

DATE: January 16, 2023

REPORT NO: PD-02-2023

SUBJECT: **Technical Report – Application for Zoning Bylaw Amendment
8535 Twenty Road Bruinsma (File No. 1601-012-22)**

CONTACT: Gerrit Boerema, Senior Planner
Brian Treble, Director of Planning & Building

OVERVIEW:

- An application for zoning bylaw amendment has been submitted by Mr. Steven Rivers of South Coast Planning Consultants and by Ms. Atjse Bruinsma, the sole owner of the subject property being 8535 Twenty Road.
- 8535 Twenty Road is located on the north side of Twenty Road near the intersection of Twenty Road and Caistor Centre Road.
- The subject property is approximately 3 hectares in area and contains a dwelling and another building formerly used to store and sell apples and locally known as Packham Apples. The property is zoned Agricultural 'A', Environmental Protection 'EP' and Agricultural Related 'AR'.
- The application for zoning bylaw amendment has been submitted to permit an agri-tourism use on the subject property, namely a Country Market retail store, whereas the Township's zoning bylaw does not permit agri-tourism uses as an on-farm diversified use on properties having less than 10 hectares of land area.
- The zoning bylaw amendment application is also requesting to increase the area use on the lot for the agri-tourism business from 1% to 2.2%.
- Finally, the application requests that the requirement for the operator of the agri-tourism/on-farm diversified use to live on the same property as the use, not apply, as the owner and operator of the proposed business does not reside on the subject property.
- At the time of writing this report, two public comment submissions have been made, and can be found in Attachment 3 to this report.
- Township Staff have completed a preliminary review of the applications and recommend that a Recommendation report be prepared and presented at a future Planning/ Building/Environment Committee Meeting once all agency and public comments have been received and staff have completed their full review, to maintain the legislated 90 day review and approval timeline applicable in the Planning Act and Bill 109.
- From the date of complete application, being October 18, 2022, 90 days would result in a decision having to be made by January 23rd, 2023. This is in part due to the municipal election which resulted in no public meetings under the planning act for the months of October, November and December.

RECOMMENDATION:

1. That Report PD-02-2023, regarding “Technical Report – Application for Zoning Bylaw Amendment, 8535 Twenty Road, File No. 1601-012-22”, dated January 16, 2023, be RECEIVED; and,
2. That, a Recommendation Report be presented at a future Planning/Building/Environmental Committee Meeting following the review of all agency and public comments and a full review of the planning application.

ALIGNMENT TO STRATEGIC PLAN:

Theme #2, #3 & #4

- **Strategic Responsible Growth**
- **Support for Business and Employment Opportunities for Residents**
- **Local Attractions**

BACKGROUND:

An application for zoning bylaw amendment has been submitted by Mr. Steven Rivers of South Coast Planning Consultants on behalf of the property owner of 8535 Twenty Road, Ms. Atjse Bruinsma. 8535 Twenty Road is a three hectare property located on the north side of Twenty Road, directly north of where Caistor Centre Road connects with Twenty Road. The property contains a single detached one storey dwelling adjacent to an older agricultural related building which formerly stored and sold apples. Prior to 2010 the majority of the property was used as an apple orchard, and the agricultural building was used to store and sell apples. The business was known locally as Packham Apples.

The property was recently acquired by Ms. Atjse Bruinsma and another individual and operated for a short period of time as a retail store which primarily sold frozen chicken products and ice cream known as ‘Coop n’ Scoop’, however, this use was not a permitted use within the zoning bylaw for the subject property. Since that time, Ms. Atjse Bruinsma has taken over as sole owner of the property.

The subject property is currently zoned Agricultural ‘A’ over the farmed area and where the dwelling is located, environmental protection abutting the Twenty Mile Creek, and Agricultural Related ‘AR’ over the agriculturally related building formerly used for the storage and sale of apples. The Agriculturally Related zone permits a variety of uses, but does not permit a retail store or restaurant type business, which the proposed use would fall under. The proposed use has elements of an Agriculturally Related use, however, the sale of non-agricultural products and the sale of produce not produced on the premises is not considered agriculturally related as it is not directly related to the agricultural uses on the property or in the area.

The owner and her agent, Mr. Steven Rivers have now submitted an application for zoning bylaw amendment to permit an agri-tourism use on the subject property, namely a Country Market store which would sell honey produced on the property, fresh flowers grown on the property and from local greenhouses, frozen chicken, take-out ice cream, homemade crafts and décor and wearable items.

The zoning amendment application is also requesting that the on-farm diversified/agri-tourism use, be permitted on a lot with an area of less than 10 hectares, whereas the zoning bylaw requires a minimum lot area of 10 hectares. Additionally, they have requested an area of 2.2% of the property be used for the on-farm diversified use, whereas the zoning bylaw has a maximum area of the lesser of 1% of the lot area or 0.5 hectares. Finally, the application has requested that the zoning regulation requiring the operator of the agri-tourism use to reside on the property be removed as the proposed operator does not reside on the property.

CURRENT SITUATION:

Provincial Policy Statement 2020 and Guidelines on Permitted Uses in Ontario's Prime Agricultural Area

The Provincial Policy Statement provides policy direction on matters of provincial interest related to land use planning and development. The Provincial Policy Statement (PPS) provides the policy foundation for regulating the development and use of land with the goal of enhancing the quality of life for all Ontarians. Section 2.3 of the PPS provides specific policy in regards to agriculture and lands designated as Prime Agricultural areas within the Province. The subject lands fall within the Prime Agricultural area designation and are to be protected for long-term agricultural use.

Agricultural uses and normal farm practices shall be promoted within this designation and any new uses in the prime agricultural area shall comply with the minimum distance separation formulae. Non-agricultural uses in Prime Agricultural Areas shall generally not be permitted, only for a limited number of non-residential uses. Impacts from non-agricultural uses shall be mitigated to the extent feasible.

In order to provide more direction on what is and is not permitted in Ontario's Prime Agricultural Areas, the Ontario Ministry of Agriculture, Food and Rural Affairs have created a document entitled *Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas*.

The document is structured around four main types of land uses:

Agricultural Use – The growing of crops including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre including poultry and fish; aquaculture; apiaries; agroforestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities and accommodation for full time farm labour when the size and nature of the operation requires additional employment.

Agricultural Related Use – means those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations and provide direct products and/or services to farm operations as a primary activity.

On-farm diversified Use – means uses that are secondary to the principle agricultural use of the property that are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.

Non-agricultural Use – those uses that are not agricultural, agricultural related or on-farm diversified uses.

The zoning bylaw application is requesting to permit an on-farm diversified use, specifically being an agri-tourism use on the subject property. Agri-tourism is defined in the Guidelines on Permitted Uses in Ontario's Prime Agricultural Area as "farm related tourism uses, including limited accommodation such as a bed and breakfast that promote the enjoyment, education or activities related to the farm operation."

Examples of on-farm diversified uses shown in the guidelines include retail uses such as farm markets, antique business and seed supplier.

The key criteria for On-farm diversified uses are as follows:

1. Located on a farm

On-farm diversified uses must be secondary to the principle agricultural use of the property, meaning there has to be active agricultural uses on the subject lands. The lands must be large enough to support an agricultural use and typically smaller lots do not qualify to be considered a farm.

2. Secondary to the principle agricultural use of the property.

Agricultural uses must remain the dominant use of the property. This is measured both spatially, meaning the area used for the on-farm diversified use is limited, and temporally, as in the on-farm diversified use must not interfere with agricultural operations.

3. Limited in Area

On-farm diversified uses should be limited in area to minimize the amount of land taken out of agricultural production, ensure agriculture remains the main land use, and to limit off site impacts to ensure compatibility with surrounding agricultural operations. The guidelines recommend that a maximum lot coverage of 2% be permitted for on-farm diversified uses to a maximum of 1 hectare.

4. Includes, but is not limited to, home occupations, home industries, agri-tourism uses and uses that produce value-added agricultural products.

The Provincial Policy Statement provides a number of examples of on-farm diversified uses, however there may be more uses that can be considered as on-farm diversified land uses.

5. Shall be compatible with, and shall not hinder, surrounding agricultural operations.

On-farm diversified uses that have negative impacts on the farm itself, generate excessive noise and trespass issues, or uses that are better suited for settlement areas may not be located within the Prime Agricultural Area.

Staff are still reviewing this application to understand if the proposed Country Market store that sells a variety of products, but most of which are not produced on the property, meets the criteria for an on-farm diversified use and an agri-tourism use.

Staff have concerns that the principle agricultural use on the property currently appears to be field crops, which is not directly related to the on-farm diversified use proposed. Additionally, staff wish to be provided with additional information regarding the timing of the apiary on the property and the growing of flowers and other produce on the property that the Planning Justification Report eludes to. The main related agricultural uses must be established prior to the establishment of on-farm diversified secondary uses.

A Place to Grow, Growth Plan for the Greater Golden Horseshoe – 2020 Consolidation

The A Place to Grow – Growth Plan for the Greater Golden Horseshoe (Growth Plan) builds on the Provincial Policy Statement to establish a unique land use planning framework for the Greater Golden Horseshoe that supports the achievement of complete communities, a thriving economy, a clean and healthy environment and social equality. The policy document specifically guides how and where to grow communities, how to support growth while protecting what is valuable, such as the natural environment and agricultural lands.

Section 4.2.6 of the plan provides policy direction concerning the Agricultural System. Prime Agricultural Areas, as this property is designated, falls within the Agricultural System. The Growth Plan requires that any new non-agricultural land uses within the Prime Agricultural Area need to be compatible with, and/or minimize and mitigate and adverse impacts on the Agricultural System. The PPS and Guidelines on Permitted Uses in Ontario's Prime Agricultural Lands provide more significant policy direction regarding the agricultural area.

Greenbelt Plan

The subject property is not located within lands designated as being within the Greenbelt and therefore the PPS and Growth Plan are the only provincial policy plans that apply. The Township of West Lincoln only has approximately 360 hectares of land designated as Greenbelt north of Young Street and east of Thirty Road.

Niagara Official Plan, 2022

On November 4, 2022 the Ministry of Municipal Affairs and Housing approved the Niagara Official Plan. The plan provides a framework of policies to guide growth and development within the Niagara Region to the year 2051.

The new Niagara Official Plan has the subject lands designated as being within the Prime Agricultural Area. Policies with respect to the Prime Agricultural Area and the Agricultural System are found within Chapter 4.1 of the new plan.

The Niagara Official Plan permits agricultural uses, agriculture-related use and on-farm diversified uses within prime agricultural areas (4.1.7.3), provided they are compatible with, and do not hinder surrounding agricultural operations. In alignment with the PPS and

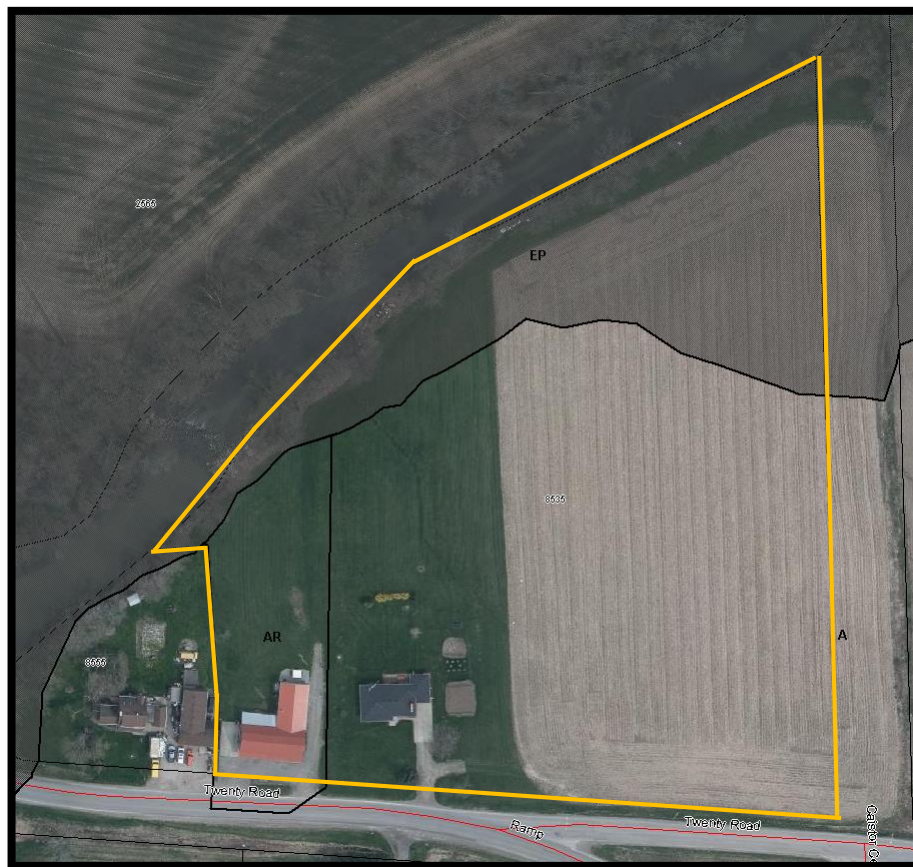
Guidelines for Permitted Uses in Ontario's Prime Agricultural Lands, On-farm diversified uses shall be located on a farm, secondary to the principle agricultural use on the property, limited in area and compatible with surrounding agricultural operations.

The appropriate scale of on-farm diversified uses may vary depending on the type of use and whether that use is located within a specialty crop area or prime agricultural area. The Niagara Official Plan outlines additional criteria including; whether the use is more appropriate in the settlement area or rural lands, the proximity to the related agricultural operation, the extent of compatibility with farming operations, scale of the activity in relation to the farming practices, consistency of character, potential off-site impacts and water usage (4.1.7.7).

Staff note that the only concern so far raised by members of the public was with respect to traffic and pedestrian safety concerns, and not specifically regarding impacts to surrounding agricultural operations. Staff will continue to review this application against the Niagara Official Plan policies, however, it would appear that generally this use may not have significant impact on surrounding agricultural operations.

Township of West Lincoln Zoning Bylaw

The subject property is zoned Agricultural 'A', Environmental Protection 'EP' and Agricultural Related 'AR'. Below is an image of the zoning on the subject property:



Neither the Agriculturally related zone or the Agricultural zone permit what is being proposed on the subject property. The Agriculturally Related zone permits a variety of uses, but does not permit a retail store, restaurant or agri-tourism type business, which the propose use would fall under. The proposed use has elements of an Agriculturally Related use, however, the sale of non-agricultural products and the sale of produce not produced on the premises is not considered agriculturally related as it is not directly related to the agricultural uses on the property or in the area. The AR zone was appropriate for the former use of the building as it stored and sold apples that grew on the property until sometime before 2010 when the orchard covering the majority of the property was removed.

The Agricultural 'A' zone only permits a single detached dwelling and accessory uses, one of which is on-farm diversified uses, however, that requires a minimum lot area of 10 hectares, which this property does not have.

The applicants have submitted a zoning bylaw amendment request to permit an agri-tourism business, namely a Country Market Store business on the property.

Agri-tourism is defined in combination with Value-added uses in the Township's zoning bylaw:

Agri-tourism/Value-added use:

Means the use of land, buildings or structures for accessory uses to the principal agricultural use of the lot conducted for gain or profit to support, promote and sustain the viability of the agricultural use, including but not limited to agricultural education and research facilities, bed and breakfast establishments, farm markets and the retail sale of farm products, pick your own facilities, farm mazes, special event facilities related to farming, and value-added assembly, fabrication, processing, packing or storage operations.

The applicants have also requested three additional modifications to the zoning bylaw Section 3.11, which include:

1. The on-farm diversified/agri-tourism use, be permitted on a lot with an area of less than 10 hectares, whereas the zoning bylaw requires a minimum lot area of 10 hectares (3.11, a).
2. An area of 2.2% of the property be used for the on-farm diversified, whereas the zoning bylaw has a maximum area of the lesser of 1% of the lot area or 0.5 hectares (3.11, c) i).
3. The zoning regulation requiring the operator of the agri-tourism use to reside on the property be removed as the proposed operator does not reside on the property (3.11 h).

In addition to the modifications requested, staff note that Section 3.11 d) requires that On-farm diversified uses shall be accessory and directly related to the existing permitted agricultural use(s) on the lot and shall primarily serve the existing permitted agricultural use(s) on the lot and the existing permitted agricultural uses on surrounding lots in the

area. Planning staff wish to seek clarification on whether any of the agricultural uses outlined in the Planning Justification Report have been established on the property, or if the property is still mainly in field crop production.

The purpose of these regulations are to ensure that secondary uses that exist within the agricultural area remain secondary to principle agricultural uses, that agricultural lands are protected, and that uses that conflict with agricultural practices are located within settlement areas.

Staff have reviewed the Planning Justification report and note that there is limited discussion and justification with regards to the reduction in the required 10 hectares of lot area to the 3 hectares provided, except that 3 hectares is the existing size of the lot. Planning Staff would like additional information on how an on-farm diversified use can remain secondary to a principal agricultural use on a 3 hectare lot. Additionally, Planning staff are also looking for justification as to the removal of the requirement that the operator of the on-farm diversified use reside on the subject property.

The final request that has been submitted with regards to zoning is to recognize the deficient lot area and setback for existing buildings on the subject property.

Planning staff will continue to review the information provided and any additional information provided by the applicants and their agent.

FINANCIAL IMPLICATIONS:

There are no financial implications associated with this report except for the potential implications associated with Bill 109, the *More Homes for Everyone Act, 2022*. Bill 109 requires municipalities, starting on July 1st, 2023, to provide fee refunds for planning act applications if decisions are not made within the required Planning Act timelines.

The timelines for approval and required fee returns associated with this will require Township Staff to prepare recommendations on a quicker timeline for Council's decisions. Council must make a decision within 90 days of complete application or they will be required to refund.

	Zoning and Official Plan Combined	Zoning Bylaw Amendment	Site Plan
No refund	Decision is made within 120 days	Decision is made within 90 days	Plans are approve within 60 days
50%	Decision made within 121-179 days	Decision made within 91-149 days	Plans are approved between 61-89 days
75%	Decision made within 180 – 239 days	Decision made within 150 – 209 days	Plans are approved 9 – 119 days
100%	Decision made 240 days and later	Decision made 210 days and later	Plans are approved 120 days and beyond

The current 2023 fee for a standard zoning bylaw amendment is \$9,630.00. If not approved within 90 days, starting on July 1st, 2023 the Township would be required to refund the applicant \$4,815.00, at 149 days, \$7,222.50 and after 209 days, the entire fee.

INTER-DEPARTMENTAL AND PUBLIC COMMENTS:

The notice and application for zoning bylaw amendment was circulated to agencies and the public on December 13, 2022. A notice sign was also placed on the property on December 23, 2022. At the time of writing this report, the Township has received comments from two members of the public.

Comments were received by property owners who live to the east of the property at 8431 Twenty Road. They have no objections to the type of business being proposed, but they do have concern regarding traffic in that location.

This is not the first concern regarding traffic and parking on this site and the Township Public Works Department has also echoed this concern and is looking for an on-site parking plan.

Comments were also submitted by the property owners west of the subject lands at 8555 Twenty Road. They have provided two sets of comments, the first being in regards to the proposal and the second with respect to a private well on the subject property which services 8555 Twenty Road.

The initial comments have requested additional time to review the application as they have concerns with the application. The first comment raised is if a building permit has been applied for on the subject property as there have been changes made in the recent past.

The second point is a private well that is located on the property, between the dwelling and the agriculturally related building which services, by way of easement, 8555 Twenty Road. The owners of 8555 Twenty Road have provided additional information with regards to this easement, which can be found in Attachment 3. They have a concern regarding the easement and the well as there have been extensions to the driveway over this easement.

In a preliminary response to the comments received from the owners of 8555 Twenty Road, due to the Planning Act requirements, the Township has only 90 days from complete application submission to review and decide upon a zoning bylaw application. Staff also note that the applicants have additional time to submit comments up to the time a decision is made on the application.

Staff also note that a septic permit was issued in 2021 for a new private septic system to service both the dwelling and the agricultural related building.

The Township of West Lincoln Public Works Department has also provided comments on the application. They state that they have no objection to the application, but wish to see a parking plan due to previous concerns and complaints regarding traffic in the area.

The Township is still awaiting comments from the Region at this time. They will be included in a future report when they are provided to the Township.

CONCLUSION:

An application for zoning bylaw amendment has been submitted by Mr. Steven Rivers on behalf of the sole property owner, Ms. Atsje Bruinsma for the property located at 8535 Twenty Road. The application has been submitted to permit a portion of the property and the existing agriculturally related building to be used for an on-farm diversified use, namely an agri-tourism use. As this use is not permitted within the Agriculturally Related 'AR' zone, or the Agricultural 'A' zone, a zoning amendment is required.

The application requests to permit an agri-tourism use, on a lot that is approximately 3 hectares in area and occupying a total of 2.2% of the lot area, whereas the zoning bylaw requires a minimum lot area of 10 hectares and only permits a maximum of 1% to be used for the on-farm diversified use. The applicant has additionally requested that the requirement to reside on the property be removed. Finally, they have requested that the existing lot area and setbacks for the agricultural related building be recognized through this zoning amendment process.

The Township has received a number of public and agency comments and will review those comments as well as any additional comments that are received. Staff recommend that a recommendation report be prepared and presented to a future Planning Building and Environment Committee Meeting.

A final note for consideration are the Planning Act changes that have been made through Bill 109, the *More Homes for Everyone Act, 2022* requiring zoning amendments be decided upon within 90 days or face punitive costs back to the applicant starting on July 1st, 2023. In order to avoid these fee returns, staff will be required to prepare recommendation reports within the required timeframe that potentially recommend:

1. Approval, subject to a holding provision,
2. Approval of application as submitted,
3. Approval of staff modified application
4. Denial

Staff will continue to work with the applicants, members of the Public and Committee and Council while meeting these tight timelines for decisions.

ATTACHMENTS:

1. Location Map
2. Planning Justification Report
3. Agency and Public Comments

Prepared & Submitted by:



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Approved by:



Bev Hendry
CAO



Brian Treble
Director of Planning & Building