



Hamilton

STAFF COMMENTS

HEARING DATE: July 23, 2024

A-24:64 – 261 Highway 5 West, Flamborough

Recommendation:

Development Planning - Deny

Proposed Conditions:

N/A

Proposed Notes:

N/A



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Development Planning:

Background

To facilitate the use of a dine-in restaurant.

Analysis

Rural Hamilton Official Plan

The subject lands are designated “Agriculture” in Schedule D – Rural Land Use Designations and identified as “Protected Countryside” within the Greenbelt Plan Designations on Schedule A – Provincial Plans of the Rural Hamilton Official Plan. Staff note that the existing take-out restaurant with Drive Through Facility is recognized as an existing use through the Zoning By-law. Policies F.1.12.2 and F.1.12.3, among others, speak to existing and non-complying uses. Policy D.2.1, among others, is applicable and does not permit the use of a restaurant. Staff note that the change in a non-complying use shall only be permitted if they maintain the intent and purpose of the RHOP. Staff note that the dine in restaurant that is proposed is not a permitted use in the “Agriculture” designation. Staff are of the opinion that the proposal does not meet the intent and policy of the Rural Hamilton Official Plan. Staff note that the proper process to add a use to the “Agriculture” designation would be an Official Plan Amendment application.

D.2.1 Permitted Uses Uses permitted in the agriculture designation are limited to agricultural uses, agricultural-related commercial and agricultural-related industrial uses and on farm secondary uses as set out in the following policies.

F.1.12.2 An existing use, identified as Protected Countryside area on Schedule A – Provincial Plans, that does not comply to or conform with the land use designations and policies of this Plan and/or the Zoning By-law may continue provided that:

- a) The non-complying use did not conflict with the Official Plan and Zoning Bylaw in effect at the time the use was established;
- b) The non-complying use has not been interrupted subsequent to the approval of this Plan; and,

F.1.12.3 Where appropriate, the City may amend the Zoning By-law to recognize the non-complying use as an existing use provided that all the following criteria shall be met:

- a) The Zoning By-law shall permit only the existing use and the associated performance standards;



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City of Hamilton Zoning By-law No. 05-200

The subject site is zoned Existing Rural Commercial (E1, 283) Zone, which does not permit a dine-in restaurant.

Variance 1

1. To permit a dine-in restaurant whereas only a take-out restaurant with a drive through facility is permitted.

The intent of this zoning is provided in the Explanatory Note below:

“The E1 Zone applies to all properties that contain legally Existing commercial uses. This Zone recognizes and permits those uses that have been legally established prior to the enactment of this By-law. It is not the intent to add properties to the E1 Zone subsequent to the enactment of this Bylaw. Special Exceptions have been applied to some E1 Zone properties to identify the specific Existing Use(s) permitted.”

Staff note that the existing building and use were subject to Site Plan Control application DA-11-189 and the specific existing use of a take-out restaurant with a drive through facility was permitted through Special Exception 283. Staff are of the opinion that adding a use does not meet the intent of the By-law as the use is expanding in what was reviewed and approved through the proper planning approvals. Staff are of the opinion that the variance is neither minor in nature nor desirable for the development as negative impacts may arise to the subject site or surrounding area. Staff note that the proper process to add a use to a zone is a Zoning By-law Amendment application.

Staff are of the opinion that the variance does not meet the four tests of a minor variance. Based on the foregoing, **staff do not support the variance.**

Zoning:

Recommendation:	No comments.
Proposed Conditions:	
Comments:	
Notes:	

Development Engineering:

Recommendation:	No Comments
Proposed Conditions:	
Comments:	N/A
Notes:	



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Building Engineering:

Recommendation:	No Comments
Proposed Conditions:	
Comments:	
Notes:	

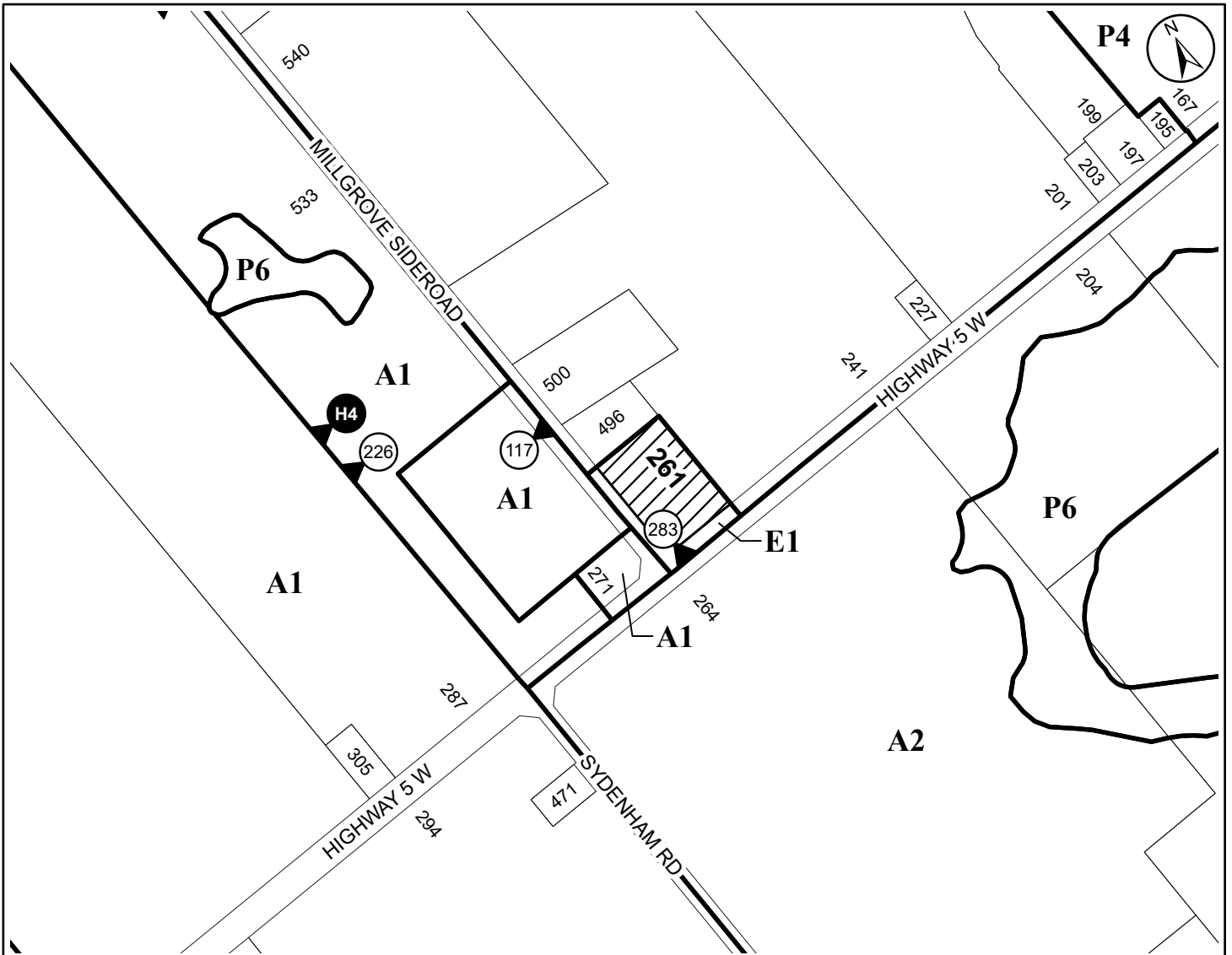
Transportation Planning:

Recommendation:	Approve
Proposed Conditions:	
Comments:	
Notes:	

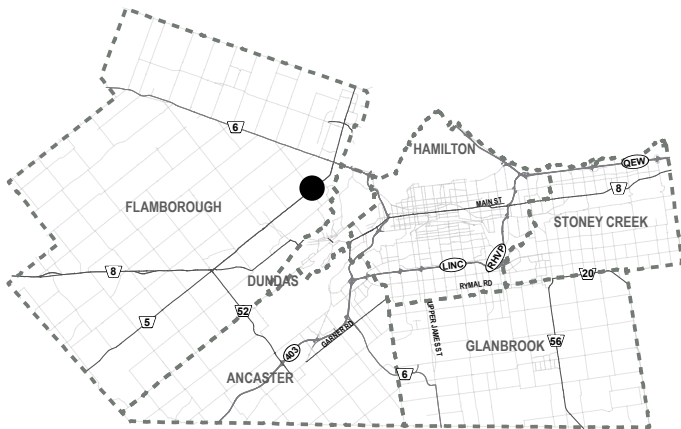
Ministry of Transportation:

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	<p>The subject property is within the ministry’s permit control. The ministry requires more information to assess the potential impact that the dine-in restaurant will create. The proponent is expected to provide the following:</p> <ul style="list-style-type: none"> • A clear copy of the Site Plan depicting the 14m setback and parking spaces sufficient to serve the dine-in restaurant. • A Grading Plan if any grading change is expected on the property. If additional paving will be necessary, it must be shown on both the Site Plan and Grading Plan. • A Traffic Brief explaining how many trips will be generated by converting this restaurant into a dine-in establishment instead of the existing drive-through restaurant. <p>For any questions regarding the ministry’s requirements, the proponent is invited to contact the ministry’s Planner, Usama Ali (Usama.Ali@ontario.ca), directly to work on the file.</p>
Notes:	

Please Note: Public comment will be posted separately, if applicable.



● Site Location



City of Hamilton

Committee of Adjustments

Subject Property



261 Highway 5 West, Flamborough
(Ward 13)

File Name/Number:

A-24:64

Date:

July 5, 2024

Technician:

SH

Scale:

N.T.S.

Appendix "A"



Hamilton

Planning and Economic Development Department