



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF DEVELOPMENT SERVICES

Mission Statement: As stewards of the Town of Amherstburg, we strive to improve the quality of life of all residents through the delivery of effective, efficient, and affordable services.

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Author's Phone: 519 519-736-5408 ext. 2134	Date to Council: June 24, 2024
Author's E-mail: jmastronardi@amherstburg.ca	Resolution #:

To: Mayor and Members of Town Council

Subject: Zoning By-law Amendment for 70 Murray Street

1. RECOMMENDATION:

It is recommended that:

- 1. By-law 2024-045** being a by-law to amend Zoning By-law No. 1999-52, to amend the zoning for the subject lands located at 70 Murray 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 2787763 Ontario Limited, c/o Jackie Lassaline, Agent. The application is attached as Appendix "C" with a Planning Rationale Memo from Jackie Lassaline, Agent is attached as Appendix "D". The rezoning application affects approximately 834 sq m of land municipally known as 70 Murray Street (refer to Appendix "A" in the attachments).

A Statutory Public Meeting under the Planning Act was held on June 10, 2024, at which comments and questions were received from members of the public and questions were received from Council that are addressed in the Discussion portion of this report.

The subject property is designated General Commercial in the Town's Official Plan.

3. DISCUSSION:

The submitted application seeks to change the existing Special Provision Commercial General (CG-4) Zone to Special Provision Commercial General (CG-19) Zone to allow for a patio/outdoor gathering space at 70 Murray Street. The lands are designated General Commercial in the Town's Official Plan.

The applicant has removed an old structure from the rear yard and is proposing the construction of two 160 sq ft commercial structures to be located in the rear yard of the existing development to create an outdoor patio/gathering place. The effect of the amendment will allow for relief in rear yard setback to permit a 1.2 m rear yard setback from the required 7.5 m for the proposed 160 sq ft commercial structures. The proposed rezoning will also allow for relief in minimum building height to permit a building height of 2.4 m from the required 7 m minimum building height. All other existing CG-4 provisions are proposed to remain the same.

Section 3(22) being the General Provisions for Outdoor Patio associated with a Restaurant also apply to the subject property. The proposed rezoning will allow for relief in capacity, increasing maximum capacity from 50 occupants to 86 occupants, relief in permitting entertainment subject to Council approval through an exemption from the Noise By-law 2001-43 and relief in parking for the patio area, removing the requirement for parking spaces consistent with the intent of the CG-4 Zone provisions.

STATUTORY PUBLIC MEETING FOLLOW-UP

Administration has addressed the questions and concerns raised at the Statutory Public Meeting (SPM) and in the written correspondence submitted prior to the SPM through a table located below.

Table 1: Comments from the Statutory Public Meeting regarding the Zoning By-law Amendment proposed for 70 Murray Street.

Comment/Question	Administration's Response
Concern regarding future egress from the rear door on the east side of the building at 68 Murray Street	<p>The Fire Chief has confirmed fire exits requirements are regulated in the Ontario Building Code.</p> <p>It has been confirmed by the Chief Building Official that the building at 68 Murray has three points of egress, one on the front, one on the back and one on the east side of the building. The Ontario Building Code (OBC) requires two points of egress. The third exit is not required by OBC.</p> <p>However, the applicant has agreed to a restricted building area being added into the ZBA to acknowledge a clear exit from the door on the east wall of 68 Murray Street. A site visit was conducted to determine the area to include in the ZBA.</p>
Length of Patio Season	The patio is proposed to be utilized as long as weather permits. Outdoor heaters may be brought in to provide a longer patio season. Umbrellas will also be provided.

AODA Compliance	<p>That patio will be located to the side and rear of the existing building at 70 Murray. It will be accessed from the Town sidewalk. Two accessible washrooms are available within the main structure and are accessed through the existing AODA compliant entrance on the north side of the building which has an automatic door opener button. The Building department has confirmed through review of the building drawings that the accessible washrooms are approximately 40ft from the accessible entrance to the building.</p> <p>Picnic tables have been designed to have removable benches and benches that pull out for seating.</p> <p>The site plan will be circulated to the Accessibility Committee for review.</p>
Proposed Structures	<p>Two prefabricated commercial structures, which are each 160 sq ft, are proposed to be fixed to the ground. They are to be permanently placed to provide a space for food/drink service, retail space or other community uses to enhance the outdoor gathering space/patio.</p>
Addressing and Site name	<p>Addressing is done at the time of Site Plan Control review. The existing site plan for 70 Murray will be amended to include the two new commercial structures.</p> <p>At this time the Fire department has confirmed that the site at 70 Murray is required to maintain the only the one existing address for emergency services purposes.</p> <p>The applicant has confirmed the name of the patio will be "The Yard".</p>
Noise By-law Relief	<p>A future request to Council is still required which will provide details on the seasonal request for relief from the noise by-law.</p>

PLANNING ANALYSIS

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 orderly development of safe and healthy communities;
- the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;
- the adequate provision of employment opportunities;
- 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 proposal provides for orderly development of the community by providing additional commercial uses within the Central Business District of Town. The proposed patio/gathering space use with additional small commercial structures provides for an accessible and pedestrian friendly space. The patio will provide for attractive public spaces that will help encourage a sense of place and provide opportunity for customers to remain on site and outdoors.

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.

1.3 Employment

- 1.3.1 Planning authorities shall promote economic development and competitiveness by:
- a) providing for an appropriate mix and range of employment, institutional, and broader mixed uses to meet long-term needs;
 - b) providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses

- which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses;
- c) facilitating the conditions for economic investment by identifying strategic sites for investment, monitoring the availability and suitability of employment sites, including market-ready sites, and seeking to address potential barriers to investment;
 - d) encouraging compact, mixed-use development that incorporates compatible employment uses to support liveable and resilient communities, with consideration of housing policy 1.4; and
 - e) ensuring the necessary infrastructure is provided to support current and projected needs.

1.7 Long-Term Economic Prosperity

- ### 1.7.1 Long-term economic prosperity should be supported by:
- promoting opportunities for economic development and community investment-readiness;
 - maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets;
 - encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*;
 - providing opportunities for sustainable tourism development;

The proposed amendment is consistent with the PPS as it facilitates further development within the existing settlement and growth area, allowing for efficient use of unused space by adding vitality to the downtown core. The outdoor gathering area provides a sense of place within an area of significant built heritage that is pedestrian friendly and accessible. The patio/gathering space is wholly on private property making it safe for all with accessible access from Town sidewalks. There is accessible access to the building and two washrooms. Accessible seating is also provided through the use of convertible picnic tables specially built for the patio to provide various seating options for all abilities, including removable benches for wheelchairs and moveable seating that do not require to swing legs over.

The proposed amendment is consistent with Section 1.3 of the PPS, as it increases the mix and range of employment uses within the Town of Amherstburg. The new commercial structures provide opportunity for additional retail space. The commercial areas within the Town of Amherstburg provide employment areas and opportunities for the development of population-related job growth.

The proposed amendment is consistent with Section 1.7 of the PPS, as it enhances the vitality of the downtown, provides a tourism draw and encourages a sense of place through built form with the historic hotel building and the well designed use of the outdoor area.

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 Official Plan 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.

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 3.2.2 Primary Settlement Areas Goals include the following:

- Support and promote public and private re-investment in the *Primary Settlement Areas*.
- 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.
- 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.
- 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.

Section 3.2.4.1 Primary Settlement Areas Policies outline the following:

- Primary Settlement Areas shall be the focus of growth and public/private investment in each municipality.

- Downtown/Uptown areas should maintain and/or enhance the existing character of these areas. Mixed-use development and an accessible pedestrian oriented streetscape are encouraged. The preparation of Community Improvement Plans are also encouraged.
- All types of land use are permitted within the “Settlement Areas” designation subject to the specific land use policies of the local Official Plans.
- Cost effective development patterns and those which will minimize land consumption and reduce servicing costs are encouraged. Land use patterns which may cause environmental, heritage preservation or public health and safety concerns shall be avoided.
- The County supports universal physical access and encourages the building industry to incorporate such features into new structures.

The subject lands have been developed in the past with commercial uses and the proposed development provides for a higher density use on the site than previously existed. The patio/outdoor gathering space and new commercial structures are proposed to help provide for a pedestrian friendly atmosphere on the site.

Town of Amherstburg Official Plan

The subject lands are designated General Commercial in the Town of Amherstburg’s Official Plan.

Section 4.4 General Commercial Areas

The uses permitted in the General Commercial designation shall include those commercial establishments offering goods and services which primarily serve the whole of the municipality’s market area and shall include such uses as retail commercial establishments, places of entertainment, assembly halls, eating establishments, hotels, motels, community facilities, public uses, recreational uses, convenience stores whether in the form of individual stores or in a shopping centre form of construction and/or ownership, and residential uses above the first floor.

...

The general location of the General Commercial areas shall be in accordance with Schedules “A” and “B”.

Any public works or private redevelopment within the area should take into account the Heritage Policies and Downtown Revitalization Policies of this Plan and should implement any applicable portion.

The General Commercial lands may be placed in separate zoning classifications in the implementing Zoning By-Law.

Section 6.2 Policies for Downtown Revitalization

It is the intent of this Plan to encourage the continued viability of the downtown core area. To this end, the following specific policies are set out with respect to future development in the Central Business Area.

6.2.1 Description

- The Central Business Area shall comprise those lands adjacent to Richmond Street, west of Sandwich Street and Dalhousie Street from Rankin to Gore.
- The uses permitted in the Central Business Area shall consist primarily of those general commercial uses described in Section 4.4 hereof, but shall also include some mixed types of residential uses located primarily on the fringe of the Central Business Area.
- The limits of the Central Business Area do not coincide in all cases with those of land use areas. However, distinct and recognizable limits to the Central Business Area will be achieved where possible by differences in intensity and character between it and adjoining areas.
- The Central Business Area is and shall continue to be characterized by an intensive use of land.

6.2.2 Role and Function

It is the intent of this Plan that the focal point of activity be the Central Business Area which shall continue to be the dominant and most intensive business area in the Town and in the surrounding market area. The Zoning by-law may apply square footage restrictions on uses beyond the Central Business Area in an attempt to encourage smaller retail and office uses to select the Central Business Area over locations on Sandwich Street.

6.2.4 Traffic and Parking

- Truck and industrial traffic shall be discouraged in the Central Business Area except where such traffic has business in the downtown area.
- Store owners shall be encouraged to make maximum use of the areas behind their stores for the purposes of both loading and parking.
- Because the Central Business Area is the sector of the Town wherein the volume of pedestrians is the most dense, it shall be designed primarily to serve a pedestrian function and to encourage social interaction.
- Parking facilities within the Central Business Area shall be limited primarily to short-term parking with high turnover, serving shopping and business purposes. Long-term or all-day parking facilities, except those developed by private business for their own use, shall be provided on the periphery rather than in the core of the Central Business Area. Where a fee is charged for off-street parking, the rate structure shall generally be such as to render the facility self-supporting. Moreover, rates shall be set so as to discourage all-day parking in the core of the Central Business Area and to encourage long-term parking on the periphery.
- Entrances and exits to off-street parking facilities shall be located so as to minimize interference with street traffic. The frontage on Richmond Street shall not be used for surface off-street parking facilities. The development of pedestrian walkways to parking areas located behind the Richmond Street frontage as well as Murray and Dalhousie Streets, shall be encouraged, as well as ensuring barrier free accessibility and accessible parking spaces.
- The provision of on-site parking shall not be prerequisite for new

development in the Central Business Area provided Council is satisfied that undue traffic hazards would not arise.

6.2.5 Downtown Improvement and Revitalization

- It is the intent of this Plan that the progressive features and positive characteristics, which have developed in the Central Business Area, shall be retained and reinforced. Development of vacant sites and redevelopment of existing areas in the Central Business Area shall be encouraged in a comprehensive manner with a view to coordinating individual site designs and providing integrated solutions to pedestrian and vehicular traffic circulation problems. To further these objectives, Council may require that prospective developers of lands in the Central Business Area enter into a Development Agreement with the Municipality under Section 41 of the Planning Act, R.S.O. 1990 c.P.13.
- Although intensification of use will be inherent in most development or redevelopment, it is the intent of this Plan that in any rehabilitation, conservation, development, or redevelopment schemes for the Central Business Area, emphasis be placed on the provision of abundant light and air space, the provision of attractive and usable open space available to the public, the aesthetic value of enclosed areas as well as open areas, the importance of public buildings as focal points of civic improvement, the restoration of existing buildings wherever possible and the retention of historical atmosphere and buildings. High standards of civic design emphasizing unity, coherence, and aesthetic appeal shall be the goal throughout.
- It is the intent of this Plan that the Central Business Area remain as compact as possible in order to serve the pedestrian most effectively. New development should be planned as an extension of the existing business area and should not be allowed to infiltrate unnecessarily into adjoining residential areas.
- Council shall encourage merchants and property owners in the Central Business Area to improve their shop fronts and signs and thereby improve the overall appearance of the downtown area.

The subject lands have been through the site plan control process with an approved agreement registered on January 24, 2022. The property owners are currently pursuing an amendment to the site plan to include the outdoor patio/gathering space area and two additional small commercial structures on the property.

The requested zoning by-law amendment will provide a reduced rear yard setback to allow for the open patio space, a reduced building height to allow for the compact commercial structures which will be subordinate to the heritage structure on the property, the exemption of parking requirements for a patio related to a restaurant will be consistent with the commercial parking requirements in the area and provide for a pedestrian friendly site. The increase in capacity is appropriate for the area available and permitting entertainment encourages a welcoming atmosphere. Therefore, the proposed amendment is consistent with the Official Plan.

Town of Amherstburg Zoning By-law 1999-52, as amended

The proposed Special Provision Commercial General (CG-19) Zone provides for the following:

That Section 3(22)(a) of By-law 1999-52, as amended, being the General Provision for capacity of outdoor patios associated with a restaurant does not apply to those lands shown on Schedule "A".

That Section 3(22)(e) of By-law 1999-52, as amended, being the General Provision for entertainment on outdoor patios associated with a restaurant does not apply to those lands shown on Schedule "A".

That Section 3(22)(f) of By-law 1999-52, as amended, being the General Provision for parking requirements for outdoor patios associated with a restaurant does not apply to those lands shown on Schedule "A".

That Section 15(4) of By-law 1999-52, as amended, is hereby amended by adding a new subsection (s) as follows;

“(s) CG-19 (70 Murray Street)

Notwithstanding any other provisions of this By-law to the contrary within any area zoned CG-19 on Schedule "A" hereto, the zone requirements for Section 15 of the By-law shall apply with the addition of the follow special provisions;

- i) Notwithstanding the parking requirements of Sections 3(22)(f) and Section 3(23)(a)(b)(c), the parking requirements for any area zoned CG-19 on Schedule "A" for residential units shall be 0.33 per unit and there shall be no parking requirements for non-residential land uses. All other parking regulations shall apply.
- ii) The minimum height shall be 2.4 metres and the maximum height shall be 18 metres.
- iii) Rear Yard Depth (Minimum) 1.2 m
- iv) Restricted Building Area- On the northwest corner of the parcel zoned CG-19 a 1.5 m interior side yard setback is required extending from the rear property line 2.7 m so that no structure may be built to impede a safe egress from the existing door at 68 Murray Street as exists on the date of this by-law.
- v) The maximum capacity for an outdoor patio associated with a restaurant shall be 86 occupants.

All other provisions under Subsection 15(3) Zone Regulations shall apply to lands zoned CG-19.”

The submitted ZBA application proposes to change in the zoning of the subject property

from Special Provision Commercial General (CG-4) Zone to Special Provision Commercial General (CG-19) Zone.

The requested zoning by-law amendment will provide relief from rear yard setback and minimum building height for two proposed commercial structures. Section 15(3)(f) requires a rear yard setback of 7.5 m. The applicant is proposing a 1.2 m setback for the new structures. Section 15(4)(d) requires a minimum height of 7 m. The applicant is proposing a building height of 2.4 m.

The rezoning will also provide for a higher occupant load of the proposed outdoor patio/gathering space. Section 3(22)(a) limits the capacity of an outdoor patio associated with a restaurant to no more than 50% of the licensed capacity of the restaurant (which is proposed to be 110 occupants) to a maximum of 50 persons, whichever is greater. The applicant is proposing the capacity of the outdoor space to be 86 occupants.

The rezoning will also grant relief from Section 3(22)(e) which restricts music (whether performed live or recorded), dancing or other forms of entertainment. Currently the Noise By-law 2001-43, amended by 2022-018, also regulates the entertainment and the use of electronic devices to produce, reproduce or amplify sound. Exempting the subject lands from this general provision will provide for approval from Council being through a request for an exemption from the Noise By-law.

The CG-4 Zone already grants relief in parking requirements for commercial uses on the site which is within the Official Plan policies for the Central Business District. However, even though the intent is for a full exemption from parking requirements for commercial uses is included in Zoning By-law 1999-52, as amended, the amendment from 2002 is not written to include the parking requirements for the outdoor patios associated with a restaurant found in Section 3(22)(f). Removing the requirement for parking spaces is proposed to be consistent with the intent of the CG-4 Zone provisions.

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.

7. 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	Legal consulting and Administrative time to defend the decision before OLT.

		Council, and or signed in and provided their contact information at the SPM.	
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 May 10, 2024, setting the 90-day timeframe by which a decision of Council must be made before close of business on August 7, 2024.

8. 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% (\$1,381) of the applicant's Zoning By-law Amendment application fee of \$2,762 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".

9. 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 is attached as Appendix “F”.

A summary of correspondence received is attached for Council consideration as Appendix “G”.

No further consultation on the ZBA is required.

10. CORPORATE STRATEGIC ALIGNMENT:

Vision: Preserving our past while forging our future.

Amherstburg Community Strategic Plan 2022 - 2026	
<p style="text-align: center;">PILLAR 1 Deliver Trusted & Accountable Local Government</p> <ul style="list-style-type: none"> <input type="checkbox"/> Improve trust between council and staff, and residents, by strengthening governance and internal accountability structures. <input type="checkbox"/> Deliver transparent and efficient financial management. <input type="checkbox"/> Increase effective communication and engagement with residents. <input type="checkbox"/> Develop our staff team, resources, and workplace culture. <input type="checkbox"/> Continue to deliver strong core municipal services. <input type="checkbox"/> Ensure Amherstburg is an inclusive accessible and welcoming community committed to reconciliation. 	<p style="text-align: center;">PILLAR 3 Encourage Local Economic Prosperity</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Encourage development of commercial and industrial lands. <input checked="" type="checkbox"/> Continue to promote local tourism industry, especially overnight accommodation. <input checked="" type="checkbox"/> Continue to facilitate downtown development for residents and visitors. <input type="checkbox"/> Continue to leverage partnership opportunities with other provincial, federal, and local governments, agencies, and organizations.
<p style="text-align: center;">PILLAR 2 Invest in Community Amenities and Infrastructure</p> <ul style="list-style-type: none"> <input type="checkbox"/> Maintain safe, reliable and accessible municipal infrastructure and facilities. <input type="checkbox"/> Increase access to recreation opportunities for all ages. <input type="checkbox"/> Finalize and execute plans for town-owned lands (e.g. Duffy’s site, Belle Vue) <input type="checkbox"/> Create public access to water and waterfront 	<p style="text-align: center;">PILLAR 4 Shape Growth Aligned with Local Identity</p> <ul style="list-style-type: none"> <input type="checkbox"/> Define and communicate a vision for the Town’s future and identity. <input type="checkbox"/> Promote and plan for green and “climate change ready” development. <input type="checkbox"/> Review and implement policies that promote greater access to diverse housing. <input type="checkbox"/> Protect the Town’s historic sites and heritage.

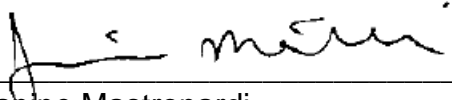
Prioritize opportunities to reduce environmental impacts of Town operations and increase Town resilience to climate change.

Preserve the Town's greenspaces, agricultural lands, and natural environment.

11. 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 2024-045 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

JM

Report Approval Details

Document Title:	Zoning By-law Amendment for 70 Murray Street.docx
Attachments:	- ZBA-17-24 - Council Report ATTACHMENTS-RM.pdf
Final Approval Date:	Jun 14, 2024

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



Melissa Osborne



Tracy Prince



Valerie Critchley



Kevin Fox