

Date: November 16, 2020

Report To: Planning and Development Executive Committee

From: Cody Vangel, Chief Building Official & Municipal Planner

Re: Perry Family Zoning Change Request – Fifth Street East

When the Town of Fort Frances conducted their most recent zoning by-law update in 2013/2014, some properties within the Town of Fort Frances had their zoning designations changed. A block of residential properties on the southwest corner of Portage Avenue and Fifth Street East were changed from Residential to Enterprise (Enterprise being a form of commercial use). Upon investigation it was found that this change was due to consultation with the CN Railway (see attached correspondence from zoning by-law consultant). The allowable permitted uses within the Enterprise Zone can be seen below:

4.10 ENTERPRISE (E) ZONE

No **person** shall within the Enterprise (E) **Zone**, **use** any land or erect, alter or **use** any building or **structure** except in accordance with the following:

4.10.1 Permitted Uses

- a) bank or financial institution
- b) building supply and lumber outlet
- c) car wash
- d) clinic
- e) commercial greenhouse/nursery including retail
- f) convenience store
- g) equipment sales/rental establishment
- h) gas bar
- i) hotel
- j) laboratory
- k) laundromat
- l) motel
- m) motor vehicle service station
- n) motor vehicle parts and accessory sales
- o) motor vehicle sales or rental
- p) office
- q) personal services establishment
- r) recreation or fitness establishment
- s) recreational vehicle sales and service operation
- t) research and development establishment
- u) restaurant
- v) retail store (minimum floor area of 500 m²)
- w) tavern
- x) self-storage facility
- y) work/service shop
- z) veterinary hospital
- aa) uses that legally existed as of the date of passing of this By-law
- bb) microbrewery¹
- cc) nanobrewery¹

In discussion with the zoning by-law consultant it was determined that the inclusion of 4.10.1.aa being uses that legally existed as of the date of passing this by-law permits the residential uses to continue while creating opportunity for a number of commercial uses.

The following table provides a comparison of the regulations governing the permitted uses between the Residential Type One (R1) zone, Enterprise Zone (E) and the General Commercial (C2) zone.

	Residential Type One (R1)	Enterprise (E)	General Commercial (C2)
Minimum Lot Area	460 m ²	930 m ² with municipal sewage service	230 m ²
Minimum Lot Frontage	15 m	23 m	7.5 m
Minimum Front Yard	7.5 m	7.5 m	Nil
Minimum Interior Side Yard	1.5 m	6.0 m	Nil
Minimum Exterior Side Yard	3.0 m	10.0 m	Nil
Minimum Rear Yard	7.5 m	7.5 m	4.5 m
Maximum Lot Coverage	40%	30%	75%
Minimum Landscaped Open Space	20%	20%	20%
Maximum Height of Building	12 m	12 m	15 m
Minimum Floor Area	79 m ²	Not defined	Not defined

Given that the current properties are zoned Enterprise, based information from the Town's GIS system, most of which do not meet the minimum/maximum requirements as shown in the table above for the Enterprise zone. It should be noted that yard setbacks, lot coverage and landscaped space cannot be determined without an appropriate survey.

Mayor and Council of the Town of Fort Frances at the time had passed and accepted zoning by-law 03/14, and in doing so created legal non-complying lots, buildings and structures. Section 3.17 of zoning by-law 03/14 sets out the standards for legal non-complying lots, buildings and structures as seen below:

3.17 NON-COMPLYING LOTS, BUILDINGS AND STRUCTURES

Where a building or structure is located on a lot having less than the minimum frontage and/or lot area, and/or having less than the minimum setback and/or side yard and/or rear yard required by this By-law, the said building or structure may be enlarged, reconstructed, repaired and/or renovated provided that:

- a) the enlargement, reconstruction, repair and/or renovation does not further reduce a front yard, and/or side yard and/or rear yard and/or lot coverage less than the minimum required by this By-law;
- b) the building or structure is being used for a purpose permissible within the zone in which it is located; and,
- c) all other applicable Zone Provisions of this By-law are complied with.

Nothing in this By-law shall apply to prevent the reconstruction of any permitted building which is accidentally damaged or destroyed by causes beyond the control of the owner. Such permitted building may be reconstructed in accordance with the previously existing standards, even if such did not conform with one or more of the provisions of this By-law, but the non-compliance may not be further increased provided that the reconstruction occurs within 12 months of the damage being done.

Where a lot, having a lesser lot area and/or lot frontage than required herein, existed on the date of passing of this By-law, or where such a lot is created by a public authority such smaller lot may be used and a permitted building or structure, may be erected, altered and/or used on such smaller lot provided that all other applicable Zone Provisions of this By-law are complied with. All vacant islands and existing vacant lots of record on islands must have an area of at least 0.5 ha above the normal or controlled high water mark.

A lot which has been increased in size following the passage of this By-law may also be used in accordance with this provision and the resultant lot shall be deemed to comply with all of the provisions of this By-law and all zone provisions applicable to any existing building on the benefiting lot shall be deemed to comply with the provisions of this By-law.

Based on the information found through research, the request to change the entire block to General Commercial (C2) is not believed to be an appropriate land use for the entire block of properties nor an individual property due to the following:

- Concerns over yard setbacks
- Concerns over lot coverage
- Creation of legal non-conforming uses which could not be expanded (i.e. residential could not be added onto)

To Summarize:

- The properties in question are currently zoned Enterprise
- The pre-existing use as single family dwellings is permitted as per 4.10.1.aa
- The other permitted uses in the Enterprise zone are permitted as per 4.10
- The subject lands are considered legal non-complying
- The said legal non-complying building or structure may be enlarged, reconstructed, repaired and/or renovated provided that:
 - o the enlargement, reconstruction, repair and/or renovation does not further reduce a front yard, and/or side yard and/or rear yard and/or lot coverage less than the minimum required by By-law 03/14;

- the building or structure is being used for a purpose permissible within the zone in which it is located; and,
- all other applicable Zone Provisions of By-law 03/14 are complied with.

It is the recommendation of administration that the Planning and Development Executive Committee:

1. Receive the letter submitted by Ken Perry, Ken Perry Jr. and Megan Perry with thanks, and that the zoning for the subject lands remain as is.

OR

2. Receive the letter submitted by Ken Perry, Ken Perry Jr. and Megan Perry with thanks, and that contact be made with the property owner(s) of the subject land to inform them of the scenario and determine if they would be accepting of rezoning from Enterprise to Residential Type One along with amending the Official Plan designations from Employment to Living, and that the costs associated be borne by the Town of Fort Frances.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Cody Vangel', with a stylized flourish at the end.

Cody Vangel, EIT
Chief Building Official & Municipal Planner