

Staff Report

Report To: City Council

Report From: Pamela Coulter, Director of Community Services
Sabine Robart, Manager of Planning & Heritage

Meeting Date: May 29, 2023

Report Code: CS-23-065

Subject: Appeal of Council's Approval of Zoning By-law Amendment No. 44 by Villarboit (Owen Sound) Holdings Limited Partnership and Heritage Grove Centre Inc. under Section 34 of the Planning Act

Recommendations:

THAT in consideration of Staff Report CS-23-065 respecting an Appeal of Council's Approval of Zoning By-law Amendment No. 44 by Villarboit (Owen Sound) Holdings Limited Partnership and Heritage Grove Centre Inc. under Section 34 of the *Planning Act*, City Council:

1. Directs staff to advise the Ontario Land Tribunal that:
 - a. Council, having considered the grounds for the Appeal, and having considered the staff technical reports, recommendations, and oral and written submissions from the public and agencies, confirms its support and approval of Zoning By-law Amendment No. 44 as being consistent with the Provincial Policy Statement, conforming to the goals, objectives and policies of the City's Official Plan and representing good planning; and
 - b. The City of Owen Sound requests party status in the matter; and

2. Directs staff and/or the City's planning consultant to prepare for and represent the City as a party at the Hearing, together with legal counsel.

Highlights:

- City Council had approved an amendment to the City's Zoning By-law to permit a mixed-use development on the subject lands (ZBA No. 44).
- The City issued a Notice of Decision in accordance with the Planning Act.
- An appeal to the Ontario Land Tribunal has been received by Villarboit (Owen Sound) Holdings Limited Partnership and Heritage Grove Centre Inc. The reasons for the appeal are outlined in the attachment.
- Council is required to provide to the OLT their position on the appeal.

Strategic Plan Alignment:

This report supports the delivery of Core Service.

Climate and Environmental Implications:

This supports the objectives of the City's Corporate Climate Change Adaptation Plan by considering climate adaptation in the development of the City's strategies, plans and policies.

Previous Report/Authority

[City of Owen Sound Official Plan \(2021\)](#)

[City of Owen Sound Zoning By-law 2010-078, as amended](#)

[CS-23-016 Technical Report – Zoning By-law Amendment No. 44 – 2275 16th Street East](#)

[CS-23-037 Recommendation Report – Zoning By-law Amendment No. 44 – 2275 16th Street East](#)

Background:

A complete application for a Zoning By-law Amendment (ZBA 44) was submitted by Sydenham Square Inc. (Muzammil Dewan) through Ron

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Davidson Land Use Planning Consultant Inc. for a mixed-use development at 2275 16th Street East.

The subject property has approximately 217 metres of frontage on the south side of 16th Street East, at the eastern portion of the City's East City Commercial area. The Heritage Grove commercial development is located adjacent and west of the subject lands.

The Proposal

The concept site plan is included in Attachment 1. The application for rezoning proposes the development of a mixed-use development that includes three multi-unit commercial buildings, two single-purpose commercial buildings, and three 3-storey 40-unit multi-unit residential buildings with a total of 120 residential units. The proposal also includes the construction of parking areas, an internal road system, landscaping, and a stormwater management system. The development is proposed to be accessed via a new private roadway on the south side and with access from 16th St E.

The effect of the application was to amend the area currently zoned 'Rural' (RUR) to 'Retail Commercial' Holding (C2 H) Zone subject to special provisions 14.136 and 'Open Space' (OS) Zone. The lands currently designated and zoned Hazard Lands (ZH) will remain. The Special Provision 14.136 are generally in accordance with the following:

- a. Notwithstanding the C2 (H) (14.136) Zone, legal existing uses as of the date of this By-law, may continue on the lands.
- b. The City of Owen Sound shall not remove the "Holding" provision for use of any lot or erect, alter or use any building or structure on the lands, until such time as the matters outlined below are satisfied and notwithstanding the provisions of the 'Retail Commercial' (C2) with special provision t4.t36, for those lands shown on Schedule A, Zoning Map 20:
 - i. Proof that site access can be designed, constructed, used and maintained to the satisfaction of City of Owen Sound.
- c. The City of Owen Sound shall not remove the "Holding" provision for use of any lot or erect, alter or use any building or structure on the lands for any retail or commercial use that is less than 465 square

metres and greater than 1,400 square metres until such time as the matters outlined below are satisfied and notwithstanding the provisions of the 'Retail Commercial' (C2) with special provision L4.t36, for those lands shown on Schedule A, Zoning Map 20:

- i. The completion of a retail market analysis, in accordance with section 3.5.2.5 of the Official Plan, to the satisfaction the City of Owen Sound.
- d. At the time when the "Holding (H)" Symbol, identified in (b) or with (b) and (c) together, is removed by the City and notwithstanding the provisions of the Retail Commercial (C2) Zone and for lands shown on Schedule A, Zoning Map 20 the Retail Commercial (C2) zone provisions shall apply save and except for the following:
 - i. Minimum Exterior Side Yard Setback: 2.0 metres
 - ii. Notwithstanding the provisions of Section 5.18 regulating Off-street Parking Requirements:

- 1. Electric Vehicle parking spaces with charging facilities shall be provided at the following ratios:

Number of Total Required Parking Spaces	Minimum Number of Electric Vehicles Parking Spaces with Charging Facilities
0-150	2
Greater than 150	3% of total required parking

The Process

The applicant engaged the City in the pre-consultation process in August 2020. The process relating to the formal application proceeded as follows:

November 20, 2022	Submission of complete application with fees
December 12, 2022	Letter of Complete Application to the applicant and request for comments
December 22, 2022	Notice of Complete Application
January 9, 2023	Notice of Public Meeting
January 30, 2023	Technical report CS-23-016

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January 30, 2023	Public meeting
March 27, 2023	Recommendation report CS-23-037
April 17, 2023	Zoning Amendment No. 44 approved by Council
April 18, 2023	Notice of Passing

The last date for appeal was May 8, 2023.

Analysis:

An appeal (Attachment 2) to the Ontario Land Tribunal (OLT) was received on May 8, 2023 from Villarboit (Owen Sound) Holdings Limited Partnership and Heritage Grove Centre Inc.

The appeal is described in the attached document and relates to the requirement for shared vehicular access on the common lot boundary between the lands subject to the Zoning Amendment (Sydenham Square) and the Heritage Grove lands. The fee of \$1,100 payable to the OLT accompanied the application.

Upon receiving an appeal, a municipality is required to prepare and submit the Municipal Submission Form, which includes information regarding the subject property, the application, declarations respecting the Notice and the required public meeting, etc.

Item 8.c requires the report on the position taken by Council in response to each appeal, including conformity with the Official Plan.

Recommendation [Report CS-23-037](#), pages 12-13 addressed the Transportation Systems policies of the Provincial Policy Statement, and pages 17-33 addressed the City's Official Plan policy, in particular, the road system. The public comments section of the report (page 39) addressed the comments from the Heritage Grove property owner. In response to the review of the policies provided within the recommendation report, the existing agreement between the two property owners was noted that provides for mutual cooperation with respect to a new shared entrance from 16th Street East as well as a stormwater outlet.

Based on the review of the materials submitted in support of the application and the review of the land use planning policy relevant to the consideration

of the proposed Zoning By-law Amendment, Council had approved a resolution in support of the application:

R-230327-005

Moved by Councillor Dodd

"THAT in consideration of Staff Report CS-23-037 respecting Zoning By-law Amendment No. 44 at 2275 16th Street East to permit a mixed-use development that includes multi-unit commercial, multi-unit residential and single-purpose commercial buildings, City Council:

- 1. In consideration of the staff reports, recommendations, technical reports, and oral and written submissions, finds that the application is consistent with the Provincial Policy Statement; conforms to the goals and objectives of the City's Official Plan; and represents good planning; and,**
- 2. Directs staff to bring forward a by-law to pass Amendment No. 44 to the City's Zoning By-law No. 2010-078, as amended and give notice in accordance with Section 34 of the Planning Act."**

Carried.

Council's Position vis-à-vis the Appeal

Council is required to provide their position with respect to the appeal.

The appeal provides no grounds or information that would alter staff's professional recommendation to Council that the Zoning Amendment be approved. Accordingly, staff recommends that Council confirm their support and approval of the Zoning Amendment on the basis that the staff report and public demonstrate that the Zoning Amendment is consistent with the Provincial Policy Statement, conforms to the goals, objectives, and policies of the Official Plan, and represents good planning.

Next Steps

The City is required to submit the Municipal Submission Form and required documentation within 15 days of the last date for filing an appeal (May 8). The material was submitted prior to the May 23 deadline. It was noted that the resolution with the position of Council would follow.

The OLT will receive the material and assign a case file number and procedures will be set relating to the Hearing. This will likely include the scheduling of a Case Management Conference to identify the parties, participants, and the issues.

A party to an appeal is fully involved in the proceedings before the OLT, and are expected to file submissions, present evidence at the hearing, question witnesses and fully understand the issues in dispute. They may also request adjournments, seek costs, or a review of the decision at the end of the hearing.

Although the City may well be considered as a “statutory party”, as a precaution, it is suggested that the City formally request “party” status in order that the City is engaged in any discussions, mediation or decisions on the appeal and is in a position to advance the best interests of the municipality and ensure conformity with respect to the City’s Official Plan.

The City’s external solicitor, who provides expert legal advice with respect to land use planning, will be retained to represent the City.

Council will be updated with respect to the proceedings.

Financial Implications:

The City has incurred costs to prepare the information required for submission to the OLT. Additional legal fees and land use planning consulting fees will be incurred as a result of the appeal as well as the dedication of staff resources.

Communication Strategy:

The OLT will provide the City direction with respect to Notice that is to be provided in this matter.

Consultation:

External City Solicitor; Dave Aston, MHBC Planning; and the Manager of Planning and Heritage.

Attachments:

1. Conceptual Site Plan
2. Appeal Letter

Recommended by:

Pamela Coulter, BA, RPP, Director of Community Services

Sabine Robart, M.SC. (PL), MCIP, RPP, Manager of Planning and Heritage

Submission approved by:

Kate Allan, Director of Corporate Services

For more information on this report, please contact Pamela Coulter, Director of Community Services at pcoulter@owensound.ca or 519-376-4440 ext. 1252.