



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: April 5, 2024
Author's Phone: 519 736-5408 ext. 2145	Date to Council: April 22, 2024
Author's E-mail: sfrench@amherstburg.ca	Resolution #:

To: Mayor and Members of Town Council

Subject: Zoning By-law Amendment for 6871 Concession 6 North

1. RECOMMENDATION:

It is recommended that:

1. **By-law 2024-022** being a by-law to amend Zoning By-law No. 1999-52, to amend the zoning for the subject lands known as 6871 Concession 6 North be taken as having been read three times and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same; and,
2. That section 6.3.4 of the Driveway Alteration or Installation Policy **BE WAIVED** to allow for 3 right-of-way access locations be provided for driveways within the agricultural zone in relation to ZBA-05-24 for 6871 Concession 6 North.

2. BACKGROUND:

The Town is in receipt of an application for a Zoning By-law Amendment to By-Law 1999-52 from Mark McGuire. The subject lands are located on the east side of Concession 6 N, between North Sideroad and North Townline Road and are municipally known as 6871 Concession 6 N (refer to Appendix A in the attachments).

A Statutory Public Meeting under the Planning Act was held on March 25, 2024, at which no comments or questions were received from members of the public or Council.

3. DISCUSSION:

The submitted application seeks to amend the Agricultural Zone to permit site specific provisions relating to a second dwelling unit. Section 3.3(f) of the Zoning By-law 1999-52

currently permits a second dwelling unit on agriculturally zoned properties, with certain provisions. The application is proposed to amend Section 3.3(f)(b) and 3.3(f)(f) and Section 3.23(i)(ix) of the Zoning By-law.

The proposed amendments will provide for the following relief:

Section 3.3(f)(b) – a new driveway is not permitted to provide for the second dwelling unit unless in accordance with the provisions of the by-law. The property currently has a u-shaped driveway providing two points of access to the property. The applicant is proposing a third driveway access to provide access to the second dwelling unit. Section 3.23(i)(ix) allows 3 driveways on an agricultural property, however the property must have a minimum frontage of 200 m. The subject lands have a frontage of approximately 150 m. Therefore, the third driveway is not in compliance with the Zoning By-law and requires relief.

Section 3.3(f)(f) – second dwelling units must be located within 20 m of the primary dwelling. The applicant is requesting relief from this provision to locate the second dwelling units 26 m from the primary dwelling. The applicant is hoping to retain the existing mature trees on the lot by placing the building an additional 6 m away from the primary dwelling.

Section 3.23(i)(ix) – multiple driveways are permitted on agriculturally zoned properties. Two driveways are permitted in the first 100 m of property frontage and one additional driveway for every additional 100 m of frontage are permitted by the Zoning By-law. Therefore, a property requires 200 m of frontage to have 3 driveways. The property in question has approximately 150 m of frontage and is proposing the third driveway to provide access to the second dwelling unit. The existing driveway is a u-shape and therefore provides two access points onto Concession 6 N and counts as two driveways in the Zoning By-law.

A site plan is attached in Appendix B.

It is noted that the Council approved Driveway Alteration or Installation Policy does not allow for three driveways on lots with less than 200 m of frontage. Therefore, a site-specific exemption from the policy is also being requested through the Zoning By-law Amendment process. The policy provides a method for the Engineering and Public Works Department to regulate driveway accesses through permits and ensure that driveways comply with the Zoning By-law. The Zoning By-law Amendment process provides members of the public with a method to request relief from the Zoning By-law, meaning that, if approved, an exemption from the policy is also required.

The submitted application is consistent with the Provincial Policy Statement and in conformity with the County of Essex Official Plan and the Town of Amherstburg Official Plan.

The following section will identify the planning rationale to support the recommendation of this report.

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 protection of the agricultural resources of the Province;
- the adequate provision of a full range of housing, including affordable housing;
- the appropriate location of growth and development;

Section 35.1 of the Planning Act, R.S.O. 1990, requires that municipalities permit up to three residential units on a property that contains a detached house, semi-detached house or rowhouse on a parcel of urban residential land. The dwelling units can be organized as up to three units in the main structure or up to two units in the main structure and one unit in an accessory structure. The Town of Amherstburg currently permits second dwelling units on all properties that allow detached, semi-detached or row house dwellings, regardless of if the land is urban or agricultural.

The zoning amendment does not result in additional agricultural land being taken out of production, as the property owner is currently permitted to build a second dwelling unit on the property in a similar location as proposed. The proposal before Council is to place the proposed second dwelling unit 26 m from the main dwelling unit, where 20 m is currently permitted in the Zoning By-law and provide a third access on the property to allow for direct access to the second dwelling unit. The applicant requested the additional 6 m in order to maintain the mature trees on the property and the third access to provide safer emergency access directly to the second dwelling unit.

The second dwelling unit is intended for the applicant’s family, which will allow multiple generations to live on the farm and to participate in the agricultural uses on the farm.

The proposal 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:

2.3 Agriculture

2.3.1 Prime agricultural areas shall be protected for long-term use for agriculture.

Prime agricultural areas are areas where prime agricultural lands predominate. Specialty crop areas shall be given the highest priority for protection, followed by Canada Land Inventory Class 1, 2, and 3 lands, and any associated Class 4 through 7 lands within the prime agricultural area, in this order of priority.

2.3.2 Planning authorities shall designate prime agricultural areas and specialty crop areas in accordance with guidelines developed by the Province, as amended from time to time.

Planning authorities are encouraged to use an agricultural system approach to maintain and enhance the geographic continuity of the agricultural land base and the functional and economic connections to the agri-food network.

2.3.3 Permitted Uses

2.3.3.1 In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses.

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 guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.

2.3.3.2 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.

2.3.3.3 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, 2020 is silent on second dwelling units or accessory dwelling units within agricultural properties. However, the proposed Provincial Planning Statement, released April 2023, contains provisions allowing up to two additional dwelling units on properties in prime agricultural areas.

A second dwelling unit is already a permitted use on the subject property under the Zoning By-law. The second dwelling unit will not be permitted to be severed from the property and therefore no new building lots are being created. The intent of the second dwelling unit permissions within the agricultural areas is to support farming families and provide an opportunity for multiple generations of families to live on the farm, therefore supporting the long-term success of agricultural uses. The applicant is requesting relief from the 20 m distance between the main dwelling and the secondary dwelling so that the existing mature trees on the property can be maintained. The third driveway will not cause any additional land to be consumed through the application, as the applicant could currently extend the driveway off the existing driveway. The third driveway provides a more direct route to the proposed second dwelling unit and provides safer emergency access.

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 Official Plan Amendment include:

3.3 Agricultural

3.3.2 Goals

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

- a) To protect prime agricultural areas for agricultural purposes to ensure the continued long-term availability of this resource.*
- b) To promote and protect agricultural uses and normal farm practices on lands within the “Agricultural” designation.*
- c) To allow and encourage farm operators to engage in a wide range of agricultural activities.*
- d) To restrict the type and amount of non-farm development in the “Agricultural” designation by encouraging non-farm uses to locate in the existing “Settlement Areas” identified on Schedule “A1”.*
- e) To only permit the expansions of existing Primary Settlement Areas onto lands designated “Agricultural” where demonstrated need for such an expansion has been justified either through a Local Comprehensive Review or a comprehensive review.*
- f) To discourage lot creation in the “Agricultural” designation and establish a County-wide minimum farm parcel size that protects the agricultural land base from fragmentation. The minimum farm parcel size shall ensure that the size of new agricultural lots are appropriate for the type of agricultural use(s) common in the*

area and are sufficiently large enough to maintain flexibility for future changes in the type or size of agricultural operation.

g) To ensure new farm and non-farm uses comply with the Minimum Distance Separation Formulae, as amended by the Province from time to time.

h) To encourage the retention of woodlots as integral components of the farm operation for agroforestry and the other benefits woodlands provide.

3.3.3.1 Permitted Uses

The following uses are permitted within the “Agricultural” designation subject to the policies of this section:

a) Agricultural Uses, Secondary Uses and Agriculture-Related Uses.

b) Forestry, conservation uses, wildlife and fisheries management.

c) Watershed management and flood and erosion control projects carried out or supervised by a public agency.

d) A single detached dwelling in conjunction with an agricultural use, on an existing lot of record, and on a newly created lot approved as a residence surplus to a farming operation.

e) Accessory farm accommodation, in accordance with Section 3.3.3.5 of this Plan.

f) Passive recreational uses such as pedestrian trails.

3.3.3.2 Secondary Uses

Secondary uses are secondary to the principal use of a property and may include, but are not limited to home occupations, home industries, and uses that produce value-added agricultural products from the farm operation on the property. The following policies apply to secondary uses:

a) Local municipal Official Plans shall contain criteria for the establishment of secondary uses that ensure the following:

i) The use shall not hinder surrounding agricultural uses.

ii) The amount of land and size of the building devoted to the use is limited in proportion to the principal use and buildings on the property such that the use is clearly secondary to the principal use on the lot.

iii) Limits are established on the total number of employees, as well as the number of outside employees that do not reside on the property

iv) That the zoning or sign by-law regulate signage.

v) That the use does not change the agricultural character of the area.

vi) That the use does not create a safety hazard or become a public nuisance, particularly in regard to traffic, parking, noise, noxious odours or other emissions.

vii) Limits on outdoor storage.

b) Home industry uses are occupations, trades, businesses, professions, or crafts that are secondary to the agricultural use or agriculture-related use or residential use on the property.

Home industry uses shall generally be confined to an outbuilding within the existing farm-building cluster and include but are not limited to small engine repair, woodworking and metal working.

Home industry uses shall generally not exceed 90 square metres; however, local Official Plans may provide for larger home industry uses subject to the establishment of policies that:

- i) Demonstrate that the increased size of the use is not more appropriately located within a settlement area.*
- ii) Balance the needs of the home industry with the needs of other businesses in the community that contribute to the vitality and mixture of uses within settlement areas and bear the financial risks of site specific operations that are not shared by the relatively insulated home industry.*
- iii) Ensure compatibility with adjacent or nearby uses by preventing adverse effects.*

3.3.3.3 Agriculture-Related Uses

Agriculture-related uses are farm-related commercial and farm-related industrial uses that are small-scale and directly related to the farm operation and are required in close proximity to the farm operation. Examples include but are not limited to the following:

- a) Seed, pesticide, fertilizer storage (including distribution).*
- b) Agricultural storage and processing facilities involving the storage and processing of crops and/or livestock from a local farm operation in the area.*
- c) Fruit/vegetable/flower stands & farm markets that retail produce derived from the principal agricultural use on the property.*
- d) Wineries, breweries and associated uses, which are secondary and directly related to the principal agricultural use on the property.*

Local municipal Official Plans shall contain policies for agriculture-related uses.

The County of Essex Official Plan does not mention secondary dwelling units on agricultural properties. The Official Plan was approved prior to the provincial changes requiring municipalities to accommodate additional dwelling units on properties that allow single detached dwellings, semi-detached dwellings and townhomes.

However, the County of Essex Official Plan permits accessory farm accommodation for full time or seasonal farm help. The proposed second dwelling unit will likely require less land than accessory farm accommodations would require.

The second dwelling unit could be considered a secondary use on the property, as it is secondary to the principal use of the property, which is agriculture, and smaller in size than the main dwelling. The second dwelling unit does not result in any new building lots being created within the agricultural area.

Town of Amherstburg Official Plan

The Official Plan currently designates the subject lands as Agricultural. There are several applicable policies that can be referenced in discussion regarding the proposed amendment. These include:

2.28 SECONDARY DWELLING UNITS

Secondary dwelling units can help to achieve intensification targets and increase the availability of affordable housing choices for residents. Secondary dwellings units may also assist with aging in place concepts. Secondary dwelling units, also referred to as additional residential units, are ancillary and subordinate to the primary dwelling unit. Secondary dwellings units may be contained within the main building and/or within an accessory building located on the same lot,

(a) In accordance with the Planning Act, as amended, secondary dwelling units are permitted in detached, semi-detached and rowhouse dwellings or in the accessory structures related to these uses,

- the use of two residential units in a detached house, semi-detached house or rowhouse; and*
- the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse.*

(b) A secondary dwelling unit will be permitted in an existing or new dwelling where a permanent single detached, semi-detached or rowhouse residential use is permitted under the zoning by-law. For greater clarity, a secondary dwelling unit will not be permitted in a seasonal dwelling unit or an accessory dwelling unit;

(c) The secondary dwelling unit is to be incidental to the main permitted residential use and shall not change the general appearance of the dwelling or negatively impact the character of the neighbourhood; pursuant to this policy, the implementing zoning by-law may regulate the second units having regard for exterior alterations; parking; access; secondary unit areas; and locational criteria.

(d) A secondary dwelling unit shall not be permitted on a lot subject to hazards such as flooding or erosion, as regulated by the conservation authority having jurisdiction for that area.

(e) No severances for new lots will be permitted to separate a secondary dwelling unit from a primary dwelling.

(OPA#11)

Section 3.2 Agricultural

3.2.1 Goals

The following goals are established for the Agricultural area:

- (1) To preserve and enhance good agricultural land for agricultural purposes;*
- (2) To allow farm operators sufficient flexibility to engage in a wide range of agricultural activities;*
- (3) To restrict the type and amount of non-farm development in the agricultural area;*
- (4) To encourage the retention and enhancement of existing windrows, hedgerows, and small woodlots in order to protect the high quality of landscape, provide habitat for wildlife, mitigate wind erosion and protect surface and groundwater resources; and*
- (5) To direct non-agricultural development to Settlement Areas and to control the development of agriculturally related commercial and agriculturally related industrial uses.*

The Town of Amherstburg permits secondary dwelling units on all properties that are zoned to permit a single detached dwelling, semi-detached dwelling or rowhouse dwelling. The subject lands are zoned Agriculture (A) Zone which permits a single detached dwelling. Therefore, the use of a secondary dwelling unit on the property is in conformity with the Official Plan.

The intent of the second dwelling unit on the subject lands is to provide additional flexibility to the farmer of the property by providing additional housing for his family members. The proposed amendments do not result in much land being removed from agricultural productivity, as the second dwelling unit is currently permitted within 20 m of the main dwelling and the proposal is to move the house to 26 m from the main dwelling. Additionally, the applicants could extend a driveway off the existing driveway rather than

applying for a new driveway, which would result in the same amount of land being removed from production as the new driveway.

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 February 20, 2024, setting the 90-day timeframe by which a decision of Council must be made before close of business on May 20, 2024.

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 \$6,000/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% (\$1,145) of the applicant's Zoning By-law Amendment application fee of \$2,290 (2022 Zoning By-law Amendment fee) 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:

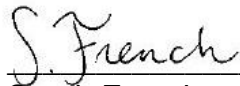
The Notice of Public Meeting was published in the local newspaper and circulated to the required agencies, property owners and municipal departments in accordance with the requirements of the *Planning Act*, R.S.O. 1990, c.P. 13 and associated regulations.

No further consultation 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 2024-022 be approved by Council, given three readings and finally passed and the Mayor and Clerk be authorized to sign same and that section 6.3.4 of the Driveway Alteration or Installation Policy be waived.



Sarah French
Planner

Report Approval Details

Document Title:	Zoning By-law Amendment for 6871 Concession 6 N.docx
Attachments:	<ul style="list-style-type: none">- Appendix 'A' - Aerials-RM.pdf- Appendix 'B' - Sketch-RM.pdf- Appendix 'C' - 6871 Concession 6 N Site Photos-RM.pdf- Appendix 'D' - ZBA-05-24 Application_Redacted-RM.pdf- Appendix 'E' - ZBA Letter from applicant-RM.pdf- Appendix 'F' - Council Circulation List and Map-RM.pdf- Appendix 'G' - Summary of Correspondence Received on ZBA-05-24 as of March 6 2024-RM.pdf- Appendix 'H' - 2024-022 ZBA-6871 Conc 6-RM.pdf
Final Approval Date:	Apr 9, 2024

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

No Signature found

Chris Aspila



Melissa Osborne

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

Tracy Prince



Valerie Critchley



Kevin Fox