelling on the lands for the majority of the time. When the dogs are outside, they are enclosed in a fenced-in dog run towards the rear of the property furthest from Concession 2 Walpole. The dog run is also located in such a manner that it is partially screened from the street by the existing dwelling, accessory structure, and vegetation on the lands.

Staff also received two phone calls from neighbours in the area who were worried about potential noise issues and the setting of a precedent for these types of uses in the area. Planning staff did advise that the proposal is for a Temporary Use By-law, which indicates that the use is intended to cease over time. Staff also advised that planning matters are not considered precedent setting and are individually considered in their specific application context. Planning staff also advised that the proposed animal kennel is being extremely limited in terms of its function, with no commercial permission being allowed and only dogs being owned by the property owner being permitted on the lands, up to a maximum of 7 dogs. The two neighbours who objected had stated that the noise issue was particularly problematic in the past, when the proponent was breeding animals on the property for commercial purposes. Planning staff advised that this would not be permitted under the proposed Temporary Use By-law and that any contravention of this would be subject to enforcement. Accordingly, any past nuisances generated from the commercial breeding would not be anticipated in the future.

Staff consulted with Municipal Enforcement Services, who stated that no further complaints have been received in relation to the dogs on the subject property since the initial animal welfare complaint in the summer of 2022. The SPCA has also been out on the property and found no concern related to the treatment of the animals.

To ensure that the owner's animal kennel is compatible to the greatest extent possible with the neighbouring hamlet residential properties, the owner's kennel license will be subject to the following criteria:

1. That the owner shall be permitted to keep a maximum of seven (7) dogs on the subject lands;
2. That all dogs must be individually licensed pursuant to the County's Animal Control By-law under the ownership of the owner of the lands; and
3. That at no time shall any commercial operation related to dogs be permitted on the lands, including commercial breeding, boarding or training of dogs.

Based on the foregoing, 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: There are no employees and or commercial component to the proposed animal kennel. Accordingly, there are no anticipated traffic or transportation impacts.

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

Planning Comment: Planning staff have spoken with the proponent, who plans on bringing the property into compliance with the applicable County by-laws in advance of the Temporary Use By-law expiring. Should the proponent not be able to do this, they will be required to apply for an extension of the temporary use and subject to Council approval of same.

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 and provides required setbacks, etc. If a proposal does not comply with the Zoning By-law, it is not permitted, and County licenses, such as a dog kennel licence, cannot be granted.

The subject lands are zoned 'Hamlet Residential (RH)' Zone in the Zoning By-law. The 'RH' Zone permits a number of uses including a single detached dwelling, related accessory structures subject to provisions. The 'RH' Zone does not permit an animal kennel. 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 (1,968 feet) from an urban zone that permits a residential use;
- b) 300 metres (984 feet) from a 'Hamlet Residential (RH)' or 'Lakeshore Residential (RL)' Zone;
- c) 125 metres (410 feet) 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 (98 feet) 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. The proposal is considered a kennel for the purposes of the County's Zoning By-law only because the County's Animal Control By-law considers it a kennel based on the number of dogs being kept on the property 'seven (7)'. The proposed kennel use does not comply with the above provisions of the Zoning By-law, and thus a permanent, full scale commercial kennel would not be appropriate in this location. However, the proposal is not operating as an animal kennel in the traditional sense where many dogs will be kept, trained, boarded and bred for commercial purposes and a small scale, personal use kennel is appropriate for the reasons outlined below. Furthermore, the proposed Temporary Use By-law appropriately restricts the proposed animal kennel use to the point where a larger kennel operation would not be permitted on the lands. The outdoor portion of the property where the dogs are proposed to be kept is located towards the rear of the property, in behind the existing single detached dwelling and approximately ±50 metres from the street. The area is also well buffered by mature trees and vegetation along the eastern and front property line. Furthermore, the applicant has advised that the majority of the time, the animals are kept within the dwelling, where any noise/barking would be significantly mitigated. When considered jointly with the letters of support from the immediate neighbours, the impact of keeping the seven (7) dogs on the property on a temporary basis is not anticipated to create any undue adverse impacts. The proponent would also be subject to obtaining a kennel license and comply with the conditions thereof.

It is Planning staff's opinion that it is reasonable to approve the owner's request to permit her to obtain a dog kennel licence from the County and keep her seven (7) dogs on the subject lands for a period of

two (2) years to December 31, 2024 subject to conditions (maximum of 7 dogs, no commercial operations related to dogs, all dogs must be owned by the owner of the Lands) for the following reasons:

1. The subject lands are located in a rural settlement area known as a Hamlet rather than the urban area where land uses are compact with less separation.
2. The lot is a large hamlet residential lot (1 acre) that can accommodate the use, and the proposed outdoor area is setback substantially from the street and buffered by existing structures and vegetation on the property.
3. The proposal is supported by the immediate neighbours to the east and west, who are likely to be the most impacted by the proposed Temporary Use By-law. No compatibility issues or concerns were raised by these neighbours.
4. The Temporary Use By-law has been limited significantly to only permit the owner to keep a maximum of seven (7) dogs on the property. All dogs must be owned by the property owner and individually licenced. No commercial operations are permitted including, breeding, training and boarding of dogs.
5. Municipal Enforcement Services has not received any additional complaints related to noise or nuisance since the initial animal welfare complaint back in the summer of 2022.
6. The applicant submitted the proposed application as a compromise (Temporary Use By-law for a limited timeframe rather than a Zoning By-law Amendment for permanent permissions).
7. The zoning permissions will expire should:
 - a) The owner not submit an application for extension, or
 - b) Council does not approve subsequent extensions based on feedback from the neighbours and/or should incompatibility issues arise.
8. The Temporary Use By-law extension application has allowed for a 'check-in' (no objections raised) and will continue to allow for check-ins with the owner and neighbours to determine if extension is desirable from a land use compatibility (enjoyment of property) perspective.
9. 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 2 for Council's approval. The Temporary Use By-law will expire on December 31, 2024.

Dog Kennel Licence:

All dog kennels within the County are required to be licenced annually by the County. Dog kennels must comply with the Animal Control By-law 1396-13 and other applicable By-laws of the County, including the Haldimand County Zoning By-law HC-2020 (re: setbacks). Dog kennel licences expire on December 31st each year, which lines up perfectly with the expiry date in the Temporary Use By-law.

In this case, the owner must seek approval for the Temporary Use By-law and associated extension, to temporarily permit the use on the subject lands due to zoning non-compliances relating to being located within a Hamlet, prior to obtaining the required dog kennel license. Planning staff have determined that the dog kennel licence can also be included as an additional legal tool to list conditions relating to the restrictions on the kennel use, including the maximum number of dogs, and restriction on commercial uses (no boarding, breeding or training). If Council passes the Temporary Use By-law, the owner will need to apply annually over the next two (2) years for a dog kennel licence under Haldimand County By-law 1396-13. The dog kennel licence will include the following conditions, which have been discussed with the Supervisor of Customer Experience & Communications, who oversees the Dog Kennel Licence process:

1. That the owner shall be permitted to keep a maximum of seven (7) dogs on the subject lands;
2. That all dogs kept on the property shall be owned by the owner of the property where the dogs are kept;
3. That all dogs be individually licensed; and

4. That at no time shall any commercial operation related to dogs be permitted on the lands, including commercial breeding, boarding or training of dogs.

These conditions will be outlined in the enacting section of the Temporary Use By-law and will also be included in the purpose and effect section with reference to the required dog kennel licence. As such, Planning staff have no concerns.

Planning Opinion:

It is Planning staff's opinion that Council is authorized by the *Planning Act* to pass a Temporary Use By-law to permit land use permissions for an animal kennel. It is Planning staff's opinion that the proposal generally conforms to the Haldimand County Official Plan policies relating to Temporary Use By-law applications and that the use has been sufficiently scoped to mitigate undue adverse impacts. As such, Planning staff recommend approval of this application and passing of the attached Temporary Use By-law (Attachment 2). Following, the owner will need to apply for and receive a dog kennel license. The Supervisor of Customer Experience & Communications has confirmed that the conditions can be included in the dog kennel licence.

Public Consultation:

As part of the application process, Planning staff circulated a Notice of Complete application on January 23, 2023 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 one (1) phone call of support and two (2) phone calls of objection. The proponent also submitted three letters of support received from neighbours. A public notice sign was posted on the subject lands and a Notice of Public meeting was circulated at least twenty (20) days prior to the Public meeting.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

Building & Municipal Enforcement Services – If the Temporary Use By-law is approved, the proponent will be able to apply for a kennel license, thereby bringing the property into compliance with the Animal Control By-law.

Supervisor of Customer Experience & Communications – The applicant will need to obtain a kennel licence annually for the duration of the temporary use extension. The kennel permit/licence can be issued with special conditions/the criteria listed in the Temporary Use By-law. The kennel licence application form, which the applicant will be required to complete, can be found online on the County's Licences page.

Public Input – Planning Staff received one (1) phone call and three (3) letters of support for the subject application, including the neighbours directly adjacent on either side (east/west) of the Lands. Planning staff also received two (2) phone calls from neighbours objecting to the proposal; with noise being the primary concern.

Planning Comment: From discussions with the two objecting neighbours, it was deduced that previous noise issues were from when the proponent was breeding animals on the property and that the number of dogs on the property significantly exceeded seven (7). The restrictions being placed on the proposed

Temporary Use with respect to the number of dogs on the property and the restrictions on commercial uses, including breeding, should ensure that this does not occur. Furthermore, the applicant has advised that the majority of the time, the animals are kept within the dwelling, where any noise/barking would be significantly mitigated. When the animals are outside, they are contained to a fenced-in dog run that is substantially setback and buffered from Concession 12 Walpole. Furthermore, the Temporary Use period has been reduced from 3 years to a period expiring on December 31st, 2024. This will reduce the opportunity for transferability of the use to a new owner should the property be sold; and will provide Council with the opportunity to re-review the Temporary Use and compatibility of same through an extension at an earlier date. Lastly, should noise become an issue, residents can file a by-law complaint with Municipal Enforcement Services under the County's Noise By-law.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

REFERENCES:

1. [Haldimand County Kennel Licence webpage](#)

ATTACHMENTS:

1. Location Map.
2. Draft Temporary Use By-law.