

Subject: Short Term Accommodations

Recommendation:

THAT Council receive Report 2020-0049 as it pertains to Short Term Accommodations Policies and Regulations (file No. AM-12-18);

THAT the revisions made to the Official Plan and Zoning By-law since the public meeting was held are minor in nature and no further public meeting is required;

THAT Council approve the amendments to the Official Plan and Zoning By-law as well as the Licencing By-law for Bed and Breakfast Establishments and Short Term Accommodations.

Background:

In September of 2018, Council directed staff to undertake a consultation process that would inform policy and regulatory changes for the Town to undertake relating to short term accommodations. Between November 2018 and April 2019, Town staff reached out to a number of different stakeholders and conducted on-one-one meetings, conducted research and prepared draft policy and regulatory changes for comments including draft Official Plan and Zoning By-law amendments and a draft Licencing By-law. On October 1st, 2019, Staff held a roundtable with various stakeholder groups to outline the proposed changes, provide copies and receive some additional feedback in advance of the public meeting on October 22nd, 2019. The draft documents were also circulated to agencies for review and comment.

Following the public meeting (Appendix A Public Meeting Minutes) revisions were made to the draft policies and regulations to address the questions and concerns raised by Council and members of the public, and direction received from Council. The proposed policy and regulatory changes include:

- A revised draft Official Plan Amendment;
- A revised draft Zoning By-law Amendment; and
- A revised draft Licencing By-law.

All of the proposed policies and regulations are appended to this report.

Staff reviewed zoning and licencing requirements of other municipalities, including the City of Toronto, Town of Oakville, Town of Niagara-on-the-Lake, Town of Blue Mountains, Prince Edward County and Kelowna, British Columbia as part of our research of best practices and understanding of how other jurisdictions address short term accommodations. Each municipality has adopted an approach that best suits their circumstances and issues that they face. While some of the approaches are similar, each are unique to address the local context and issues, and each require differing levels of enforcement and administration. The approach recommended by staff builds on the experiences of other municipalities while still addressing the needs of the Town of Pelham.

Analysis:

Planning Act

Sections 17 and 34 of the *Planning Act*, R.S.O. 1990 provide the process for consideration of Official Plan and Zoning By-law amendments.

The *Planning Act*, R.S.O. 1990 provides that decisions of Council in respect to planning matters shall be consistent with provincial policy statements that are in effect as of the date of Council's decision and shall conform with provincial plans that are in effect.

Provincial Policy Statement, 2014

Policy 1.1.1 speaks to sustaining healthy, livable and safe communities by accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons) and commercial uses as well as avoiding development and land use patterns which may cause environmental or public health and safety concerns.

Policy 1.1.4.1 indicates that healthy, integrated and viable rural areas should be supported by promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources and providing opportunities for sustainable and diversified tourism, including leveraging historical, cultural and natural assets.

Policy 1.1.5 indicates that permitted uses on rural lands include resource-based recreational uses (including recreational dwellings), home occupations and home industries and that recreational, tourism and other economic opportunities should be

promoted. Opportunities to support a diversified rural economy should be promoted by protecting agricultural and other resource-related uses and directing non-related development to areas where it will minimize constraints on these uses. Development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted.

Policy 2.3.3 permits agricultural uses, agriculture-related uses and on-farm diversified uses provided agriculture-related uses and on-farm diversified uses are compatible with do not hinder surrounding agricultural operations.

Greenbelt Plan, 2017

The Greenbelt Plan, 2017 applies to lands designated Specialty Agricultural and Rural Settlement Area (North Pelham) in the Town's Official Plan. The Specialty Agricultural areas are designated Protected Countryside and Niagara Peninsula Tender Fruit and Grape Area and the Rural Settlement Area is designated settlement area in the Greenbelt Plan.

Goals for the Protected Countryside include support for the Niagara Peninsula specialty crop area as a destination for and centre of agriculture focused on the agri-food sector and agri-tourism related to grape and tender fruit production (1.2.2.1(b)(i)); Additional goals relating to culture, recreation and tourism include enabling continued opportunities for sustainable tourism development (1.2.3(c)). Goals for settlement areas are supporting a strong rural economy by allowing for the social, economic and service functions through the residential, institutional and commercial/industrial uses needed by the current and future population within the Greenbelt and sustaining the character of the countryside and rural communities (1.2.2.4(a) & (b)).

Lands within the specialty crop areas and prime agricultural areas of the Protected Countryside permit a whole range of agricultural uses, agriculture-related uses and on-farm diversified uses provided agriculture-related uses and on-farm diversified uses are compatible with and do not hinder surrounding agricultural uses are promoted and protected (3.1.3.1 & 3.1.2.1).

Policies for Hamlets (Rural Settlement Area) are contained within the Growth Plan for the Greater Golden Horseshoe, 2019.

Niagara Escarpment Plan, 2017

The Niagara Escarpment Plan, 2017 (NEP) applies to lands designated Niagara Escarpment Plan Area in the Town of Pelham Official Plan, 2014. Policies of the NEP apply to these lands. Areas within the Town of Pelham are designated Escarpment Rural Area, Escarpment Protection Area and Escarpment Natural Area.

The NEP permits single dwellings and bed and breakfasts in the Escarpment Natural Area, Escarpment Rural Area, Escarpment Protection Area (1.3.3, 1.4.3 & 1.5.3). The Niagara Escarpment Plan defines a bed and breakfast as “sleeping accommodation (including breakfast and other meals, services, facilities and amenities for the exclusive use of guests) for the travelling or vacationing public within an existing single dwelling that is the principal residence of the proprietor.”

Part 1.1.1 of the NEP allows municipalities to set standards and policies that are more stringent than the requirements of the NEP unless doing so would conflict with the NEP. Zoning By-laws do not apply to the NEP area.

Growth Plan for the Greater Golden Horseshoe, 2019

The Growth Plan for the Greater Golden Horseshoe, 2019 (GPGGH) applies to lands within the Town’s urban areas of Fenwick and Fonthill (Settlement Areas), north Pelham (Rural Settlement Area) and the Good General Agricultural Area in the Town’s Official Plan (Prime Agricultural Area).

The GPGGH aims to support complete communities that have diverse residential and employment uses, improve quality of life for people of all ages, abilities and incomes and provide a mix of housing units to accommodate the needs of all household sizes and incomes (2.2.1.4(a), (b) & (c)).

Where permitted on rural lands, resource-based recreational uses should be limited to tourism-related and recreational uses that are compatible with the scale, character and capacity of the resource and the surrounding rural landscape and may include commercial uses to serve the needs of visitors and where appropriate, resource-based recreational dwellings for seasonal accommodation (2.2.9.4).

Municipalities are encouraged to implement approaches to sustain and enhance the Agricultural System and the long-term economic prosperity and viability of the agri-food sector by promoting the sustainability of agricultural, agri-food and agri-product businesses while protecting agricultural resources and minimizing land use conflicts (4.2.6.7).

Regional Official Plan, consolidated August 2015

The Regional Official Plan (ROP) applies to all lands within the Town of Pelham. The Regional Official Plan encourages a variety of housing types within urban communities and neighbourhoods to serve a variety of people as they age through the life cycle.

Policy 11.A.3 states that the Region encourages housing which allows people to work at home or in relatively close proximity to work.

Policy 5.B.17 indicates that farm diversification uses may be permitted and are a potentially significant contributor to economically sustainable agriculture in Niagara, contributing more access to local food and VQA wines, contributing toward the preservation of the agricultural land base and the scenic quality of the agricultural landscape. Value added marketing uses are supported with limits to the scale included in local Official Plans. Bed and breakfast facilities are not permitted to exceed 6 bedrooms (5.B.24).

Agri-tourism uses that are not directly related to agriculture but benefit from a farm location may be regulated in a local Official Plan subject to: limited scale and appropriate to the site and surrounding area, minimal impact on and compatibility with the surrounding agricultural and rural uses, low water and low effluent producing uses that can be accommodated with private water and sewage systems, no off site impacts related to infrastructure or transportation, use does not generate potentially conflicting off-site impacts, special events are occasional and not regular recurring, timing and duration of the use does not hinder agricultural operations and compliance with the Regional Official Plan.

Town of Pelham Official Plan (2014) & Draft Official Plan Amendment

The existing Town of Pelham Official Plan includes some policies and permissions relating to bed and breakfast establishments, but is silent with respect to a dwelling being rented for short term accommodations.

The existing Town of Pelham Official Plan permits a range of residential uses as well as bed and breakfast establishments in single detached dwellings subject to policy requirements (B1.1.2) in the Urban Living Area. Policy B1.1.7 Bed and Breakfast Establishments permits bed and breakfast establishments in single detached dwellings provided that they are located within the principal residence of the owner/operator, preserve the character of the dwelling as a private residence and can be accommodated in terms of parking and access. The Official Plan policies also state that the Zoning By-law should define a bed and breakfast establishment and

provide further regulation regarding the conditions or criteria under which bed and breakfast establishments would be permitted.

The draft Official Plan amendment (Appendix B) proposes to remove the requirement that a bed and breakfast establishment be located within only a single detached dwelling and would extend the allowance to all types of dwellings.

The existing Official Plan permits hotels, inns and bed and breakfast establishments in the Downtown designation (B1.2.2(e)). The draft Official Plan amendment proposes to replace bed and breakfast establishments with short term accommodations.

The existing Official Plan permits inns and bed and breakfasts in the Downtown Transitional Area (B1.3.3(c)). The draft Official Plan amendment proposes to replace bed and breakfast establishments with short term accommodations.

The existing Official Plan permits small-scale inns and bed and breakfasts in the Downtown Transitional Area (B1.3.4.2). The draft Official Plan amendment proposes to replace bed and breakfast establishments with short term accommodations.

The existing Official Plan permits bed and breakfasts subject to Policy B2.1.3.6 of the Plan in the Good General agricultural designation (B2.1.2(c)). The draft Official Plan amendment proposes to replace bed and breakfast establishments with short term accommodations.

For clarity purposes, the permission for a bed and breakfast establishment is proposed to be added to the Townhouse Residential, Low Density Residential and Low Density Residential – Special Policies designations in the North West Fonthill Secondary Plan area (B1.6.2.1(b), B1.6.2.2(b) & B1.6.2.3(b)). Similar permission for a bed and breakfast establishment is proposed to be added to the EF-Low Density Residential, EF-Medium Density Residential and EF-High/Medium Density Residential designations in the East Fonthill Secondary Plan area (B1.7.7.3.1(x), B1.7.7.4.1(a)(xiii) & B1.7.7.5.1(a)(x)).

The proposed Official Plan amendment proposes to replace the permission for a bed and breakfast establishment in the Good General Agricultural, Specialty Agricultural and Environmental Protection. Two designations subject to meeting policy requirements (B1.1.2(c), B2.2.2(e) and B3.3.3.2(d)) relating to the character of the dwelling as a private residence being preserved, adequate parking, traffic, private servicing and legal signage (B2.1.3.6).

Zoning By-law 1136 (1987), as amended & Draft Zoning By-law Amendment

At present, Zoning By-law 1136 (1987) does not contain regulations for bed and breakfast establishments or short term accommodations with the exception of a site specific R1-165 zone for 1541 Haist Street permitting a bed and breakfast with six (6) guest rooms.

The proposed zoning changes (Appendix C) will add definitions for bed and breakfast establishment, principal residence dwelling and short term accommodation as follows:

“Bed and Breakfast Establishment” means a principal residence dwelling in which the owner and operator provides guest rooms for the temporary accommodation for twenty-eight (28) consecutive days or less to the travelling public and may offer meals to the registered guests but does not include a hotel, motel, inn, tavern or any other use governed by the *Innkeepers Act*, R.S.O. 1990, c.l.7, as amended.

“Dwelling, Principal Residence” means a dwelling unit owned or rented by a person, alone or jointly with another person, which is their principal place of residency.

“Short Term Accommodation (STA)” means a dwelling or dwelling unit, that in whole or part is rented or available for rent with the intention of financial compensation for an occupancy period of less than twenty-eight (28) consecutive days and includes a Bed and Breakfast Establishment, but does not include a motel, hotel, inn, tavern or any other use governed by the *Innkeepers Act*, R.S.O. 1990, c.l.7, as amended.

The draft zoning changes propose to allow a bed and breakfast establishment within any principal residence dwelling in specific zones, including the agricultural and commercial zones, but not the residential zones, subject to the following provisions:

- a) one (1) off-street parking space per guest room shall be provided in addition to the required parking for the principal residence dwelling;
- b) all relevant requirements of the Ontario Building Code and Ontario Fire Code shall be complied with; and
- c) licensing in accordance with the Town’s Licencing By-law.

The draft zoning change proposes to permit short term accommodation rentals including bed and breakfast establishments and short term rentals of entire dwelling units in the Agricultural, Special Rural, Neighbourhood Commercial, General Commercial and Commercial Rural zones subject to meeting licencing requirements in accordance with Council’s direction received at the public meeting.

Additional Regulations Draft Licencing By-law

The draft Licencing By-law requires all short term accommodations (including bed and breakfast establishments) to obtain a license. It also:

- details the information that must be provided with an application (insurance, fire safety plans, floor plans, etc);
- requires inspections by Fire and By-law Enforcement staff every two (2) years for non-principal residence dwelling short term accommodations and two (2) years for principal residence dwelling short term accommodations;
- requires that the owner of a Short Term Accommodation premises shall ensure that there is a responsible person available to attend the Short Term Accommodation premises at all times within a period of no greater than one (1) hour from the time of contact by way of telephone or e-mail;
- maintain a record of the renter that includes all pertinent information regarding the renter's name and address, length of stay, and confirmation of receipt of the Renter's Code; and
- requires posting of information for renters relating to emergency egress, noise by-laws, parking, etc. establishes a process for enforcement, penalties and appeals.

The draft Licencing By-law is appended to this report as Appendix D. Combined, the proposed Official Plan amendment, Zoning By-law amendment and Licencing By-law provide the appropriate tools to manage and regulate short term accommodations, including bed and breakfast establishments.

Financial Considerations:

Staff are currently working on establishing the fees associated with Licencing. After reviewing what other municipalities have implemented, the Town is looking at establishing a fee of \$150/per room in a Bed and Breakfast establishment and a fee of \$300/per room for a Short Term Accommodation.

Beyond fees, the Town is also establishing Administrative Monetary Penalties which will be applied by Bylaw Enforcement if the owner(s) contravene the provisions of the By-law. The monetary penalties are in the amount of \$250 for each day on which each contravention or violation occurs or continues.

Alternatives Reviewed:

An alternative could be that Bed and Breakfast Establishments are the only form of a Short Term Accommodation permitted in Residential areas. These establishments are owner occupied and provide for the owner being on the premise during the duration of the stay of the renter. This allows for the guests to be closely monitored while at

the establishment, therefore, not infringing on the surrounding neighbours day to day lives. This alternative would require a change to Section 6.2 of the appended Zoning By-law amendment, to permit Bed and Breakfast Establishments within all zones, which include Residential areas.

Strategic Plan Relationship: Build Strong Communities and Cultural Assets

The Strategic Plan includes addressing Short Term Accommodation requirements and regulations as an action item for 2020. The proposed policy and regulatory changes are required actions to achieve Council's strategic plan goal and contribute to building strong communities.

Consultation:

Agency Comments:

On October 2nd, 2019, a notice was circulated to required commenting agencies and Town departments. To date the following comments have been received (Appendix E):

Niagara Region:

- Regional staff has reviewed the exemption criteria under Policy 14.E.6 and 14.E.7 of the Regional Official Plan, and confirms that the Official Plan Amendment (OPA) is exempt from Regional Council approval, in accordance with the ROP and the Memorandum of Understanding.

Niagara Escarpment Commission:

- The location of the amendment does not include the Niagara Escarpment Plan Area (NEPA). If the amendment did include the NEPA, the introduction of short term accommodation as a permitted use would conflict with the Niagara Escarpment Plan (NEP), as the only provision for short-term accommodation is per the NEP definition of Bed and Breakfast. Therefore, Section 3 – Location of the Amendment should explicitly exclude the Niagara Escarpment Plan Area.

Public Comments:

Planning staff held a roundtable meeting on October 1st, 2019, where stakeholder groups were invited to review and comment on the draft copies of the proposed changes to policies and regulations related to Short Term Accommodations.

On October 2nd, 2019, a public notice was published in the Voice of Pelham, posted on the Town's website and social media as well as circulated to commenting agencies, Town departments and known stakeholder groups.

Planning staff have received thirteen (13) public comments (full comments in Appendix F) in writing since the public meeting on October 22nd, 2019 (minutes in Appendix A). The following is a summary of comments made:

- Concerned for safety of children on the street with unknown people staying in these houses.
- Increased traffic and parking on the street.
- No reference as to how current Air bnb would be handled. Air bnbs should be deemed unacceptable in prime residentially zoned areas.
- Agree with having Short Term Accommodations being permitted in the Rural and Commercial zones, but not permitted in residential zone.
- Signage has no place in a designated prime residential area.
- Bed and Breakfast facility and Short Term Accommodations must have “on lot” parking, but how can that be accommodated in prime residential areas? When did the Town roadways become approved and appropriate parking lot locations?
- How will various code requirements be enforced?
- How does the Town have “rights” to inspect these places?
- Strongly disagree with allowing B&B and Short Term Accommodations anywhere in the Town.
- Keep the tourist industry to Niagara-on-the-Lake and/or Niagara Falls.

Planning staff also consulted with the Town CAO, Town Clerk, the Fire Chief/Manager of By-law Enforcement and By-law staff, particularly with regards to the implementation of the Licencing By-law.

Staff comments:

In response to comments received by the public regarding the policies and regulations associated with Short Term Accommodations and Bed and Breakfast establishments, Planning staff have the following information to offer.

There have been concerns about nuisance issues, like noise, increase in traffic and safety issues for neighbours. Furthermore, Council requested that these establishments not be permitted within residential zones to address the concerns residents have with regards to those issues stated above. Furthermore, the Zoning By-law Amendment, does not permit Short Term Accommodations and Bed and Breakfast establishments in residential zones and will only be permitted in the rural agricultural and commercial zones.

Also, through the licencing application process, the owner of the short term accommodation or bed and breakfast establishment must designate a Responsible Person, who is available to attend the Short Term Accommodation premises at all

times within a period of no greater than one (1) hour from the time of contact by way of telephone or e-mail.

The by-law defines a "Responsible Person" as the owner or an agent assigned by the owner or licensee of the Short Term Accommodation to ensure the Short Term Accommodation is operated in accordance with the provisions of this by-law, the license and applicable law.

By establishing a Responsible Person for these types of accommodations it will help negate any nuisance or safety issues by ensuring that any issues will be dealt with in a timely manner.

With regard to the concerns about parking, inspections and enforcement this has been addressed in the Licencing By-law (Appendix D). With respect to parking, one (1) parking space per guest room in addition to the required spaces for the principal dwelling is required and located on the same lot as the use.

A pre-inspection of the premises prior to the consideration of the application is required. The applicant shall cooperate and facilitate in arranging the inspection of the premises, be in attendance during the inspection and shall pay the fees required prior to the inspection. Also, an officer may at any reasonable time inspect any premises or place where a licence has been issued under the Licencing By-law to determine compliance.

Furthermore, a Municipal Law Enforcement Officer who finds that a person has contravened any provision of this by-law, may issue a notice addressed to that person, advising that person, that he or she has failed to comply with a provision to this by-law and that he or she is subject to paying an administrative penalty as a consequence of that non-compliance. The financial penalty is a deterrent and proven to be successful in obtaining compliance in other jurisdictions.

Conclusion:

The proposed Official Plan and Zoning By-law have been revised to address the comments received at the public meeting and Council's direction. It is staff's recommendation that the amendments are considered to be minor in nature and no further public meeting is required.

The proposed Licencing By-law was reviewed with By-law Enforcement Staff and the Town Clerk to ensure that staff have an understanding of the process to be undertaken for a licence to be issued and have the tools needed to implement this new licencing regime.

Together, the proposed Official Plan amendment, Zoning By-law amendment and Licencing By-law will provide the appropriate tools required to manage short term accommodations.

Other Pertinent Reports/Attachments:

Appendix A Public Meeting Minutes – October 22, 2019

Appendix B Draft Official Plan Amendment

Appendix C Draft Zoning By-law Amendment

Appendix D Draft Licencing By-law

Appendix E Agency Comments

Appendix F Public Comments

Prepared and Recommended by:

Tara Lynn O'Toole, B.A. (Hons.)
Policy Planner

Barbara Wiens, MCIP, RPP
Director of Community Planning and Development

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer