



PROCEEDINGS
for a Public Meeting
to discuss a Proposed Temporary Use Provision
(Re: D14-17-03 65 - 105 Barkman Close)
Tuesday, May 9, 2017
12:30 p.m.

PRESENT: Mayor D. Canfield
Councillor M. Goss
Councillor R. McMillan
Councillor D. Reynard
Councillor S. Smith
Councillor C. Wasacase

Regrets: Councillor L. Roussin

Staff: Karen Brown, CAO
Devon McCloskey, City Planner
Heather Kasprick, City Clerk

Mayor Canfield advised that this public meeting is being held by the City of Kenora in accordance with Section 39 of the *Planning Act* to consider a temporary use provision to the City of Kenora Comprehensive Zoning By-law Number 101-2015, as amended.

Notice was given by publishing in the Daily Miner and News which in the opinion of the Clerk of the City of Kenora, is of sufficiently general circulation in the area to which the proposed temporary provision would apply, and that it would give the public reasonable notice of the public meeting. Notice was also provided by mail to every owner of property within 120 metres of the subject property, prescribed persons and public bodies, and posted online on the City of Kenora portal.

If anyone wishes to receive the Notice of the Decision of Council, please leave your name and address with the City Planner. A sign in sheet was available for all people present at the meeting.

An appeal may be made to Ontario Municipal Board not later than 20 days after the day that the giving of notice as required by section 34(18) is completed by either the applicant or person or public body who, before the by-law is passed makes oral submissions at a public meeting or written submissions to the Council by filing a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee prescribed under the Ontario Municipal Board Act, with the City Clerk.

The Council of the City of Kenora will have the opportunity to consider a decision at a future meeting of Council.

Herein the applicant will have the opportunity to speak on behalf of their application, and the City Planner will provide a summation of her report and recommendation, after which anyone who wishes to speak either for or against the application, will be given the opportunity to do so, and a record will be kept of all comments.

The Council of the City of Kenora will make the decision at a future meeting of Council.

The Chair stated that herein the applicant will have the opportunity to speak on behalf of their application, and the City Planner will provide a summation of her report and recommendation, after which anyone who wishes to speak either for or against the application, will be given the opportunity to do so, and a record will be kept of all comments.

The applicant (or representative) will present their application.

Mr. Tew is requesting that he be permitted to stay in his sleeping cabin while he builds his retirement home. He is prepared to hook up hydro and then he won't need a generator anymore. He uses a composting toilet and he burns the compost. Under a permit from the NWHU he installed a grey water filter bed. He would like to remain in his sleep cabin for the time it takes to build his retirement home.

Devon McCloskey, City Planner presented the planning report for the application:

An application for temporary use provision is proposed to temporarily allow for the property specifically identified to be used for a sleep cabin, equipped with kitchen facilities, while construction is underway for a single-detached dwelling, for a period up to 3 years, in addition to uses permitted within the Rural Residential Zone ('RR').

The property is located at 105 Barkman Close.

Zoning mechanisms of the RR zone require that a single-detached dwelling meet certain requirements, including a minimum gross floor area of 80 m². The subject application is proposed in order to allow for an existing building (originally permitted as a shed), so be used as a sleep cabin equipped with kitchen facilities for a temporary basis. The applicant has described that this interim approval would enable enough time to build a single-detached dwelling, in accordance with the Zoning By-law.

The property is fronting on Seitler Drive and is an irregular lot. The street address is Barkman Close but the shortest part of the lot is Seitler Drive. The property is an irregular corner lot. It is fronting on Barkman Close with an exterior side yard on Seitler Drive.

In accordance with the Provincial Policy Statement (2014), approval of the application would support Policy 1.1 'Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns', in particular b) accommodating an

appropriate range and mix of residential (including second units, affordable housing and housing for older persons).

In addition, Policy 1.4 which deals with the provision of housing, providing a range of housing (i.e. development within a rural subdivision).

The application should be consistent with Policy 1.1.5 for Rural Lands in Municipalities, "Development that is compatible with rural the landscape and can be sustained by rural service levels should be promoted (PI 1.1.5.4)"

Compatibility of uses is a key theme throughout the PPS.

b) City of Kenora Official Plan (2015)

The Land Use Designation of the property is 'RU' Rural. An image of the designation mapping is shown below as well as the following policies with particular relevance.

Policy 4.8 Rural Area

Rural Areas include a variety of agricultural, residential, industrial, commercial, recreational, tourism and open space uses. Over the lifetime of this Plan the Rural Areas may experience limited change.

4.8.1 b) Residential development shall be limited in the Rural Areas.

4.8.3 Residential Development in the Rural Area

a) Residential development shall be restricted to single-detached dwellings on relatively large lots serviced by private water and sewage;

3.15 Land Use Compatibility

Whenever a change in land use is proposed, consideration shall be given to the effect of the proposed use on existing land uses. Where there are potential compatibility concerns, consideration shall be given to the extent to which increased site plan requirements can reduce the potential impacts. If the impacts cannot be minimized to acceptable levels, the proposed development shall not proceed. Development of land uses that require separation from other uses will be subject to the Ministry of the Environment and Climate Change DSeries Guidelines.

Appropriate buffering will be required so that major facilities such as airports, transportation/transit/rail infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries and resource extraction activities, and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety.

Where planning approvals are required to accommodate the establishment or expansion of major facilities or sensitive land uses, proponents may be required to provide supporting technical studies, prepared by a qualified professional and in accordance with Ministry of the

Environment and Climate Change land use and compatibility guidelines. These studies will assist in the evaluation of proposed developments to ensure that land uses will be appropriately designed, buffered, and/or separated from each other to prevent adverse effects from odour, noise, and other contaminants, and minimize risk to public health and

safety. If the impacts cannot be minimized to acceptable levels the proposed development shall not proceed.

8.3.2 Temporary Uses

Council may pass a By-law to allow the temporary use of lands that do not comply with the Land Use designations in this Plan provided that:

- a) the temporary use does not require major capital investment or alteration to the existing landscape;
- b) the proposed use is compatible with surrounding land uses;
- c) the proposed use does not require the extension of municipal services;
- d) the developer has entered into an agreement with the municipality specifying the conditions under which the use may be permitted; and,
- e) the By-law shall specify a maximum time period for which the use may be permitted.

c) Zoning By-law No. 101-2015

Permitted uses include Single-detached dwellings, Sleep cabins, Seasonal dwellings, etc.

3.34.2 Construction Facilities

Any sheds, scaffolds, portable trailers, or other structures incidental to construction or repair work in progress, which work has not been abandoned or finished, shall be permitted in any zone, so long as the said structure(s) are not equipped with kitchen facilities, sleeping quarters or other overnight accommodations. Structures incidental to construction do not include recreational vehicles, trailers, etc.

Internal comments:

From a Building perspective; the department has no objections to the storage shed changed to a sleep cabin, being used as a temporary use provided there is a CO and Smoke Alarm installed.

From a Planning perspective; this is not the first time the City has been asked to allow the use of a non-permitted shelter while under construction; this is however to my knowledge, is the first time requested by Temporary Use Exception. Care should be taken if approval is being considered so as not to set a precedent i.e. stipulate conditions. May I suggest that if approval is considered that conditions be applied e.g. the applicant submit a detailed construction schedule/stages for the 2 to 3 year project (as per application); the applicant submits confirmation of approved financing for each stage (the applicant does indicate he is working on financing).

It should be noted that the request is for a specific purpose being the construction of a house; I don't believe the above conditions are unreasonable and will likely be required by his financier – April 7/17

The Clerk advises that given the concerns raised, an exemption to the Noise By-law would not be approved for the use of a generator.

From the Roads department, it appears at the site that a third entrance is in use further east to the permitted two entrances. The property owner needs to apply for an entrance

permit for the third entrance if it complies with the planning regulation.

Kenora Fire has no issues with this application. The owner must follow all fire safety measures as described within the Ontario Fire Code.

Existing grey water ok and new approved septic approved to install – April 13/17

Kevin and I spoke yesterday and I realized that we may have issued our permit prematurely if Mr. Tew was not in compliance with the Zoning By-law. The system has been installed and covered.

I have spoken with Mr. Tew about this infraction and the related paperwork from the Northwestern Health Unit. It is our intent to not issue our Certificate of Completion until he is in compliance with the City on the zoning issue as it relates to his building permit.

Public Comments:

A public meeting is scheduled to be held by Council on May 9th, 2017. Notice of the application was given in accordance with Section 34 of the Planning Act, whereby it was circulated on April 6th, 2017 to property owners within 120 metres, and published in the Municipal Memo of the Newspaper, persons and public bodies as legislated. Together with staff, Council will have the opportunity to evaluate the proposal in lieu of public comments.

To date (May 1/17), the Planning Department has received comments from six (6) property owners in the area of the application. Copies of the submissions are redacted, scanned and attached to this report. Comments and concerns with the existing use and proposal are outlined within the emails.

One email provides support for the temporary use. Five emails provide comments of concern generally related to servicing, and non-compatibility of the existing use; including noise emitted from a generator which is used to provide electrical service; uncertain grey and black water servicing, and daytime burning. Neighbours were also concerned about general misconduct, and are distrustful about the situation improving with approval of the temporary use, and plans to build a single-detached dwelling.

A copy of the redacted public comments was provided to the applicant. The applicant later provided a letter of request not to provide public comments to Council and explained that he was concerned that the comments could damage his character and risk successful outcome of the application. I explained that the comments are retained as part of the public record, that the expectation of the public is that the comments will be provided, and that I could not impede the public process.

Planning Advisory Committee Recommendation:

The notice of application also stated that the Planning Advisory Committee would have the opportunity to consider recommendation of the application to Council at their meeting on April 18th, 2017. There were no public persons in attendance at the PAC meeting, however two written comments were provided in advance of the agenda circulation, and three were provided to members at the meeting.

Mr. Tew attended the PAC meeting and provided an overview of his application and background. Members of PAC asked questions, and expressed concern with the application and requested further information to demonstrate the ability for temporary hydro hook up, approved financing, and to specify his building plans and construction schedule.

Evaluation:

Temporary Use of a sleep cabin with kitchen facilities, as interim means for accommodation while constructing a permanent dwelling is a practical use. The Zoning By-law does make allowances for use of sheds and equipment as a supportive use to construction of a permitted permanent use; however, kitchen facilities and overnight accommodations are not permitted as of right.

Approval of a Temporary Use By-law is required in order to achieve approval for a sleep cabin, required for the purpose as noted in Section 3.34.2 of the Zoning By-law.

The Official Plan provides direction in the matter of temporary use, noting in particular that the must be compatible with the surrounding area. Whereas notice of the application was circulated to property owners in the area within 120 metres, and comments in opposition have been received, the issue of compatibility is apparent.

Comments make specific mention of noise emitted from a generator that is used to provide electricity to the building. The zoning by-law and official plan do not make specific reference to the need to provide hydro services. The Noise By-law however, allows for use of a generator for construction purposes between the hours of 7:00 a.m. and 9:00 p.m. but prohibits use of a generator outside of these hours.

A request for exemption from the Noise By-law can be made to the office of the City Clerk. The Clerk advises that given the concerns raised, an exemption would not be approved.

Outstanding concerns include receipt of a permit for the sewage disposal system, ongoing use of a generator for purposes unrelated to construction, a schedule identifying completion dates for phases of construction, as well as financing.

Execution of an agreement with Council is provided for by the Official Plan; however the City's Solicitor advises that rather than an agreement, the Planning Act provides for terms under which the approval may be given, to be identified within the Temporary Use Provision By-law itself.

Terms of approval may identify approval for the temporary use of the existing structure, for three (3) years or until an occupancy permit is issued for the Single-detached dwelling. If, after an annual inspection and review, it is determined that the terms of approval are not met, the approval will be deemed to contravene from the terms of the Temporary Use Provision, similar to a termination or revoke of approval.

It is recommended that any approval duly sets out remaining matters to be resolved, including interim use of the building and servicing for residential use, not limited to use of a generator; receipt of permits for sewage system; interim building permit; proposed

building permits; resolution of property entrance permit; demonstration of approved financing to complete construction of the proposed single-detached dwelling; scheduling of dates for completion of construction phases; and assurances to the applicant that if there are shortcomings to these terms, that the approval will no longer be valid.

If the approval is contravened, or dwelling is completed, the by-law must clearly state that the site and the sleep cabin is appropriately restored in accordance with the Zoning By-law.

Recommendation

As Planner for the City of Kenora, it is my recommendation that Council accepts the recommendation of the Planning Advisory Committee to defer consideration of the application, in order to enable the applicant to provide sufficient information to ensure compatibility of the temporary use, and plans to demonstrate the capacity for successful construction of a single detached dwelling.

Whereas the PAC will continue to work with the applicant toward a temporary use provision, which identifies criteria, for the satisfaction of the terms for a by-law, lasting up to three (3) years (i.e. June 20, 2020 or date of execution of agreement).

Any person may express his or her views of the application and a record will be kept of all comments.

Is there anyone who wishes to speak in favour of the amendment?

Lori Ward, neighbour of Cecil's across the road. The generator is nothing, it is not a noisy generator and he has built an enclosure for it. He has an approved septic field. So many people have moved in trailers while they were building and he asked permission but was denied.

Mayor Canfield questioned if there anyone who wishes to speak in opposition of the amendment?

There were none.

Mayor Canfield questioned if there are there any questions?

Councillor Smith questioned if this would come before Council for decision. Devon advised that the recommendation is to defer the matter.

Mr. Tew commented that he has been delayed for 2 ½ years and he can't get financing until he is framed in. He has his footings started, and electrical service ready. The building season is very short and he would like to get going so he can get closed in by the end of this season. He won't likely get an occupancy permit by the end of this year, but he could get closed in. Another option that he had proposed is that he would build a separate cooking facility. I am ready to get going now, and he is hoping for a vote sooner.

As there are no (further) questions, Mayor Canfield declared this public meeting CLOSED at 12:50 p.m.

