



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: Christopher Aspila	Report Date: August 22, 2023
Author's Phone: 519 736-5408 ext. 2124	Date to Council: September 11, 2023
Author's E-mail: caspila@amherstburg.ca	Resolution #:

To: Mayor and Members of Town Council

Subject: Temporary Zoning By-law Amendment – East Side of County Road 20 North of River Canard (ZBA-14-23)

1. RECOMMENDATION:

It is recommended that:

1. **By-law 2023-090** being a by-law to amend Zoning By-law No. 1999-52, to amend the zoning for the lands legally described as Part Lots 34 and 35 on Concession 1; Part 1 on 12R-22921 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 Temporary Use Zoning By-law Amendment to By-law 1999-52 from Jamaal Jime (Jim) Shaban. The subject lands are located on the east side of Front Road North, north of the River Canard bridge, known as Phishlago Bridge (refer to Figure 1). The subject lands are legally described as Part Lots 34 and 35 on Concession 1; Part 1 on 12R-22921 and are approximately 0.68 ha (1.69 ac) in size. The subject lands are also known as 1873 Front Road North.

The purpose of the application is to provide a Temporary Use Zoning By-law Amendment to allow the use of shipping containers on the property for a period of up to three years. The applicant can apply to the Town of Amherstburg for an extension to the Temporary Use Zoning By-law Amendment for an additional three years. The applicant has permission from the Ministry of Natural Resources and Forestry to control the Common reed (*Phragmites australis*), an invasive species, on his property until August 2026. Since there are no other accessory structures on the property, the applicant uses the shipping containers to store the equipment utilized for the control of Common reed.

In preparing this information report for Council, planning staff have reviewed the following documents/submissions in order to provide comments to Council regarding the proposed development:

1. Town of Amherstburg Official Plan
2. Town of Amherstburg Zoning By-law
3. Relevant legislation – Planning Act
4. Comments received as of July 27, 2023 (Appendix “D”)
5. Comments received at the Statutory Public Meeting held on August 14, 2023.

3. DISCUSSION:

The Official Plan designates the lands as Provincially Significant Wetland and Natural Environment, with a portion of the lands designated as Low Density Residential.

Section 3.4.2 Policies for Natural Environment states:

Lands designated Natural Environment are lands that have been identified as ANSIs (Areas of Natural and Scientific Interest) by the Ministry of Natural Resources, or as significant valleylands, wooded areas, wildlife habitat, or Environmentally Significant Areas (ESAs) by the Essex Region Conservation Authority (ERCA). The following policies shall apply to those lands designated “Natural Environment” on Schedules “A” and “B” of this Plan:

(1) The predominant use of land shall be wildlife management including hunting and fishing, natural environment management, passive outdoor recreation, conservation, and associated facilities;

(2) Buildings and structures associated with passive uses are also permitted in addition to those directly related to the management of the natural environment;

(3) Lands designated “Natural Environment” shall be retained in their natural state and for conservation or wildlife habitat enhancement. Site alteration and/or development of these areas shall not be permitted unless it has been demonstrated to the satisfaction of Council and E.R.C.A. that there will be no negative impacts on the natural features and or their ecological functions. However, no development and or site alteration shall be allowed in the habitat of endangered and threatened species.

(4) “Negative impact” means:

a) in regard to fish habitat, the harmful alteration, disruption or destruction of fish habitat, except where, in conjunction with the appropriate authorities, it has been authorized under the Fisheries At, using the guiding principle of no net loss or productive capacity; and

b) in regard to other natural heritage features and areas, degradation that threatens the health and integrity of the natural features or ecological functions for which an area is identified due to single, multiple or successive development or site alteration activities. (Modification #15)

(5) Site alterations and/or development on lands within 50 metres of the “Natural Environment” designation may only be permitted if it can be demonstrated that there will be no negative impacts on the adjacent natural environment features or their associated ecological functions.

(6) For the determination of whether or not negative impacts will occur, an Environmental Impact Assessment shall be undertaken in accordance with the County of Essex Official Plan Guidelines for Environmental Impact Assessments, as amended from time to time, contained in Appendix I to this Plan. When Council considers it appropriate, additional requirements may be made to the Guidelines in accordance with more detailed locally adopted terms of reference for an Environmental Impact Assessment.

(7) All Natural Environment lands will be placed in an Environmental Protection Zone in the implementing Zoning By-Law.

Section 3.6 of the Official Plan identifies goals for Provincially Significant Wetlands.

3.6.1 General

Areas designated “Provincially Significant Wetlands”, as depicted on Schedules “A” and “B” of this Plan, are wetlands which have been identified by the Ministry of Natural Resources as being provincially significant. The majority of the provincially significant wetlands within the Town of Amherstburg are generally located at the mouth of the Canard River (consisting of the Canard River Marshes and the Detroit River Marshes), and lands associated with Big Creek (including Mann’s Marsh and Big Creek Marsh). Significant portions of the waterways associated with these marshes are also provincially significant wetlands and have been mapped as wetland to assist in determining which lands are adjacent to the water based wetland features.

3.6.2 Goals

The following goals are established for the “Provincially Significant Wetlands” designation:

- (1) To identify and designate provincially significant wetlands on the land use schedule;*
- (2) To preserve and protect provincially significant wetlands;*
- (3) To prohibit development within any provincially significant wetlands; and*
- (4) To prohibit development of lands adjacent to (within 120 metres) of any provincially significant wetland unless it can be demonstrated that there will be*

no negative impacts on the natural features and ecological functions of the wetland.

The subject lands are zoned Residential Type 1A (R1A) Zone. The R1A zone allows the following uses:

- i) single unit residential uses;
- ii) home occupations;
- iii) accessory uses; and
- iv) public use.

Section 3.27 of the Zoning By-law 1999-52 provides policies regarding shipping containers. Shipping containers are only permitted in residential zones as temporary storage containers and can only be located on a lot for a maximum of 90 days for the purpose of aiding in moving, or for a maximum of one year when used in conjunction with a construction or renovation project under a building permit.

The applicant currently has permission from the Ministry of Natural Resources and Forestry (MNRF) allowing Common reed removal until August 2026. Due to the requirement for storage of the equipment utilized in the removal process, the applicant is requesting permission to retain the existing shipping containers on the site. Due to the residential zoning of the property, the shipping containers are only permitted when in conjunction with residential moving of houses or construction. Therefore, the Temporary Use Zoning By-law Amendment would permit the shipping containers to remain on the property.

The Temporary Use Zoning By-law Amendment would expire three years after the date of approval. At that time, the Applicant can return to Council and request an extension, if still required.

The proposed Temporary Use Zoning By-law Amendment is in conformity with the Natural Environment and the Provincially Significant Wetland Official Plan policies as the buildings are associated with the management of the natural environment.

Planning staff will be reviewing all of the comments received from this statutory public meeting and will be assessing all information provided by the Applicant and all internal and external departmental and agency comments, and will be preparing a subsequent staff report that discusses how the above items are being addressed.

As part of the regulations of the Planning Act, the application has been circulated to the area residents within 120 m and various agencies. All comments received to date are attached as Appendix 'D'. No additional comments were received at the Statutory Public Meeting.

4. RISK ANALYSIS:

The applicant has permission from the Province of Ontario to control an invasive species on the subject lands. There is a low risk for the Town should this matter be approved by Council and appeal be filed with the OLT as the application is to allow for temporary use associated with a provincially authorized activity.

Administration's Recommendation	Decision of Council	Who can appeal the decision to OLT.*	Costs to the Town if Appealed
Recommend approval	Approve the Recommendation	Parties who provided written and or verbal communication on this matter at the Statutory Public Meeting (SPM) or public meeting of Council, and or signed in and provided their contact information at the SPM.	Legal consulting and Administrative time to defend the decision before OLT.
Recommend to deny the application	Approve the Recommendation	The Applicant who requested the amendment.	Planning and legal consulting services to defend Council's decision and legal consulting and Administrative time to defend Administration's recommendation before OLT.
Recommend approval	Refuse the Recommendation Note: The Planning Act defines a tied vote as a refusal.	The Applicant who requested the amendment.	Planning and legal consulting services to defend Council's decision and legal consulting and Administrative time to defend Administration's recommendation before OLT.
Recommend to deny the application	Refuse the Recommendation Note: The Planning Act defines a tied vote as a refusal.	Parties who provided written and or verbal communication on this matter at the Statutory Public Meeting (SPM) or public meeting of Council, and or signed in and provided their contact information at the SPM.	Legal consulting and Administrative time to defend the decision before OLT.
Recommend to approve (or deny)	Request to defer decision on the grounds of requiring additional information.	The Applicant who requested the amendment.	In this scenario it allows for the applicant to consider if the additional information requested by Council, rather than an OLT hearing is preferred. As OLT hearings are costly and time consuming the applicant may elect to provide the additional information. If that is the direction the Town may need to refund the application fee, noting the refund is also less costly for the Town than an OLT hearing.

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, the Town will incur costs, as noted above. OLT appeals of any nature can be costly with estimated costs of a hearing at \$20,000/day, noting that those daily costs will likely be higher if Town Administration is required to be before OLT as both witnesses for an Applicant and defense of a decision.

6. **CONSULTATIONS:**

Manager Licensing and Enforcement
Chief Building Official

7. **CONCLUSION:**

Administration supports the proposed Temporary Zoning By-law Amendment.

A handwritten signature in blue ink, appearing to read 'C. Aspila', is written over a horizontal line.

Christopher Aspila
Manager of Planning Services

Report Approval Details

Document Title:	Temporary Zoning By-law Amendment - ZBA-14-23 - Shaban.docx
Attachments:	- 2023-090- ZBA- Temporary Use Shaban.pdf - Appendix 'A' - ZBA-14-23- Notice of Statutory Public Meeting-.pdf - Appendix 'B' - ZBA-14-23 Aerials.pdf - Appendix 'C' - ZBA-14-23 Application_Redacted.pdf - Appendix 'D' - Summary of Correspondence Received on ZBA-14-23.pdf
Final Approval Date:	Aug 30, 2023

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



Melissa Osborne

No Signature - Task assigned to Tracy Prince was completed by delegate Yufang Du

Tracy Prince



Valerie Critchley



Kevin Fox