

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2005-16

Being a by-law to amend Zoning By-law No. 1999-52

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 MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:

1. Schedule "A", Map 37 of By-law-1999-52, as amended, is hereby amended by changing the zone symbol on those lands shown as "ZONE CHANGE FROM CG-4 TO CG-6" on Schedule "A" attached hereto and forming part of this By-law from "Special Provision Commercial General (CG-4) Zone" to "Special Provision Commercial General (CG-6) Zone".
2. That Section 15(4) of By-law 1999-52, as amended, is hereby amended by adding a new subsection (e) as follows:

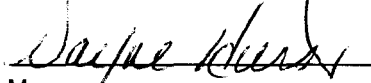
"(e) CG-6

Notwithstanding any other provisions of this by-law to the contrary, within any area zoned CG-6 on Schedule 'A' hereto, the following special provisions shall apply:


- (i) Uses Permitted
 - (a) Any use permitted in a CG zone;
 - (b) A maximum of 14 dwelling units including units on the first floor.
 - (ii) Other Provisions
 - (a) Rear Yard Depth (minimum) 4.5 m
 - (b) Building Height to roof peak 14 m maximum and 10 m minimum
 - (c) Heritage Building replacement shall be as approved on a site plan under Section 41 of the Planning Act with Council approval to drawings being required as per Section 41(4) of the Planning Act
 - (d) Access to Parking Area and Required Spaces
Notwithstanding Section 3(21)(i)(i) access to the underground parking structure may be provided from a right of way that does not access an improved street and notwithstanding Section 3(21)(a)(b) or (c) the parking requirement for a residential unit shall be 0.33 spaces per unit and there shall not be parking requirements for non-residential land uses. All other parking requirements shall apply"
3. That all other appropriate regulations for the use of land and the character, location and use of buildings and structures conforms to regulation of the Commercial General Zone, as applicable and all other general provisions or regulations of By-law 1999-52, as amended from time to time.

4. This By-law shall take effect from the date of passage by Council and shall come into force in accordance with Section 34 of the Planning Act, R.S.O. 1990.

Read a first, second and third time and finally passed this 21st day of February, 2005.



Mayor



Clerk

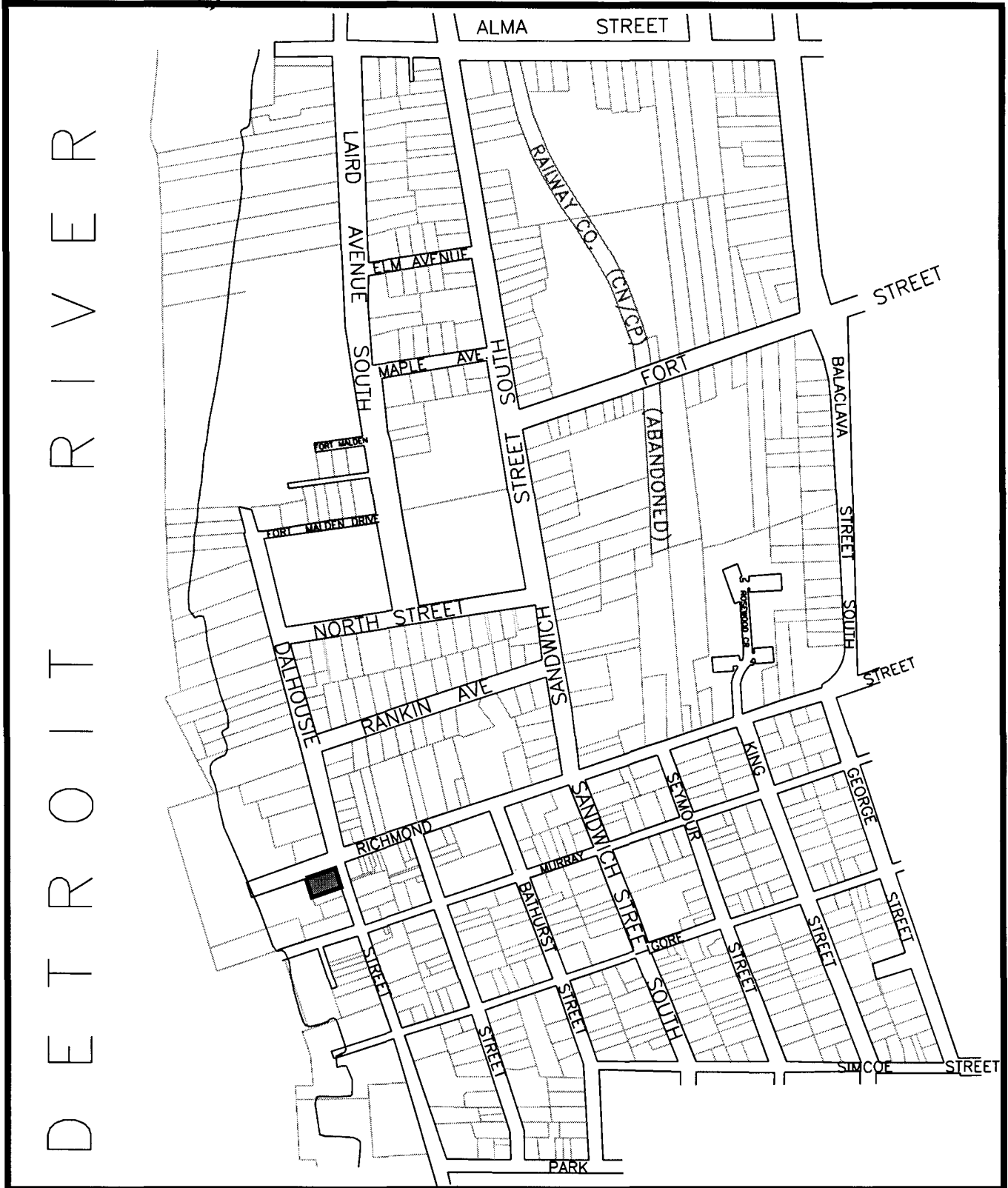
TOWN OF AMHERSTBURG

SCHEDULE "A" TO BY-LAW No. 2005-16
A BY-LAW TO AMEND BY-LAW No. 1999-52,

PASSED THIS 21ST DAY OF FEBRUARY 2005


MAYOR


CLERK



KEY MAP No. 37



ZONE CHANGE FROM
CG-4 TO CG-6

ISSUE DATE:

SEPT. 22, 2005

DECISION/ORDER NO:

2487



PL050286

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

The Architectural Conservancy of Ontario, Windsor Region Branch and Elio Del Col have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 2005-16 of the Town of Amherstburg
OMB File No. R050051

APPEARANCES:

Counsel

Parties

The Architectural Conservancy of Ontario
Windsor Region Branch

Elio Del Col

Town of Amherstburg

Armando F. De Luca

1603966 Ontario Limited

Jeffrey M. Slopen

DECISION DELIVERED BY F. G. FARRELL AND ORDER OF THE BOARD

The appellants, the Architectural Conservancy of Ontario, Windsor Region Branch and Elio Del Col appealed under Section 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 2005-16 of the Town of Amherstburg. Zoning By-law 2005-16 amends Zoning By-law 1999-52. The Zoning By-law 2005-16 was passed by Town Council on February 21, 2005. The purpose of the Zoning By-law amendment is to change the zoning of the subject lands known as municipal address 252 Dalhousie Street (vacant land) from the "Special Provision Commercial General (CG-4)" zone to a "Special Provision Commercial General (CG-6)" zone to permit the proposed development of a four storey building with a maximum of 14 residential units including units on the first floor. Under the proposal the first floor will have commercial units and the second, third and fourth floors will be residential units. Under the proposal, the building is to be higher than the previous 3 storey building, which has been demolished. The overall footprint will be larger than the former building. The proposed building does not meet the 7.5 m rear yard setback of the CG-4 Zone or the general provision that requires access for parking from an improved street. Under the proposal, the rear yard setback is 4.5 m and access for parking for the building will be from a right-of-way to the rear of the

building and parking will be underground with 14 spaces available. A copy of Zoning By-law No. 2005-16 was produced and marked Exhibit 15.

The subject property is located at the northwest corner of the intersection of Dalhousie and Richmond Street. The previous 3 storey building which occupied the property was commonly known as "the Salmoni Building". The property had been designated under Part IV of the *Ontario Heritage Act* and is subject to a Heritage Easement. An independent Evaluation Study of the Salmoni Building prepared by Peter Stewart produced and marked Exhibit 6 had stated in its conclusion "there would appear to be insufficient evidence to support a claim by the owners' that the building must be demolished in order for them to achieve their redevelopment goals". Town Council after considering the matter made the decision to issue a Demolition Permit.

Under By-law 1999-52 (Section 15(3)(i)) any replacement building must be of the same height, volume, floor area, general form, mass and external design as the original building or structure. The proposed building does not meet these requirements.

Jean Monteith, a qualified land use planner for the Town of Amherstburg, provided the Board with an overview of the location of the subject property, history of the site and the relevant provisions of the Official Plan, Zoning By-law 1999-52 and the Zoning By-law amendment 2005-16. Planner Monteith later in the hearing would provide the Board with her expert opinion evidence with respect to Zoning By-law 2005-16.

Ms Monteith confirmed the location of the subject property at the southwest corner of Dalhousie and Richmond Street. She stated that the Salmoni Building had been built in 1849 with additions to the south in 1860, to the rear in 1876 and a shed structure constructed at the rear of the building (date unknown). In 1977, the building had been designated under Part (IV) of the *Ontario Heritage Act*. The building had changed ownership over the years and had been used for different purposes including a fine dining restaurant and a bar and grill. She stated that the building had been vacant since 1995. Adjacent to the property to the north is the King's Navy Park. She stated that the policies of the Official Plan strongly supported heritage and its preservation. She emphasized that Town Council had the benefit of an independent evaluation study of the Salmoni Building, prepared by Peter Stewart

to assist them with respect to an application to demolish the building. The property which had been designated under Part IV of the *Ontario Heritage Act*, is protected by a Heritage Easement. Town Council issued a Demolition Permit and the building was demolished.

Elio Del Col, who resides at 256 Dalhousie Street, testified in opposition to Zoning By-law 2005-16. He is the immediate neighbour to the south of the subject property. He uses the building for his residence and his business (an art gallery). He stated that he was an artist who had lived previously in Windsor for over 50 years. He moved to his current address in 1997 having been impressed by the building location, streetscape and the heritage features of the general area including the Navy Yard Park and the Salmoni Building. He advised the Board that the preservation of the Salmoni Building was of great interest to him and he had looked forward to its restoration and the development of the site.

Mr. Del Col stated that he had many concerns about the proposed redevelopment. However, the proposed use of the building was not a concern but rather permitting the provisions of Zoning By-law 1999-52 to be exceeded. He stated that the provision of By-law 1999-52 in particular Section 15(3)(i) with respect to Heritage Buildings should be maintained. He emphasized that over-development of the site would result in a drastic change in the nature of this historic district and set a precedent for future Council decisions.

Mr. Del Col believed that similar expansion would occur on both sides of his property, which would result in a loss of his use and enjoyment of his property and significant devaluation. He stated that the site plan proposed a 4 ft walkway between the south elevation of the proposed new building and his north wall and rear deck. The north wall of the building would have several windows overlooking his property. He stated that this would impact his privacy because of the location of his bedroom, work area, rear deck where he entertained friends and visitors to his gallery. Since the proposed building would have greater height and mass as well as extending further to the rear, his view of the Detroit River would be reduced.

It was the opinion of Mr. Del Col that the objectives of the Official Plan were not met, in particular, Section 5.4.2(3) which encouraged the construction of new buildings to be a design compatible with existing structures and to resist unsympathetic alteration to buildings that would by doing so, detract from the

character of the Heritage Area. In his opinion, the proposed building did not conform to this policy of the Official Plan.

Mr. Del Col raised concerns about serious traffic problems, which would result from the proposed site plan, which redirected the flow of traffic off Dalhousie Street to access the laneway (Water Street) at the rear of the subject property for parking purposes and as well as access to underground parking in the proposed building. It was the opinion of Mr. Del Col that this would cause unnecessary congestion and endanger public safety. He stated that a reduction of parking from one space per residential unit to .33 under the Zoning By-law amendment would result in "on street" parking which was already inadequate and undesirable.

It was the opinion of Mr. Del Col that the site plan would not provide any safeguards since it is under the direction of the Town Administration, Council and Consultants retained by the Town to facilitate the aims of the developers.

Mr. Del Col requested that the appeal be allowed and that Zoning By-law 2005-16 not be authorized. Mr. Del Col provided the Board with a copy of his written presentation to support his testimony with exhibits attached marked Exhibit "10(1-19)".

Patricia Malicki who resides at 275 Ford Blvd., Windsor, testified on behalf of the Architectural Conservancy of Ontario in her capacity as President of the Windsor Region Branch. She advised the Board that the Architectural Conservancy of Ontario was an incorporated charitable organization. Ms Malicki stated that the subject property was designated under the *Ontario Heritage Act* and was subject to a Heritage Easement. It was her assertion that because of the foregoing designation and easement, any zoning decisions regarding the site should comply with existing legislation regarding heritage properties (*Ontario Heritage Act*, the *Planning Act*, Provincial Policy Statement and Amherstburg Official Plan).

She stated that Zoning By-law 2005-16 amends Section 15(4) of By-law 1999-52 without making any reference to Section 15.3(i) of By-law 1999-52 requiring any replacement building be of identical height, volume, floor area etc.

She stated that Zoning By-law 2005-16 was in direct contradiction of the above protection and weakened the protection and replacement of designated Heritage Properties in the Central Business Area of Amherstburg. She stated that

despite the demolition of the Salmoni Building, by virtue of the *Planning Act*, Part 1 Section 2(d), the Town of Amherstburg has an obligation to ensure the best possible replica be built. She stated that under the Official Plan, Section 5.2.5(2) Development of Vacant Sites and Essential 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 circumstance problems. She stated that under Section 5.2.5(3) of the Official Plan, there was provision for the retention of historical atmosphere and buildings and not the widening of streets, encroachment on parkland, or increasing the volume of a replacement building.

She stated that the reduction of the rear yard requirement would cause further stress to the rear laneway behind the subject property. She was concerned that the increased building depth would not allow for the retention of a historical atmosphere of the Central Business Area in contravention of Section 5.2.5(3) of the Official Plan. She stated that the proposed building was 4 storeys wherein the Salmoni Building had been 3 storeys resulting in a much different external design. It was her opinion that all regulations pertaining to Residential Heritage Properties should be maintained.

She was concerned about a further reduction of parking spaces since there was no public transit in Amherstburg. In her opinion, the proposal was contrary to the Official Plan and did not represent good planning. Ms Malicki requested that the appeal be allowed and that Zoning By-law 2005-16 not be authorized. She provided the Board with a copy of a written presentation to support her testimony marked Exhibit 14.

Planner Monteith a qualified land use planner provided the Board with her expert opinion evidence with respect to this proposal and testified in support of Zoning By-law 2005-16. Ms Monteith provided the Board with a copy of her written Planning Opinion marked Exhibit 17.

Planner Monteith stated that in her expert opinion, Zoning By-law 2005-16 conformed to the Official Plan of the Town of Amherstburg. She reviewed the development provisions of the Official Plan. Under Section 3.4.4, Residential Development is permitted within the General Commercial Designation. The policies encourage residential development to locate above the first floor in order to ensure

continuous commercial opportunities. Since commercial development already abuts Dalhousie Street, it was her opinion that the proposed development achieved the Official Plan objectives of maintaining commercial at the pedestrian level within the commercial core.

Under Section 3.4.4, this residential development should attempt to include all required tenant parking on site. However, it also provides that residential standards may be significantly reduced within the General Commercial Zone to encourage intensification and redevelopment if it is deemed to have a positive impact on the downtown area. Under the proposal, on-site tenant parking is provided. It was the opinion of Planner Monteith that the proposed development would result in the intensification of the downtown core and meet the on-site parking requirements under the Official Plan. Section 3.4.4, provides that in order to promote and strengthen this portion of the General Commercial Area (Heritage Area) a wide range of uses will be permitted where compatibility among adjacent uses can be achieved. These uses would include residential uses of various types but limited in height to 3 storeys, full range of commercial uses including mixed commercial and residential and open space uses and recreational facilities. It was the expert opinion of Planner Monteith that the proposal would conform to the Official Plan in this regard since the proposal was a mixed residential development with commercial at the Dalhousie Street level. Moreover, the building given its location on the site had the appearance of 3 storeys from Dalhousie Street, which was the important heritage portion of the site.

Planner Monteith referred the Board to Section 5.2 and 5.4 of the Official Plan, which are relevant to any redevelopment within the Heritage Sensitive Core. It was the expert opinion of Planner Monteith, higher density residential development is permitted if Council is satisfied that the redevelopment will not prejudice the future redevelopment of the Central Business Area and development conforms to the other policies of the Plan and Heritage Policies. It was the expert opinion evidence of Planner Monteith that the proposal complied with the policies of the Official Plan with respect to downtown redevelopment.

Planner Monteith stated that the original building at 242 Dalhousie Street was demolished and that Council had the right to issue a demolition permit. Under Section 5.4.2(3), provision is made to encourage construction of new buildings to be of a design compatible with existing structures and to restrict unsympathetic

alterations to buildings that would be, by doing so, detract from the character of the Heritage Area. It was the expert opinion evidence of Planner Monteith, having reviewed the massing and conceptual drawings for the development that the proposal was compatible and sympathetic to the architectural style of the original building.

It was the expert opinion evidence of Planner Monteith that Zoning By-law 2005-16 conformed to the Official Plan.

Planner Monteith addressed the parking issue. She stated that Zoning By-law 2005-16 did not alter the parking regulations. She stated that the Town had reduced the parking standards within the General Commercial Core for those lands designated CG-4 2002 as an incentive for the development of the upper portion of the stores and businesses in the core area of the Town.

She stated that access to the building by emergency vehicles would not be an issue.

Insofar as the reduction in the rear yard requirement of the By-law, Planner Monteith stated that the previous building could have "as-of-right" built an addition in the rear yard up to and abutting the property to the south (the Del Col property) and would have resulted in a visual intrusion.

Planner Monteith stated that the Heritage Easement, which the Municipality holds on the property, is being used to ensure that Heritage Sensitive Architectural Detail will exist in the new building.

Planner Monteith stated that Council did have regard for Provincial Interests under Section 2 of the *Planning Act* including Section 2(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest.

While Council issued a demolition permit, she stated that Council was concerned about Heritage and sought to achieve an architecturally sensitive building, which would maintain the historical atmosphere of the original design. She pointed out that under Section 2(i) Council is charged with the protection of financial and economic well being of the Province and its municipalities. Planner Monteith stated that Council required and obtained an archaeological assessment of the site,

wherein artifacts were removed and appropriately documented. It was the expert opinion evidence of Planner Monteith that there had been regard for the Provincial Policy Statement.

Planner Monteith stated that the proposal would result in a rejuvenation of the downtown business area, create a mix of commercial and residential development and at the same time be sensitive to heritage concerns. The subject property had been vacant for 10 years and now new development sensitive to heritage concerns would occur. It was the expert opinion evidence of Planner Monteith that Zoning By-law 2005-16 represented good planning.

The Board heard the testimony of the appellant, Patricia Malicki on behalf of the Architectural Conservancy of Ontario, Windsor Region Branch, the appellant Elio Del Col and Jean Monteith, a qualified land use planner for the Town of Amherstburg. The Board has reviewed all the evidence including the above testimony, the written presentations of the appellants, the written planning opinion evidence of Planner Monteith, the many exhibits, the relevant provisions of the Official Plan, Zoning By-law 1999-52, Zoning By-law 2005-12 (Zoning By-law amendment), the various case authorities filed and referred to by Counsel Slopen for the applicant and the Board's own notes. The Board has given due consideration to all of the evidence at the hearing.

In an appeal of this nature, the Board considers the merits of the proposed Zoning By-law amendment. The main issues are whether the Zoning By-law amendment conforms to the Official Plan, the merits of the Zoning By-law amendment itself in terms of the public interest and whether it represents good land use planning.

Whether or not the Zoning By-law amendment conforms to the Official Plan, requires an examination of the relevant provisions of the Official Plan and in particular, its goals, objectives and land use designations. In this respect, the Board examined the relevant provisions of the Official Plan of the Town of Amherstburg.

Insofar as the public interest is concerned and whether or not it represents good land use planning, the Board considers the nature and consequences of the Zoning By-law amendment and in particular, any adverse impacts on the immediate area or on the public generally.

The purpose of the Zoning By-law amendment is to change the zoning of the subject property from "Special Provision Commercial General (CG-4) Zone" to a "Special Provision Commercial General (CG-6) Zone" to permit the development of a 4 storey building. The building is to have 14 residential units including units on the first floor to be used for commercial purposes.

Under the Official Plan the subject property is designated General Commercial Area Zone. Under Zoning By-law amendment 1999-52, the subject property is zoned Commercial General (CG-4) Zone.

The purpose of Zoning By-law 2005-16, (the Zoning By-law amendment), is to change the zoning of the subject property as indicated above and to permit the proposal.

The proposed building will be greater in height and have a larger footprint than the original building. The rear yard setback will be 4.5 m. Access to the underground parking will be provided from a right-of-way that does not access an improved street and the parking requirement for a residential unit will be 0.33 spaces per unit and no parking requirement for non-residential land uses. A copy of Zoning By-law 2005-16 was produced and marked Exhibit 15 and was reviewed by the Board.

The original building on the site was commonly known as a Salmoni Building and was situate at the southwest corner of the intersection of Dalhousie and Richmond Street. In 1977 it was designated under Part IV of the *Ontario Heritage Act*. The property is subject to a Heritage Easement. The Heritage Easement remains on the site putting the power of the conceptual and massing drawings under the control of Council. The building remained vacant for the past 10 years. Town Council after obtaining an Evaluation Report despite its recommendations issued a demolition permit at the request of the owner. The subject property, which is situate at an important intersection of the Town, is vacant.

The Board has reviewed the relevant provisions of the Official Plan of the Town of Amherstburg in conjunction with the expert opinion evidence of the land use planner, Jane Monteith, as well as the concerns raised by both appellants. The Board has also examined the photographic evidence of the Salmoni Building produced at the hearing, marked Exhibit "4" (a-d) and the Conceptual Images of the proposed building marked Exhibit "4" (e) and Exhibit "9" (a-d).

Under Section 3.4.4 of the Official Plan, residential development is permitted within the General Commercial Designation. It also provided that new residential development should attempt to include all required tenant parking on site. A wide range of uses is to be permitted where compatibility amongst adjacent uses can be achieved. These uses can include residential uses of various types limited in height to 3 storeys, full range of commercial uses including mixed, commercial and residential. The proposed building will be a mixture of both commercial on the first floor and residential on the remaining 3 floors. Tenant parking is on site. While the proposed building is 4 storeys, the first level is to be commercial with 3 storeys dedicated to residential. The Board agrees with the expert opinion evidence of Planner Monteith having reviewed the Conceptual Images of the proposed building produced and marked Exhibit "9" (a-d) that the structure has all the appearance of a 3 storey building at Dalhousie Street level. It is at this location that the Official Plan seeks to maintain the Heritage Atmosphere.

The Board has reviewed the policies contained in Section 5.2 of the Official Plan with respect to downtown revitalization in conjunction with the redevelopment proposal. The Board accepts the expert opinion evidence of Planner Monteith that the proposal, which would result from Zoning By-law 2005-16, would be an important improvement and add to the revitalization of the Central Business Area. Vacant land will be replaced by a dynamic structure comprising both a mixture of Commercial and Residential uses. The Board finds that this proposal should give encouragement and direction for the further development and redevelopment in the immediate area thereby satisfying the downtown revitalization policies of the Official Plan.

The Board has paid particular attention to the policies under Section 5.4 (Heritage Conservation) of the Official Plan. Since the original building has been demolished, the Board accepts the expert opinion evidence of Planner Monteith that the relevant policy in this regard is Section 5.4.3, which states:

"Locations to encourage the construction of new buildings to be of a design compatible with existing structures and to restrict unsympathetic alterations to buildings that would be so doing detract from the character of the Heritage Area".

The Board has examined the photographic evidence of the original building produced and marked Exhibit "4" (a-d) and the Conceptual Drawings of the proposed building marked Exhibit "9" (a-d). The Board has considered the expert opinion

evidence of Planner Monteith and the criticisms of both appellants with respect to both buildings. The Board accepts the expert opinion evidence of Planner Monteith that the massing and conceptual drawings for the proposed development are compatible with the existing structures and sympathetic to the architectural style of the original building on the site. The Board finds that the proposed building does have respect and is indeed sensitive to the Heritage Area of Amherstburg and that it will not detract but enhance the overall character and historic atmosphere of the immediate area.

The Board accepts the expert opinion evidence of Planner Monteith that Zoning By-law 2005-16 conforms to the Official Plan.

The last issue is whether or not Zoning By-law 2005-16 represents good planning.

Whether or not a by-law represents good planning depends on the circumstances in each particular situation. Zoning By-laws form a planning perspective to allow a plan to separate uses and organize them so as to achieve an efficient, compact and intensive land use pattern and to avoid adverse, unacceptable impacts.

The Board listened to Mr. Del Col with respect to his personal concerns and those for his community, which included the need to preserve heritage. The Board listened to Ms Malicki on behalf of the Architectural Conservancy of Ontario, which focused on the need to preserve heritage in Amherstburg.

Mr. Del Col is the immediate neighbour to the south of the subject property. He raised concerns about a loss of enjoyment, privacy, devaluation of his property and the loss of view of the Detroit River. He stated that the proposed building would be higher and larger in size extending further to the rear of the lot than the former building with a minimum rear yard depth of 4.5 m. The proposed building would have windows on the south side overlooking his bedroom, work area and deck. It was the evidence of Planner Monteith however, that the original building could have been extended "as-of-right" to the rear lot line. From the photographic evidence, the original building had several windows on the south side overlooking the Del Col property. While the windows were "bricked in" the bricks could have been removed. In any event, windows on sides of adjoining properties whether residential or commercial are common. Mr. Del Col did not produce any expert opinion evidence

to substantiate any devaluation of his property by reason of the proposal. While Mr. Del Col's view of the Detroit River will be reduced by the proposal, the Board has considerable jurisprudence to the effect that no one has a right to a view over adjoining properties.

Under the proposal, there are to be 14 underground parking spaces. The building will have a maximum of 14 dwelling units (residential) including units on the first level (commercial). Parking will also be located adjacent to the King's Navy Park. Concerns about parking, traffic and other such issues are being dealt with in a site plan agreement pursuant to the provisions of Zoning By-law 2005-16. The Board heard the expert opinion evidence of Planner Monteith to this effect and is satisfied with her evidence that such issues will be adequately addressed.

Ms Malicki and Mr. Del Col showed a common interest and concern about heritage. They seek to protect, preserve and restore historic buildings. These goals are admirable and they are to be commended for their community spirit. Mr. Del Col took an active interest in the heritage of Amherstburg and looked forward to the restoration of the surrounding buildings. Ms Malicki, President of the Windsor Region Branch of the Architectural Conservancy of Ontario has worked diligently in the Greater Windsor Area on heritage matters. The Board appreciates their concern and efforts in this regard. However, the Salmoni Building, which was empty for 10 years, is now demolished and the site is vacant. This vital economic corner in the Central Business Area of Amherstburg stands vacant and underdeveloped. Zoning By-law 2005-16 seeks to permit the development of the subject land, which will result in the construction of a new building, which will have a mix of both commercial on the first floor and residential on the second, third and fourth floor.

The policies of the Official Plan encourage the continued viability of the Downtown Business Area with specific policies with respect to future development. The policies encourage downtown improvement and revitalization. The Board accepts the expert opinion evidence of Planner Monteith that the proposal will result in a new building that while not identical will fit compatibly within and be in harmony with the existing neighbourhood with no adverse impacts on the immediate neighbourhood and general vicinity. The Conceptual Drawings reflect a Georgian Style Architecture whose character is sympathetic to the architectural style of the original Salmoni Building. The Board finds that the proposal will enhance the overall character of the Heritage Area of Amherstburg.

The Board noted that the expert opinion evidence of the qualified land use Planner Jean Monteith, while challenged in cross-examination by the appellants, was not be contradicted or shaken. Further, the expert opinion evidence of Planner Monteith was not contradicted by any other land use planner.

The Board finds that Zoning By-law 2005-16 represents good planning.

The appeals are therefore dismissed.

The Board so orders.

"F. G. Farrell"

F. G. FARRELL
MEMBER