



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
 Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	March 3, 2015
SUBJECT / REPORT NO:	Modifications and Updates to Town of Ancaster Zoning By-law No. 87-57, Town of Dundas Zoning By-law No. 3581-86, Town of Flamborough Zoning By-law No. 90-145-Z, Township of Glanbrook Zoning By-law No. 464, City of Hamilton Zoning By-law No. 6593, City of Stoney Creek Zoning By-law No. 3692-92 and Hamilton Zoning By-law No. 05-200 (PED15028) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Peter De Iulio Senior Project Manager (905) 546-2424 Ext. 1345 Steve Robichaud Director of Planning and Chief Planner Planning Division
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That approval be given to **City Initiative CI-14-H** for modifications and updates to Town of Ancaster Zoning By-law No. 87-57, Town of Dundas Zoning By-law No. 3581-86, Town of Flamborough Zoning By-law No. 90-145-Z, Township of Glanbrook Zoning By-law No. 464, City of Hamilton Zoning By-law No. 6593, City of Stoney Creek Zoning By-law No. 3692-92 and Hamilton Zoning By-law No. 05-200;
- (b) That the attached draft By-laws, marked as Appendices “A” to “G” to Report PED15028, which have been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (c) That the changes proposed to the By-laws, in Appendices “A” to “G” to Report PED15028, are minor in nature and that any changes made after holding a public meeting on March 3, 2015, that Council determines that no further notice is

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required prior to the passing of the proposed By-law, pursuant to Section (34)17 of the *Planning Act*.

EXECUTIVE SUMMARY

Further to the staff report on the housekeeping amendment to Hamilton Zoning By-law No. 05-200 on September 3, 2014, staff were requested to bring forward modifications and updates to the former Municipal Zoning By-laws to ensure that the By-laws remain up to date, provide clarification for interpretation issues, correct any issues within the Zoning By-laws, respond to feedback received as part of the “Open for Business” sub-committee review, and to provide consistency with By-law No. 05-200. In addition to the text amendments, several properties which were inadvertently incorporated into the new City Wide Zoning By-law No. 05-200 as Institutional Zones, will be removed and incorporated back into Hamilton Zoning By-law No. 6593.

Specific amendments recommended as part of this Report include:

- clarifying wording to provide easier interpretation;
- rectifying administrative errors (i.e. section numbers);
- revising definitions to provide consistency in all the By-laws;
- adopting the parking stall sizes for surface parking spaces in Zoning By-law No. 05-200 as well as the exemption for additional parking upon a change of certain uses for properties in Downtown areas in the former municipalities and Business Improvement Areas (BIA’s) thereby providing a consistent standard in all Zoning By-laws;
- rezoning lands at the southeast quadrant of the Queen Elizabeth Way and Fifty Road to promote economic development opportunities; and,
- removing properties from Zoning By-law No. 05-200 that were incorrectly zoned institutional when the institutional zones were introduced, and adding them back to Hamilton Zoning By-law No. 6593.

A more detailed discussion of the specific amendments is provided in the Analysis / Rationale for Recommendations Section of this Report.

Alternatives for Consideration – See Page 22

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N / A

Staffing: N / A

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Legal: As required by the *Planning Act*, Council will hold at least one Public Meeting to consider an amendment to the Zoning By-law.

As this is a City-initiated Zoning By-law Amendment with City Wide effects, no notification by mail or sign on the property was required, as per Council policies.

HISTORICAL BACKGROUND

The City of Hamilton Zoning By-law No. 05-200 is being completed in phases, with the Downtown Zones, Open Space and Parks Zones, Institutional Zones and Industrial Zones, having already been adopted into the By-law. While the Rural Zones, Commercial Zones and Residential Zones are currently under development, the existing six By-laws for the former municipalities are still in force and effect. As a result, these By-laws need to be monitored on an on-going basis. The intent is to ensure the By-laws remain easy to use, but continue to remedy any interpretation issues that may arise.

Policy Planning and Zoning By-law Reform staff continue to work with the Building Division and other Divisions within the Planning and Economic Development Department to identify any amendments that should be undertaken to provide easier use of, and clarity in, the Zoning By-laws.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The properties discussed in Subsection 8 of the Analysis and Rationale for Recommendation Section of this Report are all designated “Neighbourhoods” on Schedule “E” – Urban Structure and Schedule “E-1” – Urban Land Use Designations in the Urban Hamilton Official Plan. This designation permits and provides for the opportunity for a full range of housing forms, types and tenures, complementary facilities and services intended to serve the residents such as places of worship, as well as a range of commercial uses including retail stores and services. The proposed zoning changes conform with the Urban Hamilton Official Plan.

The rezoning of the lands at the southeast quadrant of the Queen Elizabeth Way and Fifty Road to industrial and open space zones implements the “Employment Area” and “Business Park” designations on Schedules “E” and “E-1” of the Urban Hamilton Official Plan, and the “Employment Area – Business Park” and “Natural Open Space” designations of the Fruitland-Winona Secondary Plan (under appeal).

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The remainder of the proposed text amendments conform to the Urban and Rural Hamilton Official Plans and do not alter the intent of the policies, Schedules, Maps or Appendices.

RELEVANT CONSULTATION

Consultation has been undertaken with the Building Division and the Development Planning, Heritage and Design Sections of the Planning and Economic Development Department, to discuss any issues that have arisen in the implementation of the former Municipal Zoning By-laws.

Notice of the Amendments has been posted in the Hamilton Spectator, as per the *Planning Act*.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

This modification and update initiative supports the “Open for Business” mandate, provides consistency between existing By-laws and allows for the adaptive reuse of buildings in the former downtowns and Business Improvement Areas (BIA’s).

1. All Zoning By-laws

As noted above, City-wide comprehensive Zoning By-law No. 05-200 is being implemented in phases. As such, whenever possible, the definitions and regulations of the By-law will be added to the former municipal By-laws to provide consistency throughout the City. Several revisions to all of the former municipal By-laws are required to correct minor administrative errors (e.g. numbering) and to ensure consistency in all By-laws, including the new City-wide comprehensive By-law No. 05-200. Appendix “H” to this report contains comparisons of the former municipal By-laws of the matters discussed Section 1.

1.1 Adequate Services and Outdoor Commercial Patios

Renumbering Subsection

On March 1, 2006, By-law No. 06-038 was passed by Council respecting the “Prohibition of Use of Land Without Adequate Services.” The following new subsections were added to each of the By-laws:

“Ancaster – 7.29 Adequate Services;
Dundas – 6.25 Adequate Services;

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Flamborough – 5.37 Adequate Services;
Glanbrook – 7.42 Adequate Services;
Hamilton – 6. (22) Adequate Services; and,
Stoney Creek – 4.4.11 Adequate Services.”

On September 30, 2009, By-law No. 09-210 was passed by Council respecting “Outdoor Commercial Patios” inadvertently duplicating the Section numbers of the Adequate Services By-law. The following new subsections were added to the following By-laws:

“Ancaster – 7.29 Outdoor Commercial Patios;
Dundas – 6.25 Outdoor Commercial Patios;
Flamborough – 5.37 Outdoor Commercial Patios;
Glanbrook – 7.42 Outdoor Patio Restaurants; and,
Stoney Creek – 8.1.7 Outdoor Patio Restaurants.”

As a result, the Ancaster, Dundas, Flamborough and Glanbrook By-laws for Outdoor Commercial Patios need to be amended to assign Subsections 7.30, 6.26, 5.38 and 7.43 to the respective By-laws. No revision to the Stoney Creek By-law is required. Additional revisions to the Ancaster and Dundas By-laws are required to move the definition of “Outdoor Commercial Patio” from the end of the list of definitions to its proper place alphabetically.

With respect to Hamilton Zoning By-law No. 6593, Subsection 18. (11) contains “Special Requirements for Outdoor Patios” which were partially deleted and replaced through By-law No. 09-210. However, the provisions that were not replaced were not renumbered. As a result, this error is addressed through this amendment.

Revised Wording

Finally, Building Division staff has indicated that there is an issue with the applicability of one of the provisions for Outdoor Commercial Patios in all the By-laws. In particular, “the portions of the patio that cross property lines such as road allowances” is only applicable to the seating capacity requirements when it should apply to all requirements. As a result, the subsections for all the By-laws need to be amended to add the wording in bold to read as follows:

“Notwithstanding any provisions of this By-law, every Outdoor Commercial Patio, ***inclusive of all outdoor areas and portions of the patio that cross property lines such as road allowances***, shall comply with the following:”

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Since the bolded and italicized wording is included as noted above, subsection b) Seating Capacity Requirements of each By-law can be amended by deleting provision ii) leaving provision i) which does not have to be numbered any more.

To ensure consistency in all By-laws, subsection 4.20 of Zoning By-law No. 05-200 will also be amended to reflect the above-noted clause and to delete provision ii) under Seating Capacity Requirements.

1.2 Urban Farm and Community Gardens

Similar to the Adequate Services and Outdoor Commercial Patios By-laws, the recently passed By-laws for each municipality incorporating “Urban Farm” and “Community Gardens” regulations duplicated existing Section numbers. As a result, changes to the various By-laws need to be made as follows:

a) Ancaster

The new definition of “**Urban Farm**” should be clause 3.143.1 instead of 3.141.1.

b) Dundas

The new definition of **URBAN FARM** should be clause 3.2.96.1 instead of 3.2.93.1. Subsection 6.25 – Regulations for an Urban Farm should be 6.27 and 6.26 – Regulations for Community Gardens should be 6.28. The references to Section 6.1.25 and 6.1.26 in Subsections 8.6, 8.7, 9.6, 9.7, 10.8, 10.9, 10A.4, 10A.5, 11.10, 11.11, 11A.5, 11A.6, 12.7, 12.8, 13.5, 13.6, 14.4, 14.5, 15.5, 15.5, 15A.9, 15A.10, 17.6, 17.7, 18.7, 18.8, 19.7 and 19.8 should be changed to Subsection 6.27 and Subsection 6.28, respectively. The reference to Subsection 6.25(c) in Subsection 18.7.2 should be changed to 6.27(c) and the reference to Subsection 6.26(b) in Subsection 18.8.2 should be changed to 6.28(b).

c) Flamborough

Subsection 5.37 – Urban Farm should be 5.39 and Subsection 5.38 – Community Gardens should be 5.40. The references to Section 5.37 and 5.38 in Subsections 6.2.1, 6.2.2, 9.2.1, 9.2.2, 10.2.1, 10.2.2, 11.2.1, 11.2.2, 12.2.1, 12.2.2, 13.2.1, 13.2.2, 15.2.1, 15.2.2, 16.2.1, 16.2.2, 17.2.1, 17.2.2, 18.2.1, 18.2.2, 20.2.1 and 20.2.2 should be changed to Subsections 5.39 and 5.40, respectively.

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d) Glanbrook

Subsection 11.9 – Urban Farm should be 11.10 and Subsection 11.10 – Community Gardens should be 11.11. The references to Section 11.9 and 11.10 in Subsections 10.2, 11.9, 11.10, 23.4, 23.5, 24.3, 24.4, 25.5, 25.6, 27.4 and 27.5 should be changed to 11.10 and 11.11, respectively.

e) Stoney Creek

Subsection 6.1.20 – Urban Farm should be 6.1.10 and Subsection 6.1.21 – Community Gardens should be 6.1.11. The references to Subsection 6.1.20 and 6.1.21 in Subsections 6.1.20, 6.1.21, 7.1.5 and 7.1.6 should be changed to 6.1.10 and 6.1.11, respectively. Subsection 7.1.5 – Special Exemptions of Section 7.1 – Neighbourhood Development “ND” Zone should be renumbered to 7.1.7.

f) By-law No. 05-200

That Subsection 4.2 – Community Garden should be renumbered 4.27 and Subsections 6.6.2.6 and 6.6.2.7 should be renumbered 6.6.2.3 and 6.6.2.4.

Staff note that while all of the By-laws passed to implement these new regulations have not been appealed, the Official Plan Amendment has been appealed and, as a result, these By-laws are not in force and effect yet. However, it is considered appropriate to make the necessary modifications at this time.

1.3 Administration of By-law

Each By-law contains an Administration Section which contains a provision with respect to which staff person is to administer the By-law, that is, the final interpretation of the By-law. The provisions in the Ancaster, Dundas and Flamborough By-laws are very similar; Ancaster and Flamborough do not identify a particular person or position; whereas, Dundas identifies a Zoning Administrator. Glanbrook delegates administration to the Zoning Administrator, while Hamilton delegates it to the Building Commissioner, and Stoney Creek delegates it to the Director of Planning and in his / her absence the Manager of Development Control. Currently, final interpretation of the former municipal By-laws has been delegated to the Director, Building Services, Chief Building Official. Since various positions are identified in the By-laws, the By-laws are being amended to identify the same position. Final interpretation of Zoning By-law No. 05-200 has been delegated to the Director of Planning, and in their absence the Manager of Development Planning, Heritage and Design. No changes to By-law No. 05-200 are proposed.

1.4 Parking Stall Size

The parking stall size provision of all of the former municipal By-laws varies and has been modified in numerous site specific Zoning By-law Amendment applications over the past ten years to reflect the standard established in the new City-wide, comprehensive Zoning By-law No. 05-200. The standard in By-law No. 05-200 is 2.6 metres wide by 5.5 metres long for a surface parking stall only. Parking stalls within garages is going to be reviewed as part of the “Residential Zones” review. Only the Ancaster By-law currently has the same standard as By-law No. 05-200. The Flamborough By-law has the same width of 2.6 metres, but the required length is 5.8 metres. The Dundas and Hamilton By-laws have a standard of 2.7 metres by 6.0 metres. The Glanbrook By-law has a standard of 3.0 metres by 6.0 metres, except where a minimum of 20 parking spaces are required, a maximum of 35% of the parking spaces may be 2.6 metres by 5.8 metres. Finally, the Stoney Creek By-law standard is 2.75 metres by 5.8 metres, except private residential garages which must be 3.0 metres by 6.0 metres.

Changes to the physically handicapped or barrier free stall size are also included to reflect the standard in Zoning By-law No. 05-200 which is 4.4 metres wide by 5.5 metres long.

It is appropriate to make the above noted changes to the By-laws to a standard surface parking stall size of 2.6 metres wide by 5.5 metres long and physically handicapped or barrier free size of 4.4 metres wide by 5.5 metres long.

No changes to the By-law requirements with respect to the number of parking spaces are proposed. Rather, as part of the Zoning By-law reform project, staff are reviewing these requirements, especially for commercial and residential uses, and will report back to Planning Committee.

1.5 Definition of Height

Height is defined differently in all of the former municipal By-laws, as well as the new City-wide comprehensive Zoning By-law No. 05-200. It is measured either by distance (metres) or number of storeys or sometimes both (see Appendix “H”). It is appropriate to use the definition from Zoning By-law No. 05-200, which is:

“Building Height Shall mean the vertical distance from grade to the uppermost point of the building but not including any mechanical penthouse or any portion of a building designed, adapted or used for such features as a chimney, smokestack, fire wall, stair tower, fire tower, water tower, tank, elevator bulkhead,

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ventilator, skylight, cooling tower, derrick, conveyor, antenna, or any such requisite appurtenance, or a flagpole, display sign, ornamental figure, parapet, bell tower or other similar structure. Provided, however, where this By-law requires building height to be calculated to determine a minimum rear yard or a minimum side yard requirement, building height shall mean the vertical distance between the lowest finished grade elevation along the lot line related to such required yard at that point closest to the building and the horizontal extension of the uppermost point of the building.”

However, since Hamilton Zoning By-law No. 6593 still has zones that only measure height in storeys, the final clause of the current definition will be maintained.

1.6 Dwelling Unit in a Basement or Cellar

The Ontario Building Code (OBC) has been revised over the years to permit dwelling units in basements or cellars subject to certain regulations with respect to safety (window sizes, ceiling heights, etc.). Some of the former municipal By-laws prohibit dwelling units in both basements and cellars (Ancaster and Glanbrook), while others prohibit it in the cellar only (Dundas, Flamborough and Stoney Creek). The Hamilton By-law permits a dwelling unit in both the basement and cellar; however, in the “Residential Conversion Requirements” of the By-law, it excludes the area of the cellar for the minimum floor area requirement of each dwelling unit. It is appropriate to remove any references to the prohibition of dwelling units in a basement or cellar as well as any reference to the exclusion of cellars from the minimum floor area requirement for a dwelling unit, except Glanbrook and Ancaster, since these regulations are covered by the OBC and this will align zoning regulations with OBC regulations.

1.7 Lot Coverage

By definition, in all of the former municipal Zoning By-laws (except Hamilton which does not have a definition) lot coverage includes the percentage of the lot covered by buildings, including accessory buildings. The definition of building typically includes structure, and a deck is defined as a structure. As a result, decks are included in the maximum lot coverage of a lot. While decks may include roofed-over type structures like a trellis or contain screening, they cannot be totally enclosed. If they do become totally enclosed, then the area of the deck would be included in the lot coverage since it would now be considered part of the main dwelling. To reduce the number of repetitive variances, it is appropriate to use the definition from the new City-wide comprehensive Zoning By-law No. 05-200, which is:

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“Shall mean the percentage of the lot covered by all buildings, but shall not include swimming pools and decks.”

1.8 Parking Exemption for Existing Floor Space in Former Municipal Downtowns and Some Business Improvement Areas

Zoning By-law No. 05-200 contains a regulation that recognizes the existing number of parking spaces for existing buildings and only requires additional parking spaces for the increased gross floor area where an addition, alteration or expansion occurs to an existing building in the Downtown Zones of Hamilton, as well as a hospital or place of worship in any Zone. The downtowns of the former municipalities (Ancaster, Dundas, Flamborough (Waterdown), Glanbrook (Binbrook) and Stoney Creek) and some of the Business Improvement Areas (BIA’s) (Barton Village, Concession Street, Locke Street, Ottawa Street and Westdale) experience similar situations where uses change without changes to the building, but zoning regulations has been identified as a barrier for small businesses with respect to the parking requirements for existing buildings.

Subsection 5.6 b) of Zoning By-law No. 05-200 states:

“Notwithstanding Subsection a) above, for any permitted use or uses within any Downtown Zone located in all or part of a building existing on the effective date of this By-law, no parking spaces are required provided that the number of parking spaces which existed on the effective date of this By-law shall continue to be provided and maintained. Where an addition or expansion of an existing building is proposed, the parking requirements of Section 5.6 a) above, shall only apply to the use or uses contained within the increased gross floor area.”

Similar wording will be used in the appropriate Subsections of the By-laws. Ancaster, Dundas, Flamborough (Waterdown) and Stoney Creek have specific, stand-alone Zones that co-relate to the boundary of their respective downtowns, but will only include commercial uses, excluding a medical office or clinic. Only the Glanbrook By-law does not have a specific Zone for the Binbrook area since the downtown area is relatively new and just developing now. Many of the existing dwellings are being converted into single-user, commercial space such as doctor’s offices while the new, larger scale, multi-use developments have been providing parking spaces in accordance with the current parking requirements.

With respect to the BIA’s, the Barton Village, Concession Street, Locke Street, Ottawa Street and Westdale BIA boundaries are identified on Schedules “A4” to “A8”, inclusive, attached to the amending By-law for Hamilton Zoning By-law No. 6593 (Appendix “E” to

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this Report). The Main West Esplanade BIA is not included since it is part of the Strathcona Secondary Plan which is currently under appeal.

1.9 Air conditioning Units, Pool Pumps / Filters and Mechanical / Unitary Equipment

The placement of air conditioners, pool pumps / filters and other mechanical / unitary equipment on residential properties has been a concern for many years, especially with the Provincial mandate to intensify development in existing, built-up areas. Smaller lot sizes with reduced setbacks can still accommodate modest dwelling sizes and, as a result, there is less space to locate an air conditioner. As indicated in the chart attached as Appendix “H” to this Report, the setbacks vary in the former municipal By-laws. For consistency, it is appropriate to use the standard of the City-wide, comprehensive Zoning By-law No. 05-200 in the former municipal By-laws.

1.10 Standards for Common Element Condominiums

Hamilton is experiencing a new and very common form of development commonly referred to as “Freedominiums.” A “Freedominium” is essentially street townhouse dwellings on a private driveway / road, similar to the old standard block townhouse development. The components of the townhouse block that are condominium tenure are the access driveways (including sidewalks), any common open space, central mailbox and the visitor parking spaces, while the balance of the land is freehold. The typical zoning for the standard condominium block addresses regulations for the block as a whole. As a result, all rezoning applications to permit the “Freedominium” development, require multiple changes to the regulations of the standard block townhouse Zone, including deeming the internal, private driveway(s) a “public street” to allow the dwelling units to be “street townhouse” dwelling units. A general clause will be added to the respective By-laws that will recognize this form of development, but this new clause will not necessarily avoid multiple changes to the zone regulations through rezoning applications since the regulations of the standard street townhouse Zone have not been updated to reflect current trends. Unfortunately, these regulations will not be reviewed until the new residential zones are developed. The City of Kitchener Zoning By-law includes a regulation which addresses this form of development:

“5.21B Common Element Condominiums

Notwithstanding Section 5.2 of this by-law, single detached, semi-detached, duplex or street townhouse dwellings shall be permitted on lots without frontage on a public street provided that all such dwellings are located on Parcels of Tied Lands (POTL’s) to a Common Elements Condominium (CEC) consisting of at least a private driveway connecting to a public street.

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Where lands have been comprehensively planned and are subject to an approved Site Plan and a Development Agreement pursuant to Section 41 of the Planning Act, any zoning deficiencies resulting from the creation of the POTL's, shall be deemed to conform to the regulations of the by-law, provided that:

- a) all applicable regulations of the by-law relative to the whole lot and its external lot lines, existing prior to any condominium plan registration are complied with, and
- b) each dwelling unit shall have an unobstructed access at grade or ground floor level, having a minimum width of 0.9 metres, from the front yard to the rear yard of the lot either by:
 - i) direct access on the lot without passing through any portion of the dwelling unit; or,
 - ii) direct access through the dwelling unit without passing through a living or family room, dining room, kitchen, bathroom, bedroom, or recreation room or any hallway that is not separated by a door to any such room; or,
 - iii) access over adjacent lands which, if the lands are not owned by the City of Kitchener or the Regional Municipality of Waterloo, are secured by a registered easement or are a common element of the condominium.

Any additions or alterations to the dwelling; accessory structures such as sheds; and yard projections such as porches, balconies, decks, and pools, added subsequent to the registration of the condominium, which are not shown on the approved Site Plan must comply with the applicable zoning regulations for the type of dwelling contained within the POTL. For the purposes of this regulation, the front lot line shall be deemed to be that lot line abutting the internal driveway or primary internal walkway.”

Unlike Kitchener, the proposed changes to the City's existing By-laws only address townhouse dwelling units since there are few developments in the City with the other dwelling types.

These changes will avoid the necessity for minor variance applications and will avoid any unnecessary delays in the registration of Common Element Condominiums but will

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still ensure that the form of development is consistent with the applicable parent zoning by-law regulations and performance standards. The proposed changes are reflected in the draft By-laws attached as Appendices “A” to “G” to this Report.

2. Ancaster Zoning By-law No. 87-57

2.1 General Provisions For Residential Zones

New Residential Zones (“R5”, “RM4” and “RM5”) were incorporated into the Ancaster Zoning By-law in 1993 (By-law No. 93-20). While the Sections were added to the By-law, the General Provisions section for all residential Zones, Section 9, was not amended to include the new Zones. As a result, these general provisions are not applicable to the Zones. It is deemed appropriate to revise Sections 9.1 and 9.2 to incorporate the Zones.

These changes, along with the changes from the All Zoning By-laws section, are reflected in the draft By-law attached as Appendix “A” to this Report.

3. Dundas Zoning By-law No. 3581-86

3.1 Uncovered Porches

Section 6.6.8 of the By-law addresses “uncovered porches.” The provision indicates that an uncovered porch must be set back a minimum of 4.0 metres from a street line. This regulation is appropriate for a front yard since the minimum setback to the dwelling is typically 6.0 metres, which would allow for the porch to encroach 2.0 metres into the front yard. However, for a corner lot, the dwelling is permitted to be set back a minimum of 3.5 metres from the side yard abutting the street (flankage yard) in most Residential Zones. Based on the permitted encroachment of 2.0 metres into a front yard, if this 2.0 metre encroachment is applied to the side yard abutting a street, then the setback would be 1.5 metres from the street line. Staff is satisfied that this setback is appropriate since, even if a dwelling had a wrap-around porch with the above-noted setbacks, the porch would not encroach into either a 3.0 x 3.0 metres or 5.0 x 5.0 metres visibility triangle, thereby not creating a traffic hazard while providing a street presence.

3.2 Pleasant View Area

By-law No. 4066-93 was passed by Dundas Council on February 15, 1993, and approved by the Ontario Municipal Board on January 28, 1999, to establish site specific regulations for the Pleasant View area. A new Rural (RU) Zone was established which

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permits: agricultural uses, limited to field crop farms, fruit and vegetable farms, and accessory residence and farm buildings; non-farm residential dwellings; and, existing residential uses, including accessory buildings, structures and uses subject to the provisions of subsection 6.1.2 of By-law No. 3581-86. The Zone includes provisions for the agricultural uses and accessory residence and structures, but not the non-farm residential dwelling even though the heading indicates it is included. In addition, the regulations for accessory buildings or structures and farm buildings needs to be clarified. Currently the regulations only apply to accessory farm buildings and structures so there are no provisions for a building or structure accessory to an accessory farm residence or non-farm residential dwelling. It is appropriate to apply the provisions of the accessory residence to the non-farm residential dwelling as well and to clarify the regulations for accessory buildings or structures and farm buildings.

3.3 Cross-Melville Heritage Conservation District

When the site-specific zoning was established for the Cross-Melville Heritage Conservation District in 1996 (By-law No. 4280-96), the height provision for accessory structures was established with a minimum height of 4.0 metres rather than a maximum height of 4.0 metres. Staff has reviewed the staff reports with the draft By-law attached to the reports as well as the minutes of all of the meetings where this matter was considered, and it was always a maximum height of 4.0 metres in the draft By-law and there was no change indicated in the minutes. It is appropriate to change the provision to a maximum height of 4.0 metres.

These changes, along with the changes from the All Zoning By-laws section, are reflected in the draft By-law attached as Appendix “B” to this Report.

4. Flamborough Zoning By-law No. 90-145-Z

4.1 Deck

The definition indicates that a deck is “attached” to a dwelling. However, decks may be free-standing. As a result, it is appropriate to revise the definition to reflect the definition in Zoning By-law No. 05-200 which is as follows:

“Deck Shall mean a structure accessory to a building with or without roof or walls, which may include visual partitions and railings, and is constructed on piers or a foundation at a minimum of 0.15 metres above-grade.”

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This change, along with the changes from the All Zoning By-laws section, are reflected in the draft By-law attached as Appendix “C” to this Report.

5. Glanbrook Zoning By-law No. 464

5.1 Home Occupation / Home Professions

An issue has arisen over the parking requirements for “home occupations” and “home professions,” in particular, tandem parking. While these uses are defined to be “clearly incidental and secondary to the use of the principal residential and / or agricultural use of the subject lands,” they are listed as a separate permitted use in both the General Agricultural “A1” and Restricted Agricultural “A2” Zones, and, in accordance with the General Provisions For All Residential Zones Section, they are permitted in all Residential Zones. Both of the Agricultural Zones and the General Provisions For All Residential Zones contain minimum parking requirements for the uses, but the Minimum Parking Requirements in the General Provisions For All Zones Section of the By-law, only permits tandem parking for single detached, semi-detached, street townhouse and block townhouse dwellings. While the dwellings are the principal use, since the provisions for the “home occupations” and “home professions” specifically state a minimum parking requirement for the use, it is reasonable to allow tandem parking for these uses as well. As a result, it is recommended that Section 7.35(a)(iv) be revised to read as follows:

- “(iv) The parking facilities shall have adequate access from a street to permit unobstructed ingress and egress of motor vehicles. Notwithstanding the foregoing, tandem parking is permitted for single detached, semi-detached, street townhouse and block townhouse dwellings, ***including home occupations and home professions.***”

5.2 Patio Deck

The definition indicates that a patio deck is “attached” to a dwelling. However, patio decks may be free-standing. As a result, it is appropriate to revise the definition to reflect the definition in Zoning By-law No. 05-200 which is as follows:

“Deck Shall mean a structure accessory to a building with or without roof or walls, which may include visual partitions and railings, and is constructed on piers or a foundation at a minimum of 0.15 metres above-grade.”

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These changes, along with the changes from the All Zoning By-laws section, are reflected in the draft By-law attached as Appendix “D” to this Report.

6. Hamilton Zoning By-law No. 6593

6.1 Accessory Buildings

Section 18(4)(iv) of the By-law restricts the location of accessory buildings to the rear yard only and does not permit them in any side yard. The setback required is 0.45 metres from the nearest lot line. All of the other former municipal By-laws do not permit accessory buildings in the front yard but do permit them in the side and rear yards. With respect to setbacks, the By-laws vary from 0.5 metres (Stoney Creek) to 2.0 metres (Dundas) from the rear and side yards, except the setback for an exterior or flankage side yard abutting a street is between 3.5 metres (Dundas) and 7.5 metres (Ancaster). Both the Ancaster and Glanbrook By-laws contain different regulations as the accessory building gets larger (over 12.0 square metres). By-law No. 05-200 prohibits accessory buildings in the front yard and requires a minimum setback of 0.6 metres from both the side and rear yards for buildings accessory to a residential use between 10.0 and 18.0 square metres. However, if the building is designed or intended for the parking of motor vehicles, it must be set back 6.0 metres from any street line. Accessory buildings greater than 18.0 square metres must meet the setback requirements of the residential dwelling. The simplest solution is to permit them in the side yard but not the required side yard, that is, if the required side yard is 1.2 metres for the dwelling, then the accessory building must be set back 1.2 metres from the side lot line. For a corner lot, the existing regulations require that the building be set back from the street line the same distance as that required for a dwelling on an adjoining lot, that is, if the front yard setback for the dwelling on the adjoin lot is 6.0 metres, then the accessory building must be set back 6.0 metres as well.

Based on the foregoing, it is recommended that accessory buildings be permitted in the side yard by simply adding the word “required” before “side yard” in Subsection 18(4)(iv).

6.2 Mapping

The only other changes are mapping changes as a result of removing properties from By-law No. 05-200 and restoring the previous zoning on the properties, as discussed in Section 8 below.

These changes, along with the changes from the All Zoning By-laws section, are reflected in the draft By-law attached as Appendix “E” to this Report.

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7. Stoney Creek Zoning By-law No. 3692-92

7.1 Access to Parking Spaces

Subsection 6.1.8 of the By-law addresses “Parking Restrictions in Residential Zones.” In particular, clause (e) indicates that access to a parking area shall be by means of a driveway, either one-way with a width of 4.5 metres or two-way with a width of 6.0 metres. This regulation has caused problems for single detached, semi-detached, duplex, triplex, fourplex and street townhouse dwellings since single-wide driveways are typically only 3.0 metres wide due to the width of the lot. As a result, the regulation will be modified to exempt these dwelling units similar to the regulation in the Flamborough Zoning By-law.

7.2 Sales Pavilions

Subsection 4.15 of the By-law addresses “Temporary Uses.” In particular, subsection 4.15.2 (a) permits a “real estate pavilion located on or abutting the lands which are for sale.” A concern has arisen that the lands should also be zoned for the proposed use. It is deemed appropriate to modify the clause to ensure the use(s) is permitted.

These changes, along with the changes from the All Zoning By-laws section, are reflected in the draft By-law attached as Appendix “F” to this Report.

8. Hamilton Zoning By-law No. 05-200

Mapping Changes

The properties noted below are either currently zoned (8.1 and 8.2) or proposed to be zoned (8.3) Neighbourhood Institutional (I1) Zone.

8.1 Fennell Avenue East and Upper Sherman Avenue Area

660 / 662 Fennell Avenue East

This property contains a two-storey, multi-tenanted commercial building located on the south side of the street, just west of East 27th Street. The main tenant and owner is a real estate company while another tenant listed is a religious organization. Since this has always been a multi-tenanted commercial building, it is appropriate to remove the Neighbourhood Institutional (I1) Zone in Zoning By-law No. 05-200 and re-establish the “H” (Community Shopping and Commercial, etc.) District in Hamilton Zoning By-law No. 6593.

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307 East 27th Street

This property used to contain a place of worship when the new Institutional Zones were introduced into Zoning By-law No. 05-200 in March 2007. However, the property was recently redeveloped in 2010 with a two-storey, multi-tenanted commercial building through Site Plan Control application DA-07-153. When the Site Plan application was reviewed, it was reviewed in accordance with the “H” (Community Shopping and Commercial, etc.) District provisions of Hamilton Zoning By-law No. 6593 and a subsequent Minor Variance application (HM/A-07:321) was approved by the Committee of Adjustment in January 2008 to permit the development. Since the place of worship no longer exists and there is two-storey commercial building on site, it is appropriate to re-establish the “H” (Community Shopping and Commercial, etc.) District in Hamilton Zoning By-law No. 6593.

598 and 600 Upper Sherman Avenue

These properties contain a two-storey, mixed use building at 598 Upper Sherman Avenue and a two-storey dwelling containing three apartment units at 600 Upper Sherman Avenue. Staff is not aware of any institutional use having been established on either property. In fact, since the subject properties had merged on title, a consent application was required to re-establish the original parcels and, due to zoning deficiencies, the properties were rezoned in February 2007 (By-law No. 07-052), the same meeting the report that established the new Institutional Zones in Zoning By-law No. 05-200 was considered. The zoning regulations from By-law No. 07-052 were not reflected in the Institutional Zone. As a result, it is appropriate to re-establish the site-specific zoning approved through By-law No. 07-052.

8.2 Carson Drive

A fourth property at 271 Carson Drive was also zoned Neighbourhood Institutional (I1) Zone. This property is located south of Mohawk Road East between Upper Ottawa Street and Upper Kenilworth Avenue. It contains a two-storey, single detached dwelling in the middle of the neighbourhood. When the new Institutional Zones were established in 2007, a church organization owned the dwelling. Since the church organization no longer owns the property, it is considered appropriate to re-establish the “C” (Urban Protected Residential, etc.) District in Hamilton Zoning By-law No. 6593.

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8.3 Upper Sherman Avenue

A fifth property at 1457 Upper Sherman Avenue requires additional lands to be zoned Neighbourhood Institutional (I1) Zone. The chronology of events relating to this property is as follows:

July 9, 2003: The back portions of the properties at 1437, 1445 and 1457 Upper Sherman Avenue were rezoned from the “AA” (Agricultural) District to the “C”-‘H’ (Urban Protected Residential, etc. - Holding) District (By-law No. 03-180).

April 12, 2006: Consent applications HM/B-06:34 and HM/B-06:35 were conditionally approved by the Committee of Adjustment to permit the conveyance of a portion of 1445 Upper Sherman Avenue to be added to 1457 Upper Sherman Avenue and the rear portion of 1457 Upper Sherman Avenue to be added to the property at 1445 Upper Sherman Avenue to allow for land assembly and the development of a residential plan of subdivision (“Stone Ridge Estates”, Plan 62M-1145).

May 2006: Rezoning application ZAC-06-43 was submitted for the proposed residential subdivision.

July 2006: Consent applications were finalized.

September 19, 2006: Rezoning application was considered by the Planning and Economic Development Committee but the Committee deferred the application for two weeks.

October 3, 2006: Planning and Economic Development Committee meeting, the application was referred back to staff.

October 17, 2006: The Planning and Economic Development Committee tabled the application. The applicant appealed the application to the Ontario Municipal Board due to the lack of a Council decision within the legislated timeline.

February 20, 2007: The Economic Development and Planning Committee authorized that the City’s position on the application be presented to the Ontario Municipal Board, which was in support of the application.

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March 28, 2007: Unfortunately, when the new Institutional Zones were approved, it did not reflect the reconfigured church property at 1457 Upper Sherman Avenue.

July 31, 2007: The rezoning application was approved by the Board.

It is considered appropriate to rectify this oversight at this time.

8.4 Southeast Quadrant of the Queen Elizabeth Way and Fifty Road

The lands are designated “Employment Area” on Schedule E – Urban Structure and Business Park on Schedule E-1 – Urban Land Use Designations in the Urban Hamilton Official Plan. Fifty Creek runs through a portion of the lands and is identified as “Stream” on Schedule B – Natural Heritage System, “Significant Woodland” on Schedule B-2 – Detailed Natural Heritage Features Significant Woodlands, “Wetlands” on Schedule B-4 – Detailed Natural Heritage Features Key Hydrologic Features, “Local Natural Area Environmentally Significant Area” on Schedule B-6 – Detailed Natural Heritage Features Local Natural Area Environmentally Significant Areas and “Stream” on Schedule B-8 – Detailed Natural Heritage Features Key Hydrologic Feature Streams. Finally, the lands are also within Stoney Creek Area Specific Policy “USC-3” and identified as Parcel B. This policy essentially requires the preparation of Secondary Plan prior to any development occurring.

Amendment No. 17 to the Urban Hamilton Official Plan respecting the Fruitland-Winona Secondary Plan was adopted by Council on May 14, 2014. This Amendment has been appealed to the Ontario Municipal Board. The subject lands are designated “Employment Area – Business Park” on Map B.7.4-1 – Fruitland-Winona Secondary Plan Land Use Plan. Fifty Creek runs through a portion of the lands and is identified as “Core Area” and “Vegetative Protection Zone” on Map B.7.4-2 – Fruitland-Winona Secondary Plan Natural Heritage System.

Based on the foregoing, it is recommended that the lands be zoned Prestige Business Park (M3) Zone with Fifty Creek and a 15 metre buffer from the limits of the wetland zoned Conservation / Hazard Land (P5) Zone. Future development on the lands abutting this feature will require the submission of an Environmental Impact Statement.

Text Changes

8.5 Dry Cleaning Plant

A “dry cleaning plant” is defined in the By-law, but it is not listed as a permitted use in any Zones. Staff has taken the position that it is a “manufacturing” use since the process involved is similar to and covered in the definition of “manufacturing.” Thus, it is permitted in all the industrial Zones, except Airport related Business (M8) Zone and Airport Reserve (M9) Zone, both of which are currently under appeal.

A “dry cleaning plant” is defined as:

“Dry Cleaning Plant Shall mean a building where dry cleaning, dry dyeing, washing or pressing of articles of clothing is conducted.”

“Manufacturing” is defined as:

“Manufacturing Shall mean the production, fabrication, compounding, processing, packaging, crafting, bottling, packing, recycling or assembling of raw or semi-processed or fully-processed goods or materials, and shall include but not be limited to a Biotechnological Establishment, Computer, Electronic and Data Processing Establishment, Pharmaceutical and Medical Establishment, Printing Establishment and / or a Science and Technology Establishment. Manufacturing may also include a Private Power Generation Facility as an accessory use, but shall not include a Waste Management Facility.”

Based on these definitions, it is evident that the two uses are different and distinct and should be listed as two separate uses. As a result, it is recommended that a “dry cleaning plant” be listed as a permitted use in both the General Business Park (M2) Zone and General Industrial (M5) Zone since it is a Class I or II industrial use.

These changes are reflected in the draft By-law attached as Appendix “G” to this Report.

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ALTERNATIVES FOR CONSIDERATION

If the proposed By-law amendments are not approved, inconsistencies in the interpretation and application of the Zoning By-laws may occur.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.1 Continue to grow the non-residential tax base.
- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

- 3.2 Build organizational capacity to ensure the City has a skilled workforce that is capable and enabled to deliver its business objectives.
- 3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES

- Appendix "A": Draft Amendment to Ancaster Zoning By-law No. 87-57
- Appendix "B": Draft Amendment to Dundas Zoning By-law No. 3581-86
- Appendix "C": Draft Amendment to Flamborough Zoning By-law No. 90-145-Z
- Appendix "D": Draft Amendment to Glanbrook Zoning By-law No. 464
- Appendix "E": Draft Amendment to Hamilton Zoning By-law No. 6593
- Appendix "F": Draft Amendment to Stoney Creek Zoning By-law No. 3692-92

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- Appendix “G”: Draft Amendment to Hamilton Zoning By-law No. 05-200
- Appendix “H”: Comparison of Former Municipal By-laws

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