

November 29<sup>th</sup>, 2017

## Staff Report

To: City of Kenora Planning Advisory Committee

File No.: D10-17-10

Fr: Devon McCloskey, City Planner

Action: To Consider Provisional Approval

Re: Application for Consent

Location: 923 Hwy 17E

Owner: Faith Brydges

Agent: Tara Letwiniuk

### 1. Introduction

An Application for consent to sever is proposed to create one (1) new lot, zoned HC - Highway Commercial. The application is being considered in conjunction with an application for Site Plan Control. The property is located at 923 Hwy 17E, and described as two PINs.



Firstly, PIN 42168-0485 being part of lots 3, 4 and 5, lying westerly of Hwy 17. The property is also subject to an easement in gross over Part 1 of Plan 23R-11929.

Secondly, PIN 42168-0483 being part of lots 7, 16 and lane of Plan M-35, lying east of lot 7, Parts 1 - 3 of Plan 23R-8943. The property is also subject to easement in gross over Part 2 of Plan 23R-11929.

The effect of approval would be the creation of one (1) new lot which will comply with the minimum required lot size of 600 m<sup>2</sup> as per the provisions of the Kenora Zoning By-law 101-2015; for uses permitted in the HC- Highway Commercial Zone.

Refer to Figure 1 aside for an illustration of the location.

## **2. Existing Conditions**

The property is fronting on Hwy 17E and abutting Ninth Avenue South to the west.

### **Adjacent Land Uses**

Surrounding lands are developed in accordance with the Zoning By-law for their relative uses, however buildings on the eastside of the Highway are nonconforming since they are located closer to the road than regulated.

North: Retail 'HC'

South: Automobile Dealership 'HC'

East: Restaurants and Hotel 'HC'

West: Single Detached Residential 'R1'

### *Severed Lot*

The northern part of the property, described as Part of Lots 3 and 4 of Plan M-35, is primarily vacant, and maintained as lawn. If approved, existing parking spaces servicing the KFC, would be moved further south in order to accommodate all of the required parking within Lots 5 and 6. Potential uses of the lot include all of those listed within the HC zone, developed in accordance with the zoning by-law including setbacks, lot coverage, parking requirements, etc.

If approved, the lot frontage would be 26.41 metres, with area of 637.4 m<sup>2</sup>.

### *Retained Lot*

The existing Restaurant building, drive-through, signage, all associated parking, refuse containers, and lot access, would continue to be located within the retained lots, and as described above, any parking spaces that spill over would be relocated within the property in order to allow for the severance of the land to the north. The property would continue to be used for a restaurant.

If approved, the lot frontage would be 51.61 metres, with an area of 1661.6 m<sup>2</sup>

## **3. Background**

This past spring the agent for the owner began speaking with the Planning Department about the property and potential for redevelopment. Various options for potential severance and development were discussed, and as requested an Application for Site Plan was received. As part of that process, departments were circulated and a reconfiguration of the existing use was deliberated, in order to confirm that the additional lands were not required in order to remain compliant with the Zoning By-law and could be severed. Site Plan Approval was granted for the area to be retained, and a future site plan will be submitted for the severed lot once a development plan is proposed.

As part of the enquiry for lot creation, discussion was also struck as to the potential for the owner to acquire part of the abutting City owned Road Right of Way (Spence Street), in order to allow for a larger development. A formal request for purchase and/or lease is pending while the City's Operations Department investigates its servicing and infrastructure priorities. In the event that any disposition takes place, appropriate methods for public notice and procedure will be followed.

#### 4. Site Visit

Photos from a site visit conducted on November 16/17 and November 29/17 are included.

Photo 1 – South perspective



Photo 2 – North perspective



Photo 3 – Southeast perspective





Photo 4 –

Waste Oil Containers within a parking space at the right of the entrance to the drive though



Photo 5 –

Garbage enclosure masking the dumpsters from view of the parking lot





Photo 6 –

View of dumpsters from residential properties on Ninth Avenue South

Photo 7 – View of Shipping Container within the area of the retained lot



## 5. Consistency with Legislated Policy and City Directives

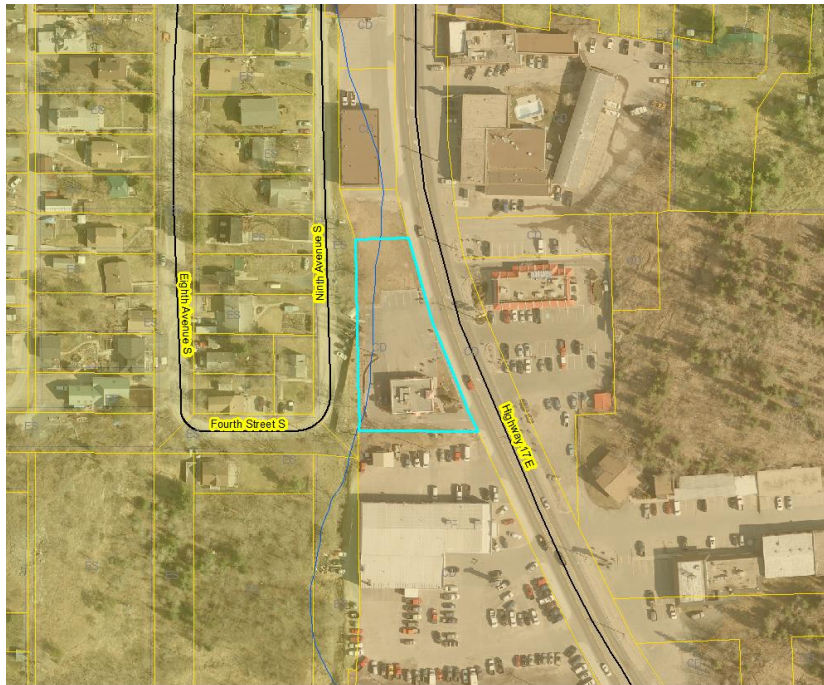
### a) Provincial Policy Statement (2014)

The application supports direction under Policy 1.1.1 which promotes the managing and directing of land use to achieve efficient and resilient development and land use patterns, including efficient land use patterns.

### b) City of Kenora Official Plan (2015)

Figure 3.





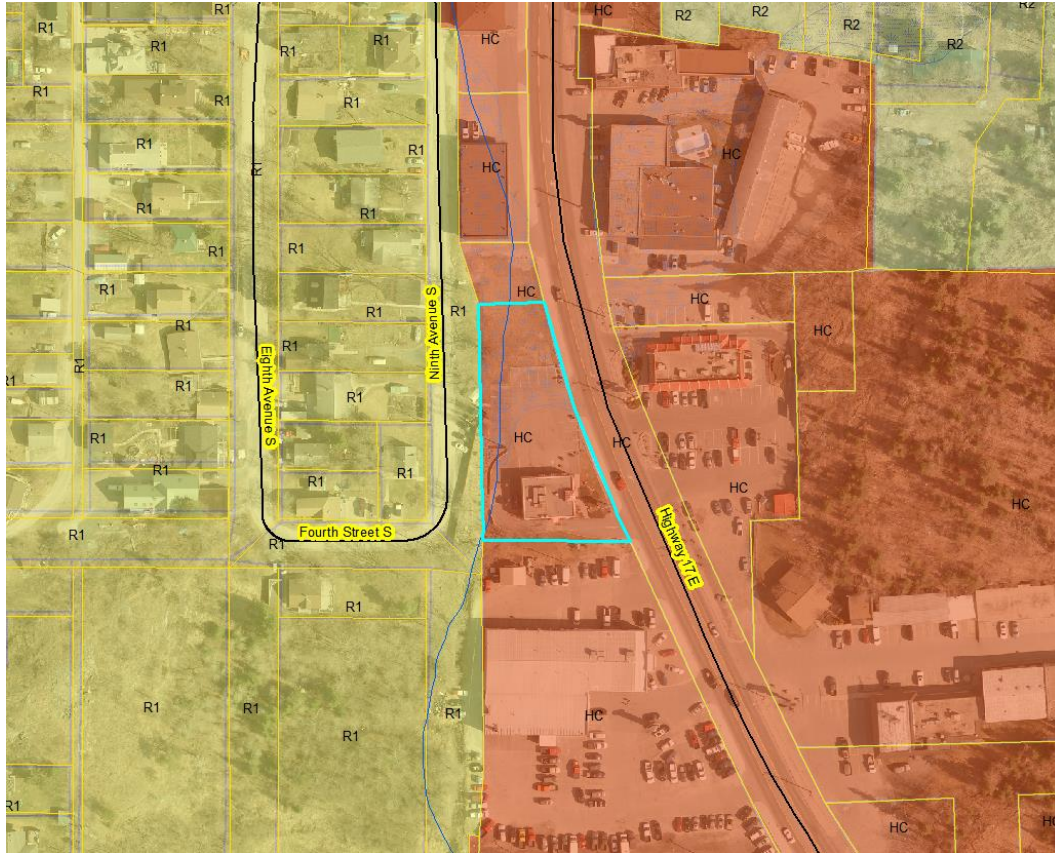
The lands are designated Commercial Development -

Policy 4.4 describes that continued development of retail commercial uses shall be promoted.

Policy 4.4.2 a) explains that the zoning by-law shall ensure that developments in the commercial development area are appropriately set back and buffered.

**b) Zoning By-law No. 101-2015**

Figure 4.




The subject location is zoned Highway Commercial (HC) and currently meets the provisions of the Zoning By-law. Both the retained and proposed lot would comply, meet and exceed the minimum provisions for lot frontage and area. Lot creation would enable development of those permitted uses listed within the zone.

Currently, the property is subject to several matters of non-compliance including a shipping container established without site plan approval, a garbage dumpster enclosure and shed encroaching on City property, and two (2) waste oil receptacles, located within a required parking space.

## 6. Results of Interdepartmental and Agency Circulation

Departments and Agencies Circulated	Comments Received
Municipal Engineer	No concern with continued use of the property dedicated for easement on the west side of the property for parking purposes. Services to the proposed lot do not exist. The sewermain is across the road, a pump may

	<p>also be required to pump sewage from the lot to the mainline. The property owner/ developer would be responsible for all costs associated with any extension for service to the property line. Application to the City of Kenora Sewer and Wastewater Department will be required for any installations - Site Plan Comments September 13/17 Site Plan Comments September 13/17</p>
Building Department	No questions, comments or concerns – November 6/17
Roads Department	<p>Property access along this section of Highway 17E is quite congested. The particular development and use of property would be evaluated at the time of an application for an entrance permit. Without having a understanding of the proposed development or use of the property, the City isn't able to advise as to specific concerns that may arise at the time of review for an entrance permit. The City would prefer to see a shared entrance between the property developed as KFC and a future potential lot, perhaps with an easement for ROW over the KFC property.</p> <p>Property access along this section of Highway 17E is quite congested. The particular development and use of property would be evaluated at the time of an application for an entrance permit. Without having a understanding of the proposed development or use of the property, the City isn't able to advise as to specific concerns that may arise at the time of review for an entrance permit. The City would prefer to see a shared entrance between the property developed as KFC and a future potential lot, perhaps with an easement for ROW over the KFC property - Site Plan Comments September 13/17 Site Plan Comments September 13/17</p>
Water & Wastewater Department	 <p>The location of the existing services for water and waste water was provided as per the sketch above – November 9/17</p>



Kenora Hydro	Kenora Hydro concern for the existing pole/push guy northwest of the property; which is supporting the overhead guy wire required to hold the pole across the road, near the travel lodge. The pole is heavily strained due to the difficult angle. If use of the proposed lot is for building purpose then consultation will be required. We are very limited to make any type of adjustments – Site Plan Comments September 13/17
Kenora Fire & Emergency Services	No concerns with the severance – November 3/17

## **7. Public Comments**

Circulation of the Notice of Complete Application and Hearing was completed in accordance with Sections 53 of the Planning Act; whereby it was circulated to property owners within 60 metres of the subject property on October 26<sup>th</sup>, 2017, and provided to the persons and public bodies prescribed.

A public hearing is scheduled to be held on November 21<sup>st</sup>, 2017, to hear public comments. If new information or comments are provided at the meeting, additional information may affect the outcome of the recommendation presented.

As of the date of this report, no public comments have been received.

## **8. Evaluation**

The proposal meets the provisions of the OP and Zoning By-law. The retained lot will continue to be used for Restaurant use and the severed lot can be built in accordance with the by-law. As part of the Site Plan Process, the agent and their architect were able to demonstrate that the property could be successfully severed, and developed for uses permitted in the HC zone. It was discussed that parking and storage could remain on the area occupied by the easement in gross, for drainage purposes.

As part of the exercise, four (4) design options were presented, which identified the required setbacks, lot coverage, building floor area, number of parking spaces for retail use in accordance with the zoning by-law, and road entry.

The Operations Department expressed some concerns with the addition of another entrance, and suggested that depending on the proposed use, that they would be more comfortable with a shared entrance with KFC lot, however this could be reviewed once a development proposal is submitted.

As part of the site plan approval process for the retained property, it was noted that the KFC's dumpsters, and a shed are located off of the private property and within the City road right of way. It was requested that these facilities be relocated onto private property. It was also recommended that landscaping including pot plantings are reestablished and maintained. Since consideration of the site plan, two (2) oil collection bins and a shipping container have been brought onto the property

## **9. Legislative Framework for Consent approval**

The Committee shall evaluate a consent application based on the Provincial Policy Statement (2014), The City of Kenora Official Plan (2015), Zoning By-law No. 101-2015 as amended and the provisions of section 51(24) of the Planning Act:

In determining whether a provisional consent is to be given, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to:

- (a) the effect of development of the proposed subdivision on matters of provincial interest;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act

## 10. Recommendation

**That application D10-17-10 for consent to sever property located at 923 Hwy 17E, described as PINs 42168-0485 and 42168-0483, be approved and provisional Consent be granted, subject to the following conditions:**

- 1) The original executed Transfer/Deed of Land form, a duplicate original and one photocopy for City records be provided
- 2) A Schedule to the Transfer/Deed of land form on which is set out the entire legal description of the parcel(s) in question and containing the names of the parties indicated on page 1 of the Transfer/Deed of Land form be provided.
- 3) That the transferor and transferee not be the same person.
- 4) That the existing easement along the west side of the property is appropriately described and transferred with the severed portion.

- 5) That a site plan application and associated agreement for the retained portion is approved, and all outstanding matters are resolved to bring the property into compliance including use and location of a shipping container, relocation of the dumpsters and oil disposal containers, and that landscaping including pot plantings are reestablished and maintained.
- 6) That approvals are received from the City for the provision of an entrance permit, culvert and materials as required to develop driveway access, where a new entrance is required.
- 7) Three original copies (not photocopies) of the reference plan of survey, bearing the Land Registry Office registration number and signatures as evidence of deposit therein, and illustrating the parcel(s) to which the consent approval relates and which must show in general the same area and dimensions as the sketch forming part of the application be provided.
- 8) That the payment of any outstanding taxes, including penalties and interest (and any local improvement charges if applicable) shall be paid to the City of Kenora.
- 9) That prior to endorsement of the deeds, the Secretary-Treasurer shall receive a letter, from the owner or owner's Agent/Solicitor, confirming that conditions #1 through #6 have been fulfilled. Clearance letters from the City of Kenora and external agencies are to be included.
- 10) That all costs associated with extension of services, driveway installation, surveys, legal fees and matters related to the application are the responsibility of the developer/applicant.

#### NOTES:

Prior to any grading or any construction on the site, the Developer may be requested to provide a Drainage Plan, to identify the capacity of the existing natural swales and/or proposed ditches, and demonstrate that the drainage for all roads and lots be as close to the property lines as possible. References would be made to an overall drainage basin runoff flow calculation

The following section(s) of the Planning Act apply:

#### **Conditions not fulfilled**

**53(41)** If conditions have been imposed and the applicant has not, within a period of one year after notice was given under subsection (17) or (24), whichever is later, fulfilled the conditions, the application for consent shall be deemed to be refused but, if there is an appeal under subsection (14), (19) or (27), the application for consent shall not be deemed to be refused for failure to fulfill the conditions until the expiry of one year from the date of the order of the Municipal Board issued in respect of the appeal or from the date of a notice issued by the Board under subsection (29) or (33). 1994, c. 23, s. 32.

#### **Lapse of consent**

**53 (43)** A consent given under this section lapses at the expiration of two years from the date of the certificate given under subsection (42) if the transaction in respect of which the consent was given is not carried out within the two-year period, but the council or the Minister in giving the consent may provide for an earlier lapsing of the consent. 1994, c. 23, s. 32.



Devon McCloskey, RPP, MCIP



City Planner

**Attachments**

- Complete Application for Consent to Sever
- Notice of Application and Public Meeting
- Site Plan Application and Letter of Comment