

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 20, 2023

CASE NO(S).:

OLT-23-000185

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Seminary of Sacred Knowledge
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description: To permit the addition of a student residence to an existing school
Reference Number: ZBA-22-22
Property Address: 6101 County Road 20, Pt. of Lot 68, Concession 6
Municipality: Town of Amherstburg
OLT Case No.: OLT-23-000185
OLT Lead Case No.: OLT-23-000185
OLT Case Name: Seminary of Sacred Knowledge v. Amherstburg (Town)

Heard: August 14, 2023 by Video Hearing ("VH")

APPEARANCES:

Parties

Counsel/Representative*

Seminary of Sacred Knowledge
("Applicant"/"Appellant")

Robert Brown*

Town of Amherstburg

Thomas R. Porter

DECISION DELIVERED BY K.R. ANDREWS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is a Settlement Hearing concerning an appeal by the Seminary of Sacred Knowledge. The Appellant is seeking a Zoning By-law Amendment ("ZBA") to permit the boarding of students within a part of an existing school. The Tribunal is informed that the Town requires the subject ZBA for the purpose of issuing a building permit to construct student boarding rooms within the existing structure. The Appeal arises following the initial refusal of the ZBA application by the Town of Amherstburg ("Town").

PARTY STATUS REQUEST

[2] As this is the first event in the matter, the Tribunal canvassed those attending to confirm if anyone is seeking either Party or Participant Status. The present Member was not aware of any such requests having been filed with the Tribunal.

[3] However, Jill McGraw attended the Hearing and stated that she is seeking Party status as an area resident. The Tribunal asked her if she had submitted a Party status request form, and she confirmed that she had submitted both Party and Participant status request forms.

[4] The Tribunal then made inquiries with the Tribunal's administration staff and confirmed that Ms. McGraw had indeed submitted a Party and Participant status request form; however, her form and the statements had not been included in the Tribunal file, nor were they shared with the existing Parties. Ms. McGraw also confirmed that she had a more detailed written statement that she wished to read before the Tribunal, which had not been previously sent to the Tribunal.

[5] Such circumstances proved problematic, given the potential prejudice caused to the existing Parties by not having been provided with a copy of her materials in advance of the present hearing. The Tribunal, therefore, determined that it would be prudent to stand down the matter for an hour to give Ms. McGraw time to send her more detailed statement to the Tribunal, and also to give the Tribunal time to share her original request form and statements, plus her new statement, to the Parties.

[6] Upon resumption of the Hearing, Ms. McGraw confirmed that she also had several photos (she could not confirm how many but said that there were many) that she said were available "if the Tribunal needs to see them". The Tribunal asked Ms. McGraw if she intended to present these photos as part of her proposed role as a Party. Ms. McGraw had difficulty answering this question, repeatedly stating that she would share the photos if the Tribunal wanted to see them. The Tribunal advised her that it would be her decision to present the photos if she is granted Party status. The Tribunal confirmed that it simply needs to know the extent of her intentions to participate as a Party if granted status; for example, the Tribunal asked if she intended to present evidence (i.e., the photos).

[7] Eventually, it was determined that Ms. McGraw did not intend to present the photos on her own accord. Furthermore, after a lengthy and often off-topic discussion with Ms. McGraw about her intentions, it was determined that she only wished to read her written statement.

[8] The Tribunal then asked the Parties for submissions on Ms. McGraw's request for Party status, and both Parties expressed general opposition to her request and a desire to proceed with the Settlement Hearing. Counsel for the Applicant also pointed out that Ms. McGraw's issues, as expressed in her statements, did not raise planning issues; rather, her concerns were focused on complaints about a lack of by-law enforcement regarding present activities at the subject site (i.e., property standards and/or disturbances). In response, Ms. McGraw submitted that she believes that these issues will only get worse if the ZBA is approved.

[9] The Tribunal ultimately declined to grant the requested Party status, finding that Ms. McGraw failed to present proper planning issues as the crux of her concerns. In addition, she confirmed that she only wanted to read her written statement, which the Tribunal finds to be unnecessary given that it can be read by the Tribunal.

[10] Instead, the Tribunal grants Ms. McGraw Participant status and accepts Ms. McGraw's original statements contained in her status request forms, together with her handwritten statement provided on the present day of the Hearing, as her Participant Statement.

SETTLEMENT

[11] Evidence in support of the proposed settlement was provided by Tom Storey, who was duly qualified as an expert in land use planning.

[12] To begin, Mr. Storey confirmed that there was some debate between him and the Applicant's representative, Robert Brown (who is also a land use planner), regarding whether or not the Applicant's ZBA is even necessary to allow the proposed development of student residences.

[13] Mr. Storey confirmed that Mr. Brown took the position that student residences are already a permitted use as an accessory use of the school. Mr. Storey further confirmed that his own independent investigation revealed that the existing school was formerly St. Peter's ACHS College School (a Catholic school), and it included the boarding of students. Given this information, Mr. Storey acknowledged that it is not unreasonable to conclude that, when the school was first established in the former Malden Township (prior to amalgamation), the boarding of students may have been considered a lawful use and that the boarding of students could still be considered a permitted use as a legal non-conforming use under the existing By-law.

[14] Mr. Storey acknowledged that, based on the above conclusions, a liberal interpretation of the existing By-law could include the boarding of students as a permitted use, but he also opined that such an interpretation lacked certainty. Consequently, Mr. Storey took the position that it is preferable to remove any ambiguity concerning the Applicant's proposed use of the property, as set out in the proposed settlement ZBA.

[15] Mr. Storey testified that the principal features of the proposed settlement ZBA are:

- It creates a site-specific zone;
- A definition for "seminary" is provided and includes the boarding of students and residence for clergy as permitted uses;
- The area within the existing school building for student boarding is limited to 250 square metres; and,
- Permitted buildings and structures are limited to those existing on the date of passing, except for one accessory structure for the storage of the grounds-maintenance equipment and construction materials.

[16] Mr. Storey noted that, as the current By-law presently reads, up to 50% of the property could be developed as-of-right, totalling approximately 3 acres of the property's 6 acres. He opined that this would be a massive overdevelopment of the site, and so it is preferable from the Town's standpoint to include limits on development as part of the proposed settlement ZBA.

[17] Upon considering the proposed ZBA, Mr. Storey opined that the proposed by-law conforms with the description of the contemplated institutional uses, set out in Section 4.3 of the Town Official Plan ("TOP") and implements Section 2.23 of the TOP, which deals with the establishment of new institutional uses and their potential expansion.

[18] He further opined that the proposed ZBA is similarly consistent with the Provincial Policy Statement (“PPS”) and conforms with the County of Essex Official Plan (“COP”), given that he opined that the aforementioned TOP policies are consistent with the PPS and is in conformity with the COP with regards to institutional uses.

[19] Finally, Mr. Storey opined that the settlement represents good planning, in that:

- The Appellant is able to establish its desired use (i.e., a seminary with student boarding and necessary accessory structure; which may or may not already be permitted as-of-right); and,
- The Town will be able to appropriately regulate any expansion of the existing building footprint through zoning and site plan control, as set out in its Official Plan.

[20] The Tribunal accepts the above-described uncontroverted evidence and finds same.

[21] The Tribunal confirms that it has had due regard for the contents of the Participant statement provided by Ms. McGraw in coming to its decision.

ORDER

[22] **THE TRIBUNAL ORDERS** that:

1. Jill McGraw is granted Participant status; and,

2. The appeal is allowed in part, and By-law No. 1999-52 of the Town of Amherstburg is hereby amended as set out in Attachment 1 to this Order. The Tribunal authorizes the municipal clerk of the Town of Amherstburg to assign a number to this by-law for record-keeping purposes.

[23] The Member is not seized but may be spoken to through the Case Coordinator if any issues arise.

"K.R. Andrews"

K.R. ANDREWS
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

CORPORATION OF THE TOWN OF AMHERSTBURG BY-LAW NO. 2023-XXX

By-law to amend Zoning By-law No. 1999-52 6101 County Road 20, Amherstburg

WHEREAS By-law 1999-52, as amended, is a land use control by-law regulating the use of lands and the character, location and use of buildings and structures within the Town of Amherstburg;

AND WHEREAS the Council of the Town of Amherstburg deems it appropriate and in the best interest of proper planning to amend By-law 1999-52, as herein provided;

AND WHEREAS this By-law conforms to the Official Plan for the Town of Amherstburg;

NOW THEREFORE the Council of the Corporation of the Town of Amherstburg enacts as follows:

1. Schedule "A", Map 60 of By-law 1999-52, as amended, is hereby amended by changing the zone symbol on those lands shown as "Zone Change from I to I-6" on Schedule "A" attached hereto and forming part of this By-law from "Institutional (I) Zone" to "Special Provision Institutional (I-6) Zone".

2. THAT Section 2 of By-law 1999-52, as amended, is hereby amended by adding a new definition, in the appropriate order, as follows:

"SEMINARY" means an educational institution used for the purpose of religious studies and includes the boarding of students and the necessary associated ancillary uses including but not limited to a residence for a clergy and/or caretaker."

3. THAT Section 24(4) of By-law 1999-52, as amended, is hereby amended by adding a new subsection (f) as follows;

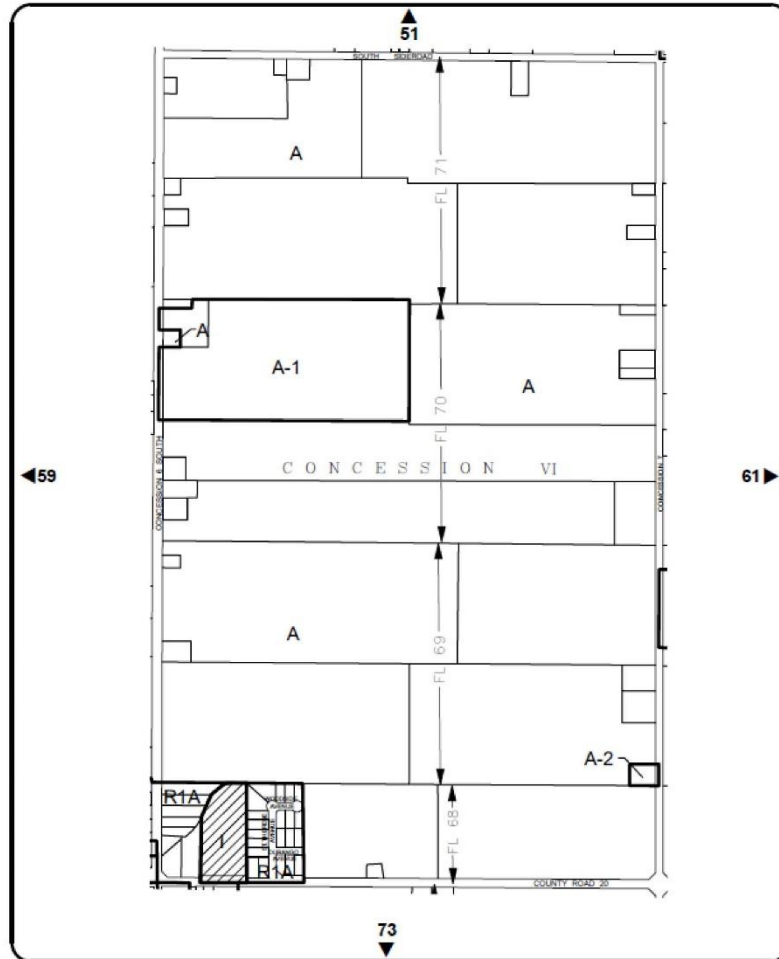
"(f) I-6 (6101 County Road 20)

Notwithstanding any other provisions of this By-law to the contrary, within any area zoned I-6 on Schedule "A" hereto, the zone requirements of Section 24 of the By-law shall apply with the addition of the following special provisions:

- (i) Uses Permitted;
 - (a) A seminary
 - (b) An accessory storage building
 - (c) any use permitted in the Institutional (I) Zone
- (ii) Zone Requirements
 - (a) Maximum gross floor area of a student boarding area, shall be 250 sq. m of the building as existed on the date of passing of this by-law.
 - (b) Maximum gross floor area of an accessory storage building shall be 223 sq. m.
- (iii) Notwithstanding any other provisions of the by-law to the contrary the permitted buildings and structures shall be limited to those existing on the date of passing of this by-law.

TOWN OF AMHERSTBURG

SCHEDULE "A" TO BY-LAW No. 2023-003
A BY-LAW TO AMEND BY-LAW No. 1999-52



SCHEDULE 'A'
MAP 60
ZONING BY-LAW NO. 1999-52

I to I-6 