



## PLANNING & DEVELOPMENT

57 Napier Street, Goderich, Ontario N7A 1W2 CANADA

Phone: 519.524.8394 Ext. 3 Fax: 519.524.5677 Toll Free: 1.888.524.8394 Ext. 3  
www.huroncounty.ca

To: Members of the Town of Goderich Committee of Adjustment  
Jason Dykstra, Secretary of the Committee of Adjustment

From: Victor Kloeze, Planner

Date: April 14<sup>th</sup>, 2021

**Re: Application for Minor Variance GOD MV04-20**

Legal Description: Firstly, PIN 41449-0225 being LTS 533, 534 & 535 PL 457 TOWN OF GODERICH; PT LTS 531 & 532 PL 457 TOWN OF GODERICH BEING PT 6, 22R5619; Secondly, PIN 41449-0223 being PT PK LT 3 PL 468 LT 5 PL 468; PT ALBERT STREET PL 457 (CLOSED BY R28566) BEING PT 4, 22R5619; TOWN OF GODERICH; Thirdly, PIN 41449-0118 being PT ANGLESEA ST PL 457 TOWN OF GODERICH CLOSED BY R73654, AS IN R172986; S/T RIGHTS IN R73655; Fourthly, PIN 41449-0119 being PT PKLT 4 PL 468 TOWN OF GODERICH PT 1, 22R818; Fifthly, PIN 41449-0227 being PT LT 608 PL 457 TOWN OF GODERICH BEING PT 7, 22R5619; Sixthly, PIN 41449-0228 being PT LT 530 PL 457 TOWN OF GODERICH BEING PT 9, 22R5619

Municipal Address: 199 Anglesea Street

Owner: Huron District Contracting Ltd. (Richard Peever)

Applicant: Gowing WLG – Julia Sjaarda, RPP, MCIP

---

### RECOMMENDATION

It is recommended that this application for minor variance be denied.

### PURPOSE

The purpose of this application is to bring the subject lands into compliance with Zoning By-law 124-2013 of the Town of Goderich, following a letter dated March 20<sup>th</sup>, 2020 to the property owner indicating that the applicant's client was in contravention of the Town's Zoning By-law. The contravention was the operation of a cannabis production facility, which would currently only be permitted by the By-law as a licensed medical marijuana facility in the General Industrial (M2) zone.

The subject property is designated Industrial in the Town of Goderich Official Plan and is zoned Light Industrial (M1) on Key Map 4 of Zoning By-law 124-2013. The Light Industrial (M1) Zone does not permit a licensed medical marijuana facility.

The application requests that a licensed medical marijuana facility be permitted for the subject lands.

This minor variance application was previously circulated for a hearing scheduled for June 25<sup>th</sup>, 2020. At the request of the applicants, it was removed from the agenda to allow them to have consultants complete and submit an odour study regarding their proposal. That odour study has now been received by the Town, and peer-reviewed.

## REVIEW

In considering an application for minor variance, it must be demonstrated that the application is minor in nature, is desirable for the appropriate development or use of the land, building or structure; and that the variance maintains the intent of the Official Plan and Zoning By-law.

## Odour and Compatibility

While it is not the only issue of concern with the proposed application, odour is a key consideration for this file. As shown in the aerial photo (figure 1) below, the surrounding area includes a number of potentially sensitive uses including the Town's hospital and medical centre, residential neighbourhoods, and a Kingdom Hall community facility use. The multi-tenant building on the subject property contains several tenants, including a contracting business, multiple commercial recreational facilities, and the existing cannabis production facility.

Figure 1: Site and Surrounding Uses



The applicants have submitted an Odour Impact Assessment prepared regarding their proposal by BCX Environmental Consulting. The study ultimately concluded that under even a conservative modelling scenario with the full 1700 plants currently on the facility's license and 24 /7 exhaust, the facility would meet the Ministry Odour Guideline at all off-site sensitive receptors and the building main entrance. Regarding general odour perception, the study states (excerpt):

“Very infrequently odours may be noticeable onsite at the main entrance. Very infrequently odours may also be detectable offsite to the east of Cambria Road and to the south of Anglesea Street.”

The Town of Goderich had a peer review prepared of the BCX Odour Impact Assessment dated December 20<sup>th</sup>, 2020, which was completed by Anna Bokowa of Environmental Odour Consulting Corporation. The peer review notes a number of technical concerns with how the Odour Impact Assessment was conducted, concluding that the modelling results are not reliable and are possibly underestimated. The peer review states that the assumptions, testing source selection, and analysis timeframe were not appropriate and the results should not be considered reliable.

The February 26<sup>th</sup>, 2021 response by BCX Environmental (including responses by Valley Environmental Services and ORTECH) replied to the technical concerns raised by the peer reviewer and disagreed with the peer review, indicating that they believe that their results were accurate and that their method and assumptions were appropriate and valid.

When provided a copy of the response materials, the Town's peer reviewer confirmed that their concerns stand.

On March 14, 2020, the first email regarding odour concerns was submitted to a member of Town of Goderich Council by Shaun Garrity, operator of Huron Brazilian Jiu-Jitsu, a commercial recreational use in the same building as the applicant's client. This email stated that (excerpt):

“All the recreational sports businesses located at 199 Anglesea st Goderich are concerned about the new grow op Marijuana facility that is located in our building. Since the beginning of the week the building has been filled with weed smell and it is disturbing our businesses and we have lots of clients at every business complaining, some even walking out. We would like counsel to review this and we would like to know if this business is legally in this building. We find it hard to believe that all these businesses that have children participants doing sports that this kind of smell and business could be in the same facility.”

This first complaint regarding odour issues has been followed and supported by other complaints and concerns by other business operators within the multi-unit building at 199 Anglesea Street. Town staff and members of Council have also noted perceiving a strong cannabis odour at the site, outside the building, in common hallways and the common entrance, and within other units which are used for commercial recreation purposes.

The statement made by the odour study that odour from the use should only be very infrequently perceived, much less severe enough to result in concerns, would appear to be inaccurate in light of the complaints that have been received regarding odour. It would appear that there is indeed a perceptible odour, which is clearly having an impact on compatibility between the proposed use and existing uses on site and the members of the public attending the building and the other units, if not in the broader area. This is supported by the concerns raised and maintained by the Town's peer reviewer regarding the odour study.

### **Intent of the Official Plan and Zoning By-law**

As identified earlier, the subject property is designated Industrial in the Town's Official Plan and is zoned Light Industrial (M1) on Key Map 4 of Zoning By-law 124-2013. The property is also identified as being part of the Maitland Employment Area special policy area in Schedule "E", Special Policy Areas, of the Town's Official Plan.

The Town's Official Plan Goals and Policies contained in Section 4 of the Plan identify compatibility between industrial lands and uses, ancillary uses of industrial lands, and sensitive land uses as being a key consideration for industrial land use planning in the Town. The encouragement of the plan for diverse industrial employment opportunities and well utilized industrial lands must be considered in light of the policies of the plan regarding compatibility.

In addition to existing sensitive residential and community facility uses in the surrounding area, the immediately abutting property to the north is designated Residential in the Town's Official Plan. At some point in the future, those lands could be developed for residential purposes, and in considering the intent of the Official Plan the potential for impacts on the ability of those lands to be redeveloped must be considered.

Section 7.B(3) of the Official Plan further identifies that the Maitland Employment Area, which includes the subject property, is constrained by the proximity of the adjacent residential area, which limit the range of industrial uses that can feasibly locate in the area. The intention of the plan as expressed in this special policy area is to preserve the Maitland Employment Area as employment lands, while minimizing negative impacts on surrounding residential uses. To help maintain viability of these lands for employment uses, the plan identifies that a range of compatible employment uses would be permitted, which may include light industrial uses, offices, and commercial recreation uses.

The Zoning By-law, in enacting these policies, identifies the subject lands as Light Industrial (M1). The light industrial zone does not allow some uses permitted in the General Industrial (M2) zone, particularly those which have a higher potential to cause impacts on surrounding sensitive land uses. To help ensure that the industrial lands are not underutilized, additional uses which are likely to be compatible with the permitted light industrial uses (but may not be compatible with general industrial uses) are permitted. Importantly for the consideration of this application, the additional uses include commercial recreation facilities, such as those that have been located at 199 Anglesea Street. Commercial recreation facilities are not permitted in the General Industrial (M2) zone, which does permit a licensed medical marijuana facility.

The Town of Goderich Zoning By-law provides definitions of both General and Light Industrial Uses, which assist in clarifying the intent of the By-law. A key difference between the two definitions is that light industrial uses are clarified to “Means the inoffensive use of land, buildings or structures or any part thereof to [...]; but shall not include any obnoxious industry”. The By-law’s definition of an obnoxious use is:

**“OBNOXIOUS USE**

Means an offensive use or trade within the meaning of the Public Health Act, the Environmental Protection Act, or any other applicable legislation; or any use that by reason of emission of airborne or waterborne odours, gases, dirt, smoke, noise, vibration, fumes, cinders, soot or waste, or the depositing or leaving of unsightly objects or chattels on land, which may be hazardous or injurious as regards health or safety or which prejudices the character of the surrounding area or interferes with or may interfere with the normal enjoyment of any use of land, building or structure.”

The By-law does not define inoffensive, but defines non-offensive as:

**“NON-OFFENSIVE**

Means a use or uses which by operation is not offensive to surrounding uses due to noise, odour, dust, smell or any other characteristic.”

The applicant indicates that in their opinion the facility is not an intensive use and is small scale, and notes that there are only four personal use licenses as authorized by Health Canada for the property. Further, they indicate that this means that their client is not a commercial manufacturer, that “produces and distributes large volumes of product, as anticipated by the Zoning By-law”.

The odour study produced by the applicant indicates that the facility is authorized by Health Canada for a maximum of 1700 plants. There have been repeated observations and complaints of odour produced by the facility. Based on these issues and complaints, which represent an interference with normal enjoyment or use or the other units in the building, the use is not inoffensive, and appears to meet the definition of an obnoxious use. The use, as it currently consists and is proposed to continue, would not appear to fit the definition of a light industrial use, or the intention of the light industrial area.

Based on the nature of the proposed use and the number of cannabis plants, the odour concerns that have been raised, and the concerns regarding the odour study submitted with the application, the application does not maintain the intent of the Official Plan and Zoning By-law.

**Minor and Desirable**

The proposed variance proposes to allow a use that is not permitted by the Zoning By-law.

As outlined earlier in this report, this use is in proximity to both on-site and off-site uses that may be sensitive to the odour produced by the facility; and has already created compatibility issues with other permitted uses in the building and raises compatibility concerns with the surrounding area.

Allowing this use to continue to operate would undermine the planned function of the area. The impact this application would have, and the proposed effect of the application, are not minor.

Similarly, allowing the use to continue and to allow continued negative impacts on the public and other tenants operating permitted uses in the building is not desirable for the appropriate development of the building or land.

### Comments Received

- A letter of support has been received from the property owner, which is included in the agenda package.
- Complaints have been received by the Town from other businesses operating at 199 Anglesea regarding the odour and the impacts of the odour on their businesses.
- Additional items may be raised before or during the public meeting.

### CONDITIONS

If the Committee wishes to grant the proposed minor variance, it is recommended that the decision be deferred, to allow appropriate conditions to attempt to mitigate the concerns raised by this report to be drafted.

### CONCLUSION

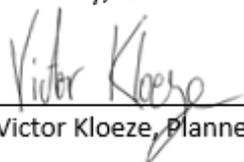
The proposed variance does not meet the four tests of a minor variance, being that it is:

- minor in nature,
- desirable for the appropriate development or use of the land, building or structure; and that
- the variance maintains the intent of the Official Plan and Zoning By-law.

The Town has received complaints regarding the odour produced by the operation but not as formal comments on the planning application, and has received a letter of support from the property owner for the application. Comments were thoroughly considered but did not impact on the planning recommendation.

It is recommended that this application for minor variance be denied.

Sincerely,



Victor Kloeze, Planner, MCIP RPP