

Staff Report 2021-0442

Meeting Date: December 6, 2021

Subject: Proposed Zoning By-law Amendment (Temporary Use), File No. 2020-0003, Glen Schnarr and Associates Inc., 10819 Highway 9, Ward 4

Submitted By: Nick McDonald, Meridian Planning Consultants, on behalf of the Planning Department, Town of Caledon

RECOMMENDATION

That the proposed Zoning By-law Amendment (Temporary Use) attached as Schedule 'D' to Staff Report 2021-0442, be refused.

REPORT HIGHLIGHTS

- An application for Zoning By-law Amendment – Temporary Use (RZ 2020-0003) was filed by Glen Schnarr and Associates Inc., on July 15, 2020. The application was deemed complete on August 10, 2020.
- The applicant proposes to rezone the property from Rural – Oak Ridges Moraine – Exception 450 (A2-ORM-450) and Rural – Oak Ridges Moraine – Exception 450 – Environmental Policy Area (A2-ORM-450-E) to Rural – Oak Ridges Moraine – Temporary XXX (A2-ORM-TXX) and Rural – Oak Ridges Moraine – Temporary XXX – Environmental Policy Area (A2-ORM-TXX-E) to permit a motor vehicle gas bar, accessory retail store and restaurant for a period of three (3) years.
- A formal Public Meeting was held on September 8, 2020, in accordance with the requirements of the *Planning Act*.
- Staff has reviewed the proposal in conjunction with public, agency and department comments and the applicable planning policy framework and is of the opinion that the proposal is not consistent with the Provincial Policy Statement, 2020, and does not conform to the A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020), the Oak Ridges Moraine Conservation Plan (2017) and the Region of Peel Official Plan. The proposal does not conform to the Town of Caledon Official Plan, which sets out the conditions under which a temporary use by-law can be considered. In addition, it is Town staff's opinion that the proposal does not represent good planning and is not in the public interest, and it is therefore recommended that it be refused.

DISCUSSION

The purpose of this Report is to recommend Council refuse the proposed Zoning By-law Amendment (Temporary Use) application.

Subject Property

The Subject Lands are municipally known as 10819 Highway 9 and are located on the south side of Highway 9, west of Tottenham Road. The Subject Lands are legally described as Part of Lot 26, Concession 10 (Albion), as in RO727124. See Schedule "A"



– Location Map, attached. The Subject Lands are rectangular in shape having an area of approximately 0.64 ha (1.58 ac) with a lot frontage of approximately 100 m (328 ft) along Highway 9 and a lot depth of approximately 64 m (210 ft). The Subject Lands are generally at grade with Highway 9; however incrementally increase in elevation approaching the rear.

The Subject Lands are currently occupied by a vacant single-storey industrial building being approximately 230 m² (2,475.7 ft²) in size and fronting Highway 9, a community mailbox, a concrete retaining wall, underground gasoline storage tanks and a two-storey residential dwelling being approximately 95 m² (1,022.6 ft²) in size located at the rear.

The surrounding land uses are agricultural and rural in nature with a medical spa business located to the east and an existing industrial use known as Lions Demolition and Excavation business to the west. Please see Schedule “B” – Aerial Photograph, attached.

Background

On July 15, 2020, the Town of Caledon received a proposed Zoning By-law Amendment (Temporary-Use) application (RZ 2020-0003) from Glen Schnarr & Associates Inc. on behalf of 2203315 Ontario Corporation for the Subject Lands. The application was deemed complete on August 10, 2020.

The intent of the application is to permit a motor vehicle gas bar with an accessory retail store, in addition to a restaurant, for a temporary period of three (3) years.

In or around 1988, the Subject Lands were the site of a single detached dwelling, a commercial garage with an accessory office, a confectionary stand and four (4) double gasoline pumps. The above uses on the lands continued until 1996, when a previous owner discontinued the gasoline pumps, while the remaining uses continued to operate, and the underground gasoline storage tanks remained on the Subject Lands.

In 2008, a new Zoning By-law was passed by the Town for the lands within the Oak Ridges Moraine Conservation Plan area and it included the lands within the A2-ORM-450 zone, which permitted agricultural uses and a motor vehicle repair facility, which as defined does not include a motor vehicle gas bar. This meant that the use of the lands as a motor vehicle gas bar was not permitted, meaning that it became a legal non-conforming use when the new by-law was passed.

In 2009, the owner (2203315 Ontario Corp.) purchased the Subject Lands with the intent of utilizing the gasoline pumps.

In 2015, an Application to Establish Legal Non-Conforming Use application was submitted, to permit the reinstatement of the gas bar use, which was discontinued in 1996. The application was refused by the Town as staff determined that the motor vehicle gas bar

use was interrupted for a lengthy period of time (since 1996), therefore losing its legal non-conforming status.

Proposed Development

The applicant is proposing to amend Zoning By-law 2006-50 to permit a motor vehicle gas bar with an accessory retail store, in addition to a restaurant for a temporary period of three (3) years.

The applicant is proposing to construct a commercial building being 260 m² (2,798.6 ft²) in size for a motor vehicle gas bar, a retail store and an accessory restaurant. The proposal also involves the construction of three (3) new double gasoline pumps, a canopy being 184 m² (1,980.6 ft²) in size, a septic system and new underground storage tanks. The applicant is also proposing a full moves access at the existing signalized intersection of Highway 9 and Tottenham Road. Please see Schedule “C” – Concept Plan, attached.

The existing residential dwelling and other building on-site will be demolished in order to facilitate the development.

The Subject Lands are currently zoned Rural – Oak Ridges Moraine – Exception 450 (A2-ORM-450) and Rural – Oak Ridges Moraine – Exception 450 – Environmental Policy Area (A2-ORM-450-E) under Zoning By-law 2006 - 50, as amended. The applicant is proposing to rezone the lands for a temporary period of three (3) years as follows:

- A2-ORM-450 Zone (front portion of the Subject Lands):
 - To permit a motor vehicle gas bar;
 - To permit an accessory retail store;
 - To permit a restaurant;
 - To permit a minimum lot area of 0.64 ha;
- A2-ORM-450-E Zone (back portion of the Subject Lands):
 - To permit a motor vehicle gas bar;
 - To permit an accessory retail store;
 - To permit a restaurant; and
 - To permit a minimum lot area of 0.64 ha.

See attached Schedule ‘D’ - Temporary Use By-law.

The parent A2-ORM zone generally permits agriculture and farm-related uses such as farm equipment storage, livestock facility, produce outlet, etc. The existing site-specific exception zone (A2-450-ORM) permits a Motor Vehicle Repair Facility and the suffix ‘E’ identifies the lands as designated ‘Environmental Policy Area’ in the Official Plan.

It is important to note that Site Plan Control would be applicable to the proposed use of the land. A Site Plan application has not been received to date.

Planning Review

The Town has completed a planning review of the proposed application, in conjunction with the Provincial Policy Statement, 2020, Oak Ridges Moraine Conservation Plan, 2017, the Region of Peel Official Plan, the Town of Caledon Official Plan and Comprehensive Zoning By-law 2006-50. In addition, supporting technical studies and reports, as well as comments and recommendations provided by internal departments, external review agencies and the public also informed the review of these applications. The focus of the planning review has been on the Town's Official Plan, which sets out the criteria under which temporary use by-laws can be considered.

Town of Caledon Official Plan

The Town's Official Plan designates the subject property as Palgrave Estate Residential Community on Schedule "A", Town of Caledon Land Use Plan, Natural Linkage Area on Schedule "P", Oak Ridges Moraine Conservation Plan, High Aquifer Vulnerability on Schedule "P-1", Oak Ridges Moraine Plan Aquifer Vulnerability Areas and Landform Conservation Area Category 2 on Schedule "P-2, Oak Ridges Moraine Conservation Plan Landform Conservation Areas. The lands are also designated Policy Area 4 on Schedule "G", Palgrave Estate Residential Community and Environmental Zone 1 on Schedule "I", Palgrave Estate Residential Community Environmental Zoning.

Section 39(1) of the Planning Act authorizes the Councils of local municipalities to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the zoning by-law in effect.

Section 6.2.13 of the Town's Official Plan provides guidance on whether it is good planning and in the overall public interest to consider the passage of a temporary use by-law. In this regard, Section 6.2.13.1 below sets out what the purpose of temporary use by-laws are:

"Notwithstanding the other policies contained in the Plan, Council may pass a Temporary Use By-law to permit a specific use on a site for renewable periods up to three (3) years in accordance with the provisions of the Planning Act. Temporary Use By-laws are not to be used in a way that will prevent the use of land for its intended purpose. Temporary Use By-laws provide a way to zone lands where it is known that a specific use is appropriate in the short-term. For example a parking lot to be permitted for two (2) years on a future office site; or on an event basis, a fair on a shopping centre parking lot for the month of July for a three (3) year period."

As per the above, temporary use by-laws provide a way to zone lands where it is known that a specific use is appropriate in the short term. In this regard, the test is that use must be 'appropriate in the short term'. Examples are also provided, which set out what is intended when a temporary use by-law is being considered, with those examples being a parking lot on a future office site or a fair on a shopping centre site.

Section 6.2.1.3 then indicates the following:

"Prior to the passing of a Temporary Use By-law, Council shall be satisfied that the proposed temporary use meets the following conditions:

- a) *That it is compatible with neighbouring land use activities;*

- b) *That adequate parking can be provided;*
- c) *That an adverse impact on traffic will not be created;*
- d) *That the construction of a permanent building or structure is not encouraged;*
- e) *That the use cannot become permanent and difficult to terminate; and,*
- f) *That adverse environmental impacts will be avoided, minimized or mitigated."*

It is Town staff's view that all of the above conditions need to be met as a result of the use of the word 'and' in sub-section e), which means that if one condition is not satisfied, this section in the Official Plan would not be satisfied. In addition to the above, each of the conditions must be clearly met, meaning that there has to be no doubt that the condition has been satisfied.

Each of the conditions in this section is discussed below in further detail:

a) *That it is compatible with neighbouring land use activities*

The Subject Lands are also designated Policy Area 4 on Schedule "G" - Palgrave Estate Residential Community. The Palgrave Estates Residential Community is recognized in the Town's Official Plan (OP) as a growing and developing estate residential community within the Oak Ridges Moraine Conservation Plan (ORMCP). However, Section 7.1.5.4 indicates that Policy Area 4 is unsuitable for estate residential development since it corresponds to the ORMCP Natural Core Area and Natural Linkage Area designations on Schedule P (Policy 7.1.5.5).

As noted above, the Subject Lands are located within the Natural Linkage designation of the ORMCP. Natural Linkage Areas are a central corridor system that support or have the potential to support movement of plants and animals among the Natural Core Areas, Natural Linkage Areas, river valleys and stream corridors (ORMCP Policy 10.1.2). Policy 12.1 (d) and (e) of the ORMCP states, the purpose of Natural Linkage areas is to maintain, and where possible improve or restore, the ecological integrity of the Plan Area, by, maintaining the quantity and quality of groundwater and surface water and maintaining groundwater recharge. A motor vehicle gas bar is not permitted within the Natural Linkage Area. As a result, the proposed temporary use by-law would have the effect of permitting uses on the Subject Lands that are not permitted by the ORMCP and which are not consistent with the planned function of Natural Linkage Areas. This condition is therefore not satisfied.

b) *That adequate parking can be provided*

Based on the development concept plan, the proposal involves a total of 13 parking spaces, 1 barrier-free parking space and 1 loading space. The parking requirement appears to be calculated using the gross floor area (260 m²) of the proposed building. The by-law requires 1 parking space per 20 m² of net floor area for a Motor Vehicle Gas Bar use, exclusive of fuel dispensing stations in accordance with the Zoning By-law. Further, the calculation for the parking requirement does not factor in the other uses requested in the temporary use by-law. This would need to be determined through a future assessment. As a result, a determination on whether this condition has been satisfied cannot be made at this time.

c) That an adverse impact on traffic will not be created

The Ministry of Transportation (MTO) has provided comments that the proposed access to the existing Highway 9 and Tottenham Road T-intersection is not acceptable. MTO has advised that the proposed site access is to be designed as a fourth leg of the intersection and is to be in municipal ownership rather than a private road. The Town's Development Engineering staff is not supportive of taking ownership of a future municipal road at the proposed location. As a result, this condition is not satisfied.

d) That the construction of a permanent building or structure is not encouraged

The applicant is proposing to construct a commercial building (260 m²) for a motor vehicle gas bar, a retail store and an accessory restaurant. The proposal also consists of the construction of three (3) new double gasoline pumps, a canopy (184 m²), a septic system and new underground storage tanks. It is proposed that the existing buildings on site be demolished.

It is Town staff's opinion that the amount of proposed construction on the Subject Lands is significant and involves a significant amount of excavation, which is not encouraged by the Official Plan. It is also Town staff's opinion that it is difficult to design any of what is proposed so that it is 'temporary'. As a result, this condition has not been satisfied.

e) That the use cannot become permanent and difficult to terminate

Given the nature of the proposed development, which involves the development of a new building, gas pumps, underground storage tanks and a septic system, Town staff are concerned that the use will be difficult to terminate given the level of investment made on the Subject Lands. As a result, this condition has not been satisfied.

f) That adverse environmental impacts will be avoided, minimized or mitigated

At the present time, the groundwater at the site exceeds the Ministry of the Environment, Conservation and Parks limits for petroleum hydrocarbon compounds (PHC) and chloroform. Not enough is known about the potential impacts of the proposed temporary use on the natural environment and as a result, a determination cannot be made on whether this condition can be satisfied.

Conclusion

As noted above, any application for a temporary use by-law must satisfy all of the conditions in the Official Plan and if it does not meet one condition, it would not conform to the Official Plan. In this case, it is Town staff's opinion that conditions a), c), d) and e) have not been satisfied. A determination cannot be made at this time on whether conditions b) or f) can be satisfied; however, given that four other conditions have not been satisfied, this is not as relevant at this time. As a result, the application for a temporary use by-law for the Subject Lands does not conform to the Official Plan. It is noted that the Region of Peel also does not recommend approval of this application either. Regional comments indicate that the applicant cannot be supported.

In addition to the above, the establishment of the proposed temporary use would not conform to the Oak Ridges Moraine Conservation Plan (ORMCP) and since the Region Peel Official Plan incorporates and references the ORMCP, the proposal would not conform to the Region of Peel Official Plan either.

With respect to the Provincial Policy Statement (PPS), it is indicated that while Provincial Plans such as the ORMCP are to be read in conjunction with the PPS, the Provincial Plans take precedence over the policies of the PPS and in this case, the ORMCP contains extensive policies that are designed to protect features and functions on the Oak Ridges Moraine, and the proposed use does not conform to the ORMCP. In addition, Section 2.1.2 of the PPS states the following, which is in keeping with the ORMCP:

"The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features."

It is Town staff opinion that the proposed temporary use is not consistent with the above policy.

With respect to the Growth Plan, it too defers to the ORMCP for the making of decisions on matters on the Oak Ridges Moraine, particularly since the ORMCP provides more protection to the natural environment, which includes the Subject Lands in the Natural Linkage Area designation. As a result, the proposal does not conform to the Growth Plan.

It is Town staff's opinion that the proposal does not represent good planning and is not in the public interest, and it is therefore recommended that it be refused.

Consultation

Notice of Application

In accordance with the Planning Act, a Notice of Application was mailed to all landowners within 120 m (393.7 ft). In addition, the Notice was posted on the Town's website and placed in the Caledon Enterprise, Caledon Citizen and Alliston Harold on August 13, 2020.

As required by the Planning Act, a sign was posted on the property on August 17, 2020.

Agency/Department Consultation

The subject applications were circulated to external agencies and internal departments for review and comment. Please refer to the Agency and Department Comment Sheet attached to this report as Schedule "E".

Public Meeting

In accordance with the Planning Act, a Notice of Public Meeting was mailed to all landowners within 120 m (393.7 ft). In addition, the Notice was posted on the Town's website and placed in the Caledon Enterprise, Caledon Citizen and Alliston Harold on August 13, 2020.

At the Public Meeting, 6 members of the public expressed concerns with the proposed development. The comments included concerns regarding hydrogeological and groundwater matters, environmental concerns, land use compatibility, impacts on the Oak Ridges Moraine, contamination and public safety, property standards and holding the Public Meeting virtually. A detailed summary of the public comments made at the September 8, 2020, Public Meeting is attached as Schedule “F” to this report.

FINANCIAL IMPLICATIONS

Property at 10819 Highway 9 has its owner listed as 2203315 ONTARIO CORP. For property tax purposes it is currently assessed as Commercial and Residential (\$1.25 mn. CVA). The Town’s share of property taxes levied, based on current value assessment is approximately \$8,500. As at November 14, 2021, the property tax account is determined to be current.

The proposed buildings (includes a motor vehicle gas bar and retail store) are classified as retail under current Development Charges By-law. Redevelopment credits may become available subsequent to the conversion, demolition or removal of any qualifying existing buildings.

The specific Non-Residential (Other) Development Charge rates will be those that were in effect on the date when the application was deemed complete, i.e. August 10, 2020.

Those rates were:

- Town of Caledon, \$57.78 per square metre of added floor space.
- Region of Peel, \$232.86 per square metre of added floor space.
- School Boards, \$9.69 per square metre of added floor space.

Interest on Development Charges will apply for the period August 11, 2020 through to the date on which those charges are received by the Town.

The Development Charges comments and estimates above are as at November 14, 2021 and are based upon information provided to the Town by the applicant, current By-laws in effect and current rates, which are indexed twice a year. For site plan or rezoning applications dated on or after January 1, 2020, Development Charges are calculated at rates applicable on the date when an application is determined to be complete; and are payable at the time of building permit issuance. Interest charges will apply for affected applications. For site plan or rezoning applications dated prior to January 1, 2020, Development Charges are calculated and payable at building permit issuance date. Development Charge by-laws and rates are subject to change. Further, proposed developments may change from the current proposal to the building permit stage. Any

estimates provided will be updated based on changes in actual information related to the construction as provided in the building permit application.

COUNCIL WORK PLAN

Connected Community: To preserve heritage and natural areas.

ATTACHMENTS

Schedule A: Location Map

Schedule B: Aerial Photograph

Schedule C: Concept Plan

Schedule D: Draft Zoning By-law Amendment

Schedule E: Agency and Department Comment Sheet

Schedule F: Public Comment and Response