

Title: Darlene & Nathan Nicholson

Date: September 25, 2017

STAFF REPORT

Applicant:

Darlene & Nathan Nicholson

Location:

Part of PIN 73373-0100, Parcel 5579, Lot 1, Concession 4, Township of Waters (15 Kalio Road, Lively)

Official Plan and Zoning By-law:

Official Plan

The subject lands are designated Rural in the [Official Plan](#) for the City of Greater Sudbury. Permitted uses within the Rural land use designation include residential uses, agricultural uses, conservation, open space and natural resource management activities, mineral exploration, rural industrial/commercial uses, resort and shoreline commercial uses and public uses including hydro-electric generation and associated facilities. Rural industrial/commercial uses are to be located with adequate separation distances to residential areas.

Zoning By-law

The subject lands are presently zoned "RU", Rural under [By-law 2010-100Z](#) being the Zoning By-Law for the City of Greater Sudbury. The "RU" Zone permits a kennel subject to a special provision that no non-residential building or structure directly associated with a kennel is permitted to be established or erected closer than 300 m (984.25 ft) to a residential building or zone. The proposed kennel use does not meet the buffer distance provision of the "RU" Zone.

Site Description & Surrounding Land Uses:

The subject lands are located at the intersection of Moxam Landing Road and Kalio Road in the community of Lively. The lands have a total lot area of approximately 6.58 ha (16.27 acres) with approximately 221 m (725.07 ft) of lot frontage along Kalio Road and 179 m (587.27 ft) of lot frontage along Moxam Landing Road. The lands presently contain a single-detached dwelling along with an operating kennel use which includes a converted accessory building along with several outdoor fenced areas providing outdoor access for dogs at the kennel. There are also several storage containers on the lands.

Surrounding uses are primarily rural residential in nature with the predominant built-form being single-detached dwellings along with accessory buildings and structures. There are also several rural-agricultural uses in the area.

Application:

To amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury by changing the zoning classification of the subject lands from "RU", Rural to "RU(S)", Rural Special.

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Proposal:

The application is intended to permit a kennel on the subject lands having a setback of less than 300 metres between those non-residential buildings and structures directly associated with the kennel and the nearest residential building.

A kennel currently operates on the property located within a 74.3 m² (800 sq.ft.) building located 84 m from the southerly lot line. A fenced yard in which the dogs are permitted to access is located to the south of the building which at its closest is 21 m from the southerly lot line. The owner is also proposing to construct a 337 m² (4800 sq. ft.) building to be used as part of the kennel operations, located 63 m from the southerly lot line. The owner had indicated on the plans that a grooming station, indoor dog play yard, hydrotherapy pool and 6 luxury suites are to be located in the new building.

The plan includes an open fenced yard in which the dogs are permitted to access. The fence enclosing the open yard is considered to be a structure directly associated with the kennel. As such the setback from the nearest residential dwelling is to be measured to the nearest point of the fence enclosure. The closest residential dwelling is located on the abutting property to the south at 212 Moxam Landing Road which is located approximately 20.7 m from its northerly lot line. Planning staff estimate the distance separation between the fence enclosure and the dwelling at Moxam Landing Road is approximately 47 m (154.20 ft).

Departmental/Agency Circulation:

Drainage, Operations, Roads, Traffic and Transportation have each advised that they no concerns from respective areas of interest.

Building Services has noted there are shipping containers located on the lands which are not permitted. There are also several other structures on the lands which have a floor area of more than 10m² (107.64 ft²) which have been constructed without the benefit of a building permit. The owner would also be required to obtain a change of use permit for the conversion of the storage shed to a kennel.

Development Engineering has noted that the subject lands are not presently serviced with municipal water or sanitary sewer.

Neighbourhood Consultation:

The statutory notice of the public hearing was provided by newspaper along with an initial courtesy mail-out to landowners and tenants within a minimum of 240 m (800 ft) of the subject lands. The owner was advised of the City's policy recommending that applicants consult with their neighbours, ward councilor and key stakeholders to inform area residents of the application prior to the public hearing. Staff understands that the owner has previously spoken to a number of area residents about the existing kennel located on the subject lands. At the time of writing this report, several phone calls and four written submissions, (copies attached to this report) in opposition to this application have been received by the Planning Services Division.

The concerns noted by residents relate to the noise of dogs barking at the existing kennel operation impacting residents' enjoyment of their property.

Title: Darlene & Nathan Nicholson

Date: September 25, 2017

Planning Considerations:

Background

The existing 74.3 m² (800 sq. ft.) building in which the kennel is located was constructed in 2007 as a shed accessory to the dwelling on the lot. A building permit (Permit # 07-2447) was issued for the accessory structure. In 2013 the shed was converted by the owner to a kennel without benefit of a required building permit. A business licence for a kennel was first issued in 2013. While the Rural zoning on the property permitted a kennel at that time, the permission is subject to all structures associated with the kennel use being located a minimum of 300 m from the closest residential building. At the time the kennel use was established in 2013, the nearest residential use was located to the north at a distance of approximately 155 m at 12 Kalio Road. In 2013 two other dwellings located at 28 Kalio Road and 191 Moxam Landing Road were located at distances less than 300 m from the building converted to a kennel. Given the existence of the three dwellings closer than 300 m to the kennel, the kennel did not comply with the By-law at that time.

In 2016 the owner submitted a minor variance application (File A0161/2016) to permit the construction of a 447 m² (4800 sq. ft.) kennel building to be located 54 m (177.17 ft) from the nearest residential building located at 212 Moxam Landing Road and to also recognize the location of the previously converted shed currently being used as a kennel. The dwelling at 212 Moxam Landing Road was not in existence in 2013 having been issued a building permit in 2016. The new building was to include a hydrotherapy pool for injured dogs, an indoor play and training area.

The minor variance application was denied by the Committee of Adjustment on January 25, 2017. The Committee concluded that the variance was not minor in nature, was not desirable for the appropriate development and use of the land and building and that the general intent and purpose of the By-law and Official Plan are not maintained. The owners appealed the decision of the Committee of Adjustment to the Ontario Municipal Board (OMB) on February 13, 2017 ([OMB File # PL170132](#)). The OMB scheduled a hearing for June 21, 2017, however at the request of the owner on May 1, 2017, the OMB granted an adjournment. Staff understands that the adjournment was granted on the basis that the owner would be proceeding with an application for rezoning rather than immediately pursuing the appeal relating to the denied application for minor variance. Staff did not support the application for minor variance and noted concerns with respect to the potential nuisances associated with a kennel use in close proximity to rural residential uses. On June 26, 2017 the owners submitted the rezoning application which the subject of this staff report.

Provincial Policy Statement

Municipalities in the Province of Ontario are required under Section 3 of the [Planning Act](#) to ensure that decisions affecting land use planning matters are consistent with the [Provincial Policy Statement \(PPS\)](#). Staff has reviewed the PPS 2014 and is satisfied that no matters of provincial interest are impacted should the rezoning be approved.

Official Plan

With respect to Section 5.2.5 of the Official Plan, it is noted that the Rural designation is supportive of and permits limited rural industrial/commercial uses and further that dog kennels are permitted in the implementing zoning by-law subject to a minimum 300 separation distance between residential dwellings and kennels.

Date: September 25, 2017

Section 5.1 of the Official Plan includes that, "the objective of the Rural Area policies is to provide an efficient and orderly pattern of land use in the Rural Areas reducing land use conflicts." Section 5.2.5.3 provides that, "rural industrial/commercial sites are to be located with adequate separation distances from residential areas and provide proper buffering". Section 5.2.3.4 also provides that, "rural industrial/commercial uses mustminimize land use conflicts." In this regard the minimum 300 m setback provided in the Zoning By-law for kennels from existing residential dwellings is intended to minimize potential conflicts between these uses in a rural setting.

Compatibility/Minimizing Land Use Conflicts

The primary issue involved with the application is that of compatibility and minimizing the conflict between a kennel and residential uses in the surrounding area. Comments (attached to this report), have been received from the public which outline concerns with the existing kennel operation respecting matters of noise, in particular from dogs barking impacting residents enjoyment of their property. Similar comments were received from the public on the minor variance application (file A0161/2016).

When Planning staff visited the property on August 18, 2017, twenty two dogs were observed.

It is noted that the existing kennel operation includes a fenced outdoor area within which the dogs are permitted to access. The plans submitted by the owner include that this would continue to be part of the kennel operation. It is expected that noise from the outdoor area would be audible at greater distances than that generated from inside the kennel buildings. However, it is not clear that eliminating the outdoor yard would eliminate noise issues with the immediate neighbours as the complaints appear to relate to noise generated from inside the existing building as well as from the yard.

The owner is proposing to expand and intensify an existing use where residents are currently experiencing nuisance issues relating primarily to noise. The owner has not identified measures to address the issue such that it can be mitigated.

The proposed distance from the kennel fence to the closest lot line would be approximately 21 m (68.90 ft) as indicated on the submitted sketch. The distance separation in the Rural Zone provisions requires 300 m (984.25 ft) to the closest residential building, which is further to the south. Staff estimates the separation distance between the kennel fence and the dwelling at 212 Moxam Landing Road to be approximately 47 m (154.20 ft). Staff is of the opinion that this is a significant reduction to the by-law standard and are concerned that this separation distance will have negative impacts on the residents in the area and will not minimize potential conflicts resulting from the kennel. Staff remains concerned with land use conflicts due to the potential noise generated by the kennel as noted by the residents in their comments on the existing use on the site.

Summary:

Staff has reviewed the application and is satisfied that no matters of provincial interest are impacted. Staff is of the opinion that the reduced buffer distance being requested by the owner is inappropriate and would not provide an adequate separation distance to minimize nuisance conflicts impacting the rural residential land uses in the surrounding area. Staff cannot support the rezoning request and the Planning Services Division recommends that the application be denied.