



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

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| TO: | Chair and Members Planning Committee |
| COMMITTEE DATE: | March 22, 2022 |
| SUBJECT/REPORT NO: | Application to Amend Hamilton Zoning By-law No. 05-200 for Lands Located at 1040 Garner Road West, Ancaster (PED22059) (Ward 12) |
| WARD(S) AFFECTED: | Ward 12 |
| PREPARED BY: | James Van Rooi (905) 546-2424 Ext. 4283 |
| SUBMITTED BY: | Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department |
| SIGNATURE: | |

RECOMMENDATION

That **Zoning By-law Amendment Application ZAC-21-030, by UrbanSolutions Planning and Land Development c/o Matt Johnston on behalf of Garner Investments Inc., Owner**, for a change in zoning from the Prestige Business Park (M3, 376, 678) Zone to the Prestige Business Park (M3, 376, 678, 771) Zone to modify the restaurant requirements applicable to the subject lands, as shown on Appendix "A" attached to Report PED22059, be **APPROVED** on the following basis:

- (i) That the draft By-law, attached as Appendix "A" to Report PED22059 which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (ii) That the proposed change in zoning is consistent with the Provincial Policy Statement (2020), conforms to the Growth Plan for the Greater Golden Horseshoe (2019, as amended);
- (iii) That the proposed change in zoning complies with the Urban Hamilton Official Plan.

EXECUTIVE SUMMARY

The Owner has applied for an amendment to the City of Hamilton Zoning By-law No. 05-200 to modify the restaurant requirements for the lands municipally known as 1040

SUBJECT: Application to Amend Hamilton Zoning By-law No. 05-200 for Lands Located at 1040 Garner Road West (PED22059) (Ward 12) - Page 2 of 13

Garner Road West. The lands are currently zoned Prestige Business Park (M3, 376, 678) Zone. A restaurant is a permitted use in the M3 Zone however it is limited to a few locations within the M3 Zone. The amendment is to expand the location for restaurants to include the subject lands.

The Application has merit and can be supported for the following reasons:

- It is consistent with the Provincial Policy Statement (PPS, 2020);
- It conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019, as amended); and,
- It complies with the Urban Hamilton Official Plan.

Alternatives for Consideration – See Page 12

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider an application for a Zoning By-law Amendment.

HISTORICAL BACKGROUND

| Application Details | |
|----------------------------|---|
| Owner: | Garner Investments Inc. |
| Applicant/Agent: | UrbanSolutions Planning and Land Development (c/o Matt Johnston) |
| File Number: | ZAC-21-030 |
| Type of Application: | Zoning By-law Amendment. |
| Proposal: | To expand the restaurant requirements within the Prestige Business Park (M3, 376, 678) Zone to include the subject lands. |
| Property Details | |
| Municipal Address: | 1040 Garner Road West |
| Lot Area: | ±1.38, hectares (irregular) |
| Servicing: | Municipal sanitary sewers and watermains. Property contains a stormwater storage tank. |
| Existing Use: | Industrial |

SUBJECT: Application to Amend Hamilton Zoning By-law No. 05-200 for Lands Located at 1040 Garner Road West (PED22059) (Ward 12) - Page 3 of 13

| Documents | |
|------------------------------------|--|
| Provincial Policy Statement (PPS): | The proposal is consistent with the PPS (2020). |
| A Place to Grow: | The proposal conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019, as amended). |
| Official Plan Existing: | “Business Park” on Schedule “E-1” – Urban Land Use Designations. |
| Official Plan Proposed: | No amendment proposed. |
| Zoning Existing: | Prestige Business Park (M3, 376, 678) Zone. |
| Zoning Proposed: | Prestige Business Park (M3, 376, 678, 771) Zone. |
| Modifications Proposed: | To add a restaurant as a permitted use. |
| Processing Details | |
| Received: | June 11, 2021. |
| Deemed Complete: | July 11, 2021. |
| Notice of Complete Application: | Sent to 12 property owners within 120 m of the subject lands on August 6, 2021. |
| Public Notice Sign: | Posted August 13, 2021 and updated with Public Meeting date on February 23, 2022. |
| Notice of Public Meeting: | Sent to 12 property owners within 120 m of the subject lands on March 4, 2022. |
| Public Comments: | One comment in opposition. |
| Processing Time: | 298 days from the date of receipt of the application. |

Existing Land Use and Zoning

| | Existing Land Use | Existing Zoning |
|-------------------------------|--------------------------|---|
| Subject Lands: | Industrial | Prestige Business Park (M3, 376, 678) Zone. |
| Surrounding Land Uses: | | |
| North | Commercial | District Commercial (C6, 320) Zone |

Surrounding Land Uses:

| | | |
|-------|--------------------|---|
| South | Industrial | General Business Park (M2, 678) Zone |
| East | Commercial/Offices | Prestige Business Park (M3, 376, 381, 678) Zone |
| West | Vacant | Prestige Business Park (M3, 376, 424, 678) Zone |

BACKGROUND

The lands are subject to Site Plan Control Application DA-18-027, which was granted final approval on March 24, 2020 for three, two-storey prestige industrial buildings with a total gross floor area of approximately 6336 square metres supported by 134 parking spaces. A Minor Variance Application was submitted in 2021 for the subject lands to permit a restaurant use. The Committee of Adjustment denied the Application (AN/A-20-286) on February 4, 2021 because the requested variance was considered “beyond that of a minor nature” and therefore should be addressed by way of an Application for a zoning by-law amendment.

A Plan of Condominium Application (25CDM-2021013) for the establishment of tenure of 38 units was also received by the City and draft approved on December 1, 2021.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Policy Statement (2020)

The Provincial Planning Policy Framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (PPS 2020), and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, as amended. The *Planning Act* requires that all municipal land use decisions affecting planning matters shall be consistent with the PPS (2020). The *Places to Grow Act* requires that all municipal land use decisions made under the *Planning Act* conform to the Growth Plan.

The mechanism for the implementation of the Provincial plans and policies is through the Official Plan. Through the preparation, adoption and subsequent Ontario Land Tribunal approval of the City of Hamilton Official Plans, the City of Hamilton has established the local policy framework for the implementation of the Provincial planning policy framework. As such, matters of provincial interest are reviewed and discussed in the UHOP analysis below.

As the Application for Zoning By-law Amendment complies with the Official Plan, it is staff's opinion that the Application is:

- Consistent with Section 3 of the *Planning Act*;
- Consistent with the PPS (2020); and,
- Conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, as amended.

Urban Hamilton Official Plan (UHOP)

The subject lands are identified as "Employment Areas" on Schedule "E" – Urban Structure and designated "Business Park" on Schedule "E-1" – Urban Land Use Designations. The following policies, amongst others, apply to the proposal.

Employment Areas

- "E.2.7.2 Employment Areas shall provide employment through a broad range of uses, including traditional industrial uses, research and *development* uses, and other uses. Uses which support the businesses and employees of the employment area shall be permitted. Major retail uses or residential uses shall not be permitted. The permitted uses shall be described in more detail in Section E.5.0 – Employment Area Designations.
- E.2.7.4 To meet the long-term market demands and locational requirements of the various industrial sectors, existing Employment Areas shall be retained.
- E.5.1.2 Maintain an adequate supply of zoned and serviced employment lands of varying parcel sizes in various locations to meet the City's projected employment growth forecast and to promote economic development and competitiveness.
- E.5.1.4 Protect lands designated Employment Area from non-employment uses and to support the employment functions of the City's Downtown, nodes and corridors. New *major retail* uses shall be prohibited and office uses shall be restricted in function and scale.
- E.5.2.1 Employment Area designations include lands designated on Schedule E-1 – Urban Land Use Designations as follows:
b) Employment Area – Business Park;
- E.5.2.4 Uses permitted in the Employment Area designations shall include clusters of business and economic activities such as, manufacturing, research and development, transport terminal, *building or contracting supply establishment*, tradesperson's shop, warehousing, *waste management facilities*, private power generation, limited agricultural uses,

office, and *accessory* uses. *Ancillary* uses which primarily support businesses and employees within the Employment Area shall also be permitted. Permitted uses specific to the four Employment Area designations are contained in Policies E.5.3.2, E.5.4.3, E.5.5.1, E.5.5.2 and E.5.6.1. (OPA 23) (OPA109).”

The proposal complies with policies E.2.7.4 and E.5.1.2 as the lands will remain in an Industrial zone. In accordance with policy E.5.1.4, the restaurant is an ancillary use serving the broader employment area. Accordingly, the proposal complies with the policies of the UHOP.

Business Park

- “E.5.4.3 The following uses shall be permitted on lands designated Employment Area – Business Park on Schedule E-1 – Urban Land Use Designations:
- a) Manufacturing, warehousing, repair service, *building or contracting supply establishments*, building and lumber supply establishments, transportation terminals, research and development, office, communication establishment, and private power generation. Salvage yards and other uses which are unsightly or otherwise incompatible with the design policies and image for Business Parks shall be prohibited;
 - b) Uses which primarily support industry, including labour association halls, conference and convention centres, trade schools, commercial motor vehicle and equipment sales, and commercial rental establishments;
 - c) *Ancillary* uses which primarily support businesses and employees within Business Parks, including hotels, health and recreational facilities, financial establishments, restaurants, personal services, motor vehicle service stations and washing, retail establishments, and commercial parking facilities;
 - d) Limited agricultural uses including only a medical marijuana growing and harvesting facility, a greenhouse and an aquaponics facility; (OPA 23)
 - a) *Waste processing facilities and waste transfer facilities*; and,
 - b) *Accessory* uses, such as limited retail and office;

- E.5.4.4 In addition to Policy E.5.4.3 c), *ancillary uses* may be permitted within the Employment Area provided the following conditions are met:
- a) the uses shall be determined through the Zoning By-law in accordance with the policies of this Plan;
 - b) Notwithstanding Policy E.5.4.4 a), the Zoning By-law may:
 - i) Permit a limited number of restaurants where a need for the use can be justified; and,
 - ii) Restrict or limit the number of ancillary uses from occupying Employment Areas;
 - c) The need for the uses to support the businesses and employees within the Employment Area has been determined;
 - d) The uses shall only be located along the exterior of the Employment Area and should generally be located at intersections of arterial or collector roads; and,
 - e) Where possible, the uses should be clustered on single sites to limit the impact on the supply of developable lands for use permitted in Policy E.5.4.3 a). (OPA 109).”

With respect to Policy E.5.4.3, the proposed restaurant use would complement the existing and planned Business Park uses in the broader surrounding area and appropriately serve the needs of the businesses and employees of the site and surrounding area.

Regarding Policy E.5.4.4, the Prestige Business Park (M3) Zone permits the restaurant use subject to locational criteria and gross floor area restrictions, therefore Policy E.5.4.4 a), b) and c) have been previously addressed through the establishment of the Prestige Business Park (M3) Zone. In accordance with E.5.4.4 d), the restaurant use would be located at the northern extent of the Employment Area and located along Garner Road West, which is a major arterial road. In accordance with E.5.4.4 e), the proposed use would be on a single site to limit the impact on the supply of industrial lands. Therefore, the proposal complies with the Business Park policies for ancillary uses.

Natural Heritage

- “C.2.11.1 The City recognizes the importance of trees and woodlands to the health and quality of life in our community. The City shall encourage sustainable forestry practices and the protection and restoration of trees and forests.”

A Tree Protection Plan (TPP) and Landscape Plan were provided through the Site Plan process (DA-18-027). The TPP and Landscape Plan were satisfied from a Natural Heritage Planning perspective on September 3, 2019.

Cultural Heritage

“B.3.4.2.12 A cultural heritage impact assessment: (OPA 57 and OPA 64)

- a) Shall be required by the City and submitted prior to or at the time of any application submission pursuant to the *Planning Act*, R.S.O., 1990 c. P.13 where the proposed development, site alteration, or redevelopment of lands (both public and private) has the potential to adversely affect the following cultural heritage resources through displacement or disruption:
 - i. Properties designated under any part of the *Ontario Heritage Act* or adjacent to properties designated under any part of the *Ontario Heritage Act*.”

As part of Site Plan Control Application DA-18-027, a Cultural Heritage Impact Assessment for the subject property was completed by Robinson Heritage Consulting dated October 2018. The report assessed the impact of the proposed three, two-storey prestige industrial buildings with associated landscaping and parking on the adjacent heritage resources being, the Shaver Stone House and the Philip Shaver House (designated under Part IV of the *Ontario Heritage Act*), located at 1028 and 1034 Garner Rd W. Cultural Heritage staff were satisfied with the Cultural Heritage Impact Assessment that was submitted and reviewed through Site Plan Application DA-18-027 and that there would be no impact.

Based on the foregoing, Staff are of the opinion that the proposal complies with the UHOP.

Hamilton Zoning By-law No. 05-200

The subject lands are currently zoned Prestige Business Park (M3, 376, 678) Zone in the City of Hamilton Zoning By-law No. 05-200. The Prestige Business Park (M3, 376, 678) Zone permits industrial uses such as manufacturing and warehousing as well as a variety of other uses such as offices, hotels and trade schools. The Special Exception 376 requires specific provisions such as considering Garner Road West as the front lot line, a minimum yard of 3 metres abutting Osprey Drive and a minimum 3 metre landscaped area abutting Osprey Drive. Special Exception 678 permits two other uses being a children’s play-gym and gymnastics studio.

SUBJECT: Application to Amend Hamilton Zoning By-law No. 05-200 for Lands Located at 1040 Garner Road West (PED22059) (Ward 12) - Page 9 of 13

It is noted that within the parent Prestige Business Park (M3) Zone, a restaurant is a permitted use, however it is limited to three areas within the City as follows:

- On South Service Road located between Lake Avenue and Winona Road, but not on any property with frontage on Fruitland Road;
- On Barton Street located between Lake Avenue and Winona Road, but not on any property with frontage on Fruitland Road; and,
- The north side of Highway #5, west of Highway #6.

The restriction on restaurants along Fruitland Road relate to the grade separation, and safety related considerations associated with vehicular turning movements.

The purpose of this application is to expand the restaurant requirements of the M3 Zone to include the lands municipally known as 1040 Garner Road West.

RELEVANT CONSULTATION

The following departments and agencies were circulated for comment:

| Departments and Agencies | |
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| <ul style="list-style-type: none">• Strategic Planning Section, Public Works Department;• Public Health Services, Healthy Environments Division, Healthy and Safe Communities Department;• Recreation Division, Healthy and Safe Communities Department;• Transit Planning and Infrastructure, Transit Operations Division, Public Works Department;• Recycling and Waste Disposal Section, Environmental Services Division, Public Works Department;• Real Estate Section, Economic Development Division, Planning and Economic Development Department;• Commercial Districts and Small Business Section, Urban Renewal Division, Planning and Economic Development Department;• Hydro One Networks; and,• Canada Post. | No Comment |

| Departments and Agencies | | |
|---|---|---|
| | Comment | Staff Response |
| Development Engineering Approvals Section, Growth Management Division, Planning and Economic Development Department | <ul style="list-style-type: none"> • Provided there are no changes to the previously approved Grading, Servicing and Stormwater Management design from the previously approved Site Plan Application formerly known as DA-18-027, then Development Engineering Approvals have no comments regarding the rezoning of the Prestige Business Park to include the use of a restaurant. | <ul style="list-style-type: none"> • No changes to the Grading, Servicing and Stormwater Management design are proposed. |
| Transportation Planning Section, Transportation Planning and Parking Division, Planning and Economic Development Department | <ul style="list-style-type: none"> • Transportation Planning supports the proposed Zoning By-law amendment (ZAC-21-030) to permit the inclusion of a restaurant within the Prestige Business Park as the use can be accommodated without significant transportation concerns in the surrounding area. | <ul style="list-style-type: none"> • Noted. |
| Bell | <ul style="list-style-type: none"> • Request a condition that the owner be responsible for the relocation of any such facilities or easement at their own costs. | <ul style="list-style-type: none"> • This condition was included as part of the Draft Plan of Condominium Application 25CDM-2021013. |
| Enbridge | <ul style="list-style-type: none"> • Request that as a condition of final approval that the owner/developer provide to Union the necessary easements and/or agreements required by Union for the provision of gas services for this project, in a form satisfactory to Enbridge. | <ul style="list-style-type: none"> • This condition was included as part of the Draft Plan of Condominium Application 25CDM-2021013. |

| Public Comments | | |
|------------------------|---|--|
| | Comment | Staff Response |
| Change in use | <ul style="list-style-type: none"> • There are enough restaurants to support the local economy; • The land has been zoned for office and business uses and should remain as such; and, • The area does not need nor can handle additional restaurants. | <ul style="list-style-type: none"> • The proposed use is considered an ancillary use that will provide services to the surrounding Ancaster Business Park and to the Commercial lands to the north; • The property will still have zoning in place for office and business uses; and, • The establishment of the restaurant use would contribute to the range of employment types in the area and planned for the area. |

PUBLIC CONSULTATION

In accordance with the provisions of the *Planning Act* and the Council Approved Public Participation Policy, notice of complete Application and preliminary circulation of the proposal were sent to 12 property owners within 120m of the subject lands on August 6, 2021. A Public Notice Sign was posted on the property on August 13, 2021 and updated on February 23, 2022 with the Public Meeting date. A Notice of Public Meeting was given in accordance with the requirements of the *Planning Act* to 12 property owners within 120m of the subject lands on March 4, 2022.

At the time of writing this report, one submission in opposition to the proposed use has been received from a member of the public, which is attached as Appendix “E” to Report PED22059 and summarized in the table above.

Public Consultation Strategy

The Application went through a Minor Variance process in 2021, a process that also required public notification. At that time, one opposition letter was submitted by a member of the public. The Applicants have offered to contact the members of the public to address any concerns related to the application if notified. As the subject lands were recently subject of a Minor Variance Application, additional consultation, such as an information meeting, was not required.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. The proposal has merit and can be supported for the following reasons:
 - (i) It is consistent with the Provincial Policy Statement (2020) and conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, as amended;
 - (ii) It complies with the policies of the Urban Hamilton Official Plan; and,
 - (iii) The proposed development is compatible with the existing land uses in the immediate area and represents good planning by, among other things, providing a range of uses, supporting businesses and employees of the employment area and maintaining the supply of zoned and serviced employment land.

2. Zoning By-law Amendment

The Application for Zoning By-law Amendment is for a change in zoning from the the Prestige Business Park (M3, 376, 678) Zone to the Prestige Business Park (M3, 376, 678, 771) to expand the restaurant requirements of the M3 Zone to include the lands municipally known as 1040 Garner Road West.

The restaurant use will contribute to the surrounding Employment Area and will serve the needs of nearby businesses and employees of the area. The proposed use will also be limited to a single site and is appropriately located along the exterior of the Employment Area and along an arterial road. Therefore, staff support the proposed Zoning By-law Amendment.

ALTERNATIVES FOR CONSIDERATION

Should the Application be denied, the subject property can be used in accordance with the Prestige Business Park (M3, 376, 678) Zone, in the City of Hamilton Zoning By-law No. 05-200.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Location Map

Appendix "B" – Amendment to Zoning By-law No. 05-200

Appendix "C" – Approved Site Plan

Appendix "D" – Draft Condominium Plan

Appendix "E" – Public Comment

JVR:sd