



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: Sarah French	Report Date: August 21, 2023
Author's Phone: 519 736-5408 ext. 2124	Date to Council: September 25, 2023
Author's E-mail: sfrench@amherstburg.ca	Resolution #:

To: Mayor and Members of Town Council

Subject: Zoning By-law Amendment ZBA-15-23 for 196 Fort Street

1. **RECOMMENDATION:**

It is recommended that:

1. **By-law 2023-089** being a by-law to amend Zoning By-law No. 1999-52, to amend the zoning for the subject lands known as 196 Fort Street 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 Brendan Renaud, Daniel Pento and Deanna Crawford and their agent Tracey Pillon-Abbs. The subject lands are located on the east side of Balaclava Street and the north side of Fort Street and are municipally known as 196 Fort Street (refer to Appendix A in the attachments).

The purpose of the application is to establish a site-specific Residential Second Density (R2) Zone to permit semi-detached and single detached dwellings and a reduced exterior side yard setback of 4 m where 6 m is required. The subject site is currently zoned Residential First Density (R1) Zone. The current zone does not permit semi-detached dwellings. The proposed site plan is provided as Appendix C in the attachments. The applicant is proposing the development of two (2) semi-detached dwellings (four (4) units) and one (1) single detached dwelling for a total of five (5) dwellings on the property.

The Statutory Public Meeting was held at 4:00 p.m., August 14, 2023 to hear public comments on the application for the Zoning By-law Amendment on the property

municipally known as 196 Fort Street. Questions, comments and concerns were raised by members of the public and Council and are addressed in Section 3 of this report. Notice of the Statutory Public Meeting was published in the July 19, 2023 edition of the River Town Times and letters were mailed to property owners within 120m of the proposed development, in accordance with the Planning Act.

The subject property is designated Low Density Residential in the Town Official Plan and is zoned Residential First Density (R1) Zone in the Town of Amherstburg Zoning By-law 1999-52.

3. DISCUSSION:

Planning Analysis

The following section of this report will highlight the applicable planning policies that have been considered in the administrative planning recommendation.

Planning Act (R.S.O. 1990)

The proposal is consistent with Part I Section 2 of the Planning Act which requires that 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 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 a full range of housing, including affordable housing;
- the appropriate location of growth and development;
- the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;
- the promotion of built form that,
 - o is well-designed,
 - o encourages a sense of place, and
 - o provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;

The development is located within the primary settlement area and can be considered infill development. It is providing for intensification of under utilized land within the existing serviced area. The proposed development provides for alternative types of housing to the predominately available single detached dwelling and increases the supply of smaller, semi-detached houses within the Town of Amherstburg. The proposed development will be required to go through the Committee of Adjustment for the land severance process prior to building permits being issued. The proposed Zoning By-law Amendment appears to be consistent with the Planning Act.

Provincial Policy Statement

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

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:

- i. efficiently use land and resources;
- ii. 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;
- iii. minimize negative impacts to air quality and climate change, and promote energy efficiency;
- iv. prepare for the impacts of a changing climate;
- v. support active transportation;
- vi. are transit-supportive, where transit is planned, exists or may be developed; and
- vii. 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.

1.1.3.3 Planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

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.

1.4 Housing

1.4.1 To provide for an appropriate range and mix of housing options and densities required to meet projected requirements of current and future residents of the regional market area, planning authorities shall:

- a) maintain at all times the ability to accommodate residential growth for a minimum of 15 years through residential intensification and redevelopment and, if necessary, lands which are designated and available for residential development; and
- b) maintain at all times where new development is to occur, land with servicing capacity sufficient to provide at least a three-year supply of residential units available through lands suitably zoned to facilitate residential intensification and redevelopment, and land in draft approved and registered plans.

Upper-tier and single-tier municipalities may choose to maintain land with servicing capacity sufficient to provide at least a five-year supply of residential units available through lands suitably zoned to facilitate residential intensification and redevelopment, and land in draft approved and registered plans.

The proposed development provides an opportunity for growth within the settlement area in the existing built-up area. The proposal will provide for redevelopment and an increased density through infill. While the proposal would not be considered intensification, since it is proposing semi-detached units, which are still considered low density residential uses, it is considered infill and redevelopment, both of which are supported and encouraged by the PPS. Additionally, the property is less than 1 km from two transit bus stops and promotes for higher density development within a walkable distance from transit opportunities.

The proposed development will utilize existing services and will not require the extension or upgrade to any of the services. The development will be required to manage stormwater on each property through the use of grading and rear yard drains. Additionally, downspouts will be required to splash onto the ground rather than being directly connected to the storm sewer system. Driveways will be limited to 50% of the each property's frontage in order to reduce the amount of front yard area that will be covered by paved impermeable surfaces.

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

Section 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 conforms to the County of Essex Official Plan as the subject lands are located within the primary settlement area, are fully serviced and the development can be considered infill and redevelopment of the lands. The additional density proposed on the subject lands will help the Town accommodate projected growth. The development is in a walkable area and is located less than 250 m from a grocery store (Sobey's), 350 m from personal service uses, it is within 200 m of a local school and in close proximity to many other uses. As mentioned above, the subject lands are within close proximity (less than 1 km) to two transit stops.

Town of Amherstburg Official Plan

The subject property is designated Low Density Residential. The following sections of the Official Plan apply to the proposed amendment.

4.2.3 Policies – Applicable to All Residential Designations

(1) Residential Lot Creation

The creation of new lots for residential purposes will primarily occur by plan of subdivision. However, consents for residential lots will be permitted in accordance with the policies contained in Section 6.1 of this Plan, and in accordance with the requirements and guidelines of the Town and/or its designated agent under the Building code or Ministry of Environment under the Ontario Water Resources Act.

(2) Supply

It shall be a policy of this Plan that residential proposals be evaluated with the intent being to achieve a housing mix. The provision of a ten (10) year supply or at least 1700 residential dwelling units or individual lots through a combination of draft approved and/or registered lots and blocks on plans of subdivision and/or registered lots which have been created in accordance with Section 5.1 of this Plan shall be maintained and developed as permitted by the capacity of the Town's services.

(3) Established Low Density Residential Areas

In established low density residential areas, the indiscriminate mixing of different housing types shall not be permitted, in the interest of protecting the stability of existing neighbourhoods. Redevelopment proposals will, to the satisfaction of Council, ensure that the residential character of the area will be maintained or enhanced and not present a burden to existing facilities and services.

4.3.1 Low Density Residential Areas

Areas designated as Low Density Residential shall be limited to single detached, semidetached, duplex, or converted dwelling units, home occupation uses and public uses.

Notwithstanding the above policy, vacant tracts of land greater than 5 hectares in size and designated Low Density Residential may be developed for Medium or High Density Residential uses if they can meet the criteria outlined in Subsection 4.3.1(3).

(1) Maximum Density

Although the existing densities within areas designated Low Density Residential are in the order of 6 to 12 units per hectare, smart growth encourages a more cost effective development pattern to better utilize services and the land base. In a desire to promote more efficient use of the land, the maximum density for single detached developments shall be 15 units per hectare and the maximum density for semidetached development and conversions shall be 22 units per hectare. The overall maximum density shall not exceed 19 units per gross hectare.¹ In keeping with the Provincial Policy Statement regarding intensification, in the older established portions of Amherstburg, a reduced lot frontage may be considered in the Zoning By-law where sufficient lot depth is available to accommodate new low density residential units/lots.

In areas where the criteria of Subsection 4.3.1(3) have been achieved, the density policies for the Medium Density Residential designation or the High Density Residential designation shall apply. Low Density Residential may be placed in separate zoning categories in the implementing Zoning By-Law.

¹For the purpose of this Plan, a "gross hectare of land" means residential building land plus the required landscaping, off-street parking, road allowances, and required amenities.

6.1.2 Land Severances

Should the consent-granting authority establish that a plan of subdivision is not necessary for proper and orderly development, consideration for consent to a land severance may be allowed. Generally the consent process would only be considered for the creation of five or less lots. In considering an application for a consent, the consent-granting authority shall be guided by the relevant objectives and policies of this Plan, including the following:

(1) The division of land will only be allowed when all parcels involved abut a public road of a standard of construction acceptable to the Town (and the County of Essex when applicable) and safe and suitable access is available;

(2) The division of land will not be allowed if any parcel involved requires access to be obtained where a traffic hazard could be created because of limited sight lines on curves or grades or proximity to intersections;

- (3) *The division of land will only be allowed when it has been established that soil and drainage conditions for all parcels involved are suitable:*
- a) to permit the proper siting of a building;*
 - b) to obtain a sufficient and potable water supply; and*
 - c) to permit the installation of an adequate means of sewage disposal. In areas where no piped municipal services are available and the installation of a septic tank system or other private sewage disposal system is therefore required, the standards established by the Ministry of Environment and/or its designated agent shall be met;*
- (4) *The division of land will only be allowed if the proposed lots comply with the provisions of the Town's Zoning By-Law. The Zoning By-Law shall establish minimum lot frontages and areas in accordance with the requirements of the Town and/or its designated agent for septic systems approved under the Building Code or the Ministry of Environment for systems approved under the Water Resources Act. Where a bylaw amendment or minor variance is necessary, it shall be a condition of the consent or plan of subdivision approval;*
- (5) *The division of land may be prohibited if development would occur on lands subject to severe flooding, provincially significant wetlands, severe erosion or unstable conditions or any other physical limitations as determined by the Town in consultation with the Essex Region Conservation Authority;*
- (6) *Notwithstanding any other section of this Plan, consents for the creation of easements or right-of-ways are permitted and minor lot adjustments or minor boundary changes are permitted provided they are granted conditional to Section 50(3) or (5) of the Planning Act, R.S.O. 1990 c. P.13 and the consent would not result in the creation of a new building lot;*
- (7) *The consent-granting authority may exercise its powers under Section 53(2) of the Planning Act, R.S.O. 1990 when reviewing the shape, size, etc. of any proposed lot;*
- (8) *It shall be the Town's policy to require one application fee per new lot created, each right-of-way, lot addition etc. Only one application outlining all the lots to be created, however, need be submitted. Such application shall have a corresponding series of numbers. Further, it shall be the Town's policy to deny consent applications that only remit one fee by applying for a new lot in the middle of an existing lot in an attempt to create three lots with one application;*
- (9) *When considering consent applications or plans of subdivision, consideration will be given to the following requirements which may be stipulated as a condition of consent or plan of subdivision approval where applicable:*
- a) that a lot levy (including 5 percent of the value of the lot for park purposes or such fee as set from time to time by the Town) and charges as specified for community services in accordance with the Town's Development Charges By- Law be paid;*
 - b) that the applicant enter into an agreement to maintain any drainage facilities servicing the agricultural sector which traverse the property;*
 - c) that the applicant enter into an agreement to construct or maintain fences around the proposed lot;*
 - d) that the Town's Zoning By-Law be amended to permit the proposed use, if necessary, prior to the stamping of deeds;*
 - e) that access to the property is constructed to the satisfaction of the appropriate agency;*

f) that all new development proposed within fully serviced areas shall be serviced by municipal piped water supply, municipal stormwater management facilities and municipal sanitary sewage facilities;
(10) In areas designated in whole or in part as “Agricultural”, or “Natural Environment”, or “Wetland”, minor boundary adjustments may be permitted that could have the effect of creating a lot of less than 40 hectares, conditional on one of the parcels being added to an adjacent property and the existing dwelling remaining on the remnant parcel so that no new building lots have been created. Generally the remnant lot must be either a viable farm parcel size or follow the policy of the surplus farm unit and be generally less than one (1) hectare in size. (Modification #35)

The proposed gross density of the subject site is approximately 18 units per hectare. The Official Plan states that the maximum density for mixed developments (such as the mix of singles and semis) shall not exceed 19 units per hectare. The gross density is calculated based on the subject land area plus the required road allowances and amenities as per Section 4.3.1.1 of the Official Plan. The proposed density is within the maximum gross density required by the Official Plan.

The proposal does not provide for the indiscriminate mixing of houses as described in Section 4.2.3.3 since only uses that are permitted in the Low Density Residential designation will be permitted. Semi-detached dwellings are permitted within the Low Density Residential designation and provide for a low density housing option as an alternative to single family dwellings.

The division of the land into the proposed five lots will require approval from the Committee of Adjustment through the land severance policies identified in Section 6.1.2. The proposal is not required to go through the draft plan of subdivision process as it proposes only five lots fronting onto an existing street.

The reduced exterior side yard proposed does not conflict with any of the provisions provided in the Official Plan. The site triangle on the property will be maintained to ensure safety of vehicular traffic and residents. The maximum lot coverage of 35% will be maintained so that the amount of impermeable surfaces on the property is not increased over the permitted requirement.

The proposed lot sizes and frontage are in compliance with the proposed R2 zone. Currently, there is an existing R2 zone located directly adjacent to the subject property, fronting onto Fort Street. It is understood that Balaclava Street does not currently have any R2 zones or semi-detached dwellings, however due to the requirement for increased housing within the town and the low density nature of the development, the site is a logical location to extend the existing R2 zone.

Town of Amherstburg Zoning By-law 1999-52

The subject lands are currently zoned Residential First Density (R1) Zone. The proposed amendment would rezone the subject lands to a special provision Residential Second Density (R2-10) to allow additional dwelling options (semi-detached) and a reduced exterior yard setback from 6 m to 4 m.

The following uses are permitted in the R2 zone:

- i) single detached dwelling;
- ii) semi-detached dwelling;
- iii) duplex dwelling;
- iv) home occupation;
- v) accessory uses;
- vi) public uses;
- vii) supportive community home.

The proposed lots will be required to comply with all other sections of the R2 Zone (Section 8 of the Zoning By-law) and all of the general provisions provided in Section 3. Section 3.23.i.i provides for maximum driveway widths on residential properties. The driveways cannot exceed 50% of the lot frontage, up to a maximum of 9 m. Only one driveway per legal property would be permitted.

The dwellings would be required to provide 2 parking spaces per unit on the private property (on-street parking does not fulfill this requirement). Private parking spaces can include parking within the garage. If any additional dwelling units are proposed on the lots at a future date, they will be required to provide one parking space per additional dwelling unit.

The proposed lots would have a 35% maximum lot coverage requirement and a 30% landscaped open space requirement. Town trees will be required for each new lot that is created.

Statutory Public Meeting Follow-up

The following table provides answers to comments and questions that were heard at the Statutory Public Meeting on August 14, 2023 or provided to the Planning Department in writing.

Table 1: Questions and concerns from residents and Council regarding the Zoning By-law Amendment at 196 Fort Street

Comment or Question	Administration's response
Concerns regarding decreasing the minimum exterior side yard setback and safety of pedestrians and vehicles	<p>The proposed reduction in exterior side yard setback will still be required to maintain the 6 m sight triangle at the intersection of the two roads. No plantings will be permitted in the sight triangle in order to maintain the visibility around the corner.</p> <p>Administration did a review of other local and comparable municipality's exterior side yard setbacks. The current R2 exterior side yard setback requirement is 6 m.</p> <p>Local Municipalities Zoning Requirements</p> <p>Town of LaSalle (R2 zone) – 3 m</p> <p>Town of Tecumseh (R2 zone) – 5 m</p> <p>Municipality of Leamington (R2 Zone) – 4.5 m</p> <p>Town of Essex (R2.1 Zone) – 1.2 m except where building wall has a vehicle entrance facing the exterior lot line, the minimum setback from the exterior lot line shall be 6m(20f)</p>

	<p>Town of Kingsville (R2.1 zone) – 4 m</p> <p>Comparable Municipalities Zoning Requirements Niagara-on-the-lake (R2 Zone) – 4.5 m Picton in Prince Edward County (R2 Zone) – 7.5 m</p> <p>The proposed 4 m exterior side yard setback falls within the average exterior side yard setback required by comparable zones within other local municipalities. The vehicle entrance will not be facing the exterior lot line, it will be facing the front lot line.</p>
Concerns regarding the removal of private trees	<p>The Town of Amherstburg does not currently have a private tree by-law to protect trees on private property. The applicant is required to maintain the existing Town trees found on Fort Street and Balaclava Street and will be required through the land severance process to provide a deposit to the Infrastructure Services Department for the planting of one tree on the right-of-way of each severed lot. If there is not room on the right-of-way for the tree, the deposit will be used to plant a tree elsewhere in Town.</p>
Compatibility with single family dwellings	<p>As identified by the applicant's Planning Justification Report there are many examples of stand-alone semi-detached dwellings within pre-dominantly single detached dwelling neighbourhoods. Semi-detached dwellings are considered low-density development while providing for an increased density over the currently permitted single detached dwellings.</p> <p>The R2 zone currently exists directly abutting the property on Fort Street. The application provides an opportunity for increased housing within the built up area of the Town as encouraged by the Province and the County of Essex, while maintaining a low-density development that will be compatible with the existing single detached dwellings in the area.</p>
Concerns regarding stormwater and the decreased exterior side yard setback	<p>Due to the nature of the proposed development, there will be no requirement for a stormwater management plan. However, all property owners are required to maintain stormwater on their own property. Stormwater will be required to be maintained through grading and rear yard drains and will not be permitted to negatively impact other properties. Downspouts will be required to splash into the yard and will not be permitted to be directly connected to the storm sewer system.</p> <p>The reduction in the exterior side yard setback does not allow for increased lot coverage. If the applicant is required to maintain the 6 m exterior side yard setback they could increase hard surfaces in other</p>

	ways, such as through accessory structures in the rear yard.
--	--

4. **RISK ANALYSIS:**

There is a risk that a decision on a zoning matter is appealed to the Ontario Land Tribunal. The risks noted below provides further clarity on this depending on the recommendation and Council decision on the matter.

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 zoning 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 zoning 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 zoning 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.

*In all matters the Municipality, the Minister of Municipal Affairs and Housing, any Prescribed Person has the right to appeal a zoning decision. The table above is to provide clarity on other parties who can appeal.

As a result of changes in the *Planning Act*, which resulted from amendments made by Bill 109 and Bill 23, a decision on a zoning matter must be made within 90 days from when the application is deemed complete. If Council does not make the decision within the required 90-days, including if the matter is deferred placing the decision past the 90 days, the Applicant would be allowed 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. In addition to the costs incurred for an appeal, the Town would need to refund the zoning application fee. This risk is mitigated by the following measures:

- Amherstburg's 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 July 13, 2023, setting the 90-day timeframe by which a decision of Council must be made before close of business on October 11, 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, 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.

Decisions on zoning matters require Council to render a decision within 90-days of the application being deemed complete. Should a decision not be made within the 90 days, including if the matter is deferred placing the decision past the 90 days, 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, and the applicant can appeal the matter directly to the OLT under 'failure to make a decision'

6. CONSULTATIONS:

The Notice of Public Meeting was published in the local newspaper 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 map and list of properties within the 120m circulation radius are attached for information.

7. **CONCLUSION:**

Administration has prepared a comprehensive analysis of all of the comments and recommendations received, and is providing a professional planning opinion and recommendation to approve the requested zoning by-law amendment.

A handwritten signature in cursive script that reads "S. French".

Sarah French
Planner

Report Approval Details

Document Title:	Zoning By-law Amendment ZBA-15-23 for 196 Fort Street.docx
Attachments:	<ul style="list-style-type: none">- Appendix 'A' - 196 Fort St Aerials.pdf- Appendix 'B' - 196 Fort St. - ZBA Application_Redacted.pdf- Appendix 'C' - 196 FORT ST.- PROPOSED SITE PLAN - FINAL - JUNE 26.pdf- Appendix 'D' - PJR 196 Fort Street FINAL V3.pdf- Appendix 'E' - 196 Fort Street Site Photos.pdf- Appendix 'F' - Circulation map.pdf- Appendix 'G' - Summary of Correspondence Received on ZBA-15-23.pdf- Appendix 'H' - 2023-089- ZBA- 196 Fort St.pdf
Final Approval Date:	Sep 11, 2023

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

No Signature found

Chris Aspila



Melissa Osborne



Tracy Prince

No Signature - Task assigned to Valerie Critchley was completed by assistant Melissa Osborne

Valerie Critchley



