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# HALDIMAND COUNTY

## Report PDD-19-2023 Zoning By-law Amendment to Permit a Secondary Suite on a Private Road - Moon



For Consideration by Council in Committee on October 10, 2023

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### OBJECTIVE:

To consider a Zoning By-law Amendment to permit the construction of a secondary suite on a lot fronting on to a private road, requiring relief from various provisions of the Haldimand County Zoning By-law, within the Hamlet of Nanticoke.

### RECOMMENDATIONS:

1. THAT Report PDD-19-2023 Zoning By-law Amendment to Permit a Secondary Suite on a Private Road - Moon be received;
2. AND THAT application PLZ-HA-2023-098 to amend the Haldimand County Zoning By-law HC 1-2020 from 'Agriculture (A)' to 'Agriculture (A)' with a special exception be refused for the reasons outlined in Report PDD-19-2023.

**Prepared by:** Neil Stoop, MCIP, RPP, Senior Planner

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

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

**Approved:** Cathy Case, Chief Administrative Officer

### EXECUTIVE SUMMARY:

The applicant submitted a Zoning By-law Amendment application to permit the construction of a secondary suite on a lot fronting onto a private road. The application is also seeking relief from the required front yard setback; interior side yard setback; eave/gutter setback; accessory building height; and maximum floor area for a secondary suite. The subject lands are designated 'Hamlet' in the Haldimand County Official Plan and zoned 'Agriculture (A)' in the Zoning By-law HC 1-2020. The subject lands are located in the Hamlet of Nanticoke, along Nanticoke Creek and known municipally as 20 Nanticoke Valley Road.

Planning staff are of the opinion that this proposal does not conform to the Provincial Policy Statement or Haldimand County's Official Plan and that the application does not maintain the intent of the Zoning By-law HC 1-2020 or represent good planning.

### BACKGROUND:

The subject application was submitted to facilitate the construction of an accessory building including a secondary suite at 20 Nanticoke Valley Road. The lands currently contain an existing single detached dwelling accessed from Nanticoke Valley Road, a private road. The lands also contain a partially built accessory building which is the subject of this application. A complaint was received by the Building

and Municipal Enforcement Division alerting them to the construction of the building without a permit. Upon review, a verbal warning was issued to the property owner to apply for, and obtain a building permit prior to continuing construction. A building permit application was submitted and it was found the structure did not comply with the Zoning By-law with respect to both the use and various zoning standards. The subject application is seeking approval to complete the construction of the garage, with a secondary suite.

The site is located on the east side of Nanticoke Valley Road, along the Nanticoke Creek in the Hamlet of Nanticoke. The lands are legally described as Concession 1 Walpole, Part Lot 5, PCL D. A general location map can be found in Attachment 1; with the overall configuration in Attachment 2 (Owner's Sketch).

The subject lands are approximately 0.7 hectares (1.73 acres) in size. The lots along Nanticoke Valley Road are a mix of year-round and seasonal residential uses as well as several vacant lots. The subject lands are impacted by floodplain and regulated by the Long Point Region Conservation Authority (LPRCA).

## **ANALYSIS:**

Planning staff have determined the key planning issues related to this application. They are as follows:

### **Provincial Policy Statement, 2020**

The Provincial Policy Statement, 2020 (PPS) provides policy direction on matters of the 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 subject lands are located within the Hamlet of Nanticoke and is considered a rural settlement area. In general, the PPS encourages intensification and development within settlement areas, including rural settlement areas. Section 1.1.3.2 outlines the goals of development within settlement areas and includes that land use patterns "are appropriate for and efficiently use, the infrastructure and public facilities, which are planned or available...". Further, section 1.1.3.4 requires, "appropriate development standards shall be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety".

While the subject lands are within a Hamlet, they front onto and are accessed only by a private road. As the County does not own the road or play a role in the maintenance of the road there are several concerns associated with intensification of residential uses. The PPS requires that municipalities establish "appropriate development standards". As will be discussed in subsequent sections of the report the County's Official Plan and Zoning By-law direct development and intensification away from private roads and generally require frontage on an open and maintained public road. Additionally, the Haldimand County Design Criteria requires a secondary access for roads exceeding 106 metres (347 feet), as well as appropriate turn arounds for dead end roads. The subject lands are approximately 510 metres (1,673 feet) from the nearest public road, and no secondary access exists for Nanticoke Valley Road. Comments received from Emergency Services indicate there are significant operational challenges, particularly for firefighting, in this location.

Section 2.6 of the PPS speaks to Cultural Heritage, and of particular relevance the protraction of archaeological resources. Section 2.6.2 requires, "Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved". No archaeological assessments have been submitted to the County as it relates to the construction of the accessory structure. Comments received from Mississaugas of the Credit First Nation (MCFN) indicate their desire to have a Stage 1

Archaeological Assessment completed to rule out archaeological potential due to the proximity of the site to the Nanticoke Creek.

Section 3 of the PPS speaks to Protecting Public Health and Safety, while section 3.2 speaks specifically to Natural Hazards. The subject lands are impacted by riverine hazards associated with the Nanticoke Creek. The proposal has been reviewed by the LPRCA and a development permit was issued.

It is the opinion of Planning staff that the subject application *does not* conform to the PPS, in particular as it relates to lack of access in line with the County's required standards.

### **A Place to Grow, 2020**

A Place to Grow, commonly referred to as the Growth Plan, provides direction to municipalities to promote growth within Greater Golden Horseshoe. The Growth Plan directs the 'vast majority of growth' to settlement areas with a delineated boundary, municipal services and can support complete communities. It goes further to state that growth 'will be limited' in rural settlements that do not have municipal services. The Growth Plan also promotes the provision of safe and appropriate transportation systems (i.e. municipal road infrastructure) and permitting development to occur where the transportation system is planned or exists.

The subject lands are located in a rural settlement area, with delineated boundary however municipal services are not planned or available. Further the lands front onto a private road, which would generally not be considered appropriate for development and intensification. The Growth Plan does not directly speak to secondary suites, or private roads however the proposed application would not upload the general direction provided.

### **Haldimand County Official Plan**

The subject lands are designated Hamlet, located within a Provincial Strategic Employment Area and the Industrial Influence Area. The lands are also impacted by the Riverine Hazard Land overlay. The Hamlet designation recognizes areas that have historically developed as residential, social and commercial centres serving the surrounding agricultural community. The Official Plan permits low density residential development within the designation, subject to the relevant development criteria.

Residential development is to be restricted within the Strategic Employment Area and Industrial Influence Area. The Official Plan does allow for minor residential infilling within these areas, provided the lands are also within the Hamlet of Nanticoke.

The Haldimand County Official Plan describes private roads as "roads that are not owned or maintained by the County but are under private ownership and provide vehicular access to more than one property". Nanticoke Valley Road is a private road. A single detached dwelling is permitted as of right (i.e. without the need for a planning application) on existing lots of record provided the servicing policies are satisfied (i.e. the lots have access and frontage on an open public road; the lots are capable of accommodating a water supply system and an on-site sanitary sewage system designed and installed as per the *Ontario Building Code*; and the sites have appropriate drainage patterns). The Official Plan prohibits further development of year-round residences on lots fronting onto private roads because private roads were historically created without engineering oversight and are not constructed to the standard of a municipal road, are held in private ownership and have no formal oversight, and are not maintained or plowed by the County. This policy framework extends to accessory dwelling units or secondary suites as they are considered additional independent dwellings and an extension of permanent year-round development. Further development of year-round dwellings can lead to property and life safety concerns, liability on the County, and pressure for assumption and upgrades in the area. Given that the subject lands do not front onto an open public road, expansion or consideration for a secondary suite as an additional use is not appropriate development.

The Official Plan continues, stating “The County cannot guarantee the provision of emergency services on private roads.”. The servicing section of the Official Plan outlines the minimum servicing requirements for “Non-Urban Areas’ such as hamlets. This section requires a new single detached dwelling to have access and frontage on an open public road. While the subject application is not proposing a new single detached dwelling, it is proposing residential intensification in the form of a secondary suite in a detached accessory structure. The secondary suite has the same function and effect as a single detached dwelling and represents a net increase in the number of separate year-round dwellings. Historically, single detached dwellings were the primary form of residential development in non-urban settings and other housing forms were not contemplated. The intent of the policy was to limit residential development on private roads.

It is the opinion of Planning staff that the subject application *does not* maintain the intent of the Official Plan.

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

The subject lands are zoned ‘Agriculture (A)’ in the Haldimand County Zoning By-law. The A zone permits single detached dwellings and permitted accessory structures, including secondary suites, subject to the provisions set out in the by-law. The subject application is seeking relief from:

	Required	Proposed
Accessory Building Front Yard Setback	13 metres (42 feet)	1 metre (3 feet)
Accessory Building Interior Side Yard	1 metre (3 feet)	0.7 metres (2.2 feet)
4.20(c) Minimum eave/gutter setback (accessory building)	0.3 metre (1 foot)	0 metres
Maximum secondary Suite Area	49 square metres (527 sq. feet) (40% of the principal dwelling to a maximum of 100 square metres)	112 square metres (1,184 sq. feet)
Accessory Building Height	6.5 metres (21.3 feet)	8 metres (26.2 feet)

Further to the above requirements Section 4.55 lists restricted areas where secondary suites are not permitted, including “on a lot that is only accessible by a private road”.

The purpose of a required front yard setback is to ensure a uniform building line along travelled roads and to limit any safety hazards for motorists and other road users. The subject lot has a unique configuration as it is between the end of a road and the Nanticoke Creek. In this configuration large portions of the front yard function like a side yard and do not abut any portion of travelled road. The required interior side yard setback is 1 metre (3 feet), in keeping with the proposed front yard setback. Planning staff are of the opinion that the proposed front yard setback for an accessory building is appropriate and is not anticipated to have any adverse impacts.

The purpose of a required interior side yard setback is to ensure there is adequate separation between structures on adjacent lots and that there is sufficient space to construct and maintain the structure without trespassing on the neighbouring property. The subject application is seeking relief to permit an interior side yard setback of 0.7 metres (2.2 feet), and an eave/gutter setback of 0 metres for an accessory building. It is the opinion of Planning staff that a 0 metre setback for the eave does not provide enough space for construction and maintenance without trespassing on the neighbouring lot.

It is the opinion of Planning staff that the proposed relief from the required interior side yard is not appropriate.

The purpose of limiting the floor area of a secondary suite is to ensure it is secondary and subordinate to the primary dwelling on the property. Further, accessory suites in detached accessory buildings are subject to reduced setbacks compared to the primary dwelling, increasing the potential to adversely impact an adjacent lot. The proposed secondary suite is located entirely within a proposed detached garage. The footprint of the proposed garage does not exceed the maximum permitted lot coverage for accessory structures on the lot. While the footprint of the garage does not require relief, relief from the maximum permitted height is required to accommodate the secondary suite on the second floor of the structure. The maximum permitted height of an accessory building is intended to limit the impact on adjacent properties, at lesser setbacks than a primary dwelling. The combination of increased floor area and height along with the requested relief from required yard setbacks is not in keeping with the intent of the Zoning By-law.

It is the opinion of Planning staff that the subject application *does not* maintain the intent of the Zoning By-law HC 1-2020, nor does it represent good planning.

It is noted that the building has been partially constructed without permits, however, should Council-in-Committee support staff's recommendation for refusal, the structure and associated building plans could be modified to only recognize an accessory storage building to the existing residential dwelling, which would require a Minor Variance application to permit. Planning Staff could consider a subsequent Minor Variance application to recognize reductions to front yard setback and interior side yard setback and increased height for the structure, however, this would not include any recognition for a secondary dwelling unit. The modification to the plans would require the removal of the secondary suite space and a "bump out" portion of the second floor of the building to be removed.

## **FINANCIAL/LEGAL IMPLICATIONS:**

Not applicable.

## **STAKEHOLDER IMPACTS:**

### Senior Building Inspector – Building & Municipal Enforcement Services:

- Survey required to confirm location of property lines and building prior to issuance of permit.
- Some of the zoning deficiencies could create building code issues regarding spatial separation, which will require additional measures for fire protection, and could be an issue for maintenance of the building.

### Deputy Chief, Fire Services – Emergency Services:

- The fire department would face several operational challenges in dealing with an emergency in this area.

### Mississaugas of the Credit First Nation (MCFN), Department of Consultation & Accommodation (DOCA):

- With the location so close to a water feature, MCFN DOCA would be interested in seeing a Stage 1 Archaeological Study completed. This way we can rule out any potential issues within the area.

### Land Use Officer – Six Nations of the Grand River:

- Six Nations of the Grand River Territory is within the most highly urbanized land in Canada. Development has occurred on Six Nations' traditional territory without consultation or consent of

our Nation. The cumulative effects of this intense development has contributed to significant environmental degradation and, as a result, Six Nations has experienced severe impacts on our ability to exercise our Aboriginal and Treaty Rights that are not only set out in the treaties themselves, but are also recognized and affirmed in Section 35 of the *Constitution Act*, 1982. These treaty lands are subject to unresolved litigation and any infringement upon our treaty rights must be fully mitigated by the proponent.

- The proposed new construction of accessory building on this land parcel being a few environmental concerns to my attention. First off considering the house is already located within the floodplain, we at Six Nations would not want to see anymore development any closer to the creek then the house already is. Secondly, any trees that need to be removed to facilitate this build, we ask that they get replaced at a 10:1 ratio. We also ask that you replant with site appropriate native species, Kayanase (<https://www.kayanase.ca/>) is a green house we have on reserve, that can assist you with the replanting process. Any opportunity to plant riparian vegetation we would also recommend, as this helps maintain water quality, reduce erosion as well as provide much needed habitat. Erosion mitigation measures are going to be needed more and more as climate change increases the severity of storms events, much like we have seen this summer.

## **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

## **REFERENCES:**

None.

## **ATTACHMENTS:**

1. Location Map.
2. Owner's Sketch.
3. Elevation Drawing.