

**CORPORATION OF THE TOWN OF AMHERSTBURG
BY-LAW NO. 2018-51**

**Amending By-law to update the requirements for Site Plan Control in the
Town of Amherstburg**

WHEREAS Section 41(2) of The Planning Act, R.S.O. 1990, c. P. 13 as amended authorizes the council of a municipality by by-law to designate the whole or any part of the area covered by the Official Plan as a site plan control area;

AND WHEREAS it is deemed expedient to designate the entire municipality as a "site plan control area";

AND WHEREAS Council deems it necessary and advisable, as hereinafter provided, that the Owner of land enter into a site plan agreement with the Town with respect to any or all of the items contained within Section 41 of the Planning Act, R.S.O. 1990, as amended (the "Act");

AND WHEREAS Section 41(13)(a) of the Act authorizes municipalities to define any classes of development that may be undertaken without site plan approval.

AND WHEREAS Section 41(7) and 42 of the Act provide for conditions of approval that the municipality may require.

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

DEFINITIONS

1. In this by-law,

"Development" means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in subsection 164(4) of the Municipal Act, 2001 or of sites for the location of three or more mobile homes as defined in subsection 46(1) of the Planning Act or of sites for the construction, erection or location of three or more land lease community homes as defined in subsection 46(1) of the Planning Act;

"Facilities and Works" may include but not necessarily be limited to the following: parking, fencing, driveways, signage, sidewalks, lighting, landscaping, all municipal, public and/or private services, storm water management ponds, rate of flow monitor(s), access, truck and fire routes, loading areas, open storage area and surface treatment.

"Minor" in regard to site plan approval or site plan amendment shall mean a change which does not result in an increase in floor area of a main building in excess of 10% and does not result in a need to undertake changes to the approved storm water management system, infrastructure extension(s), service connection upgrades (other than replacement of existing) or other Planning Act approval(s).

"Town" means The Corporation of the Town of Amherstburg.

"Town of Amherstburg" means the geographical area of the municipality.

"Zoning By-law" means the Zoning By-law as amended of the Town, which may be amended from time to time.

DESIGNATION

2. All lands lying within the Town of Amherstburg are designated as a "Site Plan Control Area".

APPROVAL OF PLANS OR DRAWINGS

3. Subject to the provisions of Section 4 herein, no person shall undertake any development in the Town of Amherstburg unless the Council of the Town or Manager of Planning Services or appointed officer(s) delegated by Council or, where a referral has been made under subsection 12 of Section 41 of the Act, the Local Planning Appeal Tribunal has approved both of the following:

- i. Plans showing the location of all buildings and structures, both existing and proposed, and showing the location of all Facilities and Works in conjunction therewith and of all Facilities and Works required under Section 41(7)(a) of the Act, and
- ii. Drawings showing all plan views, and at the discretion of the Manager of Planning Services elevation and cross-section views for each building to be erected, which drawings are sufficient to display,
 - a) the size and conceptual design of the proposed building,
 - b) the relationship of the proposed building to adjacent buildings, streets, and exterior areas to which members of the public have access,
 - c) the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings, and
 - d) matters relating to exterior design, including without limitation, the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design

but which exclude the layout of interior areas, (other than the interior walkways, stairs, elevators and escalators referred to in clause c)) and interior design.

4. Notwithstanding the provisions of Section 3 of this by-law, the following class or classes of Development may be undertaken without the approval of plans and drawings otherwise required under said Section 3:

- i. single detached dwellings, semi-detached dwellings and duplex dwellings except those within a Heritage Zone;
- ii. semi-detached dwellings, duplex dwellings and multiple dwellings which are developed within an approved plan of subdivision, (not applicable to infill development in an existing built area);
- iii. an agricultural use as defined in the Zoning By-law, (excluding abattoirs, greenhouses, wineries, kennels, breweries and cideries and mushroom farms);
- iv. an addition to enclose a stairway;
- v. an addition to enclose a loading area or open storage area not exceeding 100 square metres in area;
- vi. a permanent sign including any alteration to an existing permanent sign on lands with no approved site plan;

- vii. a portable sign located and licensed in accordance with the Town's Portable Sign By-law;
- viii. building features or mechanical elements including but not necessarily limited to a spire, belfry, skylight, cupola, scenery loft, chimney, smokestack, water storage tank, air-conditioning and/or heating equipment, ventilator, mechanical penthouse, fencing for protective or screening purposes, communications equipment, pedestrian bridge, fire escape, building entrance/exit and canopy or awning, provided further that the said building feature or mechanical element is to be constructed separate and apart from any other Development as defined in this by-law which previously obtained site plan approval.

CLASSES OF SITE PLAN APPROVAL

5.

i) Site Plan Approval – Council

- a. All new Development, including parking lots, not excluded by Section 4, with a construction value exceeding \$1,000,000 or located adjacent to or within a residential zone shall be subject to full site plan approval by Council.
- b. All new Development which requires approval of a zoning by-law amendment in combination with site plan approval regardless of the dollar value of construction.

ii) Site Plan Approval – Administrative

All new Development, including parking lots, not excluded by Section 4, with a construction value of less than \$1,000,000 and not located adjacent to or within a residential zone shall be subject to approval by the Manager of Planning Services.

iii) Site Plan Amendment

All amendments to any Development that has existing site plan approval shall be subject to the approval of the Manager of Planning Services, who has the discretion to refer the amendment to Council for approval.

DELEGATION OF SITE PLAN APPROVAL

6. Pursuant to Section 41(13)(b) of the Planning Act, R.S.O., 1990, the powers and authority given to Council of the Town under Section 41 of the Act are hereby delegated to the Manager of Planning Services, or his or her designate, the powers and authority under Section 1 subject to the provisions of Section 5 of this by-law.

GENERAL

- 7. Notwithstanding Section 4 of this by-law site plan approval may be required if, at the discretion of the Manager of Planning Services, a proposed Development regardless of location, type or dollar value should be subject to site plan control.
- 8. Notwithstanding any other provisions of this by-law to the contrary, any change made to approved plans or drawings, including applicable items under Section 4 herein, must be reviewed and approved by the Manager of Planning Services and said changes must be attached to the existing approved agreement. In the event the Manager of Planning Services determines in his or her sole discretion that an amending development agreement is required, the cost of the preparation and register of the amending site plan development agreement will be the sole

responsibility of the owner(s), which costs shall be paid to the Town prior to the issuance of any building permit(s).

PENALTY

9.


- i) Every person who contravenes any provision of this By-law and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention, is guilty of an offence and on conviction is liable,
 - a) on a first conviction to a fine of not more than \$25,000; and
 - b) on a subsequent conviction to a fine of not more than \$10,000 for each day or part thereof upon which the contravention has continued after the day on which the person was first convicted.
- ii) Where a corporation is convicted under subsection i), the maximum penalty that may be imposed is,
 - a) on a first conviction a fine of not more than \$50,000; and
 - b) on a subsequent conviction a fine of not more than \$25,000 for each day or part thereof upon which the contravention has continued after the day on which the corporation was first convicted, and not as provided in subsection i).
- iii) Where a conviction is entered under subsection i), in addition to any other remedy or any penalty provided by law, the court in which the conviction has been entered, and any court or competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

REPEAL OF BY-LAW 2012-26


10. By-law 2012-26 of The Corporation of the Town of Amherstburg, and all amendments thereto are hereby repealed.

11. This by-law shall come into force and take effect on the final passing thereof.

Read a first, second and third time and finally passed this 11th day of June, 2018.



MAYOR- ALDO DICARLO



CLERK- PAULA PARKER

DEVELOPMENT AGREEMENT

THIS AGREEMENT made in triplicate on this 21st day of November, 2018.

BETWEEN: SCOTT GLENDON CAMPBELL WILKINS

(Hereinafter collectively called "**Owner**")

OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF AMHERSTBURG

(hereinafter called the "**Corporation**")

OF THE SECOND PART;

Hereinafter collectively referred to as the "**Parties**"

WHEREAS the lands affected by this Agreement are described in Schedule "A" attached hereto, and are hereinafter referred to as the "**Lands**";

AND WHEREAS the Owner warrants it is the registered owner of the Lands;

AND WHEREAS, in this Agreement the "**Owner**" includes an individual, an association, a partnership or corporation and, wherever the singular is used therein, it shall be construed as including the plural;

AND WHEREAS the Official Plan in effect in Amherstburg designated parts of the area covered by the Official Plan, including the Lands, as a Site Plan Control area;

AND WHEREAS the Owner intends to develop the Lands for the purpose of a retail winery business as a secondary agricultural use on the property, with a converted shipping container to serve as the tasting bar, a washroom trailer and a gravel primary parking area with 13 parking spaces, in accordance with the Site Plan attached hereto as Schedule "B", and hereinafter referred to as the "Site Plan";

AND WHEREAS the Corporation as a condition of development of the Lands requires the Owner to enter into a Site Plan Control Agreement, as per By-Law 2018-51 with respect to any or all of the items contained within Section 41 of the Planning Act, R.S.O., 1990, as amended (the "Act");

AND WHEREAS the Corporation under Section 41(13)(b) has delegated the Manager of Planning Services of the Municipality, Council's powers or authority under Section 41 of the Planning Act as per By-law 2018-51, except the authority to define any class or classes of development as mentioned in clause (a);

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, along with the sum of FIVE (\$5.00) DOLLARS of lawful money of Canada, now paid by each of the Parties hereto to each of the other parties hereto, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby covenants and agrees with the Corporation as follows:

1. The following Schedules, which are identified by the signatures of the Parties to this Agreement, and which are attached hereto, are hereby

made a part of this Agreement as fully and to all intents and purposes as though recited in full herein:

2. Schedule "A" hereto describes the Lands;
3. Schedule "B" (the "**Site Plan**") hereto shows:
 - (a) The location of the building on the lands as part of the Owner's proposed development of same;
 - (b) The location and provision of parking facilities and access driveways including driveways for emergency vehicles;
 - (c) Walkways and all other means of pedestrian access;
 - (d) Site Servicing.
4. The Owner shall be responsible for consulting with and obtaining any necessary approvals from Hydro One, Union Gas and Bell Canada regarding any matters that relate to services provided by Hydro One, Union Gas and Bell Canada. Should the proposed development impact Union Gas services, it may be necessary to terminate Union Gas service and relocate the line according to the new development requirements. Any service relocation required would be at the cost of the property owner.
5. The Owner shall be responsible for consulting with and obtaining any necessary approval from the Ministry of the Environment and the Essex Region Conservation Authority.
6. The Owner shall be responsible for consulting with and obtaining any necessary approval from the Corporation regarding any upgrades to the private septic system, if required.
7. All walkways on the said lands, where so designated on Schedule "B", shall be constructed of concrete, asphalt or other like material capable of permitting accessibility under all climatic conditions by the Owner to the satisfaction of the Corporation.
8. All parking or loading areas and lanes and driveways shall be paved with asphalt or a concrete poured cement or other like material capable of permitting accessibility under all climatic conditions, as shown on Schedule "B" and together with crushed stone, slag, gravel, crushed brick, tile, cinders or like materials, having a combined depth of at least 15.2 cm and with provisions for drainage facilities.
9. If any curbs, sidewalks, boulevards or highway surfaces of the Corporation are damaged during the development by the Owner, such damage shall be repaired or replaced by the Owner.
10. Snow removal from the parking or loading areas and lanes, driveways and walkways shall be the responsibility of the Owner.
11. The Owner shall install and maintain a system for the disposal of storm and surface water, as necessary, so that no such water will flow along the surface from the said lands onto any adjoining lands.
12. Any garbage or refuse that is stored outside shall be stored in a non-combustible container and maintained so that the garbage or refuse does not blow or fall out of the container.
13. Any and all lighting shall be installed and maintained in accordance with the standards set out in the Town's Development Manual, and, so as to not, in the opinion of the Corporation, interfere with the use or enjoyment

of adjacent properties or with the safe flow of traffic on abutting or adjacent streets.

14. All driveways for emergency vehicles shall:
 - (1) Be connected with a public thoroughfare;
 - (2) Be designed and constructed to support expected loads imposed by firefighting equipment;
 - (3) Be surfaced with concrete, asphalt or other material capable of permitting accessibility under all climatic conditions;
 - (4) Have a clear width of 6 metres at all times;
 - (5) Be located not less than 3 metres and not more than 15.2 metres measured horizontally and at right angles from the face of the building;
 - (6) Have an overhead clearance not less than 4.5 metres;
 - (7) Have a change in gradient of not more than 1 in 12.5 over a minimum distance of 15.2 metres; and
 - (8) Have approved signs displayed to indicate the emergency route.
15. If the Ontario Building Code requires that an architect or professional engineer or both shall be responsible for the field review of any new building or extension provided for in this Agreement, the Owner shall not occupy or use or permit to be occupied or used any said new building or extension until after an architect or professional engineer has given to the Corporation a letter addressed to the Corporation and signed by him certifying that all services on or in the said lands, required for this development or redevelopment, newly installed by the Owner in connection with this development or redevelopment and not contained within a building, have been installed and completed in a manner satisfactory to the architect or professional engineer.
16. The Corporation through its servants, officers and agents including its building inspector, plumbing inspector, fire chief, public works head and municipal engineer may from time to time and at any time enter on the Lands to inspect:
 - (1) The progress of development;
 - (2) The state of maintenance as provided for in this Agreement.
17. In the event of any servant, officer or agent of the Corporation determining upon inspection that the development is not proceeding in strict accord with the plans and specifications filed with the Corporation, such servant, officer or agent shall forthwith place a notice requiring all work to be stopped upon the Lands, and shall forward a copy by registered mail to the Owner at his last address as shown by the revised assessment rolls, and the Owner shall forthwith correct the deficiency or deviation.
18. In the event of any servant, officer or agent of the Corporation upon inspection being of the opinion that the state of maintenance is not satisfactory, such servant, officer or agent shall forthwith forward notice of such opinion to the Owner by registered mail at his last address as shown from the revised assessment rolls, and the Owner shall forthwith correct the deficiency or appeal to Council of the Corporation as hereinafter provided.
19. In the event that an Owner should disagree with the opinion of the servant, officer or agent of the Corporation as to the progress of the development or as to the state of maintenance, such Owner shall appear before Council of the Corporation, which after hearing the Owner, shall be permitted to express its position as to whether such progress or maintenance is satisfactory, following which Council of the Corporation shall make a decision, by resolution, as to whether to lift or sustain the prior decision of

the Corporation's servant, officer or agent, which shall constitute a final determination of the matter.

20. In the event that an Owner should fail to obey a stop work order issued under Section 17 hereof, the Owner recognizes the right of the Corporation to apply to the Courts for a restraining order.
21. In the event that an Owner should fail to correct a deviation or deficiency after notice pursuant to Section 17 or 18 or after notice of an opinion, which Council of the Corporation determines is correct under Section 20, the Council of the Corporation may by law direct or default of the matter or thing being done by the Owner, after two (2) week written notices to it by registered mail at the last shown address of the Owner pursuant to the revised assessment rolls of passage of such by-law, that such matter or thing be done by the Corporation at the expense of the Owner, which expense may be recovered by action or like manner as municipal taxes.
22. In the event of an Owner wishing to change at any time any of the buildings, structures or facilities described in the plans annexed or referred to in Section 3 hereof, it shall make application to Council of the Corporation for approval and shall not proceed with such change until approval is given by such Council, or in default by the Ontario Municipal Board, under the procedure set out in Section 41 of the Planning Act, R.S.O. 1990 herebefore referred to.
23. This Agreement and the provisions thereof do not give to the Owner or any person acquiring any interest in the Lands any rights against the Corporation with respect to the failure of the Owner to perform or fully perform any of its obligations under this Agreement or any negligence of the Owner if its performance of the said obligations.
24. In the event that no construction on the Lands has commenced on or before the expiry of one (1) year from the date of registration of this Agreement, the Corporation may subsequently, at its option, on one month's written notice to the Owner, terminate this Agreement, whereupon the Owner acknowledges that agrees that it will not be able to undertake any development construction on the Lands (or any further development or construction) on the Lands.
25. All facilities and matters required by this Agreement shall be provided and maintained by the Owner at its sole risk and expense to the satisfaction of the Corporation and in accordance with the standards determined by the Corporation and in default thereof and without limiting other remedies available to the Corporation, the provisions of Section 446 of the Municipal Act shall apply.
26. A financial guarantee (being in the form of a certified cheque payable to the Corporation or irrevocable letter of credit address to the Corporation, being self-renewing without burden of proof in the case of the latter) for 50% of the value of on-site improvements on the Lands, exclusive of buildings and structures, shall be posted with the Corporation by the Owner, in addition to further financial security, in the same form as described above, in the amount of 100% for all off-site works required as part of this development. With respect to determining values herein, the Owner's engineer is required to provide a certified estimate of the cost of the on-site and off-site work for consideration and approval by the Corporation's Director of Engineering and Infrastructure. Once the Town has inspected and approved the construction of the on-site and off-site works, the Owner will be required to provide security, again in the form described above, for a one year maintenance period in the amount of 15% of the cost of on-site and off-site improvements.

27. This Agreement shall be registered against the land to which it applies, at the expense of the Owner, and the Corporation shall be entitled, subject to the provisions of the Registry Act and the Land Titles Act, to enforce its provisions against the Owner named herein and any and all subsequent owners of the lands.
28. This Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
29. This Agreement shall be governed by, and interpreted according to, the laws of the Province of Ontario and the laws of Canada applicable therein, and shall be treated in all respects as an Ontario Contract.
30. If any provision or part thereof of this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement, and the remaining provisions of the Agreement shall remain in force and effect and shall be binding upon the Parties hereto as though the said provision or part thereof had never been including in this Agreement.
31. The division of this Agreement into Articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not effect the construction or interpretation hereof.
32. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and shall be effective as of the date set out above.
33. Words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neutral genders.
34. Schedules and other documents attached or referred to in this Agreement are an integral part of this Agreement, and are hereby incorporated into this Agreement by reference.
35. This Agreement constitutes the entire agreement among the Parties and except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective Parties. There are no oral representations or warranties among the Parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both Parties.

IN WITNESS WHEREOF the Owner and the Corporation (the latter under the hands and seals of its officers duly authorized in this regard), have executed this Agreement as of the date first above written.

**OWNER: SCOTT GLENDON CAMPBELL
WILKINS**


Per _____
Scott Glendon Campbell Wilkins

I have authority to bind the Corporation

**THE CORPORATION OF THE
TOWN OF AMHERSTBURG**


Per _____
Rebecca Belanger,
Manager of Planning Services

I have authority to bind the Corporation

*Authorized and approved by By-law
No. 2018-51 enacted the 11th day of
June, 2018.*

SCHEDULE "A"

DESCRIPTION OF THE LANDS

Part of Lot 84, Concession 7,
Town of Amherstburg, County of Essex and Province of Ontario

Properties

PIN 70574 - 0153 LT
Description PT S1/2 LT 84 CON 7 MALDEN AS IN R1235023; AMHERSTBURG
Address 8704 COUNTY ROAD 9
AMHERSTBURG

Consideration

Consideration \$1.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name WILKINS, SCOTT GLENDON CAMPBELL
Address for Service Dancing Swallow Vineyard
8704 Essex Road 9, RR5
Amherstburg, ON N9V 0C8

This document is not authorized under Power of Attorney by this party.

Party To(s) *Capacity* *Share*

Name THE CORPORATION OF THE TOWN OF
AMHERSTBURG
Address for Service 271 Sandwich Street South
Amherstburg, Ontario N9V 2A5

This document is being authorized by a municipal corporation Rebecca Belanger, MCIP RPP, Manager of Planning Services.
This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.
This notice is for an indeterminate period
Schedule: See Schedules

Signed By

Thomas Robert Porter 500-251 Goyeau Street acting for Signed 2018 11 26
Windsor Applicant(s)
N9A 6V2

Tel 519-258-0615
Fax 519-258-6833

I have the authority to sign and register the document on behalf of the Applicant(s).

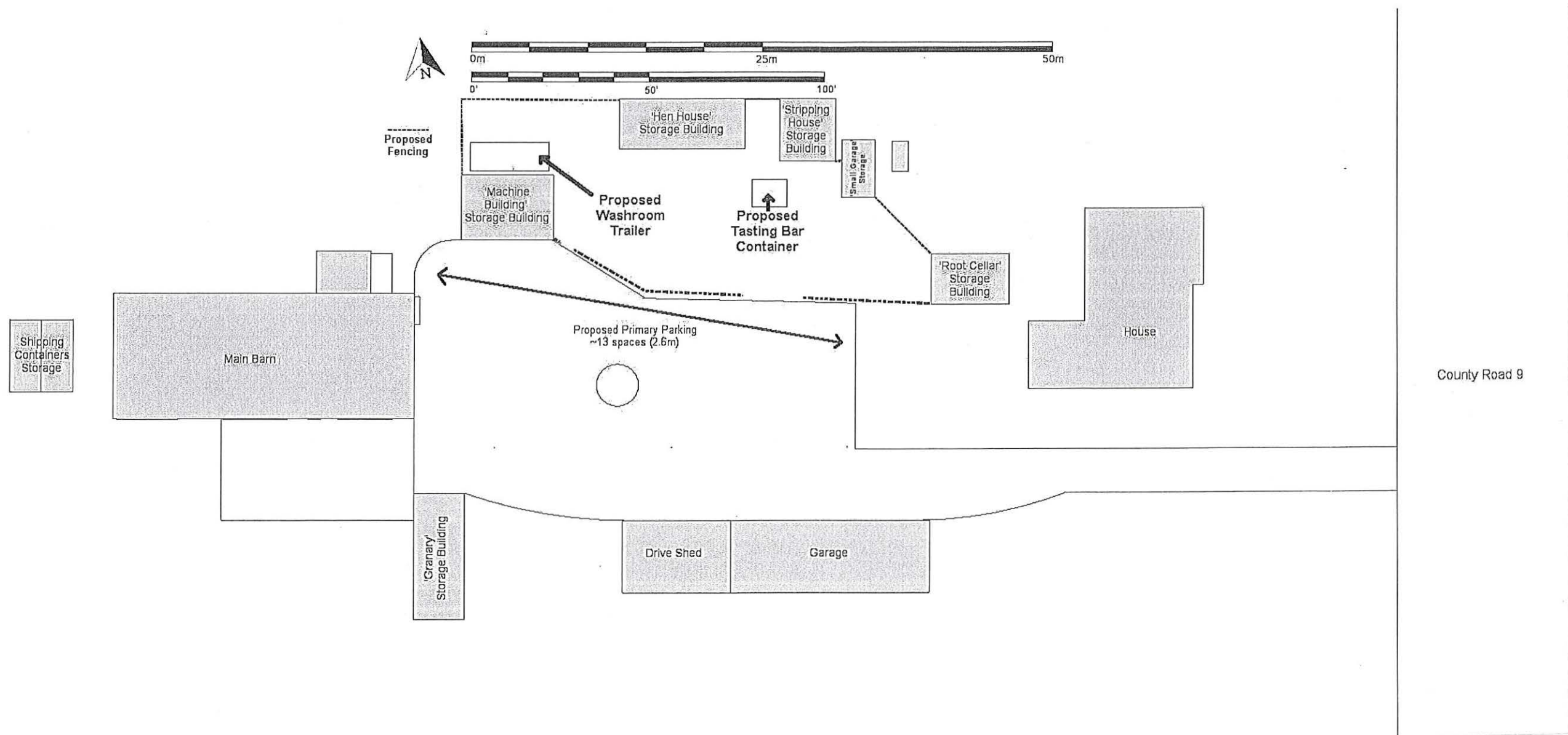
Submitted By

MOUSSEAU DELUCA MCPHERSON PRINCE 500-251 Goyeau Street 2018 11 26
Windsor
N9A 6V2

Tel 519-258-0615
Fax 519-258-6833

Fees/Taxes/Payment

Statutory Registration Fee \$64.40
Total Paid \$64.40



SCHEDULE "B"
Scott Glendon Campbell Wilkins
 Scott Glendon Campbell Wilkins
 TOWN OF AMHERSTBURG
Rebecca Belanger
 Rebecca Belanger, Manager of Planning Services