

THE MUNICIPALITY OF LAMBTON SHORES

Report PL 03-2022

Council Meeting Date: February 22, 2022

TO: Mayor Weber and Members of Council
FROM: Will Nywening, Senior Planner
RE: Deferred ZBA Application ZO-16/2021
Plan 24, Part Lots 372 and 405
17 Pine St, Grand Bend
MFL Properties Ltd. (Agent: Jay McGuffin, MBPC)

RECOMMENDATION:

THAT Report PL 03-2022, relating to a Zoning By-Law Amendment Application, submitted by MFL Properties Ltd., be received; and

THAT Zoning By-Law Amendment Application ZO-16/2021, submitted by MFL Properties Ltd., requesting an amendment to Zoning By-Law 1 of 2003 to rezone portions of 17 Pine Street to permit an R3 Zone with site-specific provisions for construction of a triplex dwelling, be refused.

SUMMARY

This report relates to the Zoning Amendment Application submitted by MFL Properties Ltd. affecting lands known as 17 Pine St, Grand Bend and a second public meeting respecting same. The applicant seeks to amend Zoning By-law 1 of 2003 by changing the (roadside) portion of the lands from the current "Residential-4 (R4) Zone" to a site specific "Multi-Residential-3 (R3-*) Zone Exception". In this respect, the applicant proposes to construct a 3-storey, triplex dwelling.

BACKGROUND

The Zoning By-Law Amendment application was originally presented to Council at a December 21, 2021 public meeting. Council deferred making a decision at that time. Staff met with the applicant and agents on January 7, 2022 to discuss the concerns raised by the public, Council, and Municipal staff. The applicant has revised their application and requested that it be brought back to this Council meeting. The Municipality has decided to hold a second formal public meeting. A revised notice was provided in the same way as was required under the *Planning Act* for the first public meeting. In addition, all those who had submitted comments or requested notice respecting this zoning amendment application were also provided direct notice, by email in most cases.

They applicant has had revised architectural renderings and a report to supplement the original planning justification report prepared and submitted. These and the original submissions are included in Council's agenda.

The applicant has revised the proposed building by reducing individual floors' ceiling heights. Overall building height would be 9.8m as opposed to the original proposed height of (up to) 11.2m. They have also removed the proposed rooftop amenity area and roof access (stairwell and elevator penthouse) that would have been in addition to that height. The building footprint, site plan, and interior layout are the same. They have also identified the need for the proposed site-specific R3 Zone provisions to address lot area and lot coverage because of the fact that a portion of the lot is located in a separate Lakeshore (LS) Zone (see section 3.9.3 of the Zoning By-law, quoted later in this report).

The requested Zoning Amendment, as revised, would:

- Leave the lakeward, Lakeshore (LS) Zone portion of the lot in that Zone.
- Change the landward, Residential 4 (R4) Zone portion of the lot to a new Residential 3 zone exception (R3-*) Zone.
- Establish a new, site-specific R3-* zone exception, which would differ from the standard R3 Zone as follows:
 - The primary permitted use would be limited to a triplex dwelling, whereas the standard R3 Zone would also permit a converted dwelling, street townhouse, stacked townhouse, and multiple dwelling.
 - A minimum rear yard of 2.5m (measured from the LS Zone portion of the lot), whereas the standard R3 Zone would require 7m and the current R4 Zone requires 6m.
 - A maximum permitted lot coverage of 45% (of the LS Zone portion of the lot), whereas the standard R3 Zone would permit 30% for a triplex dwelling and the current R4 Zone permits 35%.
 - A minimum lot area of 785m² (excluding the LS Zone portion of the lot), which equals 262m² / dwelling unit, whereas the standard R3 Zone would require 300m² / dwelling unit and the current R4 Zone has a minimum lot area requirement of 297m².

The proposed building height is reduced to 9.8m, which complies with the 11m maximum permitted height of the standard R3 Zone. The revised building proposal has eliminated the roof top amenity area. In contrast with the original building design, the revised building would not require any special zone provisions with respect to height or a rooftop amenity area.

The construction of a triplex dwellings would be subject to site plan approval from Council.

A significant number of written submissions have been made with respect to this application. All those received by the time this report was submitted have been compiled into two documents (*Correspondence Parts 1 and 2*) included within Council's agenda. This includes those previously provided to Council at the first public meeting.

Correction and Clarifications

Staff made reference to portions of the Grand Bend community design policies in section 15.4.2 of the Official Plan in its December 21, 2021 planning report (PL 47-2021). The policy states:

To maintain Grand Bend's seaside village resort "feel", future development is restricted to low and medium density development in low rise buildings. Building heights are generally restricted to a maximum of three storeys, with building heights generally decreasing from Ontario Street to the lake to preserve views. In addition, new low density residential in the "Grand Bend Residential" area is restricted to 7.5 units per hectare or less to preserve the existing tree cover and natural environmental features.

Staff noted in the original staff report that the 7.5 units per hectare maximum density noted in the final sentence of this paragraph would apply to this application, but staff wishes to retract that statement. Staff is uncertain why the last sentence is not included under the "Grand Bend Residential" policies located elsewhere in the Official Plan. Its inclusion in the Grand Bend community design policies at section 15.4 implies that this maximum density is intended to apply to those areas of Grand Bend designated "Residential". The realization however that this density translates into a minimum lot size of approximately 1333m² leads staff to conclude that this last sentence is intended to apply only to those southerly residential areas of Grand Bend located within the oak savannah and designation "Grand Bend Residential" on the map schedules, as noted in the applicant's original planning justification report.

The first part of this paragraph, does still apply however, including the policies respecting a "seaside village resort "feel"", densities, and building heights.

The applicant has relabeled some of the rooms on the floor plans to clarify that it is not their intent to use every room in the building as a bedroom. The projected sanitary flows would still be expected to be more than that of the uses permitted by the current zone designation, but would be marginally less than what their engineer calculated based on the previous assumption of 13 bedrooms.

In response to a question in staff's original report, the applicant's architect has looked more closely at site grading and advises there will be no need to build up the site elevation in order to construct the proposed building.

DISCUSSION

Staff presented Report PL 47-2021 to Council at the December 21, 2021 Council meeting. It is included in Council's agenda for reference. As the applicant's agent had put together a thorough planning justification report, that staff report did not include a full planning analysis but instead highlighted and commented on a number of items from the

applicant's planning justification report and also added a number of comments (e.g. points where staff disagreed with the analysis as presented or identified additional items that should be considered). Likewise, the intent of this Report PL 03-2022 is not to provide a full planning analysis, but only to update the original staff report and respond to the applicant's revised building proposal and supplemental submissions.

Revised Proposal: The applicant's proposed revisions are an improvement in light of some of the concerns expressed in the previous staff report and public submissions. The removal of the stairwell and elevator penthouse, especially, reduces the height and prominence of the proposed structure as viewed, in particular, from the south. However, the alterations are insufficient to address staff's concerns. Except as specifically noted herein, the comments and concerns raised in the original staff report are still concerns.

Staff wishes to reiterate or emphasize several points from the original staff report and add some additional comments based on the revised submission.

Split Zoning: Staff reiterates its opinion that the Zoning By-law's intent in zoning more than half this lot as Lakeshore (LS) Zone was that this lot be developed in line and in scale with the single detached dwellings to the north and south. The lot's wider than average frontage translates into a larger than average building envelope, but it is staff's opinion that the intent of the LS Zone was that the lot's greater than average depth not be a factor in further increasing the building envelope or scale of development.

Lot Coverage: Further, the applicant is seeking permission to cover almost 45% of the portion of the lot that is located outside the LS Zone, whereas the standard R3 Zone would allow only 30% for a triplex. The R4 Zone allows 35% lot coverage. It is notable that the Committee of Adjustment has granted multiple minor variances to this 35% limit in the R4 Zone, but has generally been diligent in limiting lot coverage to 40%. Also notable is that staff and the committee have been careful to ensure that such variances are used to support the construction of houses in character and scale with the area, not simply to support bigger or maximized gross floor areas. That is, all such variances have been for buildings limited to two storeys, most (but not all) with peaked roofs.

Landscaped Open Space: The applicant's supplemental materials address the subject of minimum landscaped area. Staff had not looked at this initially. For a triplex, the standard R3 Zone requires that a lot maintain at least 30% of the area in "landscaped open space", which is defined as:

...the open, unobstructed space, on a Lot, accessible by walking from the Street on which the Lot is located and which is maintained and suitable for the growth and maintenance of grass, flowers, bushes, trees and other landscaping. This definition may include any surfaced walk, patio, Deck or similar area provided that such surfaced walk, patio, Deck or similar Structure is not more than 40% of the Open Space area, but shall not include any driveway or ramp, whether surfaced or not, nor any curb, retaining wall, or any Parking Area; nor any Open Space beneath or within a Building or Structure.

The proposed structure covers 44% of that portion of the lot outside the LS Zone. Staff estimates the parking area and sidewalks cover approximately 34% of the area outside the LS Zone, leaving 22% or less for open space, not the 30% required for a triplex by the standard R3 Zone. The applicant's supplemental materials opine that landscaped open space calculations are based on the entire lot area, not just the proposed R3-* portion. In that case, no special provision in the R3-* Zone would be required respecting landscaped open space. They base this on the fact that Section 3.9.3 does not specifically list landscaped open space. Section 3.9.3 addresses lots with more than one zone designation on them, states:

When a Lot is divided into more than one Zone, each such portion of the Lot shall be considered separately for the purposes of determining Zone provisions such as Lot Area, Lot Frontage, Lot Coverage, Required Front Yard, Required Side Yard and Required Rear Yard and development on each such portion shall conform to the provisions of the appropriate Zone...

Although landscaped open space is not specifically noted in Section 3.9.3, staff notes the words "such as" indicate that the zone provisions listed there are not necessarily exhaustive, so it is debatable whether landscaped open space should be calculated on the whole lot or only the portion outside the LS Zone. Staff also notes that the shifting sands on the LS Zone portion are not suitable for growing grass and landscaping, so it is questionable whether they would qualify as landscaped open space, as defined. That the building and parking area occupy at least 78% of the portion of the lot outside the LS Zone, suggests the proposed development is out of character with the area.

Prominent Views: Staff noted in the previous report how prominent the building will be in general, but especially the view from the south. The view from up Centre Street is also important, as Centre Street funnels a significant amount of walking traffic to the shoreline and this lot is located directly off the end of Centre Street. The revisions will reduce the building's prominence, but it will still be prominent and substantially larger than would be permitted by the current R4 Zone provisions. It would also exceed the standards the Committee of Adjustment has been applying for minor variances to lot coverage.

Staff emphasizes that although the proposed 9.8m building height is less than the original 11.2m proposed height and less than the 11m permitted by the standard R3 Zone, it is still more than the 9m maximum of the current R4 Zone, even before the maximum height was reduced to 7.4m for flat-roofed buildings by By-law 56 of 2021.

Secondary Dwellings: The *Planning Act* requires that Official Plans and Zoning By-laws generally permit accessory dwellings in existing dwellings and detached accessory buildings, in residential areas. The Municipality's Zoning By-law is out of date in this respect, allowing one apartment within single detached dwellings, but not in other prescribed types of dwellings and not in detached accessory buildings at all. Updates are needed. It is staff's understanding from discussions with the Ministry that there may be circumstances where a Municipality would be justified not to permit secondary dwellings in a particular location. The sanitary sewage capacity limitations in Grand Bend may be one such valid reason. It is also the opinion of some that the legislation requires that a lot

be allowed the option of creating an apartment within either the dwelling or the detached accessory building, but not necessarily both – e.g. not three dwellings on one lot. In any event, the Zoning provisions do not yet set out parameters under which apartments will be permitted in detached accessory buildings and do not permit three units per lot. In any event, it is staff's opinion that provisions allowing second or even third dwellings on a single detached dwelling lot do or would not justify introducing alternate forms of housing such as a triplex into a single detached dwelling neighbourhood.

Summary: The combination of the larger than average lot width with a lot coverage and height that are greater than allowed by the current R4 Zone and recent Committee of Adjustment decisions, results in a building that is out of scale with the neighbourhood, in staff's opinion. Despite the revised application, staff is still not satisfied that the introduction of medium density residential uses to this lot is appropriate. Staff is still not satisfied that the proposed building is in scale or character with the surrounding low-density residential area. Staff is still not satisfied that the proposed building or use maintains the intent of the Official Plan policies noted in the previous staff report.

In staff's opinion, the proposed zoning amendment and triplex use and the scale of building the amendment would permit are not consistent with the goals of the Official Plan, are not in character with the area, and do not represent good planning. Staff cannot support approval of the application.

ALTERNATIVES TO CONSIDER

Staff has not drafted an amending by-law as it is recommending refusal of the application.

If Council wishes to approve the application as presented or some modified form, Council should pass a resolution directing staff to prepare an amending by-law for presentation at a future Council meeting. The zoning provisions should be based on those summarized in the applicant's supplemental report. Any approval should also include a maximum building height of 9.8m, as per the proposed building plans, whereas the 11m building height allowed by the standard R3 Zone would otherwise apply, notwithstanding the plans as presented. The provisions should also note that no features other than an access hatch are permitted above the maximum height, as otherwise a stairwell and elevator penthouse would be permitted, in theory. The provisions might also need to include an exemption to allow a minimum landscaped open area of only 20%, and/or clarification whether that zoning provision is calculated based on the entire lot area or only the portion outside the LS Zone.

RECOMMENDED ACTIONS

That Council receive Report PL 03-2022 and refuse ZBA Application ZO-16/2021.

FINANCIAL IMPACT

The applicant has paid the Municipality a \$1200 application fee.

CONSULTATION

The applicant and their agents.

Steve McAuley (CAO), Nick Verhoeven (Engineering Specialist), Lawrence Swift (Chief, Fire Protection and Emergency Services), and Randy Lovie (Chief Building Official) of the Municipality of Lambton Shores

Staff received various comments and inquiries from members of the public respecting this application. Written submissions are attached.

Attachment 1: Subject Lands

