

Date: November 23, 2020

Report To: Mayor & Council

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.

This matter was considered at the November 16, 2020 session of the Planning and Development Executive Committee where recommendation was agreed to 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.

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

Council approval of this report will agree with the recommendation of the Planning and Development Executive Committee to 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.

Jan 28,2020

From: Greg Hynde. ghynde@me.com

Subject: Town of Fort Francis Zoning By-law 03/14
Enterprise Zone

To: Cody Vangel cvangel@fortfrances.ca
C.B.O. & Municipal Planner

Hi Cody

Further to your enquire of Jan15/20 and our discussions of Jan 28/20
the following clarification is provided.

The Enterprise Zone was used in this section of Town to address the
CNR position of no residential development within a certain distance
of the ROW through Town.

Instead of creating legal non conforming uses in proximity to ROW which would have
prevented the home owners from rebuilding, adding additions to their dwellings and
impacting the refinancing of their properties - the Town decided to include existing
uses as a permitted use in the Enterprise Zone.

A set of regulations (Section 4.10.2) for new builds and additions was included to
regulate new development.

I trust the above provides the clarification you require.

Regards

Greg Hynde RPP

Nothing in this By-law shall prevent the strengthening or restoration to a safe condition of any **existing**, legal **non-conforming building** or **structure** or part thereof, provided that the strengthening or restoration does not increase the **building** height, size or volume or change the **existing**, lawful **use** of such **existing building** or **structure** unless these changes are necessary to provide for floodproofing of the **building**.

The provisions of this By-law shall not apply to prevent the **erection** or **use**, for a purpose prohibited by this By-law, of any **building** or **structure**, the plans for which have, prior to the date of passing of this By-law, been approved by the **Municipality**, so long as the **building** or **structure**, when **erected**, is used and continues to be used for the purpose for which it was **erected**.

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.

4.4 RESIDENTIAL TYPE ONE (R1) ZONE

No **person** shall within a Residential Type One (R1) **Zone**, **use** any land or **erect**, alter or **use** any **building** or **structure** except in accordance with the following:

4.4.1 Permitted Uses

- a) single detached dwelling
- b) home occupation
- c) group home
- d) community garden

4.4.2 Regulations for Permitted Uses

- a) Minimum **Lot Area** 460 m²
- b) Minimum **Lot Frontage** 15 m
- c) Minimum Yard Requirements
 - Front Yard 7.5 m
 - Interior Side Yard 1.5 m
 - Exterior Side Yard 3.0 m
 - Rear Yard 7.5 m
- d) Maximum **Lot Coverage** 40%
- e) Minimum **Landscaped Open Space** 20%
- f) Maximum Height of Building 12 m
- g) Minimum Floor Area 79 m²

4.9 GENERAL COMMERCIAL (C2) ZONE

No **person** shall within a General Commercial (C2) **Zone**, **use** any land or **erect**, alter or **use** any **building** or **structure** except in accordance with the following:

4.9.1 Permitted Uses

- a) accessory dwelling units on a floor above the **first storey** and/or on the first floor behind the commercial use¹
- b) assembly hall
- c) bank or financial institution
- d) clinic
- e) community health and resource centre
- f) crisis centre
- g) day nursery
- h) funeral home
- i) gas bar
- j) hotel
- k) laundromat
- l) motel
- m) offices
- n) parking lot
- o) personal services establishment
- p) post office
- q) private club
- r) recreation or fitness establishment
- s) restaurant
- t) retail store
- u) tavern
- v) taxi or bus depot
- w) work/service shop
- x) microbrewery²
- y) nanobrewery²

4.9.2 Regulations for Permitted Uses

- | | |
|-------------------------------------|--------------------|
| a) Minimum Lot Area | 230 m ² |
| b) Minimum Lot Frontage | 7.5 m |
| c) Minimum Yard Requirements | |
| Front Yard | nil |
| Interior Side Yard | nil |
| Exterior Side Yard | nil |
| Rear Yard | 4.5 m |
| d) Maximum Lot Coverage | 75% |

¹ Amendment May 9, 2016 to clarify accessory residential units in C2 Zone

² Amended February 6, 2020

- e) Minimum **Landscaped Open Space** 20%
in any yard abutting a residential zone a planting strip shall be required
- f) Maximum **Height of Building** 15 metres

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

¹ Amended February 6, 2020

4.10.2 Regulations for Permitted Uses

- a) Minimum **Lot Area**
 - without municipal sewage services 4,000 m²
 - with municipal sewage services 930 m²
- b) Minimum **Lot Frontage** 23 m
- c) Minimum **Yard Requirements**
 - Front Yard** 7.5 m
 - Interior Side Yard** 6 m
 - Exterior Side Yard** 10 m
 - Rear Yard** 7.5 m

- d) Maximum **Lot Coverage** 30%
- e) Minimum **Landscaped Open Space** 20%

in any yard abutting a residential zone a **planting strip** shall be required.

- f) Maximum **Height of Building** 12 m