

## Staff Report

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**Report To:** City Council  
**Report From:** Sabine Robart, Manager of Planning & Heritage  
**Meeting Date:** October 23, 2023  
**Report Code:** CS-23-113  
**Subject:** Appeal of Council's Approval of Zoning By-law Amendment No. 50

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### Recommendations:

THAT in consideration of Staff Report CS-23-113 respecting an Appeal of Council's Approval of Zoning By-law Amendment No. 50 by R. K. Radbourne Building Ltd. 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. 50 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 approved an amendment to the City's Zoning By-law to permit a rock-climbing bouldering gym at 1580 20th Street East (ZBA No.50 – Albert Wakeford).
- The City issued a Notice of Passing in accordance with the Planning Act.
- An appeal to the Ontario Land Tribunal (OLT) has been received by R. K. Radbourne Building Ltd. The reason for the appeal is outlined in the attachment.
- Council is required to provide to the OLT their position on the appeal.
- The appeal provides no grounds or information that would alter the 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 demonstrates 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.

## **Strategic Plan Alignment:**

This report supports the delivery of Core Service.

## **Climate and Environmental Implications:**

There are no anticipated climate or environmental impacts.

## **Previous Report/Authority:**

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

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

[CS-23-086 Technical Report – ZBA 50 -1580 20<sup>th</sup> Street East \(Wakeford\)](#)

[CS-23-092 Recommendation Report – ZBA 50 -1580 20th Street East \(Wakeford\)](#)

## **Background:**

A complete application for a Zoning By-law Amendment (ZBA 50) has been submitted by 845377 Ontario Limited (c/o Albert Wakeford) for a rezoning to permit a rock-climbing bouldering gym at 1580 20th Street East.

The subject property is located on the northwest corner of the intersection of 20th St E and 16th Ave E, within the western limit of the City's Industrial Park and is municipally known as 1580 20th Street East. The property has 7,850 sq. m. (1.94 ac) of lot area, 73 m of frontage on 20th St E, and 107 m of frontage on 16th Ave E.

The property currently contains an Industrial Mall with approximately 2,400 sq. m of floor area and 13 rental units containing a variety of industrial uses, a surface parking area to the north, east, and south of the existing building containing 76 stalls, including three (3) accessible stalls, two (2) existing vehicular entrances from 16th Ave E, and one (1) existing vehicular entrance from 20th St E.

The subject lands are designated 'Employment' and 'Hazard Lands' in the City's Official Plan (2021)

## **The Proposal**

The purpose of the application is to permit a rock-climbing bouldering gym, having approximately 569 sq. m. of gross floor area, to be located within the existing Industrial Mall.

The effect of the application is to amend the zone category applying to the subject lands from 'Heavy Industrial' (M2) and 'Hazard Lands' (ZH) to 'General Industrial' (M1) and 'Hazard Lands' (ZH) to permit the proposed use and to apply a site-specific zoning provision (14.140) pertaining to required off-street parking for the existing Industrial Mall.

## **Current Zoning**

The property is currently zoned 'Heavy Industrial' (M2) and 'Hazard Lands'.

## **Proposed Zoning**

The application requests that the property be zoned 'General Industrial' (M1) with Special Provision 14.140 and 'Hazard Lands'.

## Special Provision 14.140

- a. Notwithstanding Section 5.18 of this By-law, off-street parking for an Industrial Mall shall be provided at a rate of one (1) space per 50 square metres of gross floor area.

### The Process

The applicant engaged the City in the Pre-consultation process in February of 2023. Subsequently, the process relating to the formal application has proceeded as follows:

Date	Step	Days
June 28, 2023	Submission of applications for ZBA together with supporting materials and fees.	1
June 28, 2023	Letter regarding Notice of Complete Application to the applicant.	1
June 29, 2023	Request for comments to city staff and external agencies.	2
July 4, 2023	Notice of Complete Application & Public Meeting mailed to property owners within 120 m of subject lands and notice posted on property.	7
July 24, 2023	Public Meeting and Technical Report to Council.	27
September 11, 2023	Staff Recommendation Report and Amending By-laws to Council.	76

The application has been processed within the 90-day timeline prescribed by the Planning Act.

The last date for filing a notice of appeal was October 2, 2023.

## Analysis:

An appeal (Attachment 1) to the OLT was received on October 2, 2023, from Thomson Rogers (Al Burton) on behalf of R. K. Radbourne Building Ltd.

The appeal is described in the attached document and notes that the appellant does not object to the use of the subject lands for the purpose of a rock-climbing gym but rather objects to the rezoning to the M1 zone. The appellant states that the subject lands would be more appropriately rezoned to Mixed Use Industrial (MU) zone.

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 required public meeting, etc.

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

The appellant provided written comments in response to the public circulation of Zoning By-law Amendment No.50. The Recommendation Report ([CS-23-092 Recommendation Report – ZBA 50 -1580 20th Street East \(Wakeford\)](#)) addressed the applicable provincial and City policies and responded specifically to the appellant's comments on page 22 of the report as follows:

*One (1) public comment was received from Thomson Rogers Lawyers on behalf of the property owner of 1887 9th Avenue East located to the south of the subject lands. The comments received suggest that Mixed Use Industrial (MU) is a more appropriate zoning category for the subject lands as it would permit the proposed community lifestyle facility and would be more compatible with the surrounding lands transitioning into a variety of mixed uses with some modest industrial components. Planning Staff note that the MU Zone of the City's Zoning By-law applies to a limited set of properties that are located within the East and West Harbour Planning Areas identified on Schedule 'A3' and 'A4' of the Official Plan. The East and West Harbour Planning Areas are intended to accommodate a mix of land uses and array of development/redevelopment opportunities that support recreation and tourism while continuing to permit marine and related industrial uses of the working harbour. The MU Zone implements the East and West*

*Harbour Planning Area policies of the Official Plan by permitting industrial uses in combination with commercial uses that support redevelopment, recreation, and tourism such as marinas, hotels, and restaurants. In the opinion of Planning Staff, rezoning of the subject property (1580 20th Street East) to Mixed Use Industrial (MU) Zone would not be appropriate for the following reasons:*

- The existing Industrial Mall and certain uses contained therein, including a Printing/Publishing Establishment, are not permitted within the MU Zone.*
- The MU Zone would permit more sensitive commercial land uses such as hotels, museums/galleries, and restaurants on the subject lands which are not compatible with the existing and planned function of the City's Industrial Park.*

It merits note that the heart clinic ('Owen Sound Heart Clinic') noted by the appellant as part of the appeal received a business license in September 2010 subject to the City's Zoning By-law 1985-80, which was the comprehensive zoning by-law in force and effect at that time.

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 approved a resolution in support of the application:

R-230911-006

**"THAT in consideration of Staff Report CS-23-092, respecting proposed Zoning By-law Amendment No. 50 by 845377 Ontario Limited at 1580 20th Street East to permit a rock-climbing bouldering gym having approximately 569 sq. m. of gross floor area to be located within the existing Industrial Mall, City Council:**

- 1. In consideration of the staff reports, recommendations, technical reports, and oral and written submissions, including public and agency comments, 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. 50 to the City's Zoning By-law No. 2010-078, as amended and provide 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 demonstrates 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. The last day for filing an appeal was October 2, 2023, and the City had to provide the appeal package to the OLT by October 17, 2023. The Deputy Clerk provided the appeal package to the OLT on October 5, 2023, minus this resolution from Council, with the note that the resolution will follow on October 24, 2023.

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 issues.

A party to an appeal is fully involved in the proceedings before the OLT and is 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 so 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 concerning land use planning, will be retained to represent the City.

Council will be updated with respect to the proceedings.

## **Financial Implications:**

The 2023 update to the City's Fees and Charges By-law (2023-080) included a processing fee of \$500 per OLT appeal. Processing fees in the amount of \$500 were collected as part of the appeal process. The processing fee will provide cost recovery of the costs the City has incurred 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 the Notice that is to be provided in this matter.

## **Consultation:**

City Solicitor and the Deputy Clerk.

## **Attachments:**

1. Appeal Letter – R.K. Radbourne Building Ltd (Thomson Rogers)

## **Recommended by:**

Sabine Robart, M.SC. (PL), MCIP, RPP, Manager of Planning and Heritage  
Pam Coulter, BA, RPP, Director of Community Services

## **Submission approved by:**

Tim Simmonds, City Manager

For more information on this report, please contact Sabie Robart, Manager of Planning & Heritage at [srobart@owensound.ca](mailto:srobart@owensound.ca) or 519 376 4440 ext. 1236.