

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** August 12, 2024

**CASE NO(S):** OLT-23-000659

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Margaret Beaudoin
Subject:	By-law No. 2023-051
Description:	Reduction in rear yard setback
Reference Number:	ZBA-09-23
Property Address:	256 Dalhousie Street
Municipality/UT:	Amherstburg/Essex
OLT Case No.:	OLT-23-000659
OLT Lead Case No.:	OLT-23-000659
OLT Case Name:	Margaret Beaudoin v. Amherstburg (Town)

**Heard:** June 3, 2024, via Video Hearing

**APPEARANCES:**

**Parties**

Margaret Beaudoin  
("Appellant")

Black Dog Entertainment  
Inc. ("Applicant")

Town of Amherstburg

**Counsel**

Ed Hooker

Analee Baroudi

Thomas Porter

**DECISION DELIVERED BY D. CHIPMAN AND M. MENEZES, AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] The Tribunal convened a Hearing ("Hearing") in respect of the appeal filed by Margaret Beaudoin ("Appellant") against the Town of Amherstburg's ("Town") passing of

By-law No. 2023-51, the Zoning By-law (“ZBA”) pursuant to subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (“Act”) for lands municipally known as 256 Dalhousie Street.

[2] The ZBA application submitted by Black Dog Entertainment, is to provide rear-yard setback relief from section 15 of the Town’s Zoning By-law to reduce rear yard depth from 7.5 metres (“m”) to 0 m. As the setback reduction request is over half the minimum required depth, Town staff identified the request as a minor ZBA rather than a Minor Variance.

[3] The rear yard setback requested is to facilitate the development of a five storey, mixed-use building consisting of a 15-suite hotel, a ground floor retail use fronting onto Dalhousie Street, and a restaurant in the rear of the building, facing the Kings Navy Yard and the Detroit River.

[4] The Tribunal heard that a Site Plan application had been submitted but was put on “pause” pending the outcome of this proceeding.

[5] The Tribunal followed the written Hearing Plan which was prepared in consultation with each of the Parties over the course of the four (4) day hearing. Additionally, written closing arguments were provided by Counsel on June 14, 2024. Nine witnesses appeared before the Tribunal.

[6] The Tribunal having heard the evidence dismisses the appeal against By-law No. 2023-051 of the Town of Amherstburg.

## **ISSUES**

[7] The Issues List forming part of the Procedural Order (“PO”) governed the presentation of the evidence at the Hearing of this Appeal. From a policy context, the issues before the Tribunal require the general determinations of whether the proposed ZBA has sufficient regard to the Provincial interests listed in s. 2 of the *Planning Act*, is consistent with the Provincial Policy Statement, 2020 (“PPS”), and conforms to the County’s Official Plan (“County OP”) and the Town’s Official Plan (“Town OP”), and in

general, represents good planning and is in the public interest.

[8] The evidence adduced during the hearing raised the issue of prematurity of the application for the ZBA in the absence a Site Plan that would have provided the basic functionality of the site to accommodate 100% lot coverage with a building at the full height of 18 m.

[9] Within this fundamental planning issue there are a number of focused issues which speak to traffic, safety, parking, intensification, need for studies, downtown improvement and revitalization, garbage, fire safety, access to abundant light and airflow, and in general, the appropriate level of intensification for this site.

[10] Ultimately all these matters collectively focus, in part, on whether the setback is appropriate to accommodate the proposed development.

## **DESCRIPTION OF SITE AND SURROUNDING CONTEXT**

[11] The Subject Site is located at 256 Dalhousie Street in the Central Business Area of Amherstburg, between Richmond Street and Murray Street on the west side of Dalhousie Street. The Subject Site is approximately 0.031 hectares (313.5 square metres) in size and consists of one narrow parcel with approximately 9 m of frontage onto Dalhousie Street.

[12] There is existing access to the site from Dalhousie Street, which is classified as a collector road in Town OP. A rear laneway, primarily used for deliveries, is a north-south right-of-way that provides access to the back of the developments that front on Dalhousie Street by way of an access easement over the municipal right-of-way. No speed limit is posted on this laneway. This laneway is connected to Dalhousie Street north of its intersection with Richmond Street.

[13] The property immediately north of the Subject Site is a Mixed-Use Condominium Building, with Ground Floor Commercial and Residential Dwelling Units above the ground floor. The building is locally known as the Salmoni Building.

[14] Dalhousie Street operates as a two-lane road, with a posted speed limit of 50 km/h. On-street parking spaces are located on the west side of the street.

[15] The Subject Site is located within the Town's Heritage Area. The property has been removed from the Municipal Heritage Register and a demolition permit for the existing structure has been obtained.

## **CHRONOLOGY OF THE APPLICATIONS**

[16] The applications for a ZBA were submitted to the Town on March 14, 2023, and deemed complete on March 31, 2023.

[17] A Statutory Public Meeting was held on April 11, 2023, and Town Council approved the ZBA on May 23, 2023.

[18] On June 6, 2023, the Appellant formally submitted an appeal in opposition of Council's approval of the ZBA.

## **ORDER OF EVIDENCE AND WITNESSES**

[19] It was agreed that the following Order of Evidence and Witnesses would govern the Hearing:

### **For the Appellant**

D. Parks – Resident of the Salmoni Building-252 Dalhousie Street

Aaron Blata- Engineer, Traffic Operations

David Wharram – Former Fire Department Captain, Town of Amherstburg

Robert Brown - Land Use Planner

**For the Applicant and Town**

Steve Berrill – Architect, Shadow Impact

Arash Mirhoseini - Traffic Engineering

Bruce Montone - Fire Chief, Town of Amherstburg (summoned)

Chris Aspila - Manager, Planning Services, Town of Amherstburg (summoned)

Nancy Meloshe – Land Use Planner

[20] All experts were duly qualified on consent to provide expert opinion evidence in their above noted field. Mr. Parks provided factual and contextual evidence before the Tribunal. The Tribunal received and recorded all exhibits to the hearing, which were identified and assigned an exhibit number during the hearing.

**Agreed Statement of Facts**

[21] It should be noted that both Parties have agreed that the present one storey commercial building and attached decks underutilize the site within the Central Business Area and that the site is capable of intensification.

[22] Both Parties agree there is no requirement for parking or loading areas on this site under the Town's Zoning By-law designation CG-4.

**THE PLANNING ACT**

[23] In carrying out its responsibilities, the Tribunal shall have regard to, among other matters, matters of provincial interest as set out in s. 2 of the Act. When making a decision relating to a planning matter, the Tribunal shall have regard to any decision made by a municipal council or approval authority and any information and material considered by a council or approval authority in making the decision as set out in s. 2.1(1) of the Act.

[24] Section 2 of the *Planning Act* sets out a list of matters of provincial interest, which the Tribunal is required to “*have regard*” to in its disposition of the appeal.

[25] Section 2 (h), (n), (o) and (r), of the *Planning Act*, R.S.O. 1990, c. P.13 have been relied on by the Parties. (Issues 1 & 2)

- (h) the orderly development of safe and healthy communities;
- (n) the resolution of planning conflicts involving public and private interests
- (r) the promotion of built form that, are: (i) is well-designed, (ii) encourages a sense of place, and (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;
- (o) the protection of public health and safety;

[26] Mr. Brown argued that proposed 0 m setback further creates a site line issue with the exiting the parking garage next door at 252 Dalhousie that would be considered a safety issue (s. 2(n)). He stated that while the development of a hotel may be welcomed for the area, it is being proposed on a property that cannot fully or properly meet the needs of the use being proposed.

[27] Mr. Brown explained that the building design is appropriate to the area in terms of style and would blend well with the existing buildings around it, however, the scale of the building is oversized for the lot which will negatively impacting the sense of place intended for the subject parcel as well as negatively impact surrounding uses (s. 2(r)).

[28] He informed the Tribunal that zoning was previously granted for an increase to height which in turn increased the usability of the lot. The current request of a 0m rear yard setback will now increase the scale. Mr. Brown emphasized that this development provides no public space as the lot would be 100% developed.

[29] Ms. Meloshe stated through the statutory public meeting and review of the comments received, the Applicant undertook additional studies and conceptual design changes, to alleviate the Appellant’s concerns regarding the rear yard setback

reduction. In her opinion, the revised proposal is a resolution of planning conflicts. She opined that planning conflicts do not equate to the priority of one public or private interest over another but rather a well-balanced solution in which an attempt to address and consider all interests has been made (s. 2(n)).

[30] Ms. Meloshe opined that the renderings filed by the Applicant proposes a development respects the scale and heritage character of the surrounding area that will allow for a compact development on an underutilized lot. The proposed minor ZBA would permit the redevelopment of the Subject Site for the intended planned purpose and realizes a mixed-use built form that maximizes the full potential of the site and achieves the goals of the Urban Design Guidelines (s. 2(r)).

[31] With no established street wall along the rear laneway, the proposed development is planned to be located as close as possible to the street to create a more inviting and animated pedestrian environment. She stated that both street frontages (front and back of the building) are designed with the public realm in mind, aiming to animate both Dalhousie Street and the rear laneway with 'eyes on the street'. (s. 2(h)).

[32] Mr. Aspila further indicated that the building will be compatible with the existing buildings located on either side of the Subject Site.

[33] The Tribunal prefers the evidence of Ms. Meloche and Mr. Aspila and finds the proposal is consistent with the Planning Act which requires having regard to matters of provincial interest including the orderly development of safe and healthy communities.

[34] The Tribunal recognizes that Subject Site is located in the Central Business Area of the Town on an underutilized parcel of land. The proposal promotes a built form that, is well-designed, and encourages a sense of place abutting Kings Navy Park and by providing a destination for residents and the visiting public alike in the downtown core. The building is aligned with neighbouring buildings on Dalhousie Street and the rear of the building will be utilized commercially providing access to ground level uses which will attract pedestrians/cyclists utilizing Kings Navy Park.

[35] The Tribunal reviewed the materials provided to Town Council and has given its full regard to the Staff Report which recommended the proposal that was finally adopted by Town Council.

**Provincial Policy Statement (2020)**

[36] A decision of the Tribunal, in respect of any authority that affects a planning matter, shall be consistent with the PPS as set out in s. 3(5) of the Act. The PPS establishes land use policy requirements for communities and decisions under the Act.

[37] Section 1.1.1(c) of the PPS directs that healthy, liveable and safe communities are sustained by:

c) avoiding development and land use patterns which may cause environmental or public health and safety concerns.

[38] Under Issue 3, the Appellant indicated that the Applicant has failed to address safety concerns related to egress from the Salmoni building parking garage and fire escape protocols using the juliet balconies. Each of these are discussed separately in the paragraphs that follow.

[39] Section 1.4.3 (f) of the PPS establishes:

(f) development standards for residential intensification, redevelopment and new residential development which minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety.

Mr. Brown stated that the elimination of the required rear yard setback takes a small site and develops a use that, even with the required rear yard, cannot provide the basic support needs of a hotel, restaurant and retail. This would result in increased pressure to locate off-site parking, greater vehicle and pedestrian movement and pose a challenge for disabled and older persons especially at times when there are events in the downtown core.

[40] It was his opinion that the introduction of the proposed hotel adds a new use, which is permitted, but like any other use, has the potential to create compatibility



issues if not developed with a degree of sensitivity toward the established residential use next door.

[41] He specified that the proposed building would extend an additional 10 ft. beyond the westerly edge of the balconies on the Salmoni building creating two potential issues, it will block and/or restrict air flow to the balconies along the south end of the Salmoni building and it will create a site line issue for the vehicles exiting the parking garage of the Salmoni building.

[42] Ms. Meloshe opined that s.1.4.3(f) is applicable to residential uses and the role of Planning Authorities in ensuring an appropriate range and mix of housing options through various development and intensification standards. As the Subject Site is not zoned nor designated Residential in local or County policy, and the proposed use of the Subject Site is for commercial purposes, it was her professional planning opinion that this policy is not applicable.

[43] She further testified that PPS Section 3.0 provides guidance on protecting public health and safety through reducing risk to residents from natural or human-made hazards. This section of the PPS she stated, further states that development be directed away from areas of natural or human-made hazards where there would be unacceptable risk to public health or safety, and that development does not create new or aggravate existing hazards.

[44] Ms. Meloshe stated that no human-made hazards exist on or in the vicinity of the Subject Site and the rear yard reduction request will not create hazards. She emphasized that the Conservation Authority raised no concerns with the proposed rear-yard reduction amendment as it related to the development creating or aggravating an existing natural hazard related to the Detroit River. The Conservation Authority advised that a regulatory area development permit would be required at site plan stage. She stated that the Applicant is aware and accepting that a permit from the Conservation Authority is required to proceed with further development applications under the *Planning Act*. It was her opinion that the development does not impose any environmental or public health concerns on the future users of the proposed use nor the surrounding uses.

[45] The Tribunal prefers the evidence of Ms. Meloshe and finds that the Subject Site is appropriate for the Applicant's intended purpose under the PPS. While the PPS does not define public safety, the Tribunal considers the term as the prevention of, and the protection of the general population from, all kinds of significant danger, injury, damage, or harm. The Tribunal is satisfied that the proposed future use of the site is consistent with the PPS, and as addressed by the Conservation Authority the application will be examined to ensure compliance with their permit requirements. The Tribunal further agrees with the Applicant that the use of the property will not be residential in nature but in fact is Commercial General (CG-4) under the Zoning By-law.

### **County of Essex Official Plan ("County OP")**

[46] Mr. Brown stated that the County OP, s. 3.2.2 Goals d) is intended 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.

[47] It was his opinion that one of the key aspects of creating a public place on any development is providing space for the public to come onto to the property. Although the restaurant, retail and bike rental may afford the public access, it is only the paying public and only those partaking of the restaurant patio or staying at the hotel that will have any connection with the Navy Yard Park. Therefore, the zoning would permit a development without promoting, accommodating or requiring any access to the general public. In his opinion this is problematic, given that the support needs for users of the building (parking or otherwise) will be pushed off-site, the adjacent public places will be negatively impacted by these pressures.

[48] He turned to s. 4.15 of the County OP which states that a variety of supporting studies can be required for a new development. He stated the importance of the studies is to safeguard against potential impact to existing development and areas and determine if those impacts can be effectively mitigated. In his opinion the background work that has not been completed or not fully addressed in the submissions of the Traffic Impact Study on the impact of zero set back on traffic; overshadowing study to analyse the impact of the development on light and air flow on the existing residential balconies and a demonstration that the proposed waste management plan system will

effectively work and not create issues for the residential use. Mr. Brown stated the importance of studies is to safeguard against potential impact to existing development. He opined that background work has not been completed or not fully addressed.

[49] Mr. Aspila turned to the County OP and stated that the proposed development would create more mixed use, compact, pedestrian-oriented development within the designated Commercial General Area. He further opined that one of the fundamental policies of the County OP is to promote healthy and diverse communities where County residents can live, work and enjoy recreational opportunities. With Kings Navy Park abutting the property and retail on the main floor of the proposed development, Mr. Aspila stated that every attempt has been made to optimize the use of the site to satisfy and make efficient use of existing infrastructure while providing for a destination within Amherstburg's downtown.

[50] Ms. Meloshe directed the Tribunal to s. 2.2 Growth Management. She opined that the implementation of the boutique hotel would provide employment and leisure opportunities for a wide range of residents and visitors alike. The development of Amherstburg's first hotel would open doors for more tourism-related businesses and activities that can provide employment opportunities to existing and future residents by establishing the Town as an attractive destination.

[51] She testified that the reduced setback allows for the uses and amenities of the proposed building to be maximized, permitting storage space for e-bike rentals and promoting enhanced active transportation opportunities (s. 2.13(a)). The location of the proposed building also promotes and enhances a walkable downtown core, reducing the need for vehicular trips (s. 2.13.(b)).

[52] When referring to s. 2.8 Transportation, she stated that the development will assist Amherstburg in creating an active transportation friendly downtown by providing a hotel that creates an inviting pedestrian environment through façade design and encourages walkability to adjacent, local businesses.

[53] S. 3.2.7 Intensification & Redevelopment, she opined that the proposed development would promote a well-planned mixed-use form that is pedestrian oriented

and is well supported by services and amenities for current and future County of Essex residents. The nearby commercial uses and recreational resources will all benefit from the increase in visitors to the Town, improving the relative viability of the area.

[54] The Tribunal prefers the evidence of Ms. Meloshe and Mr. Aspila and agrees that the proposed development would be consistent with the County OP as it serves to encourage tourism related business and employment of local individuals that add to the focus of the County through the creation of a destination within the Central Business Area. With Kings Navy Park and a walkable river front, the proposed development will add to the draw of visitors and residents alike.

### **Town of Amherstburg Official Plan (“Town OP”)**

[55] According to the Agreed Statement of Facts (“ASF”) the Parties agree that the Subject Site is currently designated General Commercial in the Town OP and is zoned Commercial General (CG-4) according to the Town of Amherstburg Zoning By-law No. 1999-52. The as of right use includes a hotel or motel on this site.

[56] The property immediately north of the Subject Site is a Mixed-Use Condominium Building, with Ground Floor Commercial and Residential Dwelling Units above the ground floor locally known as the Salmoni building.

[57] Section 4.4.2 of the Town OP states:

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.

[58] Section 4.4.2 of the Town OP also states:

Within the General Commercial designation abutting Richmond Street, west of Sandwich Street and within the General Commercial designation abutting Dalhousie Street, south of Richmond Street to Gore Street, commercial development shall not be required to provide parking spaces resulting from a change in use or redevelopment of a site. Residential

development within this portion of the General Commercial designation may also have reduced parking requirements in the implementing Zoning By-law. No loading spaces shall be required for this portion of the General Commercial designation. Should Council consider it appropriate, development application fees and building permit fees may be waived or reduced within this area of the Town.

[59] Section 6.2.5 Downtown Improvement and Revitalization specifically imposes limits on the intensification of sites within the Central Business Area.

[60] Subsection (2) states that:

(2) 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....

(9) Council shall consider the assembling of land within the Central Business Area as assistance to redevelopment or rehabilitation schemes.

[61] Section 6.2.5 of the Town OP is applicable to downtown improvement and revitalization it provides that the progressive features and positive characteristics developed in the Central Business Area shall be retained and reinforced. This policy also recognizes that intensification of use will be inherent in most redevelopment.

[62] Mr. Brown stated that the Town OP anticipates that not all sites by themselves may be suitable for the high standards imposed on development within the Central Business Area and that permitting a building to have 100% lot coverage at full build up of 18 m is not the same thing as maximizing opportunities for intensification in the Central Business Area.

[63] He referred to s. 6.2.5 which requires: “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 co-ordinating individual site designs...”. He stated that the development as proposed does not appear to be co-ordinated with the Salmoni building given its increased projection beyond 252 Dalhousie and potential for negative impact to the ongoing enjoyment of the residents’ outdoor space and living area. He

continued to say that emphasis needs to be place on the provision of abundant light and air flow.

[64] Mr. Brown argued that the only creation of public space is the proposed retail and restaurant for paying customers. The size of the building imposes on the back of the lot and moves the building closer to the park thereby altering the look of the existing development by projecting beyond any other building. Unlike other properties in the downtown area, the Subject Site should place equal importance on the rear of the building because of Kings Navy Park and pedestrian nature of the area and neighbouring residential use, specifically the balconies of the Salmoni building.

[65] Dr. Aspila and Ms. Meloshe both testified that the ZBA conforms to Policy 6.2.5(2) and should not be interpreted to require every single redevelopment downtown to provide abundant light and air flow and to provide attractive and usable open space available to the public. They both agreed that the result would be an inefficient use of land downtown that would not maximize development potential as such, an interpretation would undermine the broader goal of encouraging compact, intense development in this commercial area.

[66] Ms. Meloshe stated the proposed minor ZBA would permit the development of the Subject Site for the intended planned purpose and realize a mixed-use built form that maximizes the full potential of the site and achieves the goals of the Town Urban Design Guidelines.

[67] Mr. Aspila opined that increased intensity and compact development are encouraged in the downtown core and the proposed use and application allows for a pedestrian-oriented design. He emphasized the Town's position that for civic improvement, commercial use in this area is the primary focus, not residential. Counsel for the Appellant questioned Mr. Aspila as to whether he had ever seen a site plan for the proposed development, he had not. He added that at the site plan stage the Town will address the necessary requirements of s. 41 of the *Planning Act*.

[68] Ms. Meloshe emphasized that the proposed development is located within the General Commercial designated area where, parking spaces and loading spaces are

not included as part of the concept plan as they are not required. Mr. Aspila through his report and knowledge of the area as the Town Planner, confirmed that on-street parking is plentiful and off-street parking is located within walking distance to serve the future clientele of the site.

[69] The Tribunal prefers the evidence of Ms. Meloshe and Mr. Aspila. The Tribunal is satisfied that by maximizing the use of the site for the purposed as of right use as a boutique hotel along with the retail space and restaurant, the Town will benefit economically through the revitalization of an underused site.

[70] The Tribunal finds that the massing and scale of the proposed building to be proportional with the existing physical character of the immediate area.

### **Prematurity**

[71] As for the question of whether the minor Zoning By-law is premature without a site plan to advance the full understanding of the Applicant's vision, the Tribunal heard the evidence as it relates to legislative tests and finds there is sufficient evidence to advance the requested relief from 7.5 m to 0 m as a rear yard setback at this time. Re-zoning and site plan applications are regularly ferried together to ensure the site will properly function and otherwise address identified concerns. The Tribunal was made aware that at this juncture the Town had not required the submission of a site plan when moving this matter forward before Council. The Applicant reserved submitting the site plan and the Town agreed, that submitting a site plan prior to ensuring the minor Zoning By-law Amendment would move forward was not needed until such a time that the full intended use of the site could be realized.

### **Fire Safety**

[72] The Tribunal heard from two experts in the field of Fire Protection Services. It was evident to the Panel that Chief Montone's experience and overview provided a more comprehensive understanding of current fire service practices and how they relate to the approach that Fire Services would undertake in the Salmoni building should the need arise.

[73] Mr. Wharram opined that having a building with no setbacks from the access alley and southern side yard of a multi-story building with window adjacent to the common boundary with the proposed hotel is inherently dangerous from a fire safety perspective. In his explanation of fire response practices, Mr. Wharram attested that an assessment of the outside of the building as a first step would be appropriate for mid-rise structures or high-rise structures.

[74] Chief Montone contradicted this in his testimony by stating in the case of the Salmoni building, an assessment of the outside of the building would be the equivalent of walking two football fields. Chief Montone stated the first line of approach would see that 99.8% of fires at the Salmoni building would be fought from the inside by first attending the annunciator panel, identifying the probable location of the fire and proceeding to the fire floor with a crew to locate the fire and to initiate primary searches and fire control in that immediate area.

[75] Chief Montone stated it is important to note that multi-unit buildings, as per the Ontario Building Code, do not have to provide fire department access to all four sides of the building. The Salmoni building is only required to have access to one side of the building, which is found on Dalhousie St. He indicated that many of Amherstburg's larger buildings only offer one to two sides for the Fire department to utilize for rescue purposes.

[76] Unlike Mr. Wharram's testimony, Chief Montone stated it would be impossible to use a ladder truck from the rear laneway as it would not be able to reach the required distances. The Tribunal heard that Firefighters would not put a master stream (of water) through a window from the outside as suggested by Mr. Wharram. It was explained that this would push the fire back into the building.

[77] Chief Montone informed the Tribunal that the open juliet balconies or windows on the Salmoni building are not the preferred form of egress during a fire but rather the emergency exits within the interior of the building because they are equipped with monitored fire alarm systems to assist residents to safety. The Tribunal heard that at the time of build the Salmoni building was equipped with roll down heat activated metal shutters in the kitchens of each unit abutting the alley.



[78] The Panel prefers the testimony of Chief Montone. His explanation of current fire protocol and knowledge of best practices in the methods of multi-storey fire response satisfied the Tribunal that the construction of a new building will have no unacceptable adverse impact on the approach that would be taken to identify the probable location of a fire and rescue attempts in the Salmoni building. The Tribunal further acknowledges that the two properties are independent from each other, and any design and construction of a new building would have to comply with the Ontario Building Code requirements and following Occupancy, the Ontario Fire Code.

### ***Air and Light Flow***

[79] The Tribunal notes that the Appellant did not retain her own expert in the area of light or air flow. Therefore, there is no evidence before the Tribunal that air flow will be impacted. Ms. Baroudi, counsel to the Applicant, stated that the Appellant's concerns regarding air flow and light merely raise apprehensions and that no actual evidence had been tendered in the hearing, merely supposition.

[80] The Tribunal heard that Staff did not require a Shadow Study to be completed due to the similarities in height and western facing frontages of the Subject Site and adjacent property. To alleviate concerns, the Applicant did commission a shadow study which was completed and confirmed there are no adverse impacts with respect to shadows. The proposed building casts the same shadow projections as the Salmoni building. It was clear that shadow would occur on the Salmoni building along with diminution of ambient light and that the existing view would be obstructed but it will not be removed. The balconies depending on the time of day and time of year will still have sunlight because they are open directly to the west. In his view, there would not a significant impact resulting from the extension of the building.

[81] Ms. Meloshe acknowledged in cross-examination that the abundant light delivered through the numerous windows on the south side of the Salmoni building will be affected by extending any future building on the Black Dog site 10 feet past the rear of the Salmoni Building. Acknowledging this she stated that light may be reduced but it will not be removed.

[82] Mr. Berrill testified that there are not many parameters for testing air flow, as air flow is not constant. Mr. Brown was of the opinion that further studies on airflow should be deemed necessary at the site plan control stage.

[83] The Tribunal accepts the testimony of Mr. Berrill and Ms. Meloshe. Discussion surrounding the loss of light and air flow has not been evaluated for buildings of this height. Through witness testimony it was evident that evaluating one mass beside another similar mass for light and air flow is rare. The Tribunal was persuaded that there are no adverse or unacceptable impacts.

### ***Sightlines and Parking***

[84] Mr. Brown stated that although the Zoning By-law does not require the provision of certain support facilities such as parking, loading and drop-off, the elimination of any rear yard forces all of these facilities to be potentially provided by and maintained by the Town. His testimony emphasized that the lack of on-site parking is exacerbated by on-street parking restrictions on Dalhousie Street and surrounding streets with the reliance on off-site private parking for overnight guests. He testified that Town parking lots are limited to two-hour daytime parking and there are no agreements in place with third parties to accommodate overnight parking needs. He emphasized that the proposed deficiency in on-site parking can result in the “overspill” of parking to other places, such as road allowances with negative impacts, as an example he used parking during winter when the snow clearing of City streets is important. The Tribunal heard that the presence of parked vehicles on Dalhousie Street dramatically restricts movement when any delivery truck stops on the west side of the street.

[85] Mr. Blata added that the proposed westerly building limit projection of 10 m will obstruct the line of sight required to accommodate a stopping sight distance for a 30 km/h travel speed. It was his opinion that public health and safety will be compromised by the rear limits of the proposed development.

[86] Mr. Mirhoseini confirmed that the 20 m sight line recommendation can be met, through the sight lines at the rear of the building. The Traffic Study submitted by the Applicant determined that, at most, 10 vehicle trips were recorded in a one-hour period

which represents a very low traffic volume. He opined that no traffic operation issue would be raised with such low traffic volumes.

[87] Mr. Mirhoseini stated that he utilized the existing traffic counts and trip generation rates for similar land uses extracted from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition, in determining trip generation for the Subject Site. Under the future conditions, it was estimated that the total number of trips expected to be added to the surrounding road network is 16 during the AM peak hour (9 inbound, 7 outbound), and 40 during the PM peak hour (22 inbound, 18 outbound).

[88] He further explained that there is no indication that existing traffic will be added to the rear laneway, save and except, the potential for use by delivery trucks, which would be a maximum of one truck per day. In light of this it was his opinion that the total number of trips added to the road network is relatively low and the impact to the traffic operation is minor.

[89] As for sight line constraints, he opined that existing sight line constraints already exist for the Salmoni building's underground parking due to the large retaining wall/fence and pillars that exists directly south of the underground parking entrance. This is even more prevalent with the parking of oversized vehicles directly south of the retaining wall, which overhang into the adjacent rear right-of-way/laneway.

[90] He stated that the sight distance with a parked vehicle falls below 13 m, whereas without any obstruction and with zero setback, the available sight distance exceeds 20 m. He referred the Tribunal to the Geometric Design Guide for Canadian Roads by the Transportation Association of Canada, in which a sight distance of 20 m is recommended for a driveway with "No Traffic Control" at a design speed of 20 km/hr. He emphasized that the maximum available distance in the rear laneway is 30 meters when there is no traffic coming through.

[91] Mr. Mirhoseini suggested that having the laneway constructed of red interlocking brick stones the colour, sound, and vibration already assists in reducing speeds in the laneway. In addition, he suggested that speed bumps and mirrors to improve the sight line view could be installed by the Applicant as part of the site plan process.

[92] Dr. Aspila also confirmed that there is ample street parking, off-site municipal parking, and off-site private parking in the area that provides an abundance of parking within walking distance of the site.

[93] The Tribunal accepts the testimony of Mr. Mirhoseini that the safety of sight lines in the lane way meets the Geometric Design Guide for a 20 m site line with no traffic control and, directs the Parties to look to ways to further enhance the safety measures through the possibility of mirrors and speed bumps for the laneway at the site plan stage.

[94] On the topic of on-site parking, the Tribunal recognizes that a hotel is an as of right use and that parking and loading areas are not required for this site.

### **Garbage**

[95] Dr. Aspila was very clear in his evidence that the logistics around garbage removal is a matter to be determined at the site plan control stage. Ms. Meloshe also agreed with this evidence.

[96] The Tribunal heard that the Applicant has proposed the use of an onsite commercial composter, which will reduce waste by 90%, is automated, odorless, and will greatly reduce the carbon footprint of the development.

[97] The Applicant does not intend to store garbage outside on the site, so a rear yard setback is not required for the purpose of storing garbage. A garbage room will be added to the ground floor for bin storage, which will reduce unnecessary exterior waste disposal and limit garbage fumes. Similar to all other properties in the Town that are serviced by municipal waste disposal, carts will be placed curbside within the Municipal right of way for pick-up.

[98] The Panel is mindful that the issue of garbage storage and disposal will be addressed at the site plan control stage under section 41(7) of the *Planning Act* which is not before the Tribunal at this time.

**Use of the rooftop (Issue 6)**

[99] The Tribunal heard that the initial proposal included a roof top, open air restaurant/bar. In response to public concerns over noise and privacy, the Applicant revised the plans to enclose the area and utilize the space as an art gallery/meeting room.

**FINDINGS**

[100] The Tribunal was tasked with a Zoning By-law Amendment on the subject lands that is intended to address solely the proposed elimination of the rear yard setback to accommodate the proposed hotel. To address the rear yard setback, the full impact of permitting the development with no setback has been determined through the evidence presented.

[101] The Tribunal is satisfied that the proposed development provides for a mixed use building within the Central Business Area and that the proposed uses within the building are permitted as-of-right in the current CG-4 zone which does not require parking or loading on the site.

[102] The proposed development represents appropriate intensification on this site within an identified Commercial General Area, which is well served by infrastructure, both in terms of municipal services and transportation, which will introduce a use that will support the long-term economic prosperity and increase the vitality of the Town.

[103] The Tribunal is satisfied that the proposed development aligns with Town OP and the Urban Design Guidelines. The building is located as close as possible to both street environments which creates a more pedestrian friendly environment within the downtown core. The property is accessible from the front through Dalhousie Street and from the rear through the abutting Town owned right-of-way. Kings Navy Yard park provides amenity space for those frequenting the proposed hotel at from the rear of 256 Dalhousie Street.

[104] The Tribunal is satisfied that through the traffic study it has been demonstrated that consideration for sightlines has been met. The Tribunal accepts the evidence from the Traffic and Transportation expert who completed the Traffic Study advising that the amount of traffic data collection undertaken for the proposed development exceeds the typical standard practice for similar type of development and anticipated level of traffic.

[105] The Tribunal is satisfied that a shadow study was completed with confirmation that there are no adverse impacts with respect to shadows as the proposed building will cast the same shadow projections as the Salmoni building. The rear of the proposed building faces west as does the Salmoni building. No studies were provided to illustrate reduced or removed air flow or loss of complete sunlight to the adjacent building.

[106] The Tribunal is not insensitive to the fact that the abutting residents raise concerns regarding the use of 256 Dalhousie as a hotel and retail/commercial space. As Mr. Brown eloquently put it, “living in the downtown area is likely not the same as living in a residential subdivision and that from time-to-time activities in the area might not be typical of what you would encounter in a residential area.”

[107] In order to address the possibility of noise and disturbance from a rooftop restaurant/bar the Tribunal includes, that the approval of the draft Zoning By-law Amendment shall accommodate the addition of text which will require that the rooftop of the building be an enclosed space as depicted in the architectural drawings submitted in evidence and that the use shall not be a restaurant/bar within that space. Further, that any commercial/restaurant space use on the ground level shall be an enclosed space.

[108] On the weight of the evidence heard by the Tribunal, its assessment of same as detailed in the reasons above and the submissions of counsel, and having weighed submissions of residents, the Tribunal finds that the proposed ZBA which will allow the relief sought by the Applicant is consistent with the PPS as well as the County OP and the Town OP, and applicable guidelines, and thus represents good planning in the public interest.

**ORDER**

[109] **THE TRIBUNAL ORDERS THAT** the appeal against By-law 2023-51 of the Town of Amherstburg is dismissed.

*“D. Chipman”*

D. CHIPMAN  
MEMBER

*“M. Menezes”*

M. MENEZES  
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.