

Municipality of Lakeshore – Report to Council

Growth and Sustainability

Planning Services



To: Mayor and Members of Council

From: Tammie Ryall, RPP, Corporate Leader – Growth and Sustainability

Date: January 8, 2025

Subject: Zoning By-law Amendment – ZBA-16-2024
Temporary Use By-law for a Home Industry at 3362 Manning Road

Recommendation

Refuse the Temporary Use By-law Application – Zoning By-law Amendment application ZBA-16-2024, to permit the temporary use (for a maximum of three years) of a small-scale automobile repair establishment as a home industry in an accessory structure with exemptions from Section 6.2.6 b), h), and j) of Zoning By-law 2-2012, on the Subject Property known as 3362 Manning Road as presented at the February 4, 2025 Council Meeting.

Strategic Objectives

This does not relate to a Strategic Objective however it is a core service of the Municipality.

Background

The applicant currently resides in a single-detached dwelling on the subject property (Appendix A). As a lifelong mechanic, he operated an automobile and truck repair business in Windsor for over 33 years. The applicant is nearing retirement and has since downsized the operations to a 178 sq. m. garage on the Subject Property. However, a planning approval has never been granted to allow for this use on the Subject Property.

The garage which shall be referred to in this report as “accessory structure” was constructed in 2023 following the approval of Minor Variance Application #A/02/2023, which granted a reduction to the front yard setback requirement of the Agricultural Zone from 15 m to 10 m. At the time of the application, the applicant indicated that the purpose of the building was for personal storage. After the structure was built, it was determined that the footings were situated too close to the front lot line (Appendix B and C). A subsequent Minor Application to allow for a reduced front yard setback of 9.5 m was approved at the September 18, 2024 Committee of Adjustment Meeting under Minor Application #A/24/2024.

Due to a By-law complaint, it came to Administration's attention that the applicant was operating an automobile repair establishment from the accessory building. The owner subsequently made applications to rectify this By-law contravention and has written an explanation (Appendix D). The purpose of the application was to consider a Temporary Use By-law to allow for the applicant to continue operating their automobile repair business out of the accessory structure and to temporarily deem this use as a home industry. Currently, the accessory structure can only be used for personal storage under the provisions of the Zoning By-law.

Section 39 of the Planning Act allows for a Council of a local municipality to pass a by-law authorizing the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the Zoning By-law for a period of not more than 3 years. Administration is of the opinion that the maximum 3-year period prescribed for a Temporary Use By-law provides the applicant with a reasonable amount of time to close down their business, in order to comply with the uses permitted in the Agricultural designation in the long term.

Proposal:

Based on the applicant's request, Administration developed the following recommendation for Council.

The Temporary Use By-law would have legalized an existing non-conforming use in an accessory structure for a small-scale automobile repair business as a home industry and to allow for operations to continue for a maximum period of 3 years. This time frame would have permitted the applicant to slowly wind down the business without facing immediate and abrupt financial losses.

The Temporary Use By-law would have allowed for the "Home Industry" to be added as an additional permitted use to a "Residential Lot" in the "Agricultural (A) zone", and the following site-specific exemptions were being considered from Section 6.26 of the Lakeshore Zoning By-law 2-2012 (Appendix E):

- b) where a home industry is proposed on a lot less than 4.04 hectares (10 acres), the gross floor area of the home industry shall not exceed 25% of the gross floor area of the dwelling or 5% of the lot area, whichever is less;

The applicant's business occupies the entirety of the already built accessory structure which is greater in size than 25% of the primary dwelling's gross floor area, but yet contains less gross floor area overall than the primary dwelling on site. As such, a temporary exemption from Section 6.26 b) of the By-law would have been required.

- h) the accessory building used for the home industry shall only be located in the rear yard of the lot;

The applicant received a building permit and Conservation Authority permit to construct

the accessory structure in the front yard and received subsequent minor variance approvals for a reduced front yard setback from 10 m to 9.5 m. While the building size and location has already been approved by the planning department, building department, and the Essex Region Conservation Authority, a temporary exemption from Section 6.26 h) of the Zoning By-law would have been required to allow for the home industry to be located in the front yard.

j) home industries are subject to site plan control under Section 41 of the Planning Act.

The owner is the only employee of the business. There is currently no external display or advertisement of the business (other than an “open” sign). The business does not produce any significantly intrusive noise, fume, dust or odour impacts on the surrounding sensitive land uses. The business is also secondary and subordinate in gross floor area to the primary dwelling on the property. There is enough room on the Subject Property to accommodate the use. Adequate parking is available for the applicant and their customers in both the accessory structure and driveway. Further, the location and size of the accessory structure has been approved through the Conservation Development Permit, Building Permit and Minor Variance processes. Administration is of the belief that an exemption to Section 6.26 j) would have been reasonable.

It must be noted that an additional condition of operating a home industry in the Agricultural Zone is that there shall be no outdoor storage which is not supported by Administration as it would expand the footprint of the operation.

However, during the internal review of the application it was determined that several mitigation measures would have to be implemented to meet the requirements of the Development Manual (Appendix F). As of writing of this report the applicant has refused to meet these requirements. Hence, Administration is not recommending support of the application.

Summary:

The subject property consists of approximately 0.57 ha (1.41 ac) of land located to the south of N Rear Rd and east of Manning Rd (County Rd 19). The legal description for the lands is Part of the North half of Lot 1, Concession North of Middle Road, Maidstone, designated as Part 1 on Plan 12R15753 The entirety of the subject property falls within Essex Region Conservation Authority’s (ERCA’s) regulated area.

Subject Land: (3362 Manning Road)	Existing Use – Single-detached dwelling and non-confirming home industry for automobile repair shop in an Accessory Structure. Proposed Use – To permit the temporary use of an automobile repair shop in an Accessory Structure as a home industry. Access — Manning Road (County Rd 19). Services — Municipal water, private septic, drainage ditch and storm sewer.
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Neighbouring Land Uses	North: Agricultural lands South: Single-detached residential lot East: Agricultural lands West: Daniher Topsoil - outdoor storage of soil and landscape supply store (located in the Town of Tecumseh)
County Official Plan:	Agricultural
Local Official Plan:	Agricultural
Existing Zoning:	Agricultural
Conservation Authority:	The entirety of the Subject Property is regulated by the Essex Region Conservation Authority

Comments:

Provincial Planning Statement, 2024 (PPS, 2024)

The Subject Property is located within the “Prime Agricultural Area”. Although the applicant is capable of fixing tractors and farm equipment, the main focus of the applicant’s business involves fixing classic cars. As such, the automobile repair shop is considered a non-agricultural use.

Non-agricultural uses are only permitted in prime agricultural areas provided that they are consistent with the policies of Section 4.3.5 in the PPS, 2024. Administration has determined that the applicant’s automobile repair establishment is not consistent with these policies. It is for this reason that a Temporary Use was being considered. Administration is recommending that the existing business be discontinued to comply with the policies of the PPS, 2024.

County of Essex Official Plan, 2014

The Subject Property is designated as “Agricultural” in the current and in effect version of the County of Essex Official Plan (The County approved 2024 Draft Official Plan is with the Province for review). The permitted uses in the agricultural designation are largely limited to agricultural uses, secondary uses and agricultural-related uses.

In accordance with Section 3.3.3.2 in the County of Essex Official Plan, a home industry is considered a permitted secondary use in the agricultural area. The County of Essex Official Plan definition for secondary uses is included below:

“**Secondary uses** mean uses secondary to the **principal use** of the property, including but not limited to home occupations, home industries, and uses that produce value-added agricultural products from the farm operation on the property.”

Section 3.3.3.2 b) defines **home industry** uses as occupations, trades, businesses, professions, or crafts that are secondary to the agricultural use, agriculture-related use **or residential use on the property**.

The County has expressed that a County Official Plan Amendment would be required if

the applicant were to make the automobile repair establishment a permanent use.

Municipality of Lakeshore Official Plan, 2010

The Subject Property is designated as “Agricultural” in the Municipality of Lakeshore Official Plan. In accordance with Section 6.2.1 c) of Lakeshore’s Official Plan for the Agricultural Designation, a home industry is considered a permitted use that is **secondary to the principal use of the property**.

Subsection h) states:

h) Small-scale home industries, which are conducted in whole or in part in an accessory building (e.g., shed or farm building) by a member of the family owning the property, will be permitted. In order to ensure that the scale of the home industry is clearly accessory to the main use, the number of employees, the gross floor area and outside storage associated with a home industry will be limited in the Zoning By-law.

Although the subject property is designated as “Agricultural”, there are no agricultural operations on the site, and there is not enough land to generate a financially viable farm crop. The property fronts onto a busy arterial road and the lands are largely constrained by the existing house and drainage ditch which take up room on the lot. As such, the principal use of the property is residential. Therefore, the proposal would have conformed to the “small-scale home industries” policies of the Official Plan.

Zoning By-law 2-2012

The Subject Property is currently zoned as Agricultural (A), in the Lakeshore Zoning By-law 2-2012, as amended. A Home Industry is a permitted use in the “A” Zone.

The following exemptions from Section 6.26 of Zoning By-Law 2-2012 would have been incorporated into the proposed Temporary Use By-law to legalize the existing non-conforming use for a period of three years:

- “b) where a home industry is proposed on a lot less than 4.04 hectares (10 acres), the gross floor area of the home industry shall not exceed 25% of the gross floor area of the dwelling or 5% of the lot area, whichever is less;
- h) the accessory building used for the home industry shall only be located in the rear yard of the lot;
- j) home industries are subject to site plan control under Section 41 of the Planning Act.”

Comments

The County of Essex, Transportation Planning and Development department has reviewed the proposal and has no objection. They advise that permits are needed for any changes to existing entrances or structures or any new entrances or structures (Appendix G).

Lakeshore Operations Department has reviewed the proposal and noted that paving and an oil-grit separator would need to be installed. In addition, Lakeshore Operations would also require the submission of a site servicing plan, stormwater management memo and lot grading plan (Appendix F).

Conclusion

Administration has met with the applicant multiple times since the non-conformity has been identified and to address mitigation measures identified by the Operations Department that could be put in place to ensure the quality of water entering the municipal drain is not negatively impacted while balancing the desire of the applicant to have time to wind down the business. As mentioned before, to date the applicant has refused to meet these requirements and has indicated that he wishes to present his comments to Council during the public meeting regarding the need for an oil-grit separator and paving.

Based on the foregoing, Administration recommends that Council refuse ZBA-16-2024 for the proposed Temporary Use Application which includes exemptions from Section 6.2.6 b, h, and j) of Zoning By-law 2-2012.

Other Options for Consideration

Should Council not support the Recommendation to refuse the application at this meeting, Council can choose to defer the application and direct Administration to come forward to a subsequent meeting with one of the alternatives listed below (as outlined in Appendix H).

1. Alternative 1 – Refusal
2. Alternative 2 – Deferral
3. Alternative 3 – Approve as modified or revised
4. Alternative 4 – Approval

Others Consulted

Notice was given to agencies and the general public as required under the provisions of the *Planning Act* and Regulations. As of the writing of this report, no comments were received from the public. Concerns expressed from the County of Essex are attached in Appendix G.

Financial Impacts

There are no budget impacts resulting from the recommendation. However, if Council chooses to accept the Recommendation of Administration to refuse the application, there

is a possibility that the Municipality will incur costs associated with litigation should an appeal be received.

Appendices

Appendix A – Aerial Map

Appendix B – Drawing

Appendix C – Photos

Appendix D – Memo from Applicant

Appendix E – Excerpts from Section 8.3.2.2 of the Lakeshore Official Plan, Temporary Use By-laws

Appendix F – Operations Comments

Appendix G – County of Essex, Transportation Planning and Development Comments

Appendix H – Council Decision Alternatives Under the Planning Act

Report Approval Details

Document Title:	Zoning By-law Amendment – ZBA-16-2024 Temporary Use By-law for a Home Industry at 3362 Manning Road.docx
Attachments:	- Appendix A – Aerial Map.pdf - Appendix B – Drawing.pdf - Appendix C – Photos.pdf - Appendix D – Memo from Applicant.pdf - Appendix E – Excerpts from Section 8.3.2.2 of the Lakeshore Official Plan, Temporary Use By-laws.pdf - Appendix F – Operations Comments.pdf - Appendix G – County of Essex, Transportation Planning and Development Comments.pdf - Appendix H – Council Decision Alternatives Under the Planning Act.pdf
Final Approval Date:	Jan 28, 2025

This report and all of its attachments were approved and signed as outlined below:

Prepared by Tammie Ryall

Approved by the Corporate Leadership Team