

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 23, 2017

CASE NO(S): PL160511

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	John Vamos
Subject:	By-law No. 48-16
Municipality:	County of Brant
OMB Case No.:	PL160511
OMB File No.:	PL160511
OMB Case Name:	Vamos v. Brant (County)

Heard: November 14, 2016 in Paris, Ontario

APPEARANCES:

Parties

Counsel*/Representative

John Vamos

J. Hitchon*

Eric Norg

Self-represented

DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD

INTRODUCTION

[1] The County of Brant (“County”) approved a re-zoning by-law, to modify the current Special Exception Rural Commercial zone to allow for the reconstruction and expansion of an existing commercial business, Carl’s Choice Meats (“Carl’s”). The subject property is located at 1139 Colborne Street West and is privately serviced with a septic disposal system and a well. The property is remote from neighbouring land uses

and is surrounded by open fields.

[2] The total gross floor area of the existing commercial use is 200 square metres (sq m) which is the maximum size the zoning by-law allows but the (“Applicant”), Eric Norg and his son, intend to double the size of the commercial use to 400 sq m. The proposed expansion also requires a reduced side yard of 2.4 metres (“m”), whereas; the zoning by-law requires 4.2 m. The expansion is proposed along the west side of the property in line from the existing facility. The expansion was initiated as an outcome of a recent fire, necessitating the removal of part of the building. The commercial activity employs fourteen persons including some Norg family members. Mr. Norg’s son and family live on site in a detached single family home.

[3] Carl’s retails meat products and the store performs butchering and delivery functions, but slaughtering is not undertaken on site. The Board heard the expansion may allow the family to undertake smoking and curing activities, if the additional floor space is approved.

[4] Carl’s began operating in 1986 and received rezoning approval in 2004 for an expansion involving approximately 70 sq m. According to evidence, a 130 sq m commercial building had been established on-site as early as “circa 1970” (Tab 6, Exhibit 1).

[5] The County planning staff supported the re-zoning action.

[6] The re-zoning by-law was appealed by John Vamos, a neighbour who resides nearby but not adjacent to the subject lands. The Board heard from Mr. Vamos’ planner that the (“Appellant”) considered that access to from the property by patrons and truck deliveries were hazardous, a state of affairs an expansion would intensify.

[7] John Ariens, a professional planning consultant testified on behalf of the Appellant.

[8] Mr. Norg testified on his own behalf. There was no representation from the County at the hearing.

[9] The planner opined that the Agricultural designation of the County of Brant Official Plan (“OP”) which applies to the subject lands, permits commercial uses but restricts those activities to functions directly relating to a farm operation, a critical relationship that the planner opined was not available to this application. Carl’s does not purchase its bulk meat products in the near vicinity but in another community according to the Applicant. Numerous policies extracted from the OP in Tab 8, Exhibit 1 did establish that commercial functions that are permitted must confirm a direct and supportive relationship to farm operations or otherwise not be allowed.

[10] The municipal planning report of Exhibit 1, Tab 6, described that conformity with the OP existed as “the proposed zoning amendment would promote the redevelopment of an existing agriculture-related use” citing policy 3.3 of the OP as the authorization.

[11] Planning staff were also content that the Provincial Policy Statement 2014 (“PPS”) also supported the rezoning amendment in that the “replacement of the existing use which will promote economic growth on rural lands which can be supported by the current infrastructure.”

[12] PPS policies 1.15.5, 1.15.3, and 1.1.5.5. were noted by the municipal planners as the policies which support the application, although Mr. Ariens claimed that the Rural policies of the PPS were not relevant because the subject property was considered a prime agricultural holding and, therefore, subject to the Agricultural policies instead which prescribe, like the OP, that a direct and valid connection with the agricultural community must exist.

[13] The interpretative differences between the planning department and Mr. Ariens widened further regarding evidence involving site plan control. The planning report did not recommend site plan as a condition of approval (nor did Council in their approval)

but John Ariens provided the Board with a copy of the County's site plan control by-law (Exhibit 3) which in clause 8 recognizes the need for site plan for building additions over 200 sq m unless otherwise exempted by Council "where there would be no reasonable benefit". In this instance the final approval by Council evidently saw no benefit in this regard, but Mr. Ariens was of the view that issues regarding off-site parking and driveway access could be properly controlled via the imposition of site plan control.

[14] In his review of the proposed re-zoning by-law the consulting planner drew the Board's attention to an error in paragraph 2 where the words: "Light Industrial" should be instead: "Rural Commercial", a correction which this decision notes in attached Schedule 1 which is drawn from Tab 9, Exhibit 1.

[15] The Applicant's testimony informed this panel that Carl's was a going-concern, a successful business with a long history dating back decades; certainly before the approval of the OP in 2012 and the introduction of the first PPS in 2005.

[16] There is an apprehension of increased impact by the planner and his client, Mr. Vamos that poorly designed driveway access and on-site parking layout will be issues in the event the expansion is permitted although, there were no traffic studies made available in evidence which affirmed that potential problem. The subject lands do perhaps have enough surplus lot area that could be effectively deployed to improve off street parking if excess demand occurs but site plan control is not necessary to effect that very specific improvement.

[17] The Board finds agreement with the planner's testimony that Carl's is not directly related to the farming and agricultural community that OP policy requires of commercial use. But the use was established in 1986 and expanded in 2004 before the introduction of more recent provincial and county planning policy regimes which have had a very profound influence on the development and protection of rural and agricultural lands since their introduction. Therefore, Carl's, if not in complete conformity with the OP, is, in the Board's view, a well established, and long established activity which contributes

valued commercial and employment benefits to the community without adverse impact to that community.

ORDER

[18] The Board orders that the appeal against Rezoning By-law No. 48-16 is dismissed with regard to the property known municipally as 1139 Colbourn Street West and the rezoning is authorized as described on attached Schedule 1. .

“Richard Jones”

RICHARD JONES
MEMBER

If there is an attachment referred to in this document,
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Ontario Municipal Board

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SCHEDULE 1

BY-LAW NUMBER 48-16

- Of -

THE CORPORATION OF THE COUNTY OF BRANT

To amend By-law Number 110-01, the Zoning By-law for the County of Brant, as amended, Eric Norg, 1139 Colbourne Street West.

WHEREAS an application was received from Eric Norg with respect to land described as CON 4 PT LOT 8, in the geographic former Township of Brantford, County of Brant and located at 1139 Colbourne Street West, to amend By-law Number 110-01, to amend the current Special Exception Rural Commercial (C5-14) Zoning to recognize a deficient interior side yard setback of 2.4 metres and an overall commercial gross floor area of 400m²;

AND WHEREAS the Planning Act empowers a municipality to pass by-laws prohibiting the use of land and the erection, location and use of buildings or structures, except as set out in the by-law;

AND WHEREAS this by-law is in conformity with the Official Plan for the County of Brant;

AND WHEREAS the Planning Advisory Committee of the Corporation of the County of Brant has recommended approval of this by-law;

AND WHEREAS the Council of the Corporation of the County of Brant deems it to be desirable for the future development and use of the lands described above;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE COUNTY OF BRANT HEREBY ENACTS as follows:

1. **THAT** Schedule 'A', Key Map 59 of By-law Number 110-01 is hereby amended to update the existing Special Exception Rural Commercial (C5-14) Zoning on the subject lands to Special Exception Rural Commercial (C5-14 (H)) Holding Zone to recognize a deficient interior side yard setback of 2.4 metres and an overall commercial gross floor area of 400m², as shown on Schedule 'A' of this by-law.

2. **THAT** Section 28(4)(n) ~~Light Industrial~~ *Rural Commercial*, is hereby amended by adding the following as subsection 28(4)(n):

(n) C5-14 (LIMITED USES)
Notwithstanding any provision of this By-law to the contrary, within any area zoned C5-14 on Schedule "A" hereto, the permitted uses shall be limited to:

- A meat market
- A single detached dwelling
- An agricultural equipment sales and service
- A bulk sales establishment primarily related to farm including fuels, feed and implements
- A contractors yard or shop
- A farm machinery sales outlet
- A greenhouse
- A nursery and garden centre
- A retail related to fresh farm produce, landscaping and/or gardening supplies, antiques, gift shop, tourist shop

- Uses accessory to the foregoing.

Furthermore, the minimum westerly interior side yard shall be 2.4 metres and a maximum overall commercial gross floor area of 400m² shall be permitted. All other requirements of the By-law shall apply. (Map 59)

3. **THAT a holding provision shall be applied to the lands zone Rural Commercial (C5-14) until the applicant apply for and receive Site Plan Approval.**
4. **THAT** this by-law shall come into force on the day it is passed by the Council of the Corporation of the County of Brant.

READ a first and second time, this __ day of _____, 2016.

READ a third time and finally passed in Council, this ____ day of _____, 2016.

THE CORPORATION OF THE COUNTY OF BRANT

R.E.F Eddy, Mayor

Heather Boyd, Clerk