SUBJECT: Modification in Zoning By-law for Lands Located at 621 Highway No. 8 (Flamborough) (PED07150) (Ward 14)

RECOMMENDATION:

That approval be given to Zoning Application ZAR-07-008, Rockton Berry Farm Inc, owner, to further modify the existing Agricultural “A-41” Zone to permit a convenience food restaurant and a retail establishment, excluding any open storage only within the existing building, for lands located at 621 Highway No. 8 (Flamborough), as shown on Schedule “A” to Report PED07150, subject to the following:

(a) That the draft By-law, attached as Appendix “B” to Report PED07150, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(b) That the proposed change in zoning is in conformity with the Hamilton-Wentworth Official Plan and the Official Plan of the Town of Flamborough.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

The purpose of the application is for a further modification in zoning to facilitate the establishment of an LCBO outlet by recognizing the existing use as a “retail establishment” with all retail uses being restricted the existing Rockton Berry Farm Market building located at 621 Highway No. 8 (Appendix “C”).
The proposal has merit and can be supported since the modification in zoning conforms with the intent of the Greenbelt Plan and the Provincial Policy Statement, and conforms with the Hamilton-Wentworth Official Plan and the Flamborough Official Plan. The proposed uses, which are restricted to the existing building only, are compatible with the agricultural area.

**BACKGROUND:**

**Proposal**

The application proposes the future establishment of an LCBO outlet, and recognition of the existing retail uses, comprising the sale of baked goods, crafts and gifts, flowers and plants, fruit and vegetables and a snack bar, within the existing building on the portion of the subject lands zoned Agricultural “A-41” Zone (Appendix “C”).

**Location:** 621 Highway No. 8 (see Appendix “A”)

**Owner:** Rockton Berry Farm Inc.

**Agent:** Planning and Engineering Initiatives Ltd.

**Property Description:**

- **Frontage:** 185.5m
- **Depth:** 59.5m
- **Total Land Area:** 9886.2m² (2.4 acres)

**Existing Land Use and Zoning:**

<table>
<thead>
<tr>
<th>Subject Land:</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural and a Farm Market</td>
<td>Agricultural “A-41” Zone</td>
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**Surrounding Land:**

- **North:** Agricultural and Industrial, Agricultural “A” and Rural Industrial “M3” Zones
- **West:** Agricultural, Agricultural “A” and “A-1” Zones, and Conservation Management “CM” Zone
- **South:** Agricultural, Conservation Management “CM” Zone
- **East:** Residential and Agricultural, Agricultural “A” and Conservation Management “CM” Zones
ANALYSIS/RATIONALE:

1. The proposed modification in zoning has merit and can be supported for the following reasons:
   
   (i) It is consistent with the intent of the Greenbelt Plan and the Provincial Policy Statement.

   (ii) It conforms to the Hamilton-Wentworth Official Plan and the Flamborough Official Plan.

   (iii) It is compatible with the agricultural area.

2. The current zoning permits the following uses, in addition to agriculture: a fruit and vegetable market and the ancillary uses of a bakery, snack bar, crafts and gifts, flowers and plants, and associated events. The list of permitted uses represents a cross-section of various retail goods. The proposed modification reflects a more modern approach to defining permitted uses used already in the first stages of the City’s New Comprehensive Zoning By-law. Using the more generic term “retail establishment” permits the sale of all “goods, wares, merchandise, foodstuffs or articles, but shall not include a salvage yard or automobile sales and service establishment”. The restriction for the non-agricultural uses to be located within the existing building will also bring the previous site-specific zoning more into conformity with the Greenbelt Plan.

   The total square footage of the existing building is 531.9m² with 253.2m² of retail and snack bar area, and 278.7m² of storage area for the retail use (walk-in cold storage, preparation and packing area). The proposed LCBO outlet is expected to occupy 93m² of the existing building. The proposal will also recognize the current Convenience Food Restaurant (snack bar), which is limited to 100m² by definition in the By-law. The outdoor sale of goods is limited to the farm and vegetable stand permitted within the parent Agricultural “A” Zone provisions.

   The existing parking area (3,300m²) provides the required number of parking spaces (28 spaces), and can accommodate a loading space without any need for redesign. The parking area size is to be restricted in the By-law in order to eliminate any future expansion/encroachment onto the adjacent agricultural area.

ALTERNATIVES FOR CONSIDERATION:

If this application is denied, then the following uses are permitted in accordance with the current Agricultural “A-41” Zone; agricultural uses, a fruit and vegetable stand, and the following ancillary uses: a fruit and vegetable market, bakery, snack bar, crafts and gifts, flowers and plants, and associated events. This would then not allow for the sale of other goods presently being sold or the establishment of the LCBO outlet.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial - N/A.

Staffing - N/A.

Legal - As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Zoning By-law Amendment.

POLICIES AFFECTING PROPOSAL:

Greenbelt Plan

The subject lands are designated “Protected Countryside – Prime Agricultural Areas” and “Natural Heritage System” within the Greenbelt Plan. The “Protected Countryside – Prime Agricultural Areas” polices permit a range of agricultural, agriculture-related and secondary uses.

Policy 5.2.1 provides that where an Official Plan was amended prior to December 16, 2004, to specifically designate land uses, this approval may continue to be recognized through the conformity exercise addressed in Section 5.3. Any further applications required under the Planning Act or Condominium Act, 1998 to implement the Official Plan approval are not required to conform with the Plan.

Similarly, where a Zoning By-law was amended prior to December 16, 2004, to specifically permit land uses, this approval may continue to be recognized through the conformity exercise described in Section 5.3. Any further applications required under the Planning Act or Condominium Act, 1998 to implement the use permitted by the Zoning By-law are not required to conform with the Plan.

This policy also provides that applications to further amend the site-specific Zoning By-law permission referred to above, for uses similar to or more in conformity with the provision of this Plan, are also permitted. All such applications should, where possible, seek to achieve or improve conformity with the Plan.

The proposal is for a modification in zoning to identify all the existing uses as generic “retail” uses and a convenience food restaurant within the existing building, which will bring the zoning into further conformity with the Plan by confining these uses to the existing building. The proposed zoning complies to the policies in the Flamborough Official Plan and recognizes similar retail uses, conforming to Section 5.2.1 of the Greenbelt Plan. The proposal would not have any direct impact on the key natural heritage or hydrologic features of the area.

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff is of the opinion that the application is consistent with the policies of the Agricultural Area, Policy 2.3.3.
Hamilton-Wentworth Official Plan

The subject property is designated as “Prime Agricultural” within the Hamilton-Wentworth Official Plan. Policy C-3.2.3.4 directs the regulation of industrial or commercial uses to the Official Plan of the local municipality. As the proposal is for a more flexible, modern recognition of the uses permitted under the site-specific zoning, with a restriction on any expansion to the existing building, the proposal is consistent with the policies of the Hamilton-Wentworth Official Plan.

Proposed Rural Hamilton Official Plan (for information purposes only)

As the application was submitted prior to the final adoption of the new Rural Hamilton Official Plan, this document has been reviewed for information purposes only. The subject lands are designated “Rural – Protected Countryside” and “Natural Heritage System”. Policy F.1.11.4 allows for the expansion or enlargement or change in non-complying uses provided they maintain the intent and purpose of this Plan, in particular Sections C.5.1 and C.2.0. As the nature of the application is for a modification in zoning to better recognize the existing use of the existing building for retail sales and involves no new external construction, the proposal is in conformity with the policies of the proposed Rural Hamilton Official Plan.

Town of Flamborough Official Plan

The subject lands are designated as “Agriculture” in the “Rural Area”, on Schedule “B” to the Town of Flamborough Official Plan. The current permitted uses were approved in accordance with Policy B.1.11.5, which recognizes that existing commercial and industrial uses may exist that do not comply with the Plan.

The proposed zoning clarification will permit a more flexible definition of retail uses for the property, which will permit the sale of beer, wine, and spirits. The LCBO has awarded a permit to the subject lands and not to any other locations in Flamborough. As the proposed modification will limit the commercial uses to only within the existing building, no consumption of good agricultural land will occur as a result of this clarification.

RELEVANT CONSULTATION:

Agencies/Departments Having No Concern or Objections:

- Ministry of Transportation.
- Horizon Utilities.
- Public Works Department, Operations and Maintenance Division, Forestry and Horticulture Section.
- Public Works Department, Operations and Maintenance Division, Traffic Engineering and Operations Section.
- Corporate Services Department, Budgets, Taxation & Policy Section.
Staff of the Hamilton Conservation Authority (HCA) has the following comments:

“The subject property is located within the West Spencer Creek subwatershed. The subject lands and the existing building are located within the Regulatory Floodplain associated with West Spencer Creek. As such, the subject property and the existing building are affected by HCA Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation 161/06 under Ontario Regulation 97/04, whereby a permit from the HCA is required prior to any new development within the regulated area. The definition for “development”, as it pertains to the Planning Act, Provincial Policy Statement, and Greenbelt Plan, means the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the Planning Act, but does not include:

a. Activities that create or maintain infrastructure authorized under an environmental assessment process; or

b. Works subject to the Drainage Act. (PPS).

According to the Authority’s records on December 3, 1981, the Hamilton Region Conservation Authority approved a Permit to construct a 12.2m x 12.2m (148 sq.m.) barn in a fill and construction regulated area for use as a winter storage building for the vegetable crops grown on the subject farm. The proposed floor elevation of the structure was 241.6m, which was 0.8m above the estimated Regional Flood elevation. Since that time, various additions and changes to the use of the subject building have taken place.

The Authority understands that the intent of this Zoning By-law Amendment is to better define the range of products and uses available and permitted within the existing commercial outlet and, as such, is proposing to introduce a country market, including an LCBO outlet within the retail portion of the existing building as an additional permitted use. As no new structures or structural additions are proposed, and the additional uses proposed are not sensitive land uses in terms of the Authority’s Regulation, a permit is not required from the HCA for this proposal.

As such, the Authority has no objection to the approval of the Zoning By-law Amendment application.”

Public Consultation

In accordance with the Public Participation Policy that was approved by Council on May 29, 2003, the application was pre-circulated to all property owners within 120 metres of the subject property and a sign was posted on the site. A total of 27 notices were circulated on May 4, 2007. No comments were received.

Notice of Public Meeting will be given in accordance with the requirements of the Planning Act.
CITY STRATEGIC COMMITMENT:

By evaluating the "Triple Bottom Line", (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Shelter, care and satisfying employment are accessible to all Hamiltonians.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Ecological function and the natural heritage system are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
The economic base is diversified.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:KW
Attachs. (3)
Location Map

Appendix "A" to Report PED07150

Subject Property

621 Highway No. 8 (Flamborough)

To further modify the existing Agricultural "A-41" Zone.
CITY OF HAMILTON

BY-LAW NO. 

To Amend Zoning By-law No. 90-145-Z (Flamborough), as amended
Respecting lands located at 621 Highway No. 8.

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the Town of Flamborough" and is the successor to the former regional municipality, namely, The Regional Municipality of Hamilton-Wentworth;

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 90-145-Z (Flamborough) was enacted on the 5th day of November 1990, and approved by the Ontario Municipal Board on the 21st day of December, 1992;

AND WHEREAS the Council of the City of Hamilton, in adopting Section of Report of the Economic Development and Planning Committee at its meeting held on the day of 2007, recommended that Zoning By-law No. 90-145-Z (Flamborough), be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Town of Flamborough), approved by the Minister under the Planning Act on September 27th, 1988.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:
Appendix “B” to Report PED07150 (Page 2 of 2)

1. Section 33 – Agricultural Zone of Zoning By-Law No. 90-145-Z, is hereby further amended by deleting Subsection 33.3.41 “A-41”, and replacing it with the following:

33.3.41 “A-41” (See Schedule A-22)

  Permitted Uses

  (a) Convenience Food Restaurant and Retail Establishment, and only within the building existing on the date of the passing of this by-law, being the ____ day of ____ , 2007.

  (b) A maximum parking area of 3,300m² is permitted.

  (c) Open storage accessory to the retail establishment or Convenience Food Restaurant shall be prohibited on the lands. This shall not prevent, however, the use of the lands for a fruit or vegetable stand permitted by Section 33.1(e).

  (d) Any use permitted in an “A” Zone.

  All other zone provisions of Subsection 33.2 shall apply.

2. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this ____ day of ____ , 2007.

__________________________________________  _______________________________________
Fred Eisenberger                             Kevin C. Christenson
Mayor                                       Clerk

ZAR-07-008
Rockton Berry Farm