



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF DEVELOPMENT SERVICES

MISSION STATEMENT: Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.

Author's Name: Janine Mastronardi and Christopher Aspila	Report Date: April 7, 2023
Author's Phone: 519 736-5408 ext. 2134	Date to Council: April 24, 2023
Author's E-mail: jmastronardi@amherstburg.ca caspila@amherstburg.ca	Resolution #:

To: Mayor and Members of Town Council

Subject: Zoning By-law Amendment for 38 Victoria Street South

1. **RECOMMENDATION:**

It is recommended that:

1. **By-law 2023-042** being a by-law to amend Zoning By-law No. 1999-52, to amend the zoning for the subject lands at 38 Victoria Street South, be taken as having been read three times and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same.

2. **BACKGROUND:**

The Town is in receipt of an application for a Zoning By-law amendment to By-law 1999-52 from Trifilio Ventures Ltd. The rezoning application affects approximately 1.26 acres of land at 38 Victoria Street South. The rezoning, if approved, will amend the existing site-specific Special Provision Commercial Neighbourhood (CN-9) Zone to permit a studio as an additional permitted use on the subject lands. The lands are designated Commercial Neighbourhood in the Town's Official Plan.

The Statutory Public Meeting was held at 5:00 p.m., March 27, 2023 to hear public comments on an application for a Zoning By-law Amendment for lands described as the northwest corner of Victoria Street South and Fort Street, municipally known as part of 38 Victoria Street South.

3. DISCUSSION:

Statutory Public Meeting Follow-up

There were no questions or concerns expressed at the statutory public meeting that required a response from Administration.

Planning Analysis

The submitted application seeks to change the existing Special Provision Commercial Neighbourhood (CN-9) Zone to allow a studio as an additional permitted use.

Planning Act (R.S.O. 1990)

The purposes of the Planning Act are;

- “ (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
- (b) to provide for a land use planning system led by provincial policy;
- (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
- (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
- (e) to encourage co-operation and co-ordination among various interests;
- (f) to recognize the decision-making authority and accountability of municipal councils in planning. 1994, c. 23, s”

The proposal is consistent with Section 2 of the Planning Act which requires that the Council have regard to matters of provincial interest including (the following are excerpts from Section 2 of the Planning Act that apply to this development):

- the supply, efficient use and conservation of energy and water;
- the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
- the orderly development of safe and healthy communities;
- the adequate provision of employment opportunities;
- the appropriate location of growth and development;

The rezoning is proposing to allow an additional use of studio that could provide a place of employment for residents in an existing building within the primary settlement.

Provincial Policy Statement 2020

The Provincial Policy Statement was issued under Section 3 of the Planning Act and came into effect on May 1, 2020. The Provincial Policy Statement provides policy direction on matters of provincial interest related to land use planning and development. As a key part of Ontario's policy-led planning system, the Provincial Policy Statement sets

the policy foundation for regulating the development and use of land. It also supports the provincial goal to enhance the quality of life for all Ontarians.

The Provincial Policy Statement provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment. The Provincial Policy Statement supports improved land use planning and management, which contributes to a more effective and efficient land use planning system.

When reviewing a planning application to determine if the requested Zoning By-law Amendment (ZBA) makes sound planning, it is imperative that the proposed development is consistent with the Provincial Policy Statement (PPS).

The PPS provides policy direction for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment. The PPS recognizes that the wise management of development may involve directing, promoting, or sustaining growth. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs while achieving efficient development patterns.

The following policy excerpts from the PPS are particularly applicable to the subject application:

1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns

1.1.1 Healthy, liveable, and safe communities are sustained by:

- a) Promoting efficient development and land use patterns which sustain the financial well-being of the province and municipalities over the long term.
- b) Accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing, and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries, and long-term care homes), recreation, park and open space, and other uses to meet long-term needs.
- c) Avoiding development and land use patterns which may cause environmental or public health and safety concerns.
- d) Avoiding development and land use patterns that would prevent the efficient expansion of *settlement areas* in those areas which are adjacent or close to *settlement areas*.
- e) Promoting the integration of land use planning, growth management, *transit-supportive* development, *intensification*, and *infrastructure* planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs.
- f) Improving accessibility for persons with disabilities and older persons by addressing land use barriers which restrict their full participation in society.
- g) Ensuring that necessary *infrastructure* and *public service facilities* are or will be available to meet current and project needs.

- h) Promoting development and land use patterns that conserve biodiversity;
and
- i) Preparing for the regional and local impacts of a changing climate.

1.1.2 Sufficient land shall be made available to accommodate an appropriate range and mix of land uses to meet projected needs for a time horizon of up to 25 years, informed by provincial guidelines. However, where an alternate time period has been established for specific areas of the province as a result of a provincial planning exercise or a *provincial plan*, that time frame may be used for municipalities within the area. Within *settlement areas*, sufficient land shall be made available through *intensification* and *redevelopment* and, if necessary, *designated growth areas*. Nothing in policy 1.1.2 limits the planning for *infrastructure*, *public service facilities* and *employment areas* beyond a 25-year time horizon.

1.1.3 Settlement Areas

Settlement areas are urban areas and rural settlement areas, and include cities, towns, villages and hamlets. Ontario's settlement areas vary significantly in terms of size, density, population, economic activity, diversity and intensity of land uses, service levels, and types of infrastructure available.

The vitality and regeneration of settlement areas is critical to the long-term economic prosperity of our communities. Development pressures and land use change will vary across Ontario. It is in the interest of all communities to use land and resources wisely, to promote efficient development patterns, protect resources, promote green spaces, ensure effective use of infrastructure and public service facilities and minimize unnecessary public expenditures.

1.1.3.1 Settlement areas shall be the focus of growth and development.

1.1.3.2 Land use patterns within settlement areas shall be based on densities and a mix of land uses which:

- a) efficiently use land and resources;
- b) are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;
- c) minimize negative impacts to air quality and climate change, and promote energy efficiency;
- d) prepare for the impacts of a changing climate;
- e) support active transportation;
- f) are transit-supportive, where transit is planned, exists or may be developed; and
- g) are freight-supportive.

Land use patterns within settlement areas shall also be based on a range of uses and opportunities for intensification and redevelopment in accordance with the criteria in policy 1.1.3.3, where this can be accommodated.

1.1.3.4 Appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety.

1.1.3.5 Planning authorities shall establish and implement minimum targets for intensification and redevelopment within built-up areas, based on local conditions. However, where provincial targets are established through provincial plans, the provincial target shall represent the minimum target for affected areas.

1.1.3.6 New development taking place in designated growth areas should occur adjacent to the existing built-up area and should have a compact form, mix of uses and densities that allow for the efficient use of land, infrastructure and public service facilities.

The proposed Zoning By-law Amendment appears to be consistent with the Provincial Policy Statement 2020 (PPS).

County of Essex Official Plan

The County of Essex Official Plan was adopted on February 19, 2014 and was approved by the province on April 28, 2015. All lower tier Official Plans or amendments must comply with the policies of the upper tier Official Plan (County). The applicable County policies that should be considered when assessing the merits of the subject Zoning By-law Amendment include:

Section 1.5 Goals for a Healthy County outline the following:

- To direct the majority of growth (including *intensification* and *affordable housing*), and investment (*infrastructure* and community services and facilities) to the County's *Primary Settlement Areas*. These *Primary Settlement Areas* will serve as focal points for civic, commercial, entertainment and cultural activities.
- To encourage reduced greenhouse gas emissions and energy consumption in the County by promoting built forms and *transportation systems* that create more *sustainable*, efficient, healthy, and liveable communities.
- To create more mixed use, compact, pedestrian-oriented *development* within designated and fully serviced urban *settlement areas*.
- To provide a broad range of housing choices, employment and leisure opportunities for a growing and aging population.
- To prohibit urban forms of *development* outside of designated “*Settlement Areas*” and discourage urban *development* in areas with partial municipal services.

Section 2.2 Growth Management note the following:

The health of the County requires that long-range land use planning and *infrastructure* investment are properly managed in a way that will:

- Direct non-resource related growth and *development* to settlements where it can be serviced, with a particular emphasis on *Primary Settlement Areas*.

It is the fundamental policy of this Plan to promote healthy and diverse communities where County residents can live, work and enjoy recreational opportunities. In this regard, every attempt should be made to optimize and make efficient use of existing *infrastructure*.

Section 3.2 Settlement Areas

3.2.2 Goals

The following goals are established for those lands designated as “*Settlement Areas*” on Schedule “A1”:

- a) Support and promote public and private re-investment in the *Primary Settlement Areas*.
- b) To support and promote healthy, diverse and vibrant *settlement areas* within each of the seven Essex County municipalities where all county residents, including special interest and needs groups can live, work and enjoy recreational opportunities.
- c) To promote *development* within *Primary Settlement Areas* that is compact, mixed-use, pedestrian oriented, with a broad range of housing types, services and amenities available for residents from all cultural, social and economic backgrounds.
- d) To promote the creation of public places within all neighbourhoods that foster a sense of community pride and well-being and create a sense of place.
- e) To require the efficient use of land, resources, water and sanitary sewage treatment facilities, other *infrastructure* and *public service facilities* including schools as provided for in the growth management policies contained within this Plan.
- f) To increase the opportunity for job creation within each *local municipality* by attracting and maintaining industries and businesses closer to where County residents live.
- g) To support long term economic prosperity by providing *infrastructure* and *public service facilities* to accommodate projected growth.
- h) To provide locations where natural habitat restoration can be accommodated to ensure an increase in the amount of core natural area and linkages amongst natural areas.
- i) Promote *residential intensification* within *Primary Settlement Areas*, and to a lesser extent, within full serviced *Secondary Settlement Areas*.

j) Promote *affordable housing* within *Primary Settlement Areas*, and to a lesser extent, within full serviced *Secondary Settlement Areas*.

k) Encourage each *local municipality* to undertake a Local Comprehensive Review of their “*Settlement Areas*” with the goal of re-allocating growth to the most appropriate locations that meet the intent of this Plan. The County encourages the Local Comprehensive Review to be undertaken at the time of the five-year review of the local Official Plan; however, *local municipalities* may initiate a Local Comprehensive Review at any time.

l) Encourage employment opportunities on lands within “*Settlement Areas*” that are in proximity to rail corridors.

The proposed Zoning By-law Amendment appears to conform to the County of Essex Official Plan as the subject lands are located within the primary settlement area, are fully serviced with municipal water and municipal sanitary sewers and the proposed additional studio use will support and promote healthy, diverse and vibrant settlement areas where all county residents, including special interest and needs groups can live, work and enjoy recreational opportunities.

Town of Amherstburg Official Plan

The Official Plan currently designates the subject lands Neighbourhood Commercial and is within the Settlement Area.

SECTION 4 SETTLEMENT AREAS - LAND USE POLICIES

4.1 GENERAL

Section 4 of this Plan deals with the Settlement Areas of the Town of Amherstburg. The land use designations and policies are intended to accommodate the anticipated population increases in a variety of locations, densities, and housing types as well as provide for employment opportunities, economic growth, recreational needs and institutional needs. The Residential Subsections deal with a variety of settlement areas as shown on Schedules “A” and “B”. In addition, there are areas designated for specific land uses such as industrial, commercial and recreational that are single purpose land use areas that are also Settlement Areas for the purpose of the Provincial Policy Statement and this Official Plan. Changes within any Settlement Area from one designation to another will be dealt with as an amendment to the Official Plan. Changes to the boundary of any Settlement Area or an attempt to create a new Settlement Area will be dealt with as required under Section 22(7.1) and Section 22(7.2) of the Planning Act.

The Town will work with the County of Essex to identify targets for intensification, infill and redevelopment and the Plan will be amended to incorporate such targets. (Modification #32)

Section 4.4.1 of the Official Plan states, “The uses permitted in the Neighbourhood Commercial designation shall be limited to those commercial uses which provide for

the sale of convenience goods and services to meet the daily living needs in foods, sundries and personal services, and may include neighbourhood business and professional offices.

The development of Neighbourhood Commercial areas may take place in the form of a small shopping plaza owned and operated as a unit or as individual establishments. The scale of development shall be guided by the population of the area to be served, the location of the site relative to abutting land uses and road classification. The actual size of the uses permitted will be specified by the Zoning By-law.

Adequate parking shall be provided for all permitted uses, and access points to such parking shall be limited in number and designed in a manner that will minimize the danger to both vehicular and pedestrian traffic.”

The submitted application does not facilitate a change in the established Neighbourhood Commercial use of the property but instead seeks to add an additional use. A studio would assist in meeting the daily recreational needs of the neighbourhood.

Section 6.7 of the Town of Amherstburg Official Plan – Planning Impact Analysis sets out several areas that must be considered as part of an Official Plan Amendment or Zoning By-law amendment. These include:

6.7 PLANNING IMPACT ANALYSIS

It is a policy of the Official Plan that a Planning Impact Analysis will be used to evaluate applications for an Official Plan Amendment and, depending on the magnitude of the development, a Zoning By-law Amendment, to determine the appropriateness of the proposed change and to identify what measures are needed to reduce any adverse impacts on surrounding land uses. The Planning Impact Analysis will supplement the consideration of compliance with the permitted use, location, scale of development, and other criteria applicable to the relevant land use designation. Proposals for changes in the use of land which require the application of a Planning Impact Analysis will be evaluated based on:

- Compatibility of proposed uses with surrounding land uses, and the likely impact of the proposed development on present and future land uses in the area on the character and stability of the surrounding neighbourhood.

Reviewing the evaluation points that apply to the proposed neighbourhood commercial use found in Section 6.7 of the Official Plan it has been determined the proposed use is similar to the existing neighbourhood commercial permitted uses.

The proposed Zoning By-law amendment appears to conform to the policies of the Official Plan.

Town of Amherstburg Zoning By-law 1999-52

The existing Special Provision Commercial Neighbourhood (CN-9) Zone provides for the following permitted uses:

Uses permitted in the CN Zone include:

- (i) business office;
- (ii) day care;
- (iii) dry cleaner's distribution station;
- (iv) dwelling unit;
- (v) medical/dental office;
- (vi) personal service shop;
- (vii) professional office;
- (viii) public use;
- (ix) retail store;
- (x) convenience store;
- (xi) video rental establishment;
- (x) *Hardware Store*;
- (xi) *Home Improvement Store*.

The submitted ZBA application proposes to change in the zoning of the subject property from Residential Type 1A (R1A) Zone to Special Provision Residential Second Density (R2) Zone. The proposed zone will consist of the standard R2 provisions but limit the permitted uses on the lands to single detached dwelling, home occupation and accessory uses to ensure consistency with the uses in the surrounding neighbourhood. The proposed permitted uses are the same as those permitted under the current R1A Zone. Appendix C attached provides the proposed lot layout, building envelope and zoning matrix for the proposed lots.

The proposed Zoning By-law Amendment is considered to be consistent with the 2020 PPS, in conformity with the County Official Plan and in conformity with the policy direction as set out in the Town's Official Plan. The requested amendment does not facilitate any negative impacts on surrounding properties. The application is considered to conform to good planning principles.

4. RISK ANALYSIS:

The recommendation presents little to no risk to the municipality.

It is important to provide Council with clarity on next steps and how changes to the Planning Act from amending Bill 109 and Bill 23 relate. Specifically, the changes provide for the applicant to appeal to the Ontario Land Tribunal (OLT) on the grounds of failure to make a decision as per s. 34 (11) of the Planning Act. Council has 90 days after the Zoning By-law Amendment application has been deemed complete in which to make a decision on the application. In addition, the Town would need to refund the zoning application fee.

These risks are mitigated by the following measures:

- Our OP was amended in 2022, section 7.20, stating in part "deemed complete when a letter is issued to the applicant indicating that the application is complete". This was put in place to ensure submission date of an application was not the date it was deemed complete, due to previous lack of clarity on this matter;

- Holding the SPM as soon as possible after deeming an application complete. This allows for appropriate time to summarize and consider the feedback for the recommendation report, which is the report for Council to make a decision on the application.

For this particular zoning amendment application, it was deemed complete on February 23, 2023, setting the 90-day timeframe by which a decision of Council must be made at May 23rd, 2023.

5. FINANCIAL MATTERS:

All costs associated with the application are the responsibility of the applicant. Should Council's decision be appealed to the Ontario Land Tribunal then the Town will incur costs.

Should Council fail to make a decision on Administration's recommendations in the follow-up report by May 23, 2023, 90 days following the deeming of the application complete, the Town will be required to refund 50% (\$1,339) of the applicant's Minor Zoning By-law Amendment application fee of \$2,678 per s. 34 (10.12) of the Planning Act.

6. CONSULTATIONS:

The Notice of Public Meeting was published in the local newspaper and on the Town website and circulated to the required agencies, property owners and municipal departments in accordance with the requirements of the Planning Act, R.S.O. 1990, c.P. 13 and associated regulations. The circulation list property addresses and a circulation map showing the 120 m radius are attached as Appendix C.

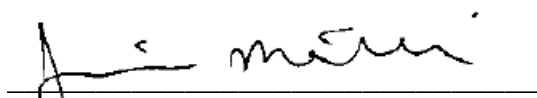
A summary of correspondence received is attached for Council consideration as Appendix D.

No further consultation on the ZBA is required.

7. CONCLUSION:

It is the opinion of administration that the Zoning By-law Amendment allows for the appropriate development of the subject lands, is consistent with the policies of the Provincial Policy Statement, 2020, and conforms with the policies of the County of Essex Official Plan and the Town of Amherstburg Official Plan.

Administration recommends that Zoning By-law 2023-042 be approved by Council, given three readings and finally passed and the Mayor and Clerk be authorized to sign same.



Janine Mastronardi
Planner



Christopher Aspila
Manager, Planning Services

Report Approval Details

Document Title:	Zoning By-law Amendment for 38 Victoria St S.docx
Attachments:	<ul style="list-style-type: none">- Appendix A- ZBA-06-23- Aerial.pdf- Appendix B- ZBA-06-23- Site Photos.pdf- Appendix C- ZBA-06-23- 120 m Circulation Map and List.pdf- Appendix D- Summary of Correspondence Received on ZBA-06-23.pdf- Appendix E- 2023-042- ZBA- 38 Victoria St S- DRAFT.pdf
Final Approval Date:	Apr 18, 2023

This report and all of its attachments were approved and signed as outlined below:



Melissa Osborne



Tracy Prince



Valerie Critchley



Kevin Fox