

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



19-132-LPAT
Attachment 1

19-133-LPAT
Attachment 2

ISSUE DATE: May 14, 2019

CASE NO(S):

PL180732

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	The Green Organic Dutchman Holdings Ltd.
Subject:	Request to amend the Official Plan - Refusal of request by the City of Hamilton
Existing Designation:	"Agriculture"
Proposed Designated:	Site-specific to be determined
Purpose:	To permit a medical marijuana growing and harvesting facility within a new greenhouse with a maximum area of 13,000 square metres, and within new buildings with a maximum area of 2,000 square metres per building.
Property Address/Description:	1915, 1995 and 1997 Jerseyville Road West, Ancaster.
Municipality:	City of Hamilton
Approval Authority File No.:	RHOPA-17-037
OMB Case No.:	PL180732
OMB File No.:	PL180732
OMB Case Name:	Green Organic Dutchman Holdings Ltd. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	The Green Organic Dutchman Holdings Ltd.
Subject:	Application to amend Zoning By-law No. 05-200- Refusal of Application by the City of Hamilton
Existing Zoning:	"Agricultural A 1"
Proposed Zoning:	Site-specific to be determined
Purpose:	To permit a medical marijuana growing and harvesting facility within a new greenhouse with

Property Address/Description: a maximum area of 13,000 square metres, and within new buildings with a maximum area of 2,000 square metres per building.
1915, 1995 and 1997 Jerseyville Road West, Ancaster

Municipality: City of Hamilton
Municipality File No.: ZAC-17-080
OMB Case No.: PL180732
OMB File No.: PL180733

Heard: May 2, 2019 at Hamilton, Ontario

APPEARANCES:

Parties

The Green Organic Dutchman Holdings Limited

City of Hamilton

Counsel

Melissa Winch

Stephen Chisholm

MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON MAY 2, 2019

INTRODUCTION

[1] This hearing event before the Local Planning Appeal Tribunal (the "Tribunal") was a settlement hearing. There was an earlier Case Management Conference before the Tribunal. The Green Organic Dutchman Limited (the "Appellant") had filed private applications for official plan amendment and zoning amendment with respect to the lands municipally known as 1915, 1995 and 1997 Jerseyville Road West (the "Property"). The Appellant is the licensed operator of a facility for the growing and harvesting of medical cannabis on the Property.

[2] The purpose of the planning applications to the City of Hamilton (the "City") was to authorize expansion of the cannabis growing operation and to construct a new greenhouse for the growing and harvesting of cannabis on the Property. City Council refused those applications and the Appellant appealed those decisions to the Tribunal.

[3] There was contemporaneously an initiative by the City for the purpose of updating policies in the official plan regarding the growing and harvesting of cannabis in the City. This initiative culminated in the adoption of Official Plan Amendment 21 ("OPA 21"), which decision was appealed by the Appellant. Together with OPA 21, City Council enacted By-law No.18-266 to implement regulations into the Comprehensive Zoning By-law regarding the matter of cannabis growing and harvesting. The Appellant appealed that by-law as well.

[4] In the interim period from the filing of the aforementioned appeals to this hearing session, discussions took place between the Appellant and the City to resolve the Appellant's issues, which culminated in a settlement between the Parties. In that regard, formal Minutes of Settlement were signed, a copy of which was filed with the Tribunal.

[5] The Minutes of Settlement acknowledge the intended expansion of the Appellant's cannabis growing and harvesting operation on the Property and set controls and a management plan on that intended expansion.

[6] The Minutes of Settlement have attached to them a draft official plan amendment and a draft zoning by-law amendment to set a site specific area policy and site specific exception provisions respectively for the Property.

[7] In support of the settlement, an affidavit deposed by John S. Ariens, the consulting land use planner retained by the Appellant, was filed with the Tribunal. Mr. Ariens is a registered professional planner in the Province of Ontario with 33 years of experience in the planning profession in both the public and private spheres. He has been qualified to provide opinion evidence on land use planning matters before the Tribunal, and its predecessor the Ontario Municipal Board, on many prior occasions.

[8] The affidavit of Mr. Ariens provided a description of the Appellant's operations on the Property and their development intentions. He detailed the settlement proposal which was being advanced before the Tribunal.

[9] In his affidavit, Mr. Ariens reviewed the relevant policies of the Provincial Policy

Statement, the Growth Plan for the Greater Golden Horseshoe, the Greenbelt Plan and the Rural Hamilton Official Plan. He was of the view that the settlement proposal was consistent and conforming with the policies in the noted planning instruments and on this basis, he recommended approval of the draft official plan amendment and the draft zoning amendment.

[10] On the strength of the affidavit of Mr. Ariens and on the submissions of counsel, the Tribunal is satisfied that the proposed amendments are consistent with the Provincial Policy Statement, and conform with the Growth Plan for the Greater Golden Horseshoe, the Greenbelt Plan and the Rural Hamilton Official Plan and thus allows the Appellant's appeals.

[11] The Tribunal approves the form of site specific official plan amendment attached to this Decision as Attachment 1 and hereby orders amendment of the Rural Hamilton Official Plan in accordance with this form of amendment.

[12] The Tribunal approves the form of site specific zoning amendment attached to this Decision as Attachment 2 and hereby orders amendment of City Zoning By-law No. 05-200 in accordance with this form of amendment.

[13] As a result of these approvals, and in accordance with the provisions in the Minutes of Settlement, the Appellant withdrew its appeal of OPA 21 and Zoning Amendment By-law No. 18-266.

[14] So orders the Tribunal.

"Gerald S. Swinkin"

GERALD S. SWINKIN
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Rural Hamilton Official Plan Amendment No. 17

The following text, together with Appendix "A" – Volume 3: Appendix A - Site Specific Key Map, attached hereto, constitutes Official Plan Amendment No. 17 to the Rural Hamilton Official Plan.

1.0 Purpose:

The purpose and effect of this Amendment is to establish a Rural Site Specific Policy to permit the growing and harvesting of cannabis in facilities having a maximum gross floor area for a single greenhouse which shall not exceed 13,000 square metres, a maximum gross floor area shall not exceed 2,000 square metres for each new cannabis growing and harvesting building, and all buildings and structures shall not exceed 20% lot coverage.

2.0 Location:

The lands affected by this Amendment are known municipally as 1915, 1995 and 1997 Jerseyville Road West within the City of Hamilton (former Town of Ancaster).

3.0 Basis:

The basis for permitting this Amendment is:

- The proposed Amendment use is considered as an agricultural use and it includes on-farm diversification.
- The proposed Amendment is compatible with existing agricultural and commercial uses in the immediate area.
- The proposed Amendment is compatible with planned agricultural use in the immediate area.
- The proposed Amendment is consistent with the Provincial Policy Statement, 2014, conforms to the Growth Plan for the Greater Golden Horseshoe, 2017, and Greenbelt Plan 2017.

4.0 Actual Changes:

4.1 Rural Hamilton Official Plan Special Policy and Site Specific Areas

Text

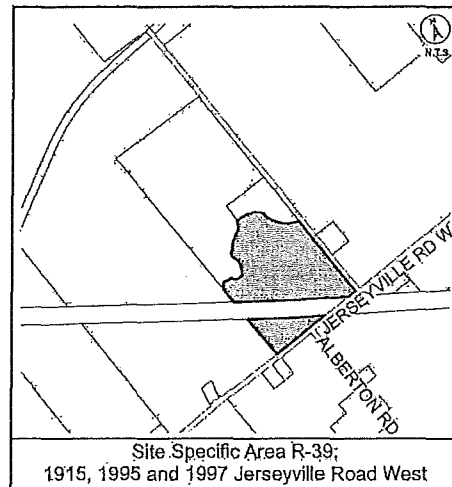
4.1.1 Chapter B – Rural Site Specific Areas

- a. That Volume 3: Chapter B – Rural Site Specific Areas be amended by adding a new Site Specific Policy – R-39 as follows:

“R-39 – Lands known municipally as 1915, 1995 and 1997 Jerseyville Road West former Town of Ancaster.

- 1.0 For the lands known municipally as 1915, 1995 and 1997 Jerseyville Road West, designated Agriculture and identified as Site Specific Area R-39, notwithstanding Policy D.2.1.1.4. b) of Volume 1, the following policies shall apply:

- a) the gross floor area for any new cannabis growing and harvesting facility shall not exceed 2,000 square metres per building;
- b) the maximum gross floor area for one greenhouse containing a cannabis growing and harvesting facility shall not exceed 13,000 square metres.
- c) all buildings and structures shall not exceed a combined lot coverage of 20%; and,
- d) Section 4.1.1(a)(ii)(d) of Rural Hamilton Official Plan Amendment No. 21 shall not apply.



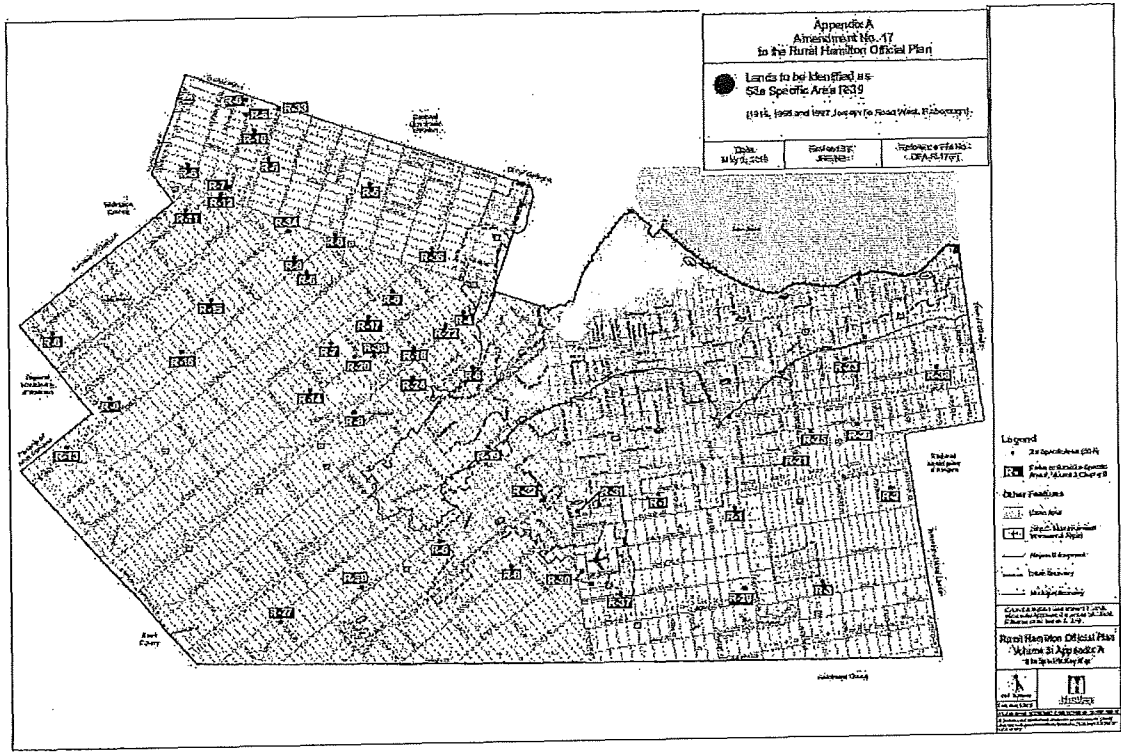
Schedules and Appendices

4.1.2 Volume 3: Appendix A – Site Specific Key Map

- a. Volume 3: Appendix A – Site Specific Key Map be amended by identifying the subject lands as Site Specific Policy R-39, as shown on Appendix "A" attached to this Amendment.

5.0 Implementation:

An implementing Zoning By-Law Amendment will give effect to the intended uses on the subject lands.



Authority:
 Ward: 14
 Bill No.

CITY OF HAMILTON
BY-LAW NO.

**To Amend Zoning By-law 05-200 Respecting Lands Located at
 1915, 1995 and 1997 Jerseyville Road West, Ancaster**

WHEREAS this By-law will be in conformity with the Rural Hamilton Official Plan upon approval of Official Plan Amendment No. 17.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map No. RU131 and RU143 of Schedule "A" – Zoning Maps of Zoning By-law No. 05-200 be amended as follows:
 - a) by changing the zoning from the Agriculture (A1) and (A1, 116) Zones to the Agriculture (A1, 689) Zone, to the extent and boundaries of which are shown on Schedule "A" annexed hereto and forming part of this By-law.
2. That Schedule "C" Special Exceptions, Subsection 116 of By-law No. 05-200 is amended by deleting the following:

1997 Jerseyville Road West	Maps 131 and 143
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3. That Schedule "C" – Special Exceptions, of By-law No. 05-200 is hereby amended by adding a special exception as follows:

689. Within those lands zoned Agriculture (A1) Zone, identified on Maps RU131 and RU143, of Schedule "A" – Zoning Maps and described as:

Property address	Map number
1915, 1995 and 1997 Jerseyville Rd W.	RU131 and RU143

The following special provisions shall apply:

- a) In addition to Section 3: Definitions, for the purposes of this By-law, the definition of Greenhouse shall mean a building or structure used for Agriculture that is climatically controlled and made primarily of translucent building material.
- b) In addition to Section 3: Definitions, for the purposes of this Special Exception, the definition of Cannabis Growing and Harvesting Facility

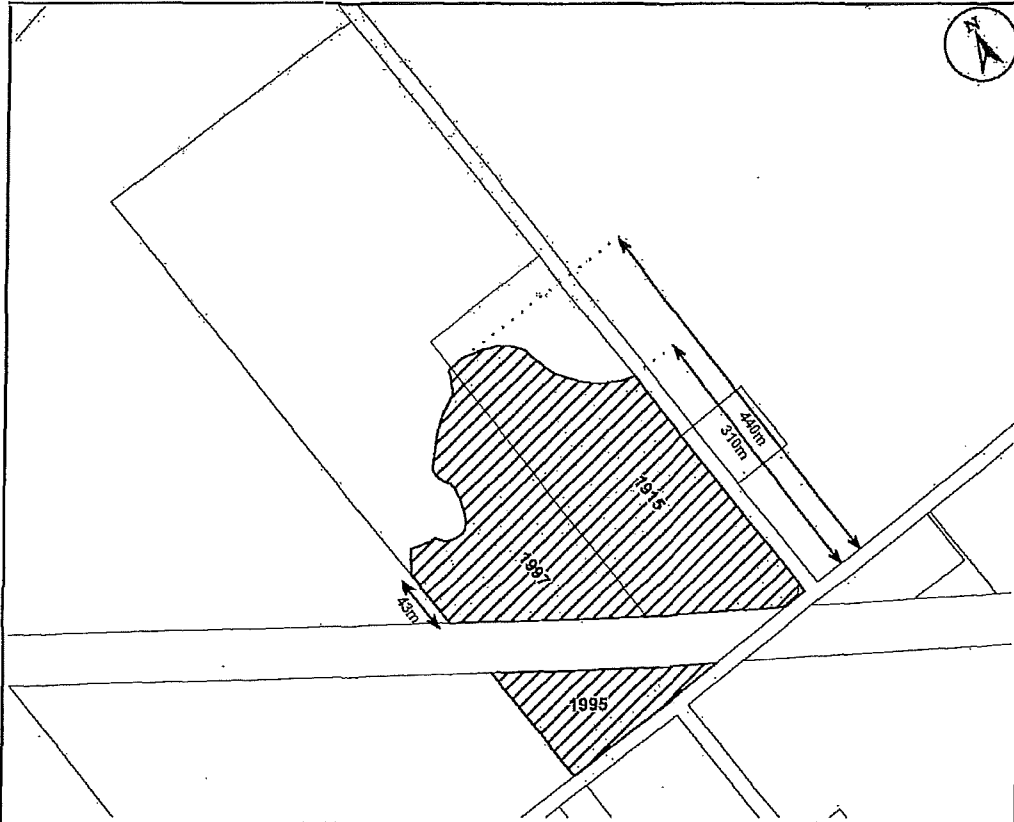
To Amend Zoning By-law 05-200 Respecting Lands Located at
1915, 1995 and 1997 Jerseyville Road West, Ancaster

shall mean a wholly enclosed building or structure used for growing, harvesting, testing, destroying, packaging and shipping of cannabis, for a facility where a licence, permit or authorization has been issued under applicable federal law.

- c) Notwithstanding Subsection 12.1.3.1 m) i), the following applies to the combined subject lands:
- i) One greenhouse for a Cannabis Growing and Harvesting Facility shall be permitted and shall not exceed 13,000 square metres of gross floor area.
 - ii) In addition to i) above, the maximum gross floor area for any new Cannabis Growing and Harvesting Facility shall not exceed 2,000 square metres per building.
 - iii) All buildings and structures shall not exceed a combined lot coverage of 20%.
 - iv) Sections 4.1(b) and 4.1(c)(iv) of Zoning By-law No. 18-266 shall not apply.

4. This By-law comes into force in accordance with Section 34 of the *Planning Act*.

To Amend Zoning By-law 05-200 Respecting Lands Located at
1915, 1995 and 1997 Jerseyville Road West, Ancaster



This is Schedule "A" to By-law No. 19-
Passed the day of, 2019

Mayor

Clerk


Schedule "A"

Map Forming Part of
By-law No. 19-_____

to Amend By-law No. 05-200
Maps RU131 & RU143

Subject Property

1915, 1995 & 1997 Jerseyville Road West, Ancaster

 Change in Zoning from Agriculture (A1), (A1, 116)
Zone to Agriculture (A1, 689) Zone

Scale:
N.T.S.

File Name/Number:
ZAC-17-080 & RHOPA-17-037

Date:
May 2, 2019

Planner/Technician:
JHE/NE



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT