



Meeting Date: February 15, 2023

Submitted by: Marion-Frances Cabral, Planner

Report No: PLA-14-2023

Subject: Subject: Applications for a Zoning By-law Amendment (ZBA-13-2022), filed by 2225660 Ontario Limited for the lands known as 23778 Richmond Street

Recommendation:

THAT Zoning By-law Amendment application ZBA-14-2023, filed by 2225660 Ontario Limited, to rezone the subject property from the 'Agricultural (A1)' zone to the site-specific 'Agricultural exception 40 (A1-40)' zone for the land municipally known as 23778 Richmond Street, former Township of London, Municipality of Middlesex Centre, be DEFERRED.

Purpose:

The purpose of this report is to provide Council with a recommendation regarding a Zoning By-law Amendment application that requests to add *cidery* to the list of definitions in the zoning by-law and permit a *cidery* as an accessory use within a new site-specific 'Agricultural (A1-x)' zone for the property. The effect of the amendment would permit the applicant to establish a *cidery* within the existing building and sell cider made from locally grown produce.

A location map is included as Attachment 1.

Background:

The subject land contains an existing farm retail store that sells local grown produce and other home goods. Additionally, the existing building contains cold storage and fruit processing facilities.

The applicant intends to manufacture and sell a variety of small batch alcoholic ciders from the existing retail store. However, the applicant has indicated that a majority of the production will occur off-site at a larger location, and that the Zoning By-law permission on this property will assist with Provincial licencing. No new buildings or structures are proposed at this time.

The property is located on the northeast corner of Richmond Street (Kings Highway No. 4) and Fifteen Mile Road and has an area of 5.9 hectares (1.09 ac) and is legally described as Concession 15 S Pt Lot 16 RP33R6378 Part 4, Municipality of Middlesex Centre. The undersized parcel is surrounded by agricultural uses and limited rural residential properties on the south side of Fifteen Mile road.

Policy Regulation:

Provincial Policy Statement, 2020:

Section 3 of the Planning Act requires all decisions made under the Act “to be consistent with” the Provincial Policy Statement, 2020 (PPS). The following PPS policies are relevant to the proposed development and need to be considered when evaluating the subject applications.

Section 2.3 of the PPS speaks to prime agricultural areas and the long-term protection of these areas for agricultural use. Permitted uses within prime agricultural areas include: agricultural uses, agriculture-related uses, and on-farm diversified uses. Agriculture-related uses means those farm related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.

Middlesex County’s Official Plan

The County of Middlesex Official Plan designates the subject property as Agricultural Area. The County Plan recognizes agriculture as the predominant land use and an economic mainstay within the County. The Agricultural Areas policies are intended to protect agricultural lands from the intrusion of land uses that are not compatible with agricultural operations. Incompatible uses are frequently identified as non-farm related residential dwellings on small lots.

Section 3.3.5 acknowledges the importance of farm related commercial and industrial uses in Agricultural Areas. Examples include feed mills, grain drying, abattoirs, and kennels. Farm related commercial and industrial uses should be considered in the Agricultural Area if the operation cannot reasonably be located in a Settlement Area and must be in proximity to farming activities, the use complies with the Minimum Distance Separation Formula, the use does not require or generate large volumes of water, and the operation is located to minimize potential adverse impacts on adjacent residential or other sensitive land uses. Operations are subject to the site plan policies and zoning by-law of the local municipality, and must provide minimum sight distances along County or local roads.

County Council adopted Amendment No. 3 to the County official plan on July 19, 2022. The purpose of the Amendment was to update the official plan to ensure that the land use planning policies are current, reflect Provincial legislation and policy, have regard for matters of Provincial interest and any guideline documents, are consistent with the Provincial Policy Statement (PPS), and reflect changing community needs for the next

25-years. While the policies implemented through Amendment No. 3 are not in force and effect until Ministry approval, the updated policies are included in this report for informative purposes indicating the intent of County Council, but are not determinative for the purposes of this planning application.

Adopted Section 2.2.2.1 Agriculture – General Policies identifies agricultural uses as the main industry outside of settlement areas and that agriculture-related uses shall be permitted where they are compatible with and not hinder surrounding agricultural operations. Permitted agriculture-related uses shall be in accordance with the 2016 Guidelines for Permitted Uses in Ontario’s Prime Agricultural Areas as released by the Province.

Middlesex Centre’s Official Plan

As mentioned the subject property is designated ‘Agricultural’ by Middlesex Centre’s Official Plan. Agricultural and agriculture-related uses are permitted in Agricultural areas. This includes all forms of farming, related buildings and structures, and uses of land. Retail sale of farm produce produced on individual properties or communally among neighbouring farms are also permitted.

The Official Pan defines agriculture-related uses as are defined as farm-related commercial and farm related industrial uses that are directly related to a farm operation, and are small in scale.

Section 2.4 provides policies for agriculturally related commercial and industrial development. These uses are directly related to agriculture, and required in close proximity to farming operations. These uses are generally encouraged to locate within settlement areas except they are essential to the functioning of agriculture or would cause conflicts in settlement area.

This section also allows for some agriculture related tourism or recreational uses to be permitted if it is determined that no negative impacts on nearby agricultural operations will result, and a determination that the use will not contribute to land use conflicts.

When considering the establishment of new agriculturally related commercial, industrial or tourism uses, or the expansion of existing uses of this type, Council will consider the following criteria:

- a) The loss of productive farm land in the accommodating of such uses, shall be discouraged. Uses will be encouraged to locate on lands of lower soil capability or lands proven to be unsuitable for farming due to lot size, shape or topography.
- b) The amount of land devoted to the use shall include only the minimum necessary to support the use and its servicing needs.
- c) The use must not require municipal sewer or water services. The method of servicing shall require approval by the appropriate regulatory bodies. Any industrial use shall be “dry” in nature.

- d) Access shall be available from a public road of reasonable construction and year round maintenance. Development is encouraged on a hard-surface, dust-free road.

Access to Provincial Highways for agriculturally related commercial and industrial development uses will be subject to the review and approval of the Ministry of Transportation (MTO). An entrance permit from the MTO will be required for the change in use of the access. The entrance permit will identify the primary land use (i.e. farmstead) with a specific secondary land use for the agriculturally related commercial or industrial use.

In addition, the MTO would not support a future severance where a property owner wishes to separate the agriculturally related commercial and industrial use from the property where a new entrance from the highway for the new lot of record would be required.

- e) A site plan agreement shall be entered into with the Municipality. Such an agreement will require particulars relating to, at a minimum, access, traffic, drainage, and grading.
- f) Where a severance of land is necessary to accommodate such a use, the severance policies in Section 10.3 of this Plan will apply.
- g) Compliance with minimum distance separation shall be required where a proposed agriculturally related commercial or industrial use is in proximity to livestock and/or poultry operations. The Municipality may exercise discretion, through the consideration of Minor Variance applications, based on the proposed type of commercial or industrial use, and the extent of its sensitivity to agricultural activities. Input from the appropriate agencies with respect to Minor Variance request will be sought by the Municipality. This Plan recognizes that such agriculturally related commercial or industrial uses may also have negative impacts on adjacent agricultural operations. Minimum distance separation shall also be used to address impact of such uses on sensitive agricultural uses.
- h) Adequate separation distances and buffering shall be required where such uses are proposed adjacent to existing residential or other sensitive uses. Adequate visual buffering or landscaping will be required where such uses may generally impact the agricultural or rural character of the Municipality.

Middlesex Centre's Zoning By-law

The subject property is zoned 'Agriculture (A1)' in Middlesex Centre's Zoning By-law. The current zoning permits the following uses:

- accessory use
- agricultural use
- bed and breakfast establishment
- conservation use
- converted dwelling
- dog kennel
- forestry use
- grain handling facility, existing legally on the date of the passing of this By-law
- home occupation
- riding school
- single detached dwelling
- portable asphalt plant
- wayside pit

The applicant has requested to add and define *cider* within the list of definitions. Specifically, a *cider* means "the use of land, buildings or structures for the processing of fruit including the fermentation, production, ageing and storage of cider where the fruit used in the production of the cider is locally or regionally grown. A *cider* may also include a hospitality room and a retail outlet."

Consultation:

Notice of Complete Application and Public Meeting were circulated to agencies, as well as property owners in accordance with the *Planning Act* and Ontario Regulation 545/06 and 543/06.

At the time of writing this report, staff spoke to an area resident who was in support of the application and proposal for the lands. No written comments were received.

Agency Comments:

The Municipality's Chief Building Official did not provide comments at the time of writing this report.

The Public Works and Engineering Department reviewed the applications and do not have any concerns.

Upper Thames River Conservation Authority has no objections or requirements for this application.

The Ministry of Transportation provided the following comments related to development on the site: The site has been considered in accordance with the *Public Transportation and Highway Improvement Act* (PTHIA), MTO's Highway access management policy and all related guidelines and policies.

The site is along Highway 4, a Class 2B – Arterial with a posted speed of 80 km/hr, and is designated as a Kings Highway (KH). As such, all requirements, guidelines and best practices in accordance with this classification and designation shall apply;

The owner should be aware that the property falls within MTO's Permit Control Area (PCA), and as such, MTO Permits are required to acknowledge the change in use, as well as before any demolition, grading, construction or alteration to the site commences. In accordance with the Ontario Building Code, municipal permits may not be issued until such time as all other applicable requirements (i.e.: MTO permits/approvals) are satisfied. As a condition of MTO permit(s) MTO will require the following for review approval;

Building and Land Use Permit (BLU Permit)

As indicated the use of the site is changing. As such, MTO BLU permit will be required. As a condition of a MTO BLU permit, the Property Owner shall submit a Site Plan indicating where production, processing of cider and sales of cider will occur on site, for MTO review and acceptance. Additionally this plan shall clearly identify all structures/works (existing and proposed) on the site, with all setbacks to MTO property limit clearly identified. As a condition of MTO Building and Land Use permit, Entrances, Signs and unauthorized Encroachments must be brought under compliance.

Traffic Impact Brief (TIB)

MTO will require the owner to submit a Traffic Impact Brief to MTO for review and acceptance, indicating the anticipated volumes of traffic and its impact upon the provincial highway network related to the proposed land use change. Pending the results of the TIB, MTO may require the owner to provide a full and comprehensive Traffic Impact Study. Should Highway improvements be identified as warranted and as a condition of MTO permits, the improvements will be designed and constructed to the standards and approval of MTO at the cost of the Property Owner.

Site Access (Entrance Permit)

This site does not qualify for an access from Highway 4, as it has frontage on a sideroad. However given the current site conditions and History of the site MTO will permit one Entrance onto the Highway. The exiting Entrance from Highway 4 does not comply with the existing Entrance permit nor with the previous Entrance Works Agreement endorsed by the property owner for MTO Work Project. As such modifications to the Highway 4 access will be required to bring it under compliance. At this time MTO will require the Access to be constructed in accordance with MTOD 305.030. A new MTO issued Entrance permit will be required for this site, to define the change in use of the Entrance and property.

Encroachment Permit

There is currently an existing laneway which connects 23778 Richmond Street to 23800 Richmond Street, which encroaches on MTO property. The property owner must remove this unauthorized connecting laneway. To facilitate this, the owner shall obtain a MTO issued Encroachment permit, with a plan showing how it will be addressed.

Sign Permit

The property owner should be aware that MTO does not have record of any sign permits being issued for these lands. A MTO Sign Permit will be required for all existing and proposed signage visible from Highway 4.

Analysis:

Planning staff have reviewed the Zoning By-law Amendment application against all relevant planning policies and guidelines.

OMAFRA's Guidelines on Permitted Uses (Publication 851) identifies that value adding or processing of fruit on site can be considered as an agriculture-related or on-farm diversified use. PPS criteria for agriculture-related uses include: farm-related commercial use; shall be compatible with and shall not hinder surrounding agricultural operations; directly related to farm operations in the area; supports agriculture; provides direct products and/or services to farm operations as a primary activity; and benefits from being in close proximity to farm operations.

Staff are of the opinion that the proposed use satisfies the PPS criteria of an agriculture-related use since the operations benefit from being within proximity to apple growers, the use supports and provides added value to produce, the use doesn't hinder agricultural operations from continuing or establishing, and provides direct products to the public.

When considering the establishment of new agriculturally related commercial, industrial or tourism uses, or the expansion of existing uses of this type, consideration shall be given to the following criteria:

- a) **The loss of productive farm land in the accommodating of such uses, shall be discouraged. Uses will be encouraged to locate on lands of lower soil capability or lands proven to be unsuitable for farming due to lot size, shape or topography.**

The proposed use will be contained within existing buildings on an existing lot of record, and does not remove agricultural lands from production.

- b) **The amount of land devoted to the use shall include only the minimum necessary to support the use and its servicing needs.**

The proposed use will be located on an existing undersized lot and is limited to the servicing.

- c) The use must not require municipal sewer or water services. The method of servicing shall require approval by the appropriate regulatory bodies. Any industrial use shall be “dry” in nature.**

The proposed use will not depend on municipal water or sewer services, and any servicing will be subject to approval by the appropriate regulatory bodies as necessary.

- d) Access shall be available from a public road of reasonable construction and year round maintenance. Development is encouraged on a hard-surface, dust-free road.**

Access to Provincial Highways for agriculturally related commercial and industrial development uses will be subject to the review and approval of the Ministry of Transportation (MTO). An entrance permit from the MTO will be required for the change in use of the access. The entrance permit will identify the primary land use (i.e. farmstead) with a specific secondary land use for the agriculturally related commercial or industrial use.

In addition, the MTO would not support a future severance where a property owner wishes to separate the agriculturally related commercial and industrial use from the property where a new entrance from the highway for the new lot of record would be required.

The property is located and has a primary entrance on Richmond Street, and a secondary access off Fifteen Mile Road. Due to the proximity to the provincially controlled highway, MTO has required the applicant to submit additional information about the current operation and proposed *cidery* use and to obtain entrance and land use permits, as necessary. As a result of this, staff are not in a position to recommend support of the application until the MTO is satisfied that the proposed use will have minimal impacts on the Provincial Highway. The applicant is aware of the requirements and is working with MTO to review the proposed use and overall operations.

- e) A site plan agreement shall be entered into with the Municipality. Such an agreement will require particulars relating to, at a minimum, access, traffic, drainage, and grading.**

The proposed use is not considered a change in land use and it will not require an expansion or construction of new buildings. As such, site plan control is not required at this time. However, if new buildings, expansion of the parking lot or redevelopment of the site is proposed the applicant will be required to enter into a site plan agreement with the Municipality.

- f) Where a severance of land is necessary to accommodate such a use, the severance policies in Section 10.3 of this Plan will apply.**

No severance is proposed to accommodate the use.

- g) Compliance with minimum distance separation shall be required where a proposed agriculturally related commercial or industrial use is in proximity to livestock and/or poultry operations. The Municipality may exercise discretion, through the consideration of Minor Variance applications, based on the proposed type of commercial or industrial use, and the extent of its sensitivity to agricultural activities. Input from the appropriate agencies with respect to Minor Variance request will be sought by the Municipality. This Plan recognizes that such agriculturally related commercial or industrial uses may also have negative impacts on adjacent agricultural operations. Minimum distance separation shall also be used to address impact of such uses on sensitive agricultural uses.**

A swine operation is located approximately 850 m away from the subject lands and there are several intervening residences within proximity. It is not expected that the proposed use will conflict with minimum distance separation.

- h) Adequate separation distances and buffering shall be required where such uses are proposed adjacent to existing residential or other sensitive uses. Adequate visual buffering or landscaping will be required where such uses may generally impact the agricultural or rural character of the Municipality.**

Generally buffering between commercial or industrial operations and residential uses will require visual screening and noise mitigation buffers, and it is usually addressed through site plan review. The subject lands immediately abut agricultural uses and are sufficiently distanced from nearby rural residential uses.

Staff reviewed the proposal and are generally in support of the permitting a variety of agricultural and agriculture-related uses that support existing agricultural businesses. However, due to the review requirements by MTO, staff cannot support the application at this time. The applicant is working with MTO through their approval process and it was expressed by MTO that the applicant can apply for MTO permits outside the scope of the planning process as long as MTO has the opportunity to review the proposed land use and operation and are satisfied.

Based on the above, staff recommend deferral of the Zoning By-law Amendment application until MTO has the opportunity to review the proposal and provides their support. Once received, staff will provide a recommendation to Council.

This opinion is provided prior to the public meeting and without the benefit of potentially receiving all comments from agencies or members of the public. Should new information arise regarding this proposal prior to or at the public meeting, Council is advised to take such information into account when considering the applications.

Financial Implications:

None.

Strategic Plan:

This matter aligns with following strategic priorities:

- Vibrant Local Economy

Attachments:

Attachment 1 – Location Map

Attachment 2 – Supplemental Information

Attachment 3 – Sketch of Existing Property