

**SULLIVAN | MAHONEY** LLP  
LAWYERS

Via e-mail to: [John.federici@notl.com](mailto:John.federici@notl.com)

September 23, 2025

Reply to St. Catharines Office  
**THOMAS A. RICHARDSON, C.S.**

*Certified Specialist (Municipal Law – Local  
Government/Land Use Planning and Development)*

Town of Niagara-on-the-Lake  
1593 Four Mile Creek Road  
Niagara-on-the-Lake, ON L0S 1T0

**Attn: John Federici, Senior Planner**

Dear Mr. Federici:

**RE: NOTL No. ZBA-09-2025: 1096 Lakeshore Road, Niagara-on-the-Lake  
Our File No.: 101711**

As you are aware we act as solicitors for Brox Company Limited with respect to the above referenced application.

At the public meeting held on September 8, 2025 submissions were made to the Council in the Committee on behalf of Brox Company Limited by Mr. Ed Werner, Dr. Don Cole, Mr. Dan Currie and by this writer. Each of those submissions were supported by a PowerPoint presentation.

In addition to the oral submissions and the PowerPoints we now submit written comments by each of the above-named persons, namely, Mr. Ed Werner, Dr. Don Cole, Mr. Dan Currie and Mr. Thomas Richardson.

We await your advice as to when a recommendation report will be submitted to the Council. Thank you in advance for your cooperation and assist in this matter.

Yours very truly,

**SULLIVAN, MAHONEY LLP**

**Per:**



**Thomas A. Richardson, C.S.**  
Thomas Richardson Legal  
Professional Corporation

TAR:th  
Enclosure

**Client Committed. Community Minded.**

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September 23, 2025

Town of Niagara-on-the-Lake  
1593 Four Mile Creek Road  
Niagara-on-the-Lake, ON L0S 1T0

**Attn: John Federici, Senior Planner**

Dear Mr. Federici:

**RE: NOTL No. ZBA-09-2025: 1096 Lakeshore Road, Niagara-on-the-Lake**

**A Critical Review of the Konzelmann Winery Application**

When municipalities consider land use applications, the balance between agricultural integrity, residential stability, and commercial expansion is often difficult to strike. The Konzelmann Winery proposal currently before the Town of Niagara-on-the-Lake highlights this challenge. While the applicant seeks to expand commercial activities on its property, the surrounding circumstances raise serious concerns. Upon close review, five central issues emerge: the incompatibility of neighboring uses, risks to tourist safety, potential loss of property value, deficiencies in planning and enforcement, and the broader implications for the Town's agricultural and residential future.

Conflict Between Neighboring Uses

One of the most pressing issues lies in the incompatibility between the Konzelmann proposal and the existing character of the neighboring Brox property. The Brox land is designated for either residential or agricultural use, both of which would suffer from the proximity of expanded commercial activity. A residential home would be subject to constant disruption from tourist events, while farming operations would, in turn, interfere with the commercial experiences offered by Konzelmann. Agricultural practices often involve noise, heavy machinery, and the application of chemicals—factors that clash with the image of a serene commercial venue. In short, these two forms of land use are not mutually supportive and would likely give rise to long-term conflict.

Tourist Safety Concerns

Equally concerning is the matter of public safety. Agriculture, though often romanticized, is an industrial operation at its core, involving large equipment and potentially hazardous substances. Hosting significant numbers of visitors in such close proximity to working farmland creates a dangerous environment. Furthermore, the proposed use of vineyards for guest parking reflects a



disregard for safe infrastructure planning. Such arrangements not only jeopardize the well-being of visitors but also risk damaging the Town's reputation as a safe and well-managed tourist destination. A municipality dependent on tourism cannot afford to allow unsafe conditions to persist.

#### Impact on Neighboring Property Value

The proposed expansion also threatens the value of adjacent properties. The Brox land, appraised at approximately two million dollars as both a farm and an estate lot, would suffer significant depreciation if the Konzelmann property were converted into an intensive commercial space. Farming operations on the Brox property would undermine Konzelmann's tourist experience, while the winery's activities would devalue the Brox land. The mutual interference of uses would result in costly disputes, financial loss, and, inevitably, a cycle of complaints and enforcement challenges. This is not simply a matter of one neighbor inconveniencing another; it represents a tangible threat to established property rights and values.

It is also relevant to note the relative economics of grape production versus event hosting. The average net profit from one acre of grapes is less than \$5,000 annually. By contrast, relocating the proposed wedding venue farther from the Brox property—even if it required removing an acre of vineyard—would generate substantially more income than grape cultivation. Such a relocation would not only provide greater financial benefit to the applicant but would also reduce the adverse impacts on the neighboring property. This demonstrates that a viable alternative exists which better aligns commercial objectives with the Town's responsibility to protect surrounding landowners.

#### Deficiencies in Planning and Enforcement

The shortcomings of the Konzelmann proposal extend beyond compatibility and safety—they reach into fundamental questions of planning. A responsible land-use plan should specify event capacity, frequency, and the services necessary to support guests. Konzelmann has failed to provide such details. The proposed thirty annual events exceed what is reasonable in an agricultural zone, particularly when scaled across Niagara-on-the-Lake's fifty-plus wineries. The cumulative effect would overwhelm local infrastructure and impose undue burdens on residents.

Moreover, Konzelmann's track record demonstrates a pattern of disregard for existing regulations. The winery has repeatedly violated zoning by-laws, hosted unpermitted events, and breached agreements with both the Town and its neighbors. More than twenty complaints have been filed in recent years, yet violations persist. In this context, granting additional permissions would undermine the credibility of local governance. Effective planning is meaningless without effective enforcement, and past behavior suggests that Konzelmann cannot be relied upon for voluntary compliance.



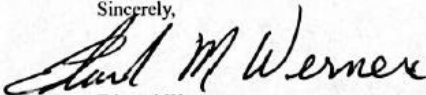
### Broader Implications for the Town

Finally, the Town must consider the precedent it sets. Approving the Konzelmann application would effectively endorse noncompliance, prioritize profit over safety, and accelerate the commercialization of rural lands. The agricultural character of Niagara-on-the-Lake is one of its

greatest assets, yet widespread approval of large-scale events would gradually transform farmland into event venues. With over 2,000 potential events across wineries and farms, the Town's infrastructure and rural identity would be placed under extraordinary strain. The broader message to residents would be clear: agricultural and residential uses take a back seat to commercial tourism.

### Conclusion

The Konzelmann Winery application, as it stands, raises more problems than it solves. The proposal threatens the compatibility of neighboring uses, creates unsafe conditions for visitors, undermines property values, and fails to meet the standards of responsible planning. More troubling still, the applicant's history of noncompliance suggests that granting further permissions would erode both public trust and the Town's regulatory framework. For these reasons, the application should not be approved. Instead, Niagara-on-the-Lake must reaffirm its commitment to balanced, lawful, and sustainable land-use practices that preserve both its agricultural heritage and its residents' quality of life.

Sincerely,  
  
Edward Werner

Donald C Cole MD, DOHS, MSc, FRCP(C)  
243 Macdonell Ave, Unit 3, Toronto, ON, M6R 2A9

**Potential exposure to pesticides for guests at on-farm events in agricultural areas –  
2025 Sept 19 - Written brief following NoTL Council Public Meeting of 2025 Sept 9**

By Donald C Cole MD, DOHS, MSc, FRCP(C)  
Occupational, Environmental, & Public Health Medicine Consultant  
Emeritus Professor, Dalla Lana School of Public Health, University of Toronto  
Family farm member of horticulture operation, Grey county

This brief describes a potential risk not mentioned in the winery application under consideration, nor in many guidance documents for municipal planners. Nevertheless, identification, assessment and mitigation of potential pesticide risks in agricultural areas is needed, to ensure the safety of guests and to reduce the liability of the hosting winery and the permitting municipality.

### **Pesticides**

Pesticides are crop protection products which are primarily chemical. They include insecticides, fungicides, herbicides, rodenticides, and fumigants among others. The major ones used in grape production are fungicides and insecticides/miticides (Ontario Ministry of Agriculture, Food and Rural Affairs - OMAFRA Publication 360C, *Crop Protection Guide for Grapes 2020-2021*, latest edition available). This publication describes: the federal registration of pesticides (Pest Management Regulatory Agency or PMRA); provincial regulation of pesticides (Ontario Ministry of the Environment, Conservation and Parks or MECP); restricted entry intervals (REI); spray buffer zones; and ways applicators can Manage Drift, with specific references (<https://www.ontario.ca/page/pesticide-drift-ground-applications>).

### **Potential routes of guest exposure to pesticides**

Most studies on pesticide exposure focus on those who work directly with pesticides, as such studies are required for companies to register pesticides with the PMRA. However, unlike farmers, contracted sprayers and farmworkers who may be exposed as part of their work, vineyard guests would be classified as bystanders. I could find no studies on vineyard guests per se. However, another group of bystanders are residents living close to orchards and vineyards.

Scientific studies have shown that people living near fields are more exposed to pesticides than those living distant from agricultural operations. For example, Polledri and colleagues showed that from the beginning to the end of the main pesticide application season in Italy, the concentrations of pesticides in the hair of children and their parents living near vineyards increased. *Int. J. Environ. Res. Public Health* 2021; 18, 3723. <https://doi.org/10.3390/ijerph18073723>.

In their review of such studies, Teyssiere and colleagues found evidence on ways that such increased exposure likely occurs (*Science of the Total Environment* 2021; 761 <https://doi.org/10.1016/j.scitotenv.2020.143294>). Consistently, the amounts of pesticides applied locally, particularly during the spring and summer months, the crop acreage around the home, the home's proximity to the field, and the wind blowing in the direction of the home all contributed to greater resident exposure. Spray drift from agricultural operations also occurs in Canada, as documented by PMRA (2022) in their review of pesticide exposure incidents from 2018-2020. These have occurred even with good equipment, experienced applicators and appropriate selection of weather conditions.

Turning to guests of hosting vineyards, they would likely be visiting during the spring-summer months, most would be close to fields of grapes and sometimes the wind might be blowing in the direction of the venue on the vineyard. Although it might be unlikely for the hosting vineyard to be applying pesticides to their grape crop during an on-vineyard event, arrangements would have to be made with neighbouring farms to avoid such application during the event.

Nevertheless, outside the active spraying period when drift might be an issue, one must also consider residues of pesticides. Residues on the target crop of grapes are part of what makes many pesticides effective, as they continue to act against pests such as mites or diseases such as blight. Guests may unfortunately ignore signs warning them not to enter fields. If they wander into grape growing areas and touch the vines or sample the grapes, they could dislodge the residue directly onto their hands. In this way they would directly ingest residues.

On non-target areas, for example the grass, soil or gravel of a vineyard, would likely also harbour residues from spray operations, particularly if they were in the middle of the vineyard, like the proposed parking area along the interior laneways. OMAFRA's most recent guide for crop protection product use on grapes and tender fruit specify Re-Entry Intervals or REIs – the minimum period when residues persist and could be potentially harmful. Pesticide REIs can range from one-half day through multiple days for a number of miticides-insecticides and fungicides (details available upon request). If on-site vineyard events are frequent and products with longer REIs have been applied, then guests could feasibly come in contact with these pesticide residues. For example, when guests exit their cars from an interior laneway parking area, the pesticide residues could adhere to their shoes. Subsequently they could track these pesticide residues into their vehicles and homes.

### **Potential health impacts of pesticides**

Pesticides can have a range of health impacts on people. Most immediately, a person can develop headaches, skin rashes and breathing problems, as were documented by Lee and colleagues when they reviewed acute pesticide illnesses associated with off-target pesticide drift from agricultural applications in 11 [USA] states, from 1998-2006. *Environmental Health Perspectives* 2011; 119 (8):1162-1169 <https://ehp.niehs.nih.gov/doi/10.1289/ehp.1002843>.

Next, pesticides can affect fertility, increase the risk of spontaneous abortions, and may contribute to birth defects – all considerations if guests of reproductive age are participating in events. Finally, much longer term are the contributions of pesticides to cancers e.g. the USEPA classified *captan* into Group B2, a probable human carcinogen.

Each of these potential health effects are dose related. For example, an urban guest attending one on-farm event every few years would likely have a lower dose than a rural neighbour attending multiple events over the season across multiple seasons. Usually, exposure potential and dose are estimated in a risk assessment. For example, Coscolla and colleagues measured airbourne levels of pesticides to estimate human exposure and conduct a risk assessment for airborne pesticides in a rural French community. *Sci Total Environ* 2017 Apr 15;584-585:856-868. <https://doi.org/10.1016/j.scitotenv.2017.01.132>.

An appropriate risk assessment for guests would include consideration of multiple routes of exposure (not just airbourne), including: respiratory from spray drift, oral (eating grapes) and dermal (skin) via pesticide residues on vegetation and other surfaces. Depending on what happens to pesticides tracked into vehicles and homes, the respiratory and dermal routes may be relevant to subsequent exposures off site.

### **Precautionary approach**

Hence, multiple considerations regarding potential guest exposure to pesticides and potential health effects among guests need to be considered in a carefully thought out proposal. Assistance may be needed from someone familiar with health risk assessments so that potential exposures of vineyard guests would be identified, potential health risks estimated, and risk mitigation measures proposed. The proponent and/or the town might raise these concerns with the Ministry of the Environment, Conservation and Parks and request assistance from them, as such concerns do not figure in their current guidance documents. In this way, the hosting winery and the town can appropriately manage potential pesticide risks and ensure the safety of vineyard guests in the coming years.

I trust this brief is of help to municipal planning staff and council.

Sincerely

A handwritten signature in blue ink that reads "Donald C. Cole". The signature is written in a cursive style with a large initial 'D'.

Cc: Brox Company



September 22, 2025

Town Clerk  
1593 Four Mile Creek Road, P.O. Box 100  
Virgil, ON L0S 1T0  
[clerks@notl.com](mailto:clerks@notl.com)

**RE: Formal comment on Zoning By-law Amendment Application (ZBA-09-2025) related to 1096 Lakeshore Road ('Konzelmann Estate Winery'), Niagara-on-the-Lake  
OUR FILE 24267A**

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MHBC Planning has been retained by the Brox Company Limited (Ed Werner as principle), owner of the property addressed as 1104 Lakeshore Road, Niagara-on-the-Lake, to provide a professional planning opinion on the Zoning By-law Amendment Application (ZBA-09-2025) related to the adjacent lands addressed as 1096 Lakeshore Road. This letter is submitted as formal comment on the aforementioned application on behalf of the Brox Company Limited.

### **Context**

The Brox Company Limited owns the lands addressed as 1104 Lakeshore Road. This property includes vineyards that are farmed with the adjacent property to the east (1122 Lakeshore Road) and includes a dwelling with livestock facilities (i.e. unoccupied barns). The buildings on this property are located to the rear (north) of the vineyards, with the barn complex buildings being located approximately 30 metres from the gallery area proposed on the westerly adjacent lands (1096 Lakeshore Road) as a part of ZBA-09-2025 (see **Attachment 'A'**).

The lands owned by the Brox Company Limited, as well as the lands subject to ZBA-09-2025, are within a Prime Agricultural Area and more specifically are a part of a Speciality Crop Area as per Schedule 'F' (Agricultural Land Base) of the Region of Niagara Official Plan. Pursuant to Schedule 'A' (Land Use Plan) of the Town of Niagara Official Plan, the lands are primarily designated Agricultural, with a strip of land designated Conservation along Lake Ontario.

These properties are both within the Rural ('A') Parent Zone, with the property of 1096 Lakeshore Road having Special Exceptions (Section 21.A.42) pursuant to Zoning By-law 500A-74. Section 4.1 of the Zoning By-law provides that permitted uses in the Rural (A) Zone include a farm (including accessory buildings), a farm winery, and a family dwelling. The Special Exemptions (Section 21.A.42) applicable to 1096 Lakeshore Road provide permissions for the use of an Estate Winery on the

property with various site layout provisions and with the secondary uses<sup>1</sup> of a retail store, a hospitality room, and an agricultural market. The definition of an Estate Winery pursuant to the Zoning By-law is as follows:

*Estate Winery: means a lot on which buildings and structures are used for the making of wines produced from locally grown fruits and subject to the following criteria:*

- (1) all wines produced shall be made from locally grown fruit;*
- (2) all wines produced are to be from locally grown fruit crushed and fermented on site;*
- (3) all Estate Wineries shall have the capability to bottle all the wine produced on site.*

This definition is distinct from a “Farm Winery” under the Zoning By-law whereas a Farm Winery sources all fruit from the site, produces the wine on-site and bottles the wine on-site. These definitions are consistent with the respective definitions provided in the Town of Niagara-on-the-Lake Official Plan. Pursuant to Section 7.4(3) of the Town of Niagara-on-the-Lake Official Plan, all Estate Wineries shall be subject to a site-specific zoning by-law amendment to control their number and location within the municipality.

## **Overview of ZBA-09-2025**

Konselmann Winery (Jim Reschke as principal), owner of 1096 Lakeshore Road, retained Quartek Group Inc. to facilitate a Zoning By-law Amendment Application (ZBA-09-2025) to permit the use of an outdoor special events space as an on-farm diversified use (OFDU) on their property. The Concept Plan prepared by Quartek Group Inc. (dated June 6, 2025) illustrates that the proposed gallery area is planned to be located on the northeast corner of the site (utilizing the existing gazebo) to the rear of the dwelling on the property and that 85 new parking stalls primarily along the existing laneway will accommodate the event space. The “Planning Justification and Impact Analysis Report” (Quartek Group Inc., June 2025) provides that no permanent structures or paved areas are being proposed on site.

Section ‘E’ and Appendix ‘C’ of the Planning Justification and Impact Analysis Report provide the Applicant’s proposed Draft Zoning By-law Amendment (ZBA). The proposed ZBA seeks to amend the existing zone structure to include:

### *21.A.42-xx*

*Added Permitted Use: On-farm diversified Use - Special Events – Outdoor Hospitality*

- 1. Permitting the use of outdoor special event. Current zoning only allows indoor hospitality room.*
- 2. Increase the maximum total floor area for all secondary uses permitted to be from 636.892 sq.m to 1100 sq.m.*

To date, there have been no updates to publicly available submission materials and the Town Staff Report with direction on a decision has not been publicly released.

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<sup>1</sup> Uses permitted “as of right” and/or “secondary” pursuant to a Zoning By-law are not intended to permit a use in addition to, and separate from, an OFDU. This language generally pre-dates the OMAFA Guidelines on OFDUs. The OMAFA Guidelines do provide discounts to OFDU calculations for uses established before 2014, but do not discount them entirely.

## Provincial Direction for On-Farm Diversified Uses (OFDU)

The Provincial Planning Statement, 2024 (PPS) was issued under Section 3 of the *Planning Act* and provides policy direction on matters of provincial interest related to land use planning and development. Section 4.3.1 (General Policies for Agriculture) provides that an agricultural system approach is to be employed by planning authorities which includes the protection of the agricultural land base for long-term use for agriculture. Specialty crop areas are to be given the highest priority for protection.

Section 4.3.2 provides the following for permitted uses in agricultural areas:

- 1. In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses based on provincial guidance. Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on provincial guidance or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.*
- 2. In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.*
- 3. New land uses in prime agricultural areas, including the creation of lots and new or expanding livestock facilities, shall comply with the minimum distance separation formulae.*

The PPS provides the following definitions related to the above:

***Agricultural uses:*** means 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; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and housing for farm workers, when the size and nature of the operation requires additional employment.

***Agriculture-related uses:*** 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 uses:*** means uses that are secondary to the principal agricultural use of the property, and are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, uses that produce value-added agricultural products, and electricity generation facilities and transmission systems, and energy storage systems.

The Ontario Ministry of Agriculture, Food and Agribusiness (OMAFRA) provides the provincial standards for uses permitted in prime agricultural areas in the document entitled "Guidelines on Permitted Uses

in Ontario's Prime Agricultural Areas" (Publication 851, 2016). Section 2.3 of these Guidelines provides that the following criteria must be met to qualify as an OFDU (paraphrased):

1. Located on a farm.
  - OFDUs must be located on a farm property that is actively in agricultural use. These provisions do not apply to small residential lots.
2. Secondary to the principal agricultural use of the property.
  - Agricultural uses must remain the dominant use of the property, both spatially and temporally. Spatial limits are addressed below under the "limited in area" criterion. Temporal considerations apply to uses that are temporary or intermittent, such as events on an interim basis. Large-scale, repeated or permanent events are not OFDUs and should be directed to existing facilities such as fairgrounds, parks, community centres and halls, settlement areas or rural lands (page 18). Directions on new venues are provided in Section 3.2 (Limited Non-Agricultural Uses) of the Guidelines (including that land does not comprise a specialty crop area).
3. Limited in area.
  - This criterion is intended to minimize the amount of land taken out of agricultural production, ensure agriculture remains the main land use in prime agricultural areas, and limit off-site impacts to ensure compatibility with surrounding agricultural operations. The total land that is unavailable for agricultural production as a result of the use is to be factored into calculations, including parking, building, and septic areas. A lot coverage ratio is utilized in this criterion given the rationale that a larger lot would be able to accommodate a larger OFDU than a smaller property while meeting compatibility requirements. Areas of existing buildings (including those with an OFDU built prior to April 30, 2014) or reconstructed (in place) as well as existing laneways jointly used for agricultural purposes are discounted in these calculations. These Guidelines recommend that the standard for the acceptable area occupied by an OFDU is up to 2% of a farm parcel to a maximum of 1 hectare. If more than one OFDU is proposed on a property, the combined area of all OFDUs should be within the area and lot coverage guidelines. Intermittent OFDUs may have an area greater than the general recommendations. The Guidelines provide that "on-farm diversified uses that are proposed to grow beyond the area limits, either incrementally or otherwise, are not supported" (page 20).
4. Includes, but is not limited to, home occupations, home industries, agri-tourism uses and uses that produce value-added agricultural products.
  - See definition of OFDUs provided previously.
5. Shall be compatible with, and shall not hinder, surrounding agricultural operations.
  - Some uses that meet other OFDU criteria may not meet the compatibility criterion. The Guidelines provide the following example that speaks to this: uses that attract large numbers of people onto the farm for non-farm events or for recreational purposes could result in soil compaction on the farm itself, excessive noise and trespass issues that may be incompatible with surrounding agricultural operations (page 21). Considerations include:
    - i. Does not hinder surrounding agricultural operations;
    - ii. Appropriate to available rural services and infrastructure;
    - iii. Maintains the agricultural/rural character of the area;

- iv. Meets all applicable environmental standards;
- v. Cumulative impact of multiple uses in prime agricultural areas is limited and does not undermine the agricultural nature of the area.

Pursuant to the above, the proposal set forth pursuant to ZBA-09-2025 does not appear to conform to the “limited in area” criterion (Criterion 2 and 3) and has not demonstrated compatibility with surrounding agricultural operations (Criterion 5). The proposal is not categorized as an “intermittent” use pursuant to the above given that the use is regular and permanent in nature from May to September (e.g. not twice a year for a wine promotion event). Criterion 2 and 3 are discussed subsequently and Criterion 5 will be discussed in the next sub-section of this letter.

The calculations provided in the ZBA-09-2025 application submission do not appear to properly capture the coverage of the existing and proposed OFDUs. Namely:

- Existing OFDU area calculations neglected to capture the areas for landscaping, septic, and parking drive aisles (not shared/discounted for farm-purposes) to the west;
- Existing OFDU area calculations factored the septic to the north of the winery building into the agriculture-related use area instead of the OFDU area (constructed in 2015, following OFDU front addition and presumed to be associated with the same); and
- Proposed OFDU area calculations did not factor the drive-aisle for parking on the northeast arm where a farm lane does not currently exist.

MHBC has calculated the total footprint of OFDUs in accordance with the Guidelines and has included the map and calculations in **Attachments 'B' and 'C'**, respectively.<sup>2</sup> Nonetheless, the proposal exceeds the standard acceptable area limit of 2% by providing for a proposal that alone comprises approximately 2.4% of the land base. The existing OFDU comprises approximately 3% of the land base. The existing area as well as the combined area with the proposed use exceeds the standard area limits set out in the Guidelines.

Policy 4.1.7.5 of the Regional Official Plan provides that agriculture-related uses and OFDUs shall be consistent with the provisions of the PPS. Policy 4.1.7.7 of the Regional Official Plan generally considers the same criteria for evaluating proposed OFDUs as set out in the Guidelines, including that the use does not generate conflicting off-site impacts and that the scale is appropriate to the site. The proposal does not appear to meet the above provincial standards to be considered an OFDU and has not evaluated the provincial requirements to establish a non-agricultural use (non-OFDU) in a prime agricultural area (Section 3.2 of the Guidelines).

## **Compatibility**

Section 4.3.2 of the PPS provides that agriculture-related uses and OFDUs shall be compatible with and shall not hinder surrounding agricultural operations and that agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards. The intent of the

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<sup>2</sup> This calculation is very conservative. The parking, access and landscaped area directly in-front of the building was not included in the calculations given that it generally existed prior to the 2012 building addition which brought the space into closer alignment with the definition of an OFDU as opposed to an agriculture-related use. Discounts were also given to components established prior to 2014.

PPS and the OMAFA Guidelines is in part to ensure agriculture remains the principle use in prime agricultural areas and that normal farm practices are able to continue unhindered.

The submission materials associated with ZBA-09-2025 do not appear to have sufficiently assessed impacts to the agricultural operations on the adjacent lands, reviewed the compatibility of the proposal with surrounding agricultural uses, and have not provided mitigation measures for potential impacts off-site. Generally, the Planning Justification and Impact Analysis Report provides that the character of the area will be maintained because the use is setback from the road, the existing vegetated buffer along the property line with 1104 Lakeshore Road and the barns on 1104 Lakeshore Road will act as noise attenuation features and that “waves crashing along the shore should play an evident role in cancelling out the noise created by the guests” (page 27).

### ***A. Agricultural Character***

As previously discussed, the intent of the size-related standards within the OMAFA Guidelines is to allow larger lots to accommodate larger OFDUs given that they can reasonably accommodate such uses without generating as substantial of off-site impacts related to compatibility. The existing OFDU and agriculture-related uses on 1096 Lakeshore Road comprise a significant amount of the property (~3%). The use of an additional ~2.4% of the property for an outdoor event venue would further align the property with a commercial use as opposed to an agricultural use and would significantly expand the public interface on the property. This shift would contribute to the fundamental change of the rural character and landscape as a result of the increased land use intensity.

### ***B. Protection of Agricultural Uses and Normal Farm Practices***

The *Farming and Food Protection Act, 1998* provides that it is in the provincial interest that in agricultural areas, agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns. Section 2(1) of the *Act* provides that a farmer is not liable for nuisances for disturbances resulting from an agricultural operation carried on as a normal farm practice. Section 6(1) of the *Act* provides that municipal by-laws may not restrict normal farm practices carried on as a part of an agricultural operation.

Normal farm practices for vineyards could include the application of herbicides, application of fertilizers, mowing the vineyard floor, the use of bird control technologies such as bird-bangers (cannons) and the use of machinery (i.e. tractors) which may be disruptive to a public-facing establishment if it were to be in close proximity. The “Best Practices for On-Farm Diversified Uses” Study<sup>3</sup>, published by the University of Guelph, highlights that the most adverse effects on normal farm practices from OFDUs resulted from those that were public-facing, such as those in agri-tourism or with on-farm event venue business models (Page 185). The Study provided examples in relation to potential effects, including requests that neighbouring farming operations cease the application of herbicides and manure around the time of events.

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<sup>3</sup> Caldwell, W., Duesling, P., and Sousa, E.C. (2022). Guidelines on Permitted Uses as a Tool to Achieve Farmland Protection, Farm Diversification and Economic Benefit: Assessing effectiveness and identifying best practices. School of Environmental Design and Rural Development, University of Guelph.

The PPS requires that prime agricultural areas be protected for long-term agricultural use and the Guidelines provide that the discussion on impact mitigation for non-agricultural uses (Sections 3.1.3 and 3.2.4) may be applicable to achieve this objective for agriculture-related uses and OFDUs. Section 3.1.3 of the Guidelines provides that impacts may be short-term or long-term and may affect agricultural production, infrastructure, operations or a farmer's ability to carry out their farming business. Examples of potential impacts include:

- Loss of agricultural land;
- Increased traffic and safety risks for slow-moving farm equipment operators and people in passing vehicles;
- Nuisance complaints by new residents related to normal farm practices (may depend on wind direction, landforms, vegetation, etc.);
- Farmer concern over lighting, noise, dust and other changes in settlement areas that are incompatible with agriculture (also dependent on physical site attributes);
- New or increased minimum distance separation requirements that may restrict future development or expansion of livestock facilities;
- Trespassing, vandalism, pets at large and litter/garbage disposal on farm properties;
- Change in water quality or quantity; and
- Increased growth pressure on remaining agricultural lands.

The proposed gallery area as a part of ZBA-09-2025 is located approximately 75 metres from the vineyards on 1104 Lakeshore Road, with associated parking provided approximately 25 metres from these vineyards. The proposed gallery area is located approximately 30 metres from the nearest barn and approximately 75 metres from the dwelling on 1104 Lakeshore Road. The proposed uses have the potential to impact agricultural operations on 1104 Lakeshore Road as follows:

- The proximity of the proposed uses from these agricultural resources has the potential to generate nuisance complaints directed towards the owners of 1104 Lakeshore Road as a result of noise (operation of bird bangers, equipment, etc.), odour (composting, mulching, fertilizing, etc.), traffic concerns (conflicts between venue traffic and farm machinery) and safety concerns related to the potential drift of chemical applications;
- Events held in such close proximity may hinder the ability of active intensive agriculture to be conducted when necessary due to the exacerbation of nuisance conflicts described above;
- The agricultural use may be impacted by dust related to increased traffic on the adjacent property and in close proximity to the vineyards (noting that access is provided via a gravel/dirt laneway and shuttle of guests via a golf cart was also mentioned to support the proposed use at the Open House);
- Risk of potential trespass incidents may increase due to the scale of the public interface; and
- The agricultural use of the property has the potential to be impacted by noise given the proximity of the proposed uses to the property (including the desensitization of birds to noise) and the incompatibility of potentially housing livestock in the barns on the property in close proximity (~30 metres) to a noise generating source (i.e. gallery area).

The submission materials related to ZBA-09-2025 do not appear to have sufficiently considered the impacts related to the application and have not provided mitigation measures for the same. To this point, the submission materials identified that the existing vegetation, barns on 1104 Lakeshore Road,

and the sound of waves in Lake Ontario would sufficiently address noise concerns (if any). A noise study has not been provided to demonstrate the same and the submission materials do not appear to have sufficiently considered other potential impacts to the surrounding area.

### ***C. Minimum Distance Separation (MDS) Formulae***

The OMAFA provides the Minimum Distance Separation (MDS) Formulae set out in the PPS in “The Minimum Distance Separation (MDS) Document” (Publication 853, 2016). The intent of the MDS Document is to “prevent land use conflicts and minimize nuisance complaints from odour” (1).

Guideline #35 of the MDS Document provides that some agriculture-related uses and some OFDUs may exhibit characteristics that could lead to conflicts with surrounding livestock facilities and that it therefore may be appropriate for municipalities to require an MDS I setback to permit certain types of these uses (the definition of livestock facilities pursuant to this Document includes unoccupied livestock barns).

Section 7.4(2) of the Town of Niagara-on-the-Lake Official Plan provides that all new development on lands designated “Good Tender Fruit or Good Grape” in the Regional Policy Plan shall be subject to the MDS I requirements. Pursuant to the Region of Niagara Official Plan, the subject lands are within the Specialty Crop Area (replaces former “Good Tender Fruit or Good Grape” designation of preceding Official Plan).

The submission materials for ZBA-09-2025 have not included a review of the MDS requirements. At a minimum, the submission materials should include the application of the MDS Formulae for the nearby livestock facilities on 1104 Lakeshore Road (approximately 140 square metre unoccupied barn located approximately 30 metres from proposed gallery area). Further consideration may also be required for the livestock facilities on the adjacent property of 990 Lakeshore Road, particularly if the parking is configured along the west arm of the farm laneway, as shown at the Open House.

### **Functionality of Application**

The Concept Plan included with the submission materials for ZBA-09-2025 may have functionality concerns on-site related to the following:

- The Concept Plan currently shows a 5 metre laneway with parking on either side (spaces have a width of 2.75 metres). The existing laneway is approximately 5 metres wide and the grapevines are offset from the laneway by approximately 3 metres. The beginning of the cultivated soil associated with the grapevines is approximately 1 to 2.5 metres from the laneway. The parking configuration along either side of the laneway has the potential to result in soil compaction (impacting soil stability, drainage and potentially root systems) and damage to the grapevines associated with the proximity (i.e. incidental destruction). The potential conflicts with agricultural resources as a result of the access and parking configuration for the proposed use have not been considered in the submission materials;
- There is no apparent walking path or laneway from the parking areas to the proposed gallery area. It is anticipated that an accessible path will need to be maintained to access the use.

The location and composition of this path has not been illustrated in existing concept plans; and

- During the Open House related to the Application, it was proclaimed that washroom facilities would be provided for guests either via a mobile washroom trailer or by shuttling them to the existing washroom in the winery. An area has not been allocated for trailer parking in the event of a mobile washroom and capacity in the existing septic and well has not been demonstrated for additional demand.

Policy 4.1.7.9 of the Regional Official Plan encourages local area municipalities to utilize site plan control to regulate the impact of agriculture-related uses and OFDUs in relation to entrances, parking and loading facilities, signage, grading and storm water drainage, buffering and landscaping, and landscape protection. It is our opinion that the proposal should be required to undergo a public site planning process if it were to proceed to mitigate off-site impacts and to address the potential on-site concerns.

In addition to the above-mentioned functionality concerns, it is our opinion that sufficient site-specific regulations have not been provided as a part of the proposed zoning structure to limit and control any apparent incompatibility with the agricultural area. The use of Estate Wineries with special permissions for outdoor special events is typically regulated in terms of area for the use, hours of operation, number of permitted events, the prohibition on the use of amplified music/outdoor public address systems, and parking. Examples of such within the Town of Niagara include:

- By-law 500TJ-06 (21.A.144: 359 Line 4 Road, Cattail Creek Winery) which regulates the location and area for events, a maximum of four outdoor special events per year from April 15th to October 15th, no amplified music or public address system, outdoor activity to cease by 11:00 p.m, a maximum of 40 guests at each event, and a maximum of 1 event per weekend.
- By-law 500VN-10 (21.A.163: 1181 Lakeshore Road (Hinterbrook Winery) which regulates that all outdoor activity shall cease at 11:00 p.m., that no amplified music shall be permitted, event tents will be removed within twenty-four (24) hours of the event, an outdoor event tent shall be permitted between May 1st and October 31st, a maximum number of eight (8) events will be permitted each year, a maximum number of one hundred and fifty (150) guests are permitted for each event, a maximum of one (1) event is permitted at any one time, and that off street parking for the outdoor special event is to be provided on-site in accordance with the requirements of Section 3.19, Parking Space Requirements.

## **Closing**

The PPS provides for the overall protection of the agricultural land base for long-term use for agriculture, with specialty crop areas being given the highest priority for protection. OFDUs are to be compatible with, and shall not hinder, surrounding agricultural operations.

The OMAFA has provided the provincial standards for permitted uses in prime agricultural areas. To qualify as an OFDU, the use(s) must be limited in area and must meet compatibility criterion (among other criteria). As discussed in this letter, the proposal set forth pursuant to ZBA-09-2025 does not

appear to conform to the "limited in area" criterion (Criterion 2 and 3) and has not demonstrated compatibility with surrounding agricultural operations (Criterion 5) as follows:

1. The standard acceptable area occupied by an OFDU is up to 2% of a farm parcel to a maximum of 1 hectare. If more than one OFDU is proposed on a property, the combined area of all OFDUs should be within the area and lot coverage standards. The proposal exceeds the standard acceptable area limit of 2% by providing for a proposal that alone comprises approximately 2.4% of the land base. The existing OFDU comprises approximately 3% of the land base (combined area of all OFDUs should be within the area and lot coverage guidelines). Together, the OFDUs on the property would significantly exceed the provincial standard with this proposal.
2. OFDUs shall be compatible with, and shall not hinder, surrounding agricultural operations. The submission materials associated with ZBA-09-2025 do not appear to have sufficiently assessed impacts to the agricultural operations on the adjacent lands, reviewed the compatibility of the proposal with surrounding agricultural uses, and have not provided mitigation measures for potential impacts off-site. Namely:
  - a. The submission materials have not considered how the increase in intensity of uses and public-interface on the property will contribute to the fundamental change of the rural character.
  - b. The submission materials generally do not consider impacts to surrounding agricultural operations beyond that of noise and do not provide sufficient information to provide mitigation measures for the same.
  - c. The submission materials have not included a review of the MDS requirements (at a minimum, the submission materials should include the application of the MDS Formulae for the nearby livestock facilities on 1104 Lakeshore Road).

In addition to the above, it is our opinion that the proposal has not thoroughly addressed various site functionality concerns (i.e. parking location, servicing, etc.) and that sufficient regulations as a part of the ZBA are not being proposed to limit and control potential impacts to the surrounding agricultural uses.

It is our opinion that the proposal does not appear to conform to the provincial standards for permitted uses in prime agricultural areas and that the proposal has not demonstrated how it supports the provincial interest related to protecting the agricultural land base for long-term use for agriculture (i.e. compatibility).

Yours truly,

**MHBC**



Dan Currie, MA, MCIP, RPP, CAHP  
Partner



Rachel Mantel, MSc  
Senior Planner










cc. *John Federici, Senior Planner at the Town of Niagara-on-the-Lake*  
*john.federici@notl.com*

**A**

**Attachment A: Context Map**



### Attachment A - Context Map

- |   |   |
|---|---|
|  Subject Lands    | <b>Colour Code</b>  |
|  Barns            |  Agricultural Use          |
|  Parcels          |  Proposed OFDU             |
|   |  Existing OFDU (post 2014) |
|   |  Existing OFDU (pre 2014)  |
| <b>Distances from Barns</b>   |   |
|  to Property Line |   |
|  to OFDU Area     |   |

**B**

**Attachment B: OFDU Map**





## **Attachment C: OFDU Calculations**

**RE: OFDU Calculation  
OUR FILE 24267A**

Lot Area: 150,000 m<sup>2</sup>

Agricultural uses: dwelling (with septic to the rear), farm-equipment storage, vineyards, farm laneways.

Agricultural-related uses: fermenting and aging tanks/rooms, bottle shop, case storage, loading areas, office.

**On-Farm Diversified Uses Area Calculation<sup>1</sup>**

Parking, entrances and landscaping (existing prior to 2014, only located to the west and associated with the 2006 addition of hospitality space, including septic bed (3520 m <sup>2</sup> ))	50% Discount	1760 m <sup>2</sup>
Wine Store, Retail, Hospitality (existing prior to 2014, 476 m <sup>2</sup> )	50% Discount	238 m <sup>2</sup>
EXISTING OFDU PRE-2104 = 1998 m <sup>2</sup> (1.3%)		
Parking (2017 west addition)	100%	1,500 m <sup>2</sup>
Septic Bed (located to the north of building, added in 2015)	100%	1001 m <sup>2</sup>
EXISTING OFDU POST 2014 = 2501 m <sup>2</sup> (1.6%)		
EXISTING OFDU TOTAL = 4499 m <sup>2</sup> (3.0%)		
PROPOSED Parking (85 spaces)	100%	1793.2 m <sup>2</sup>
PROPOSED Gallery Area	100%	1862.4 m <sup>2</sup>
PROPOSED Use of Existing Gazebo	50% Discount	9.4 m <sup>2</sup>
PROPOSED TOTAL = 3665 m <sup>2</sup> (2.4%)		
<b>Total</b>		<b>8,164 m<sup>2</sup> (5.4%)</b>

<sup>1</sup> This calculation is very conservative. It does not include the gross floor area for the entire OFDU portion of the front building addition which is two storeys (the applicable site plan only provided a ground floor area). The parking, access and landscaped area directly in-front of the building was not included in the calculations given that it generally existed prior to the 2012 building addition which brought the space into closer alignment with the definition of an OFDU as opposed to an agricultural-related use. Furthermore, this calculation hasn't captured the landscape buffer between the parking and vineyards.



SULLIVAN | MAHONEY LLP  
LAWYERS

Via e-mail to: [John.federici@notl.com](mailto:John.federici@notl.com)

September 23, 2025

Reply to St. Catharines Office  
THOMAS A. RICHARDSON, C.S.

*Certified Specialist (Municipal Law – Local  
Government/Land Use Planning and Development)*

Town of Niagara-on-the-Lake  
1593 Four Mile Creek Rd,  
Niagara-on-the-Lake, ON L0S 1T0

**Attn: John Federici, Senior Planner**

Dear Mr. Federici:

**RE: NOTL No. ZBA-09-2025: 1096 Lakeshore Road, Niagara-on-the-Lake  
Our File No.: 101711**

The Statutory Public Meeting in this matter was held before the Committee of the Whole on September 9, 2025. At that time, I was the last of four (4) speakers to make submissions on behalf of Brox Company Limited. The purpose of this letter is to amplify the oral submissions made by this writer on September 9, 2025 which submission were supported by a PowerPoint presentation.

The intent of my submission was to point out that the subject property is not and has not been for many years, in compliance with the requirements of the Zoning By-law and with the requirements of eight (8) different Site Plan Agreements entered into between the Town of Niagara-on-the-Lake and Konzelmann Winery.

The Site Plan, provided with the application acknowledges that there are currently non-compliant with the Zoning By-law 500A-74 as amended. On the lower portion of the “Zoning Matrix” you will find that the last two items titled “Secondary Uses” bear the entry “Outdoor Event Area – not complaint.”

Further, as noted in the staff information report, you have received comments from the Ministry of Environment, Conservation and Parks. The Ministry requires that the applicant provide a report from their consulting engineers demonstrating that the increase in sewage flows from the proposed Special Events can be accommodated by the current sewage system. “This should be submitted and reviewed prior to any zoning approvals”. Yet the site has been used continually for the last 10 years for Special Events with no one determining whether, in fact, the sanitary sewage system on the site can handle those events. There have been events in which “porta-potties” have been used to support Special events, those porta-potties being lined up along the fence of the Brox Company Limited property.

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The Staff Information Report also notes that the Niagara Peninsula Conservation Authority requires the review and approval of any uses within the Lake Ontario hazard limits, permanent or temporary. The NPCA will require review and approval of such temporary structures. Again, it has been our clients experience that events have occurred on the proposed area utilizing temporary structures, without any approval of the Niagara Peninsula Conservation Authority.

The litigation, currently under way, initiated by Brox Company Limited against Konzelmann Estate Winery and against the Town of Niagara-on-the-Lake, has revealed the acknowledgment of the Town that it has known of the Zoning By-law infractions for years and has failed to take any action to enforce its By-laws. In fact, the President of Konzelmann Winery has stated that the Town informed them to continue with the illegal actions.

As noted by both yourself and this writer, the application submitted on behalf of Konzelmann contains a draft Zoning By-law amendment. That draft By-law amendment was to include the controls proposed by Konzelmann with respect to any approval granted on this application. The draft By-law contains no controls whatsoever.

The purpose of this portion of our submission is to point out that Konzelmann has failed to honour the terms of the current Zoning By-law. How can the neighbour such as Brox Company Limited, rely on any new controls imposed in the proposed Zoning By-law amendment? The alternative is that the approval not be granted or that it be granted for a very small number and size of events anticipating that Konzelmann will not honour the terms of the Zoning By-law.

In our PowerPoint presentation, at page 6, we listed 8 Site Plan Agreements which have been entered into by Konzelmann and the Town of Niagara-on-the-Lake between October 23, 1987 and February 3, 2017. In this writer's experience, it is very unusual for an estate winery to have 8 Site Plan Agreements. The reason for the 8 Agreements is this. The operation on the Konzelmann property has changed periodically. In order to accommodate new changes, the Site Plan Agreements also attempt to address failure to honour the terms of the preceding agreement. As with the Zoning By-law, Konzelmann has failed consistently to honour the Site Plan Agreements it enters into with the Town.

At page 7 of our PowerPoint presentation, we assembled a Site Plan History and Non-Compliance. We note that in the news media a representative of Konzelmann has complained that photos we have provided are out of date. Looking at the chart on page 7, we will point out specific infractions. The original agreement dated 1987 calls for lighting "not to interfere with adjacent property". Given the experience of the tenants in the residences immediately adjacent to the winery, in the 2005 agreement the requirement was tightened to require lighting "not to interfere with neighbours" and "cut off lighting". When those requirements were still not met, in the 2010 agreement, the Site Plan Agreement required "low-level cut off lights with motion detectors". None of those requirements have been met.

Similarly, the original agreement of 1987 required "all landscaping maintained and replaced". In the 2005 amendment, the agreement required that landscaping be "new and replaced". When those agreements of 1987 and 2005 were not complied with, the 2017 agreement required for landscaping, "landscape strip, continuous hedge row from front property line for length of building along east

property line”. As will be seen in photographs, not only does that landscape strip not exist, it has not existed for a number of years having been ripped out. (See Slide 14).

The original agreement of 1987 required parking “free of obstruction”. In the 1990 agreement the parking space requirement was increased from 18 spaces to 25 spaces. The agreement of 2003 required “parking and driveway free of obstruction” and “removed planting strip requirement because he already did it”. Immediately before the public meeting in September 2025, Konzelmann removed a picnic area which occupied a substantial portion of the required parking. We also provided photos showing the use of the parking area for an illegal market and for food trucks. The parking requirements have not been honoured.

The final portions of our PowerPoint presentation detailed an agreement entered into by Konzelmann and Brox. It was implemented by way of a liquor license, which limited outside events to two dates when live or recorded entertainment will be played.

Our slide presentation shows a conformation from the AGCO that this requirement is still in place. As with the zoning By-law and the Site Plane Agreement, Konzelmann has continually failed to honour the requirements of the licenses.

Also contained in our PowerPoint presentation are portions of the Town of Niagara-on-the-Lake Special Event Policy. The term “Special Event” was used in the application and in the submissions made by Konzelmann. It is our respectful submission that what is requested by Konzelmann does not meet the definition of “Special Event” as found in the policy. However, presuming for a moment that the proposal does meet the definition of “Special Event” we have noted on Slide 20, that in the Town’s Special Event policy, section 4, entitled “General Condition” contains the requirement at bullet 2 that “the applicant and the organization shall adhere to all existing Town policies, legislation, By-laws and regulations”. As noted in our PowerPoint presentation Konzelmann winery has not, throughout its existence, adhere to all existing By-laws, even when issues special event permits by the Town in an attempt to legitimize the events.

Our request at the public meeting was that this application be denied and that the applicant be required to bring its current usage into conformity with the existing Zoning By-laws and Site Plan Agreements before any further consideration is given to approving a Zoning By-law amendment to permit winery events outside of the winery building. The likelihood of honouring restrictions in any new Zoning By-law amendment is small.

Yours very truly,

**SULLIVAN, MAHONEY LLP**

**Per:**



**Thomas A. Richardson, C.S.**  
Thomas Richardson Legal  
Professional Corporation

TAR:th  
Enclosure

Via email: [grant.bivol@notl.com](mailto:grant.bivol@notl.com)

December 16, 2025

Reply to St. Catharines Office  
THOMAS A. RICHARDSON, C.S.

████████████████████  
████████████████████  
*Certified Specialist (Municipal Law – Local  
Government/Land Use Planning and Development)*

Mr. Grant Bivol  
Manager of Legislative Services / Town Clerk of Niagara-on-the-Lake  
1593 Four Mile Creek Rd  
Niagara-on-the-Lake, ON L0S 1T0

Dear Mr. Bivol:

**RE: Formal Comment on Revised Zoning By-law Amendment Application ZBA-09-2025  
Related to 1096 Lakeshore Road (Konzelmann Estate Winery) Niagara-on-the-Lake  
Our File No.: 101711**

We act as solicitors for Brox Company Limited and Ed Werner, the owner of property known municipally as 1104 Lakeshore Road, Niagara-on-the-Lake with respect to the above referenced Zoning By-law Amendment application. You will recall that we made submissions at the statutory public meeting in this matter on September 9, 2025. You will also recall that Mr. Werner lives adjacent to the area proposed to be used for the regular hosting of outdoor special events.

Revised submissions in support of the application have been submitted by Konzelmann Estate Winery (“Konzelmann”) to the Town’s Planning Department. This letter is intended to address those revised submissions. Mr. Dan Currie of MHBC Planning Consultants will also submit planning submissions in response to the revised application.

Our submissions, from a legal standpoint, are as follows. First, Konzelmann has knowingly ignored its existing zoning, site plan and provincial AGCO obligations over the last several years in carrying out the proposed use without permission. As an example, a recent attendance at Konzelmann reveals that a portion of the parking area is, as of the date of this letter, being used for a tented and screened

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facility apparently used for the consumption of food and wine. This is contrary to the Site Plan Agreement as well as the Zoning By-law.

As we have submitted previously, the current Tied House Licence issued by the AGCO, which has confirmed to be binding upon Konzelmann, incorporates an agreement entered into the Konzelmann and Brox which limited the number of “events” which could be held on the site. The AGCO has confirmed the need to honour the terms of this licence. The zoning permission sought by Konzelmann asks for a number of events that significantly exceeds that permission and is technically in breach of the AGCO’s licence.

The continual breach of the obligations imposed by the Zoning By-law, the site plan and the AGCO licence are the subject of an application presently before the Superior Court of Justice and scheduled to be heard in the first week of February. The Town is a party to that application and has responded to the court confirming the breaches of the zoning by-law.

As you will be aware the Town has ordered a review of its Special Events Policy which, I understand, is to be presented to Council within weeks. The Konzelmann application discusses its desire to have “Special Events” which requires an application for the Town’s present Special Events Policy. The use of the term “Special Events” in the application is confusing. We believe that the application is referring to “events” pursuant to permission under the Zoning By-law. In our opinion, what is requested are not “Special Events” addressed in the Special Events Policy but Winery Events as contemplated through Zoning By-law permissions given to other estate wineries. This confusion should be clarified before the application can be considered in any meaningful way.

It is our respectful submission that this application should be denied, or, at the very least, deferred until the following events have occurred:

1. The decision of the Superior Court in the application of Brox v. Konzelmann has been rendered;
2. The Town has completed a full review of its Special Events Policy and a new policy or by-law has been established;
3. The applicant has clarified whether it is seeking “Special Events” pursuant to the Town’s policy or “winery events” codified in a zoning amendment;
4. The applicant has brought the property into full conformity with the current site plan requirements; and
5. The applicant addresses the Tied House Licence conditions with the AGCO and provides written confirmation that the uses the Town is asked to approve does not contravene such license. At the very least, the Town should circulate the application to the AGCO and ask it to address the issue substantively.

A deferral of this application should not create any hardships for Konzelmann as their legal counsel, in the Superior Court application, has advised that there are no events being booked for 2026.

Our request is that the application be denied. Alternatively, at the very least, the application should be deferred until those clarifications, listed above have been achieved.

Yours very truly,

**SULLIVAN, MAHONEY LLP**  
**Per:**

A handwritten signature in blue ink, appearing to read "T. Richardson".

**Thomas A. Richardson, C.S.**  
Thomas Richardson Legal  
Professional Corporation

TAR:th  
Enclosure  
cc – Ed Werner  
cc – John Federici  
cc – Dan Currie

## John Federici, MCIP, RPP

---

**From:** Eman G <[REDACTED]>  
**Sent:** March 11, 2026 2:31 AM  
**To:** Clerks; John Federici, MCIP, RPP  
**Subject:** Konzelmann File and reapplication.

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**CAUTION:** This email originated from outside the Town of Niagara-on-the-Lake. Use caution when clicking on a link or opening an attachment, unless you were expecting it or know that the content is safe. Forward the email to IT to validate.

Hello to all and John,

I would like to request to speak at the Council Meetings. I have spoken in the past to this issue about the extra events at Konzelmann Winery.

I am concerned that Lakeshore Road, with all its history and beauty could potentially turn into a massive "wine event cultural centre".

Please let me know when the next meeting is for this topic.

Regards  
Emanuele

Sent from [Outlook](#)

**SULLIVAN | MAHONEY** LLP  
LAWYERS

Via email: [John.federici@notl.com](mailto:John.federici@notl.com)

March 11, 2026

Reply to St. Catharines Office  
THOMAS A. RICHARDSON, C.S.

*Certified Specialist (Municipal Law – Local  
Government/Land Use Planning and Development)*

Town of Niagara-on-the-Lake  
1593 Four Mile Creek Rd,  
Niagara-on-the-Lake, ON L0S 1T0

**Attn: John Federici, Senior Planner**

Dear Mr. Federici:

**RE: 1096 Lakeshore Road (ZBA-09-2025)  
Our File No.: 101711**

As you are aware we act as solicitors for Brox Company Limited with respect to the above referenced application.

At the public meeting held on September 8, 2025 submissions were made the Council and Committee on behalf of Brox Company Limited by Mr. Ed Werner, Dr. Don Cole, Mr. Dan Currie and this writer. Each of those submissions were supported by a PowerPoint presentation.

By letter dated September 23, 2025 provided written comments by the same presenters, Mr. Ed Werner, Dr. Don Cole, Mr. Dan Currie and myself.

You have advised that a revised submission has been made on behalf of the applicant. We now enclose herewith submissions on the revised application made by, Dr. Don Cole, Mr. Dan Currie and myself. Each of those submissions contain our previous written submissions as well.

We will await your advice as to when a recommendation report will be submitted to council. It is our intention to request an opportunity to address council on the revised application and these revised submissions. Thank you in advance for your cooperation and assistance in this matter.

Yours very truly,

**SULLIVAN MAHONEY LLP**

**Per:**



**Thomas A. Richardson, C.S.**  
Thomas Richardson Legal  
Professional Corporation

TAR:th

Enclosure

Cc – Dan Currie

Cc – Dr. Donald Cole

Cc – Ed Werner

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**SULLIVAN | MAHONEY** LLP  
LAWYERS

Via email: [John.federici@notl.com](mailto:John.federici@notl.com)

March 11, 2026

Reply to St. Catharines Office  
**THOMAS A. RICHARDSON, C.S.**

*Certified Specialist (Municipal Law – Local  
Government/Land Use Planning and Development)*

Town of Niagara-on-the-Lake  
1593 Four Mile Creek Rd,  
Niagara-on-the-Lake, ON L0S 1T0

**Attn: John Federici, Senior Planner**

Dear Mr. Federici:

**RE: 1096 Lakeshore Road (ZBA-09-2025)  
Our File No.: 101711**

As you are aware we act as solicitors for Brox Company Limited, the owner of lands lying immediately to the east of the lands which are the subject of the above referenced application. You will recall that we made submissions to the public meeting on this matter held on September 9, 2025.

It is our understanding that the application which was considered at the public meeting on September 9, 2025 has been revised and resubmitted to the Town for consideration. We have assumed that staff will prepare a report to be presented to the Town council and Planning Committee, based on the revised application. The purpose of this letter is to make further submissions to you, prior to the preparation of the planning report, in order that you will have our latest submissions in hand. We will be requesting an opportunity to speak to the council and committee when the staff recommendation report is submitted.

Our request will be that this application not be considered until the applicant brings the property, in its current form into compliance with the Zoning By-law now in force and in conformity with the current site plan agreements registered on the property.

Brox Company Limited has commenced an application for an injunction against Konzelmann Vineyard Inc. The court has now rendered its decision. Attached hereto is a copy of an Order issued on February 3, 2026. I direct your attention to paragraph 2 of the Order which reads as follows:

“2. This Court orders, by way of a permanent injunction restraining Konzelmann and any agent, servant, employee, assign, officer, director or anyone else acting on its behalf, and any or all persons with notice of this injunction, from conducting or permitting to be conducted

**Client Committed. Community Minded.**

40 Queen Street, P.O. Box 1360, St. Catharines, ON L2R 6Z2 t: 905.688.6655 f: 905.688.5814

7085 Morrison Street, Niagara Falls, ON L2E 7K5 t: 905.357.3334 f: 905.357.3336

[sullivanmahoney.com](http://sullivanmahoney.com)

on the Subject Lands, any use not permitted by the Zoning By-law, as may be amended, including an outdoor event space”.

It is our submission that the site currently does not comply with the Zoning By-law in a number of respects. We will set out, below, details of those infractions of the Zoning By-law.

It is our submission that no approval should be given for any amendment to the Zoning By-law until the site is brought into conformity with the terms of the current Zoning By-law.

Similarly, we are requesting that no approval for an amendment to the by-law be given until the site is brought into conformity with the present site plan agreements registered on the property.

These requests are made based on past history. Our file indicates that we have been making submissions to the Town with respect to failures to comply with the Zoning By-law and with site plan agreements since at least 2015.

The following represent infractions in both the site plan agreement and the Zoning By-law of which we are aware.

1. The site plan agreement dated January 24, 2005 and registered on February 17, 2005 as instrument #NR55409, Schedule “B” contains a notation pointing to the side yard between the winery and the Brox property line which states that “no storage in easterly side yard”. There is a substantial amount of outdoor storage which occurs continually, between the Konzelmann Winery and the Brox boundary. See Attachment 2, Tab 1
2. The site plan agreement provided as part of the above referenced application shows a setback on the east side of 5.7m between the edge of the winery building and the property line with the Brox lands to the east. The site-specific by-law for Konzelmann property, zoning by-law 500A-74, Section 21.A.42, special exception 42, subsection 2(d), requires that the Estate Winery shall be subject to special provisions, including a minimum building setback from all property lines of 15m (49.2ft). The site plan agreement January 16, 2017 and registered on February 3, 2017 as instrument #NR438195 Schedule “B” shows this area of the building as farm equipment storage which does not require the increased setback. Mr. Werner advises that when added to the winery this portion of the building was shown as farm equipment storage but has since been enclosed and converted to a winery which fails to meet the setback requirements of the Zoning By-law. This is shown in Attachment 2, Tab 2
3. The site plan agreement dated January 16, 2017 and registered on February 3, 2017 as instrument #NR438195, Section 2, provides that: “as shown on Schedule “B”, a landscape strip shall be provided between the eastern most driveway with loading ramp along the east property line and the adjacent property to the east. The landscape strip shall consist of a continuous hedgerow of pyramid oaks or similar tree, or shrub greater than 1m in height which provide sufficient screening year-round. The hedgerow shall extend from the front property line as far as the length of the building along the east property line in order to provide natural

screening for adjacent uses”. As shown in Attachment 2, Tab 3 a substantial portion of that landscape strip does not exist and in fact has been paved.

4. The site plan agreement dated January 24, 2005, and registered on February 17, 2005 as instrument #NR55409, Section 8 provides as follows: “The owner agrees that views from the viewing area located within the entrance tower will be restricted so that the views will be directed to the lake so it is not to overlook the residential property to the east”. This provision was specifically included at the request of Brox in order to prevent overlook into a residential home on the Brox property, which home has now been demolished due to a failure to comply with this requirement. See Attachment 2, Tab 4
5. Zoning By-law 500A-74, Section 21.A.42, special exception 42, Section 3 permits the following secondary uses: (a) the retail sales of wine; (b) a hospitality room; (c) an agricultural market. The site has been and continues to be used for the service of meals prepared on the premises. Such use is not permitted. The court order prohibits such use from occurring. The by-law amendment sought in this application does not seek approval for a restaurant or other forms of meals served. A viewing platform has now been enclosed with a dome where meals are serviced. Meals are also being served in a pavilion on the parking lot. See Attachment 2, Tab 5
6. The site plan agreement dated January 24, 2005 and registered on February 17, 2005 as instrument #NR55409, Section 5 provides as follows: “Lighting of the land, parking areas, driveways and/or subject building shall be directed in such a way and be of an intensity so as not to interfere with adjacent property and the travelling public. For this purpose, “cut-off” lighting shall be used for all exterior lighting of the subject property to a design and specification subject to the approval of the Director of Planning and Development Services”. The lighting on site has not been directed in such a way as to not interfere with adjacent properties and the travelling public as required and shines directly onto the Brox property. See Attachment 2, Tab 6
7. The site contains two (2) existing septic beds which are shown on Schedule “B” to the site plan agreement dated January 16, 2017 and registered on February 3, 2017 as instrument #NR438195. The larger septic bed is located to the north of the existing winery building and runs parallel to the Brox boundary. The existing septic field is shown on the site plan provided in support of the above referenced application. The Werner property has suffered overflows from the large septic bed within the last two years. This system must be inspected to determine its current capacity and brought into safe operation before any additional demand is made on it. An inspection should be undertaken to determine the current capacity and operation of the existing septic system. See Attachment 2, Tab 7.
8. By-law 500A-74, Section 21.A.42, special exception 42, Section 3, specifies there shall be off street parking for the named secondary uses on the basis of one parking space for every 18.5sqm (199 sq. of floor area devoted to the secondary use). Areas of the required parking are occupied by the pavilion referenced above for the service of food. Areas of parking have also been used for “pop-up markets” and an assembly of food trucks. The current required parking areas are shown on Schedule “B” to the site plan agreement dated January 16, 2017

and registered on February 3, 2017 as instrument #NR438195. There currently exists a pavilion in which meals are served as well as an observation deck which is now covered with a dome and also used for the serving of meals. Both of these facilities occupy parking as shown in Schedule "B" to the said site plan agreement. These uses are not permitted in the current zoning by-law, nor is their approval sought in the current application. See Attachment 2, Tab 8.

Our research indicates that this Estate Winery has been the subject of a) site plan agreement and seven (7) amendments since 1987. As noted above the property does not conform with the current requirements of the site plan agreements and with the requirements of the current zoning by-law. These amendments have been made to escape non-conformity when raised on behalf of Brox. But in each case further non-conformity arises with the new requirements.

Further, as noted in our earlier submissions, in September, Konzelmann continues to ignore an agreement entered into with our client and included in the licence issued by the AGCO. The court addressed this failure as well. See Attachment #1. It is the intention of Brox to seek a finding of contempt of court if Konzelmann does not address the non-compliance with the current zoning by-law. The current application does not address the failures of Konzelmann to comply with the existing by-law. Approval of this new application will only add to new uses to a property not in conformity with the existing zoning by-law and site plan agreements.

It is our respectful request that no change to the Zoning By-law be considered until the property is brought into conformity with the current requirements of the Zoning By-law and of the site plan agreements. Failure to do so will result in a further site plan amending agreement to rationalize new uses on the property, while the property does not conform with the present requirements.

Yours very truly,

**SULLIVAN MAHONEY LLP**

**Per:**



**Thomas A. Richardson, C.S.**

Thomas Richardson Legal  
Professional Corporation

TAR:th  
Enclosure  
Attachment 1 Superior\Court Order  
Attachment 2 Photos  
cc – Ed Werner  
cc – Dan Currie  
cc – Dr. Cole

# ATTACHMENT 1

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE ) TUESDAY, THE 3rd DAY  
JUSTICE A. J. OHLER ) OF FEBRUARY, 2026

BETWEEN:

BROX COMPANY LIMITED

Applicant

and

KONZELMANN VINEYARDS INC.

Respondent

and

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

Respondent



**ORDER**

**THIS APPLICATION** was heard this day at St. Catharines, Ontario, this order being on consent, and with decision on the balance of the application reserved;

**UPON READING** the Application Record, the Applicant’s Factum, the Applicant’s Book of Authorities, the Applicant’s Reply Factum, the Affidavit of Jim Reschke, sworn December 3, 2024, the Affidavit of Kirsten McCauley sworn November 29<sup>th</sup>, 2024, the Responding Application Record of The Corporation of the Town of Niagara-on-the-Lake (“**Town**”), the Town’s Factum, and the Town’s Book of Authorities, and upon hearing the submissions of Counsel for the Applicant and Respondents:

1. **THIS COURT DECLARES** that the Respondent, Konzelmann Vineyards Inc. (“**Konzelmann**”) during the years 2024 and 2025 used lands known municipally as 1096 Lakeshore Road, in the Town of Niagara-on-the-Lake, Ontario (“**Subject Lands**”) for outdoor events, that was contrary to the permitted uses of the Town of Niagara-on-the-Lake

Zoning By-law (“**Zoning By-law**”);

2. **THIS COURT ORDERS**, by way of a permanent injunction restraining Konzelmann and any agent, servant, employee, assign, officer, director or anyone else acting on its behalf, and any and all persons with notice of this injunction, from conducting or permitting to be conducted on the Subject Lands, any use not permitted by the Zoning By-law as may be amended, including an Outdoor Event Space;
3. **THIS COURT DECLARES** that Konzelmann have used the Subject Lands for outdoor events in a manner inconsistent with the approved site plan agreement between Konzelmann and the Town;
4. **THIS COURT ORDERS** by way of a permanent injunction restraining Konzelmann and any agent, servant, employee, assign, officer, director or anyone else acting on its behalf, and any and all persons with notice of this injunction, from conducting or permitting to be conducted on the Subject Lands, any use inconsistent with the approved site plan agreement between Konzelmann and the Town;
5. **THIS COURT ORDERS** by way of a permanent injunction restraining Konzelmann or any agent, servant, employee, assign, officer, director or anyone else acting on its behalf, and any and all persons with notice of this injunction, from conducting or permitting to be conducted on the Subject Lands, any use that is inconsistent with any license that may be issued by the Alcohol and Gaming Commission of Ontario;

6. **THIS COURT ORDERS** that this Order does not apply in any way against the Town, its employees and agents and reserves its decision on any relief against the Town.

Date of Issuance:  
February 14, 2026  
Registrar

Alison Price  
Digitally signed  
by Alison Price  
Date: 2026.02.14  
09:19:56 -05'00'



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Ohler, J.

**BROX COMPANY LIMITED**  
*Applicant*

v. **KONZELMANN VINEYARDS INC et al.**  
*Respondents*

Court File No.: CV-24-00062358-0000

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
ST. CATHARINES

**ORDER**

**SULLIVAN MAHONEY LLP**

Lawyers

40 Queen Street, P.O. Box 1360  
St. Catharines, ON L2R 6Z2  
Tel: 905-688-6655

**Thomas A. Richardson (LSO No. 13114D)**  
tarichardson@sullivan-mahoney.com

**J. Patrick Maloney (LSO No. 54063D)**  
pmaloney@sullivan-mahoney.com

Lawyers for the Applicant/Moving Party

# ATTACHMENT 2

TAB 1









TAB 2





TAB 3







TAB 4





TAB 5







VINEYARD  
DOME

KOLUMBIENWINE  
KOLUMBIENWINE

# Konzelmann Estate Winery

J Jacqueline kovacich

Photo - Oct 2021



Google

Konzelmann Estate Winery

T Tariq Bethune

Photo - Jul 2021



Google

TAB 6





TAB 7









TAB 8





Konzelmann Estate Winery


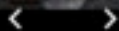
 Brad Guilani

Photo · Oct 2021



Konzelmann  
Estate



Donald C Cole MD, DOHS, MSc, FRCP(C)  
Occupational, Environmental, & Public Health Medicine Consultant  
Emeritus Professor, Dalla Lana School of Public Health, University of Toronto  
243 Macdonell Ave, Unit 3, Toronto, ON, M6R 2A9 [REDACTED]

**9 Mar 2026 Follow up to written brief of 2025 Sept 19**

To: Mr. John Federici, MCIP, RPP, Senior Planner, Town of Niagara-on-the-Lake  
Re: Section D.10 of the revised application by Konzelmann Estate Winery

I was glad to see that the proponent recognized that “each property with agricultural operation....is *bound to* have a spray operation on-site *and associated residues* given the use of land for vineyard.” [italics mine] and that “safety of guests has always been of utmost priority for Konzelmann Winery throughout.”

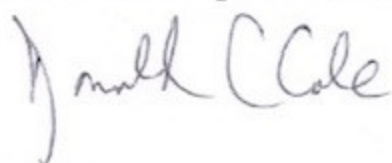
Section D.10 notes the applicable rules flowing from the Ontario Pesticides Act and its regulations which address exposure of farmers, operators and agricultural workers and potential contamination of the environment. However, the regulations do not explicitly contemplate wedding and other event guests on a property with an agricultural operation. Hence, they do not deal well with exposure of other people in the interior of a vineyard. Nor would most pesticide manufacturers or distributors contemplate guests visiting the interior of an agricultural property.

The section indicates that pesticide application “will not occur during events to ensure public safety”, eliminating guest exposure to pesticide drift. However, it does not address residues of sprays on grape vines, grass, and laneway soil. All pesticides have a period in which no-one should be in contact with sprayed areas or plants, called a re-entry interval (REI). Many are in days, and a substantial number are in weeks after spraying.

Currently, signs between the existing Konzelmann parking lot and vineyard explicitly warn visitors “Please Do Not Enter Vineyard” – thought these lack date of application and contact information, as is done for pesticide applications in most public locations. Further, the revised application plans for guests parking and walking in the active vineyard area where they would likely have contact with residues on grass and soil, even if products were applied days before. Some recognition of this exposure is needed, ideally with a program of residue testing set up with a reputable laboratory e.g. the Agricultural & Food Laboratory of the University of Guelph.

Given existing information on pesticide hazards (see my 2025 Sept 19 written brief), we had suggested the proponent contract for a risk assessment to consider the products used, REIs, and vulnerable populations including pregnant women and children. Such a risk assessment should more adequately assess potential for affecting guest safety and health.

I trust this update will be helpful to municipal planning staff and council. Sincerely



Cc: Brox Company

**PLEASE  
DO NOT  
ENTER  
VINEYARD**

  
konzelmann  
ESTABLISHED 1872



March 11, 2026

Town Clerk  
1593 Four Mile Creek Road, P.O. Box 100  
Virgil, ON L0S 1T0  
[clerks@notl.com](mailto:clerks@notl.com)

**RE: Formal comment on Revised Zoning By-law Amendment Application (ZBA-09-2025) related to 1096 Lakeshore Road ('Konzelmann Estate Winery'), Niagara-on-the-Lake  
OUR FILE 24267A**

---

MHBC has been retained by the Brox Company Limited (Ed Werner as principle), owner of the property addressed as 1104 Lakeshore Road, Niagara-on-the-Lake, to provide a professional planning opinion on the Zoning By-law Amendment application (ZBA-09-2025) for the adjacent Konzelmann Estate Winery lands addressed as 1096 Lakeshore Road. This letter is submitted as comment on the revised application and follows our previous comments of September 22, 2025 and December 16, 2025 (attached) on the applicant's earlier submissions.

Based on our review of the February 2026 revised application materials, our comments are as follows:

1. The revised proposal is not consistent with the applicable provincial guidance for establishing on-farm diversified uses (OFDUs) in a prime agricultural area (as directed by Section 4.3.2 of the Provincial Planning Statement (PPS, 2024)). Specifically, the proposal continues to exceed the standard acceptable area of 2% of a farm parcel for an OFDU and the application does not demonstrate how the impacts of exceeding the 2% land area criterion can be mitigated or are justified;
2. The revised proposal continues to have potential site functionality issues such as the location of parking and suitability of sanitary sewer facilities; and
3. Additional regulations should be included in the site specific Zoning By-law Amendment to limit and control potential impacts to agricultural uses.

The following sections of this letter provide more detailed information and rationale for the opinion stated above.

## **Provincial Direction for On-Farm Diversified Uses (OFDU)**

The establishment of On-Farm Diversified Uses (OFDU) is guided by section 4.3 of the Provincial Planning Statement (PPS, 2024) and by provincial guidelines contained in "Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas" (Publication 851, 2016, OMAFA). Both of these were reviewed in detail in our previous comments (see attached).

The primary policy objective of the PPS regarding OFDUs is that OFDUs are permitted in prime agricultural areas but they must be compatible with and not hinder the agricultural use of agricultural lands. The Guidelines provide clear direction that the primary way in which compatibility is to be ensured is by limiting the scale and size of OFDUs to 2% of the total land area of the agricultural parcel within which they are proposed to a maximum of one hectare, whichever is less.

The applicant's most recent revised submission (February 2026) identifies that the total On Farm Diversified Uses (which includes the already permitted OFDUs as well as the proposed Outdoor Events area) will comprise 2.7% of the total land area of the Konzelman parcel. It is not clear from the revised Planning Justification Report why it is necessary to exceed the 2% guideline. Nor is it clear that exceeding the 2% guideline will result in development that is compatible with and will not hinder the agricultural uses and normal farm practices.

From our review of the revised application, it appears that the exceedance of the 2% guideline is due to the additional parking area located within the vineyard. This proposed additional parking extends into the agricultural area because the parking is needed to support the scale of the proposed Outdoor Events area which is identified as being a maximum of 132 people.

The 35 proposed parking spaces that are located within the vineyard is likely to have an impact on agricultural uses and disrupt normal farm practices. This because the scale, frequency and timing of the proposed outdoor events at 132 people, 24 times per year from May 1 to October 31 is likely to disrupt the timing of things such as pesticide application and the loss of vines or vineland to widen the existing laneway to accommodate two rows of parking and a through lane. As described in our previous letter, the scale and frequency of the outdoor events may also result in indirect impacts to normal farm practices on the adjacent lands because the landowner would modify agricultural practices so that the noise of tractors or bird cannons or the smell of pesticides or manure, for example, do not impact the weddings or other outdoor events on the subject lands.

Reducing the scale of the proposed outdoor events such that the parking within the vineyard is not needed would be an appropriate method of ensuring that agricultural impacts would be managed properly.

## **Functionality of Application**

The Concept Plan included with the revised February 2026 submission materials for ZBA-09-2025 has made a number of changes to the concept plan from earlier versions. We understand that should the ZBA be approved, site plan approval would also be required. We have reviewed the updated concept plan and recommend that staff consider the following.

1. Vehicle parking

For the reasons described above, the proposed 35 car parking spaces within the existing vineyard is problematic. These spaces should be removed and either relocated to the parts of the property that are not in agricultural use or the scale of the outdoor events and the related maximum number of people permitted should be reduced.

2. Sanitary services

It is not clear from the materials submitted with the revised submission that the existing sanitary sewer services can accommodate the increased number of people that would be on site during the proposed outdoor events. The provision of services is typically addressed during the site plan approval process. However, since it is directly related to the number of people attending outdoor events and this number is to be regulated by the site specific bylaw, the applicant should either demonstrate before the site specific zoning bylaw is approved that appropriate sanitary sewer service can be provided, or the Town should apply a holding provision to the site specific ZBA that would require demonstration of servicing.

## **Site Specific Regulations**

The revised submission of February 2026 provides an updated draft site specific zoning bylaw. In our previous submissions we had commented that the applicant's had not proposed regulations to govern the proposed outdoor event use. We have reviewed the draft bylaw in the February 2026 submission and note that several regulations are now proposed. Recommended revisions and additions are as follows:

1. Revise clause 5 (d) to specifically state the maximum area for each permitted secondary use. It appears that this clause is carrying over the regulations for maximum floor area from the existing bylaw. However, combining the area for both outdoor and indoor hospitality events makes it less clear than it could be.
2. Clause 7 c) provides a definition for Agri Tourism, yet this use is not identified as one of the permitted secondary uses. It's not clear if the applicants are proposing additional agri tourism uses. If so, this should be clarified in the application and appropriate regulations applied.

3. Clause 8 should include regulations prohibiting amplified sound and outdoor lighting in the outdoor event area. The restriction on amplified sound is common within other site specific bylaws approved by the Town and would be appropriate here. Similarly, the proposed regulations state that the outdoor events shall cease at 8 pm and therefore, there would be no need for outdoor lighting – which would reduce one of the potential impacts on adjacent lands.
4. Clause 8 iv. Revising this regulation to require all outdoor activities to cease at 8 pm rather than sunset would make the bylaw regulations consistent and easier to enforce.
5. Clause 8 v. and vii. Since each event is defined as occurring on one day and there are a maximum of 24 events permitted, the regulations should be clearer about what constitutes an outdoor event. For example, the draft regulations state that wedding rehearsals (which are typically on a different day than the wedding) are not counted as one of the permitted events. However, in some cases one person’s wedding rehearsal is bigger than another person’s wedding. There needs to be clarity in the bylaw that any type of outdoor event that requires the use of the outdoor event space is counted as one of the 24 permitted events. Otherwise, there is no ability for the Town to enforce this regulation.

We also note that the outdoor events are defined in regulation 8 v. of the draft bylaw as having a duration of one day. At the same time, the description of the proposed regulations on page 27 of the Planning Justification Report identifies that outdoor events would run for 2 hours. We suggest that the Town should consider this discrepancy and determine how best to regulate the time frame for outdoor events.

6. A provision to ensure sufficient and appropriate off-street parking is provided should be included in the regulations. If sufficient parking cannot be provided, then regulation 5 g) should be modified to reduce the maximum number of guests.
7. A Holding (H) provision should be applied to the site-specific bylaw until Site Plan Approval is granted, particularly given the potential site-functionality issues described earlier.

## **Closing**

Based on our review of the February 2026 application, there are still some issues related to the proposed outdoor event use. To address these issues the Town should request that the applicant provide appropriate justification and analysis that supports the scale of the proposed OFDU at 2.7% of total land area, or alternatively, that the scale of the outdoor events be reduced so that the parking

is appropriately located. In addition, should the application be recommended for approval, the regulations in the proposed site specific bylaw should be revised as described above to ensure that the bylaw is clear and enforceable.

Yours truly,

**MHBC**

A handwritten signature in cursive script that reads "Dan Currie".

Dan Currie, MA, MCIP, RPP, CAHP  
Partner

*cc. John Federici, Senior Planner at the Town of Niagara-on-the-Lake  
Ed Werner, Brox Company Limited  
Tom Richardson, Sullivan Mahoney LLP*

**A**

**Attachment A: December 2025 Letter**



December 16, 2025

Town Clerk  
1593 Four Mile Creek Road, P.O. Box 100  
Virgil, ON L0S 1T0  
[clerks@notl.com](mailto:clerks@notl.com)

**RE: Formal comment on Revised Zoning By-law Amendment Application (ZBA-09-2025) related to 1096 Lakeshore Road ('Konzelmann Estate Winery'), Niagara-on-the-Lake  
OUR FILE 24267A**

---

MHBC Planning has been retained by the Brox Company Limited (Ed Werner as principle), owner of the property addressed as 1104 Lakeshore Road, Niagara-on-the-Lake, to provide a professional planning opinion on the Zoning By-law Amendment application (ZBA-09-2025) and revised materials (November 2025) related to the adjacent Konzelmann Estate Winery lands addressed as 1096 Lakeshore Road. This letter is submitted as comment on the revised application and follows our previous comments (dated September 22, 2025) on the original application.

Based on our review of the revised application materials, our comments are as follows:

1. The revised proposal is not consistent with the applicable provincial guidance for establishing on-farm diversified uses (OFDUs) in a prime agricultural area (as directed by Section 4.3.2 of the Provincial Planning Statement (PPS, 2024)). Specifically, the proposal continues to exceed the standard acceptable area of 2% of a farm parcel for an OFDU and does not demonstrate compatibility with surrounding agricultural operations;
2. The submission materials have not included a review of the Minimum Distance Separation (MDS) requirements to demonstrate that surrounding agricultural operations are able to pursue agricultural practices without impairment or inconvenience;
3. The revised proposal continues to have potential site functionality issues (i.e. location of parking and access); and
4. The proposal does not provide appropriate regulations as a part of the Zoning By-law Amendment (ZBA) to limit and control potential impacts to the surrounding agricultural uses.

It is our opinion that the applicant has not demonstrated that the application is consistent with the provincial standards for OFDUs in prime agricultural areas and has not demonstrated how it supports the provincial interest related to protecting the agricultural land base for long-term use for agriculture (i.e. compatibility). Therefore, in our opinion, it is premature to approve the application. We recommend that Council deny the application for the reason that the applicant has failed to demonstrate that the proposed outdoor event use is consistent with provincial policy.

Should Council decide to approve a ZBA to allow outdoor events on the Konzelmann property, we recommend that they be limited in area, duration, frequency and number of people since it has clearly not been demonstrated that the new OFDU proposed by the applicant can be accommodated without undue impact on agricultural lands and interests.

The following sections of this letter provide more detailed information and rationale for the opinion stated above.

### **Provincial Direction for On-Farm Diversified Uses (OFDU)**

Section 4.3.1 (General Policies for Agriculture) of the Provincial Planning Statement (PPS, 2024) provides that the agricultural land base shall be protected for long-term use for agriculture. Section 4.3.2 (Permitted Uses) of the PPS states that OFDUs are permitted in prime agricultural areas "based on provincial guidance" and that OFDUs shall be compatible with, and shall not hinder, surrounding agricultural operations.

The "Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas" (Publication 851, 2016, OMAFA) provides the provincial guidance for permitted uses in prime agricultural areas. Section 2.3 of the Guidelines identify the criteria that "must" be met to qualify as an OFDU:

1. Located on a farm.
2. Secondary to the principal agricultural use of the property.
3. Limited in area.
4. Includes, but is not limited to, home occupations, home industries, agri-tourism uses and uses that produce value-added agricultural products.
5. Shall be compatible with, and shall not hinder, surrounding agricultural operations.

OFDUs are permitted in prime agricultural areas pursuant to Section 4.1.2.3 of the Region of Niagara Official Plan and the definition of OFDUs pursuant to this Official Plan reflects the above criteria. Likewise, OFDUs are permitted in Specialty Crop Areas subject to conformity with Provincial Plans and relevant Provincial Guidelines for permitted uses in prime agricultural areas as per the most recent draft Town of Niagara on the Lake Official Plan (November 19, 2025) and the Town-council adopted Official Plan (2019).

Criteria 3 is intended to minimize the amount of land taken out of agricultural production, ensure agriculture remains the main land use in prime agricultural areas, and limit off-site impacts to ensure compatibility with surrounding agricultural operations. A lot coverage ratio is utilized in this criterion based on the rationale that a larger lot would be able to accommodate a larger OFDU than a smaller property while meeting compatibility requirements. These Guidelines state that the standard for the acceptable area occupied by an OFDU is up to 2% of a farm parcel to a maximum of 1 hectare. The Guidelines provide that "on-farm diversified uses that are proposed to grow beyond the area limits, either incrementally or otherwise, are not supported" (page 20).

Related to the above, the applicant has stated that the total OFDU area will be 3.1% with the addition of the new uses. This is based on their calculation of land area for the existing OFDU (factoring some of the existing parking and hospitality area) as well as the proposed gallery area and parking spaces.

Based on the information included in the applicant's site plan, site background information (including the 2017 Site Plan) and the direction of the Guidelines, we have deduced that the applicant's calculation is an under-estimate based on the following:

- We have calculated that the area occupied by the existing OFDU comprises approximately 2.3% of the property (discounted in accordance with the Guidelines; see **Appendix A**); and
- The applicant's site plan shows that the proposed OFDU area accounts for an additional 2.5% of the lot area.

The proposed ZBA would facilitate the growth of the OFDU beyond the province's standard acceptable lot coverage area of 2% given that the existing OFDU is in excess of the standard (per Criteria 2 and 3 of the Guidelines). Most importantly, the applicant has not provided an impact analysis to justify that the size and scale of the OFDUs continuing to grow beyond the provincial standard will not cause undue impacts and is in the provincial interest.

Criteria 5 provides direction to ensure OFDUs are compatible with, and do not hinder surrounding agricultural operations (consistent with the direction of the PPS). The guidance related to this Criteria includes the following (not an exhaustive list):

- Ensure surrounding agricultural operations are able to pursue their agricultural practices without impairment or inconvenience.
- The cumulative impact of multiple uses in prime agricultural areas should be limited and not undermine the agricultural nature of the area.

Further to the above, the Guidelines provide that conflicts between new OFDUs and farming due to normal farm practices should be avoided or mitigated. Normal farm practices for vineyards could include the application of fertilizers (i.e. manure spreading), the use of bird control technologies such as bird-bangers (cannons), composting of materials and the use of machinery (i.e. tractors) which may be disruptive to a public-facing establishment if it were to be in close proximity. The applicant has not considered how the proposed use may be impacted by surrounding agricultural operations and how that in-turn may result in nuisance complaints directed towards the owners of 1104 Lakeshore Road (e.g.: the adjacent owners are applying manure (a normal farm practice) during an event which generates an odour and results in complaints from the people using the nearby proposed event space). In the revised submission materials, the applicant has only considered how noise from the events will be characterized (i.e. attenuated by trees, barns and the sound of waves) and has not considered how nearby normal farm practices may be incompatible with the proposal.

The "Best Practices for On-Farm Diversified Uses" Study, published by the University of Guelph, highlights that the most adverse effects on normal farm practices from OFDUs resulted from those that were public-facing, such as those in agri-tourism or with on-farm event venue business models and provides that incompatibility between uses can impact the other farmers' ability to farm unbothered (page 185).<sup>1</sup> The proximity of the proposed uses and the scale of the OFDUs has the

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<sup>1</sup> Caldwell, W., Duesling, P., and Sousa, E.C. (2022). Guidelines on Permitted Uses as a Tool to Achieve Farmland Protection, Farm Diversification and Economic Benefit: Assessing effectiveness and identifying best practices. School of Environmental Design and Rural Development, University of Guelph.

potential to generate nuisance complaints directed towards the owners of 1104 Lakeshore Road related to their normal farm practices which in turn may necessitate an adjustment in their behaviour.

### **Minimum Distance Separation (MDS) Formulae**

The OMAFA provides the Minimum Distance Separation (MDS) Formulae set out in the PPS in “The Minimum Distance Separation (MDS) Document” (Publication 853, 2016). Section 7.4(2) of the Town of Niagara-on-the-Lake Official Plan states that all new development on lands designated “Good Tender Fruit or Good Grape” in the Regional Policy Plan shall be subject to the MDS I requirements.

Guideline #35 of the MDS Document provides that some agriculture-related uses and some OFDUs may exhibit characteristics that could lead to conflicts with surrounding livestock facilities and that it therefore may be appropriate for municipalities to require an MDS I setback to permit certain types of these uses. The discussion related to this Guideline states that uses characterized by a higher density of human occupancy or activity, including agri-tourism uses, shall be considered Type A uses when MDS I setbacks are required. The definition of livestock facilities pursuant to this Guideline is as follows:

*“Livestock facilities: All livestock barns and manure storages on a lot, as well as all unoccupied livestock barns and unused manure storages on a lot.”*

The definition of an unoccupied livestock barn is:

*“Unoccupied livestock barn: A livestock barn that does not currently house any livestock, but that housed livestock in the past and continues to be structurally sound and reasonably capable of housing livestock.”*

MHBC has visited the barns on Brox Company Limited’s (Ed Werner’s) property (1104 Lakeshore Road). There are two barns on the property. The smaller barn (approximately 140 square metre unoccupied barn located approximately 30 metres from proposed gallery area) is closest to the Konzelmann property line and would seem to meet the definition of an unoccupied livestock barn. While Mr. Werner has not kept livestock in the barn during his years as the owner of the property, he does know that previous owners did use the barn for horses. The second larger barn was likely used for livestock at some time in the past, but it has been considerably altered and would not likely meet the definition of an unoccupied livestock barn.

The applicant’s resubmission states that an MDS calculation is unnecessary since the existing house on the Konzelmann property would preclude use of the Werner barn for livestock. In our opinion, this is a misunderstanding by the applicant of the implementation of the MDS calculations. The house is located further from the Werner barn than the proposed outdoor event space (~75 metres vs 30 metres for the event space and 25 metres for the associated access path). Therefore, it is likely that the Werner barn could accommodate a relatively small number of livestock and still comply with the MDS from the existing house. The concern of the owner is the obvious implication that the establishment of the outdoor event space, because it is much closer to the barn, would reduce, or eliminate, the ability for livestock to be housed in the Werner barn because the MDS could not be achieved from the proposed outdoor event space.

At a minimum, the submission materials should include the application of the MDS Formulae for the nearby livestock facilities on 1104 Lakeshore Road to demonstrate that surrounding agricultural operations are able to pursue agricultural practices without impairment or inconvenience.

### **Functionality of Application**

The Concept Plan included with the revised submission materials for ZBA-09-2025 generally shows the parking for the proposed use along either side of the farm laneways. It is our understanding that the parking has been configured in this manner to reduce the lot coverage associated with the OFDU given that existing agricultural laneways are discounted from the OFDU area calculations. The following functionality issues should be addressed with regard to the illustrated parking configuration:

- The parking configuration along either side of the laneway has the potential to result in soil compaction (impacting soil stability, drainage and potentially root systems) and damage to the grapevines associated with the proximity of the vineyards to the parking spots (i.e. incidental destruction). The Concept Plan currently shows a 5 metre laneway with parking on either side (spaces have a width of 2.75 metres). The existing laneway is approximately 5 metres wide and the grapevines are offset from the laneway by approximately 3 metres. The beginning of the cultivated soil associated with the grapevines is approximately 1 to 2.5 metres from the laneway.
- It is unclear which entrance guests will be directed to utilize. If the intention is for guests to utilize the two westerly agricultural laneways, it should be confirmed that this arrangement meets the Town's policy for entranceways onto municipal roads (i.e. that sight lines are appropriately for the new use, number and location of entrances is appropriate, etc.).
- It is unclear how guests parking on the westerly segment of the laneway will turn-around and/or if they are expected to utilize the shared agricultural laneway on the western boundary of the property (and if permission to utilize the shared laneway has been obtained for the same given that it appears to partially overlap with the adjacent property).
- As per Section 3.19(d) of the Zoning By-law, ingress and egress to required parking spaces is to be provided by driveways or passageways that have a minimum width of 6 metres, whereas the current Concept Plan illustrates a width of 5 metres for the majority of the laneways used to access the proposed parking spaces. The widening of the laneway to meet this definition would further exacerbate the above concern related to the encroachment of the parking into the vineyards and would further increase the OFDU area calculation which is already in excess of the provincial standard.

### **Site Specific Regulations**

It is our opinion that appropriate site-specific regulations have not been provided as a part of the proposed ZBA to limit and control any apparent incompatibility with the agricultural area. Specifically:

- A provision to the effect of: "outdoor public address systems or amplified music shall not be permitted" should be included in the site-specific regulations. This provision is regularly included with the site-specific zoning regulations for similar uses (e.g.: Site-specific by-laws 500.T.F.06, 500UA-07, etc.).

- The proposed regulations delineate an "Outdoor/Special Events Area" and provide regulations for "wedding and hospitality events" but do not provide specific definitions for these terms. The submission materials also imply that the space would be used for yoga classes, workshops, etc. Clarification is required to scope the specific use of the space (i.e. wedding ceremonies as opposed to regularly scheduled workshops, classes, etc.) and to provide regulations for the same, if applicable.
- Section 9 of the proposed ZBA should explicitly regulate an "outdoor hospitality area for wedding ceremonies" to ensure that the definitions of the same are applied to the use (i.e. excludes commercial cooking equipment, activities associated with wedding receptions, etc.);
- An event has been defined as "one day"; however, the submission materials have set-out that events will not last longer than 2 hours. The submission materials also state that wedding rehearsals (which are typically on a different day than the wedding) are not counted as one of the permitted events. Therefore, it is reasonable to conclude that some weddings will essentially be multi day events – especially when the set up and take down of any tents or non-permanent structures associated with an outdoor wedding are considered. A specific provision should be included to limit the number and duration of events inclusive of related activities.
- A provision to ensure sufficient and appropriate off-street parking is provided should be included in the regulations, as typically included in the site-specific regulations for similar uses.
- A Holding (H) provision should be applied to the site-specific use until Site Plan Approval is granted, particularly given the potential site-functionality issues.

Further to the above, it is unclear how it was determined that the site could accommodate the scale of events (i.e. number of people and events) whereas similar uses are often permitted at a smaller scale (i.e. with fewer people and numbers of events), including the following examples:

- By-law 500TJ-06 (21.A.144: 359 Line 4 Road, Cattail Creek Winery) which includes regulations for a maximum of four outdoor special events per year from April 15th to October 15th, no amplified music or public address system, a maximum of 40 guests at each event, and a maximum of 1 event per weekend.
- By-law 500VN-10 (21.A.163: 1181 Lakeshore Road (Hinterbrook Winery) which includes regulations for no amplified music, a maximum number of eight (8) events each year, a maximum number of one hundred and fifty (150) guests for each event, a maximum of one (1) event at any one time.

Lastly, the "Sewage Flows from Proposed Special Events" letter prepared by Quartek (October 2025) indicates that the existing capacity of the sewage system can only accommodate 200 guests in the existing facilities if there is a reduction of other uses in the hospitality and/or office area on the day of the event. Should the proposed ZBA proceed without a reduction in the number of guests and/or the requirement for mobile washroom facilities, a provision should be included in the site-specific regulations to prohibit the use of the offices and/or hospitality area during special events to address the sewage capacity constraints. Similarly, the applicant has also stated that the property is serviced by an existing municipal watermain on Lakeshore Road. As per the Niagara Region's "2021 Water and Wastewater Master Servicing Plan", there is no municipal water infrastructure in this location. Appropriate water servicing should be confirmed as a part of the Application.

## Closing

Based on our review of the revised application, the applicant has not demonstrated that the application is consistent with the provincial standards for OFDUs in prime agricultural areas and has not demonstrated how it supports the provincial interest related to protecting the agricultural land base for long-term use for agriculture (i.e. compatibility). The proposed ZBA (as revised) is not consistent with the agricultural policies of the PPS, does not conform to the provincial guidance for uses in agricultural areas, does not conform to the Region of Niagara Official Plan, does not conform to the draft Town of Niagara on the Lake Official Plan and does not provide appropriate regulations for the proposed use.

We recommend that Council deny the application for the reason that the applicant has failed to demonstrate that the proposed outdoor event use is consistent with provincial policy. Should Council decide to approve a ZBA to allow outdoor special events on the Konzelmann property, we recommend that they be limited in area, duration, frequency and number of people since it has not been demonstrated that the OFDU proposed by the applicant can be accommodated without undue impact on agricultural lands and interests.

Yours truly,

**MHBC**



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Partner



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*Ed Werner, Brox Company Limited*  
*Tom Richardson, Sullivan Mahoney LLP*

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## Appendix A: OFDU Calculation

## **Appendix A – OFDU Calculation**

The calculation of area for OFDUs is to factor in the total land that is unavailable for agricultural production as a result of the use(s) (including parking, building, septic areas, landscaped areas, and dedicated access routes). Areas of existing buildings (including those with an OFDU built prior to April 30, 2014) as well as existing laneways jointly used for agricultural purposes are discounted in these calculations (by 50% for the former, 100% for the latter). If more than one OFDU is proposed on a property, the combined area of all OFDUs should be within the area and lot coverage guidelines.

The calculations of the OFDU area provided with the ZBA submission materials under-calculate the OFDU area; namely:

- The existing OFDU area calculations do not include the paved drive-aisles (not shared with the agricultural use), bus parking, septic bed, and landscaping generally located to the west of the primary entrance (easterly entrance) and related to the agri-tourism use (OFDU);
- Existing parking spaces were entirely discounted by 50% whereas only the areas constructed prior to 2014 are to be discounted (the west arm of the parking area was constructed in 2017 for the agri-tourism use in the place of former vineyards);
- The existing OFDU area calculations do not include the agri-tourism uses in the south section of the existing building; and
- The proposed OFDU area calculations do not include information on the widening of the laneway for the fire route (as shown on the Revise Site Plan), do not include the drive-aisle area to the east of the dwelling's entrance circle that does not currently exist as a farm-laneway (i.e. no discount is provided), and do not include a connection between the easterly event area access path and the gallery area.

With consideration for the above, as well as applicable discounts, the existing area of the property occupied by the agri-tourism (OFDU) use exceeds the province's standard acceptable area of 2% (occupies approximately 2.3%, per the below Table). This calculation has excluded the septic area to the north of the winery building given the comments included in the re-submission provided that the septic area is also used for the agriculture-related uses.

**Table 1: Existing OFDU Calculation**

<b>Use</b>	<b>Discount</b>	<b>Total Area (after discount)</b>
Parking, entrances (not shared with agricultural use) and landscaping (located to the west and associated with the 2006 addition of hospitality space (~3520 m <sup>2</sup> ))	50% discount (existing prior to 2014)	1760 m <sup>2</sup> (1.17%)

Wine store, retail and hospitality section of building (southwest corner of existing building, existing prior to 2014, 476 m <sup>2</sup> )	50% discount (existing prior to 2014)	238 m <sup>2</sup> (0.16%)
West parking lot extension, including entrance not shared with agricultural use (constructed 2017)	N/A	1,500 m <sup>2</sup> (1%)
Total		3,498 m <sup>2</sup> (2.3%)

The proposed ZBA would facilitate the growth of the OFDU beyond the province's standard acceptable lot coverage area of 2% given that the existing OFDU is in excess of the standard (per Criteria 2 and 3 of the Guidelines).



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