



Town of Amherst  
Planning Advisory Committee Meeting  
Agenda

Date: **Monday, June 5, 2023**  
Time: **4:30 pm**  
Location: **Council Chambers, Town Hall**

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	Pages
<b>1. Call to Order</b>	
<b>1.1 Territorial Acknowledgement</b>	
“I would like to acknowledge that our gathering today is taking place in (MEEG-MA-GEE), the traditional, unceded and ancestral territory of the Mi’kmaw people. I would also like to acknowledge that Nova Scotia has another unique people. These are the Indigenous Blacks of Nova Scotia whose legacy and contributions date back over 400 + years predating confederation of this land. We are all treaty people.”	
<b>2. Approval of Agenda and Minutes</b>	
<b>2.1 Approval of the Agenda</b>	
<b>2.2 Approval of the Minutes - May 1, 2023</b>	1 - 2
<b>2.3 Approval of the Minutes - May 17, 2023</b>	3 - 5
<b>3. Staff Reports / Presentations</b>	
<b>3.1 106 Church Street</b>	6 - 26
<b>3.2 55 Victoria Street East</b>	27 - 45
<b>3.3 22-2 Prince Arthur Street</b>	46 - 70
<b>3.4 Electric Street</b>	71 - 95
<b>3.5 Public Participation Opportunity Summary</b>	96 - 98
<b>4. Adjournment</b>	

**Town of Amherst  
Planning Advisory Committee  
Minutes**

**Date:** May 1, 2023  
**Time:** 4:30 pm  
**Location:** Council Chambers, Town Hall

**Members Present** Ronald Wilson, Citizen Representative, Chair  
Councillor Hal Davidson, Vice Chair  
Councillor Charlie Chambers  
Deputy Mayor Leon Landry  
Creighton McCarthy, Citizen Representative  
Jim Lamplugh, Citizen Representative

**Staff Present** Jason MacDonald, Chief Administrative Officer  
Andrew Fisher, Director of Planning & Strategic Initiatives  
Abiola Falaye, Planner/GIS Coordinator  
Marc Buske, Building Official  
Emily Wainwright, Dangerous/Unsightly Premises Administrator  
Natalie LeBlanc, Municipal Clerk  
Cindy Brown, Administrative Assistant

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**1. Call to Order**

The Chair called me the meeting to order at 4:30 PM.

**1.1 Territorial Acknowledgement**

The Chair gave the Territorial Acknowledgement.

**1.2 Approval of Agenda**

**Moved By: Deputy Mayor Landry**

**Seconded By: Councillor Davidson**

**That the agenda of the May 1, 2023 Planning Advisory Committee Meeting be approved as circulated.**

**Motion Carried**

**1.3 Approval of Minutes - March 6, 2023**

**Moved By: Councillor Davidson**

**Seconded By: Creighton McCarthy**

**That the minutes of the March 6, 2023 Planning Advisory Committee Meeting be approved as circulated.**

**Motion Carried**

**2. Welcome Councillor Chambers and Citizen Appointee Jim Lamplugh**

The Chair introduced Councillor Chambers and Jim Lamplugh to the Committee.

**3. Election of Chair and Vice-Chair**

The Clerk called for nominations for Chair. Ron Wilson was nominated to stay on as Chair by Councillor Hal Davidson. The Clerk asked three times if there were any more nominations, there were none. Ron Wilson agreed to stay on as Chair.

The Clerk called for nominations for the Vice Chair. Councillor Hal Davidson was nominated to stay on as Vice Chair by Deputy Mayor Landry. The Clerk asked three times if there were any more nominations, there were none. Councillor Hal Davidson agreed to stay on as vice chair.

**4. Staff Reports / Presentations**

**4.1 155 East Victoria Street**

Andrew Fisher presented the revised application by Leslie Carrie for a development agreement to allow construction of a 48-unit apartment building at 155 East Victoria Street (Lot 2005-1A, PID 25034091).

**Moved By: Councillor Davidson**

**Seconded By: Deputy Mayor Landry**

**That the Planning Advisory Committee recommend that Council not enter into the Development Agreement for 155 East Victoria Street.**

**Against (1): Creighton McCarthy**

**Motion Carried**

**5. Verbal Update on Demolition Orders**

Emily Wainwright gave an update on the demolition of 14-16 Cornwall Street and 2 Pearl Place. The quotes are currently being reviewed and a Purchase Agreement Request will be awarded to the lowest bidder that satisfies all requirements. The next stage will be to award a contractor to remove the contents of the building, in preparation of the demolition phase. The property of 1 McCully Street is still under discussion between the CAO and the owner's legal representatives. It is being monitored to ensure the fencing is secured.

**6. Adjournment**

**Moved By: Councillor Davidson**

**Seconded By: Deputy Mayor Landry**

**To adjourn the meeting.**

**Motion Carried**

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Andrew Fisher  
Director of Planning & Strategic Initiatives

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Ron Wilson  
Chair

**Town of Amherst  
Planning Advisory Committee  
Minutes**

**Date:** May 17, 2023  
**Time:** 12:00 pm  
**Location:** Council Chambers, Town Hall

**Members Present** Ronald Wilson, Citizen Representative, Chair  
Councillor Hal Davidson, Vice Chair  
Deputy Mayor Leon Landry  
Councillor Charlie Chambers  
Creighton McCarthy, Citizen Representative  
Jim Lamplugh, Citizen Representative

**Staff Present** Jason MacDonald, Chief Administrative Officer  
Andrew Fisher, Director of Planning & Strategic Initiatives  
Abiola Falaye, Planner/GIS Coordinator  
Marc Buske, Building Official  
Emily Wainwright, Dangerous/Unsightly Premises Administrator  
Natalie LeBlanc, Municipal Clerk  
Cindy Brown, Administrative Assistant

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**1. Call to Order**

The Chair called the meeting to order.

**1.1 Territorial Acknowledgement**

The Chair gave the Territorial Acknowledgement.

**2. Staff Reports / Presentations**

**2.1 155 East Victoria Street Development Agreement Application**

The Chair identified that there was an error in the presentation given at the May 1, 2023 Planning Advisory Committee meeting regarding the height of the building and that this meeting was scheduled to provide the PAC with the correct information.

**Andrew Fisher** presented the revised presentation to show the correct elevations on the models that were previously presented at the May 1, 2023 meeting.

**Deputy Mayor Landry** asked if the images are to scale? Andrew Fisher responded that they are not to scale but are relative to each other.

**The Chair** asked if only the elevations had been changed and not the dimensions of the building. Andrew Fisher replied that is correct

**Jim Lamplugh** asked if the committee went with Option 3, is that the agreement that is presented today. Andrew Fisher replied yes. Jim Lamplugh asked if the building footprint can be changed so that all the traffic can be moved to East Victoria Street and not have the parking lot entrance on South Adelaide Street. Andrew Fisher answered that would alleviate the traffic on South Adelaide Street however increase it significantly on East Victoria Street.

**Andrew Fisher** added that the concerns are not about traffic, adding the main concern are with the bulk and height of the building and the location on the lot.

**Councillor Chambers** motioned for Option 1 to make no motion. Andrew Fisher suggested that if the Chair asks three times if there is a motion and there is none than that is Option 1 which is no motion.

**Moved By: Jim Lamplugh**

**Seconded By: Creighton McCarthy**

**That the Planning Advisory Committee recommend that Council enter into the Development Agreement for 155 East Victoria Street, subject to any changes that may arise.**

**Councillor Davidson** asked if the proponent can make any changes, stating further that in the original presentation it was said that staff approached the applicant to change the height and bulk of the building and they said it was not financially feasible to reduce the size of the building any further. Andrew Fisher answered that is still the case. Councillor Davidson noted the criteria is not only the general intent, but 3(c) of A5 in the MPS talks about the height and bulk/lot coverage. He feels it is very important that the presentation today address the error that was made on how the height was being estimated. Councillor Davidson asks if there were any changes to the height. Andrew Fisher answered no, just the models that were shown to help show what it would look like relative to the other buildings.

**Councillor Davidson** spoke of the Mosher/Brown Street development and how that developer was able to change his site plan to allow for more setbacks between the proposed development and the neighboring houses. Councillor Davidson wanted to know if there have been any changes to the setbacks as he feels 153 East Victoria Street will be completely dwarfed by the proposed building, stating a setback from 153 East Victoria Street would help alleviate the impact that it has on that particular property, adding that if you buy a house next to a vacant lot you can reasonably expect something will be built there but they can also reasonably expect the MPS will be followed in terms of a criteria of an amendment of the height being a significant factor. Councillor Davidson asked if changes have been made in that regard.

**Jason MacDonald** answered that the setbacks noted in the original application were less than being applied for now.

**Councillor Davidson** replied he is not referring to the setbacks from East Victoria Street, his main concerns are with the setbacks from the 153 East Victoria Street side and the front of East Victoria Street. Andrew Fisher said there were no were no changes to the setbacks.

**Jason MacDonald** added that when the staff report was written it was suggested that the staff preference would be a three-storey building but four stories does satisfy the MPS. The building proposed now is the same height as 157 East Victoria Street. Councillor Davidson responded that this still does not satisfy the setback from East Victoria Street which was identified when PAC originally made the recommendation that Council not enter into the development agreement.

**Deputy Mayor Landry** asked the CAO to read the adherence of the MPS on page 21 of the staff report presented at the May 1<sup>st</sup> meeting. Deputy Mayor Landry asks how staff can recommend it; it seems vague to him.

**Jason MacDonald** read from the package: "It was suggested to the applicant that if the proposed building were reduced to three levels (4 at East Victoria) it would be similar in height to the 3-level, 8-unit building at 157 East Victoria and other 3-level buildings in the broader neighbourhood. In addition, stepping the upper floor back 10-15 feet would reduce the shear face of the building wall that fronts on East Victoria and potentially reduce its impact on the streetscape and neighbourhood character. Staff suggested that these two reductions in the height and bulk of the building might allow an argument to be made that the building is in keeping with the general intent of the key MPS policies. The applicant responded that these changes would make the project financially unfeasible."

**Deputy Mayor Landry** wants to know how staff can recommend we enter into an agreement and state that it adheres to our MPS when they also state changes needed to be made to be more inline with our MPS. Deputy Mayor Landry again stated it seems like a vague recommendation to him.

**Jason MacDonald** replied there are approximately 20 policies that addresses this application and that it easily satisfies 19 of them. The issues are the height and the bulk of the building that is more of an interpretive thing on balance that is being addressed. It would be better if it was three storeys but he does feel that at the end of the day that four-storeys does satisfy the policy.

At this time the Chair called for the vote on the motion.

**For (2): Jim Lamplugh, Creighton McCarthy**

**Against (4): Councillor Davidson, Deputy Mayor Landry, Charlie Chambers and Ron Wilson.**

**Motion Defeated**

**3. Adjournment**

**Moved By: Deputy Mayor Landry**

**Seconded By: Councillor Chambers**

**To adjourn the meeting.**

**Motion Carried**

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Andrew Fisher  
Director of Planning & Strategic Initiatives

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Ron Wilson  
Chair

**TO:** Planning Advisory Committee

**FROM:** Andrew Fisher, Director of Planning & Strategic Initiatives

**DATE:** June 5, 2023

**RE:** **Development Agreement – 106 Church Street**

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## **PROPOSAL**

An application by the property owner, Willard Leeck and Leslie Sadler, for a development agreement to allow a clay studio, which represents a change of a legally existing non-conforming use to another use not permitted in the zone.

## **BACKGROUND INFORMATION**

Attached is an Application Briefing that provides details about the proposal and relevant policies.

**Site Details:** The subject property, approximately 5,830 sqft in area, is located in the General Residential Zone, and contains an existing commercial building. The building is built up to the property line along Church Street and Belmont Street. The area behind the building is mostly paved and the majority of it is encumbered by a right-of-way in favour of 108 Church Street and a large tree.

**Neighbourhood Context:** The subject property is surrounded by a mixture of detached residential dwellings and converted apartment houses. There is a town-owned parking lot and fenced in recreation area directly across the street. The southern edge of the Downtown Core Area is a block away.

**Proposal Details:** The proposal includes converting the existing dance studio into a pottery studio defined as the creation and finishing of ceramics, stoneware and porcelain objects. Other uses related to the clay studio may include instructional classes and the storage, presentation and sale of materials and finished pottery objects.

*Figure 1. Property Location and Configuration*



The attached draft development agreement includes the following key terms and conditions:

1. Clay Studio – creation & finishing of ceramic, stoneware and products. Classes, display and sale also permitted.
2. Maximum of 5 employees.
3. Hours of operation, including shipping/receiving: 7am to 10pm
4. Any ventilation and or exhaust to the exterior of the building shall be located on the roof or street-facing walls of the building, and shall not emit any undue noise, odour, fumes, or particulate matter that would not otherwise be present in a typical residential neighbourhood.
5. No customer access or parking at the rear of the building or at 1 Belmont Street.

## **PUBLIC PARTICIPATION OPPORTUNITY**

A public participation opportunity advertised in accordance with the Policy for Public Participation and Notification was held on Wednesday, May 24, 2023. A [video](#) of the meeting has been made available on live streamed event section of the Town website, and a [summary](#) is provided as part of the package.

Concerns raised by the owner of 108 Church are detailed in the attached letter, but identify environmental concerns related to a pottery studio. Concerns were also raised about the Right-of-Way over the rear of the subject property in favour of 108 Church Street. Terms and conditions within the draft DA are intended in part to address these concerns.

## **RELEVANT POLICIES**

**Land Use Bylaw:** Section 4.15 of the Bylaw states that a development permit may be issued to change a non-conforming use to another use not normally permitted on the property by Development Agreement in accordance with Policy GP-11 of the Municipal Planning Strategy (MPS).

### **Municipal Planning Strategy:**

#### **Policy GP-11 Non-Conforming Uses**

*It shall be the intention of Council to permit, in all designations, a non-conforming use to change to another use not normally permitted on the property by way of Development Agreement. In considering such a development agreement, Council shall consider the following:*

- a) that the proposed use exerts a similar or less of an impact on the surrounding neighborhood;*
- b) the use of buffering, landscaping or fencing to reduce possible impacts or otherwise improve the property;*
- c) that adequate parking is provided for the new use; or the existing parking situation is improved by virtue of the development agreement;*
- d) the proposal will not involve any expansion of the use onto a lot not originally occupied by the use except for the provision of parking;*
- e) signage on the property;*
- f) hours of operation;*
- g) the adequacy of the transportation network to accommodate the proposed use.*

The proposed pottery studio on this property is unlikely to exert a greater impact on the neighbourhood when compared to its former use as a dance studio. The dance studio included regular group dance lessons and events that resulted in significant vehicle traffic and demand for parking around the property. Staff feel that the pottery studio will have a more constant but less intense use on a day-to-day basis. The draft development agreement includes provisions to mitigate potential impacts on the surrounding residential neighbourhood by restricting parking on other private properties nearby, and requires that the existing ROW be respected.

The draft development agreement also maintains the same permitted hours of operation and maximum number of employees as the dance studio. It also restricts any exhaust or ventilation be located on the roof or walls that abut a street, and that any such exhaust not emit noise, odour, fumes, or particulate matter that would not otherwise be present in a typical residential neighbourhood. These requirements are intended to address GP-11(a) to ensure the pottery studio ‘exerts a similar or less of an impact’.

Other MPS policies relevant to this issue include the following:

*A-5 It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:*

- a) *That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.*
- b) *That the proposal is not premature or inappropriate by reason of:*
  - (i) the financial capability of the Town to absorb any costs relating to the development;*
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;*
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development;*
- c) *That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:*
  - (i) type of use;*
  - (ii) height, bulk and lot coverage of any proposed building;*
  - (iii) parking, traffic generation, access to and egress from the site;*
  - (iv) any other matter of planning concern outlined in this strategy.*

The proposal conforms with the general intent of MPS Policy A-5. No expansions to the existing building are permitted. The draft development agreement terms and conditions are intended to mitigate potential impacts the proposed use may have on the surrounding neighbourhood. There are limited parking opportunities onsite, which will result in frequent on-street parking; however, this will not be a new situation.

*GP-7 It shall be the intention of Council to allow a mix of compatible land uses and to minimize their impacts by:*

- a) *requiring adequate buffering and setbacks;*
- b) *screening development by the use of visual barriers;*
- c) *regulating the location of parking, storage buildings or other accessory uses or facilities.*

The proposal is generally compatible with the existing residential use in the surrounding neighborhood.

## **CONCLUSIONS:**

The proposal generally conforms to the relevant policies of the MPS and LUB. The pottery studio has the potential to bring new vibrancy to this property that is relatively challenged as a commercial property given its location and lack of onsite parking. As noted above, the draft development agreement contains terms and conditions that are intended to mitigate potential impacts on the surrounding neighbourhood.

**OPTIONS:**

Option One: Recommend that Council enter into the Development Agreement for 106 Church Street as drafted by Staff, subject to any revisions that may arise.

Option Two: Recommend that Council not enter into the Development Agreement for 106 Church Street, citing specific policies with which the proposal does not conform.

Option Three: Defer the application and instruct Staff to provide more information or negotiate changes to the agreement.

**STAFF RECOMMENDATION: Option One.**

# Application Briefing

Development Agreement application to permit a Clay Studio on 106 Church Street

**June 5, 2023**



# DEVELOPMENT AGREEMENT PROCESS



*\*All meetings of the Planning Advisory Committee and Council are open to the public.*

#seewhyweloveit



# APPLICATION DETAILS

**Applicant/ Owner:** Willard Leeck & Leslie Sadler

**Summary of Proposal:** to permit the change of legal non-conforming uses of the existing building on 106 Church Street from a dance studio to a clay studio.

**Location:** 106 Church Street (PID: 25013871)

**Property Area:** 542m<sup>2</sup> (5834.04 sqft).

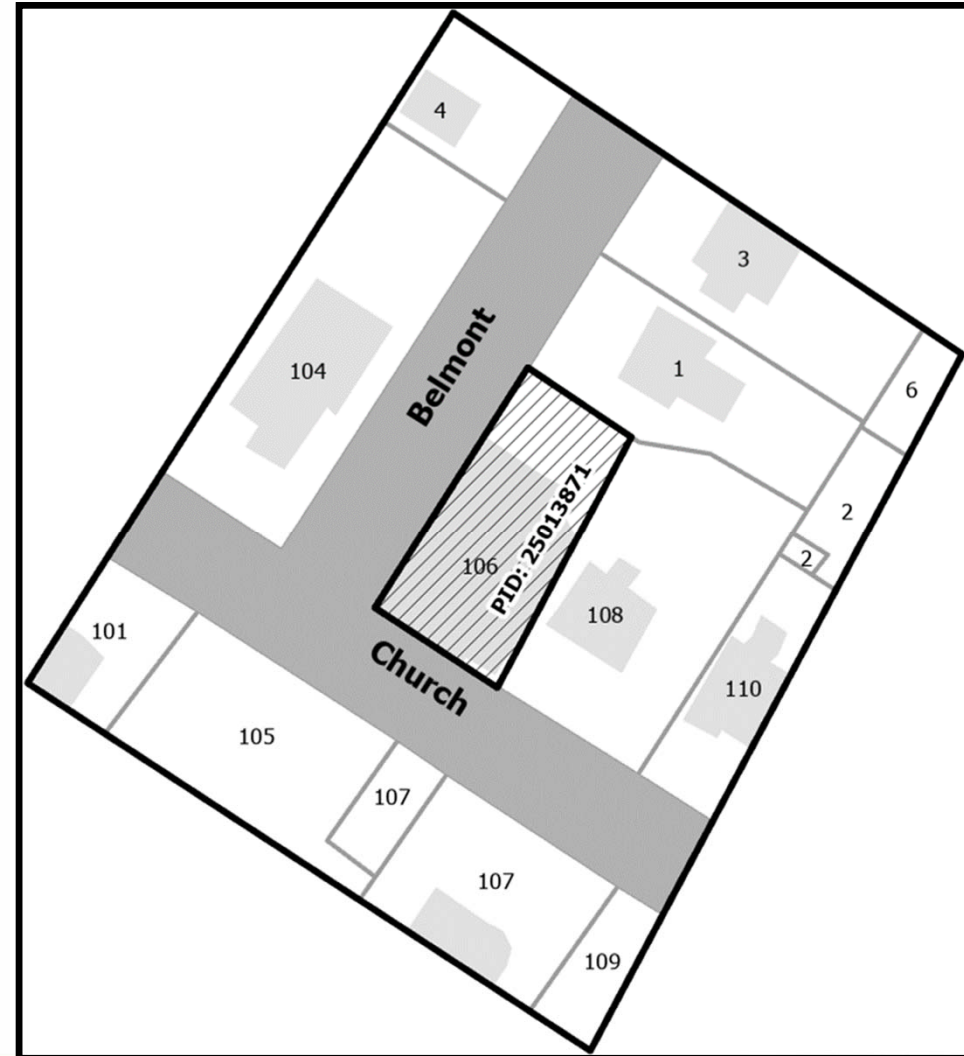
**Existing building area:** 383m<sup>2</sup> (4122.58 sqft).

**Lot coverage:** 71%.

**Existing Zoning:** General Residential

**Existing Land Use:** 2005 Development Agreement in effect that permits a dance studio on the property.

**Street Frontage:** The lot is a corner lot with approximately 17m frontage on Church Street and 34m on Belmont Street.



# NEIGHBOURHOOD CONTEXT

- ❑ The subject property is located in the General Residential Zone and surrounded by detached residential dwellings.
- ❑ Directly opposite the property along Church Street is a town-owned parking area and recreation space.
- ❑ The property is also within a close proximity to the Downtown Zone and can be easily accessed from any part of the Town.



# GENERAL DESCRIPTION

## Operation and Staffing

- ❑ The applicant intends to use the former Atlantic Ballet Studio as a pottery Studio (ceramic, pottery, stoneware and porcelain).
- ❑ Orders can be placed on-line and in-person, while pick-up (wholesale and retail) will be on-site.
- ❑ Items that would be sold include but are not limited to crafts, paints, ceramic slip (liquid clay), kit supplies and artisan hand tools.
- ❑ The space will also be made available for local artisans to teach their design, painting, pottery and clay molding skills.
- ❑ At the initial stage, the business will be operated by two persons. More will be employed as the business expands.
- ❑ The hours of operation will be 12pm till 8pm from Wednesday to Sunday. There is plan to extend this time from 7am till 10pm on Monday through Sunday as the need arises.



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# GENERAL DESCRIPTION

## Parking

- ❑ 1 on-site space appears to be possible without impeding the easement. Removal of a large tree is proposed, which would facilitate an additional parking space.
- ❑ There is currently short-term parking across the street on the Town owned property at 105 Church Street.
- ❑ An existing right-of-way agreement on the property to access the garage at 108 Church Street from Belmont Street. The DA does not override the ROW.



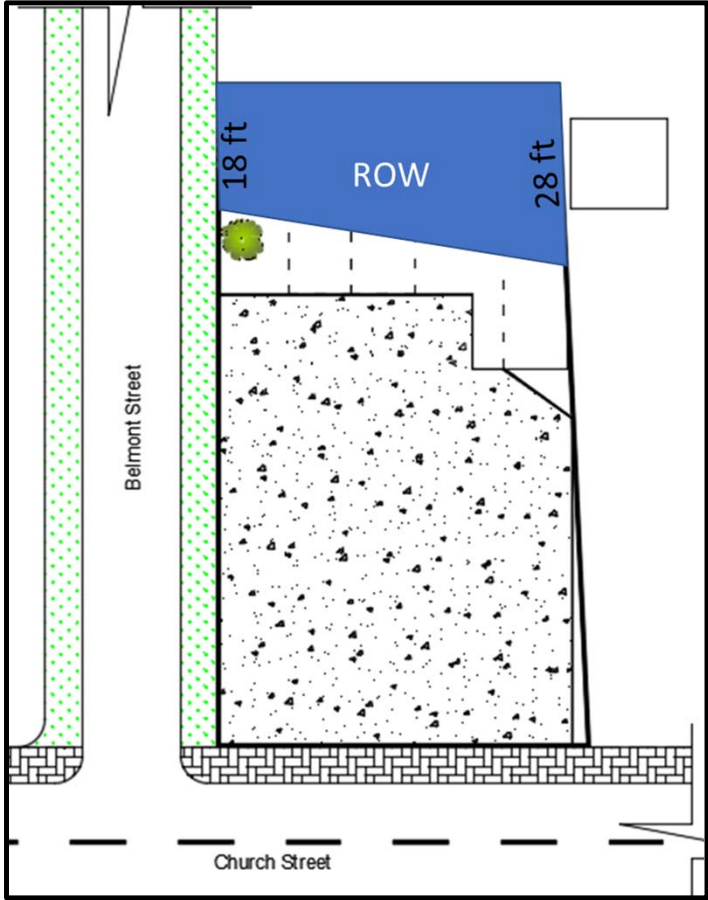
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# GENERAL DESCRIPTION

## Signage

- ❑ The DA allows fascia signage on the street-facing walls and a projecting sign on the Church Street wall, and requires directional signage for signage and building function. Interior window signage is not regulated.
- ❑ Proposed wider entrance in front of the building to ease indoor shipment delivery, improve air circulation and create a more welcoming environment.



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# Development Agreement

## Key Terms and Conditions

1. Clay Studio – creation & finishing of ceramic, stoneware and products. Classes, display and sale also permitted.
2. Maximum of 5 employees.
3. Hours of operation: 7am to 10pm
4. Any ventilation and or exhaust to the exterior of the building shall be located on the roof or street-facing walls of the building, and shall not emit any undue noise, odour, fumes, or particulate matter that would not otherwise be present in a typical residential neighbourhood.
5. No customer access or parking at the rear of the building or at 1 Belmont Street.



# RELEVANT PLANNING BYLAWS AND POLICIES

## 1. Land Use Bylaw Section 4.15 (Non-Conforming Use Changed by Development Agreement)

A development permit may be issued to change a non-conforming use to another use not normally permitted on the property by Development Agreement in accordance with Policy GP-11 of the Municipal Planning Strategy.

## 2. General Land Use and Development Policies

**GP-7 (Compatibility):** It shall be the intention of Council to allow a mix of compatible land uses and to minimize their impacts by:

- (a) requiring adequate buffering and setbacks;
- (b) screening development by the use of visual barriers;
- (c) regulating the location of parking, storage buildings or other accessory uses or facilities.

### **GP-11 (Non-conforming Uses)**

It shall be the intention of Council to permit, in all designations, a non-conforming use to change to another use not normally permitted on the property by way of Development Agreement. In considering such a development agreement, Council shall consider the following:

- (a) that the proposed use exerts a similar or less of an impact on the surrounding neighbourhood;
- (b) the use of buffering, landscaping or fencing to reduce possible impacts or otherwise improve the property;
- (c) that adequate parking is provided for the new use; or the existing parking situation is improved by virtue of the development agreement;
- (d) the proposal will not involve any expansion of the use onto a lot not originally occupied by the use except for the provision of parking;
- (e) signage on the property; (f) hours of operation; (g) the adequacy of the transportation network to accommodate the proposed use



# RELEVANT PLANNING BYLAWS AND POLICIES

## 3. Implementation Policy

### A-5 (Amendment Criteria)

It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.
- (b) That the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the Town to absorb any costs relating to the development;
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:
  - (i) type of use;
  - (ii) height, bulk and lot coverage of any proposed building;
  - (iii) parking, traffic generation, access to and egress from the site;
  - (iv) any other matter of planning concern outlined in this strategy.



This Agreement made this \_\_\_\_\_ Day of \_\_\_\_\_ 2023.

Between:

**WILLARD LEECK & LESLIE SADLER** (owner of property located at 106 Church Street, Amherst [PID 25013871], hereinafter called the "Owner"),

of the one part, and

**The Town of Amherst** (a body corporate in the Province of Nova Scotia, hereinafter called the "Town"),

of the other part.

WHEREAS the Owner wishes to obtain permission pursuant to Policy GP-11 of the Municipal Planning Strategy of the Town of Amherst, to operate a clay studio on property located at 106 Church Street (PID 25013871).

AND WHEREAS a condition of the granting of approval of Council is that the Owner enter into an Agreement with the Town;

AND WHEREAS the Council of the Town, at its meeting on the \_\_\_\_ day of \_\_\_\_\_ 2023, approved the said Development Agreement, subject to the registered Owner of the land described herein entering into this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the Town of the Development Agreement requested by the Owner, the Owner agrees as follows:

- 1) That the Owner is the registered owner of the aforesaid Land in the Town of Amherst, hereinafter called the "Land". The aforesaid Land is the only land in the Town of Amherst to which this Agreement applies, and the Land is illustrated in the plan shown on Schedule B attached.
- 2) That the Owner may operate a clay studio on the said lands, subject to the following Schedule A, attached.
- 3) Nothing in this Agreement shall exempt or be taken to exempt the Owner or any other person from complying with the requirements of any Bylaw of the Town applicable to the Property (other than the Land Use Bylaw to the extent varied by this Agreement) or any Provincial or Federal statute, act, or regulation.
- 4) Any failure of the Town to insist upon strict enforcement of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Town may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.
- 5) Should the Owner fail to act in accordance with any aspect of this Agreement, the Town shall retain the right to discharge the Agreement upon 30 days notification and / or enter the property and conduct the required work. The cost of the said work will become a lien on the property tax bill.

- 6) The Town shall issue the necessary Development Permit for the development upon expiration of the appeal period specified for Development Agreements under Section 249 of the *Municipal Government Act*, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken.
- 7) The Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Town in accordance with Section 229 of the *Municipal Government Act*.
- 8) Uses permitted as-of-right in the R-1 Residential Zone, as may be amended from time to time, are permitted on the property pursuant to the requirements of the said zone.
- 9) The following matters are considered not substantive as per Section 227 (3) (a) of the Municipal Government Act:
  - a. The hours of operation as indicated in Schedule A.
  - b. The number of employees as indicated in Schedule A.
  - c. The type of use as indicated in Schedule A.

**SIGNED, SEALED AND DELIVERED**

In the presence of

**THE TOWN OF AMHERST**

\_\_\_\_\_  
David Kogon, MD, Mayor

\_\_\_\_\_  
Jason MacDonald, MCIP, LPP, CAO

**FOR THE OWNER**

\_\_\_\_\_  
Leslie Sadler

\_\_\_\_\_  
Willard Leeck

## Schedule A

### 106 Church Street Amherst

#### Terms and Conditions:

1. Use of the property shall be limited to a clay studio defined as the creation and finishing of ceramics, stoneware and porcelain objects. Other uses related to the clay studio may include instructional classes and the storage, presentation and sale of materials and finished pottery objects.
2. A maximum of 5 people may be employed on the property.
3. The hours of operation, including shipping and receiving, shall be limited to between 7:00 a.m. and 10:00 p.m.
4. No outdoor storage, including but not limited to materials and equipment, shall be permitted on the Lands other than that required to comply with the Town of Amherst Solid Waste Bylaw.
5. The exterior of the building shall be maintained in a manner appropriate for the surrounding residential neighbourhood.
6. No accessory buildings are permitted on the Land and no expansions to the existing building are permitted except mechanical equipment or expansions required for barrier-free access.
7. Customer access to the building shall be limited to the side of the building that faces directly onto a street.
8. Operation of the clay studio shall conform to the Nova Scotia Occupational Health and Safety Act and regulations.
9. Any ventilation and or exhaust to the exterior of the building shall be located on the roof or street-facing walls of the building, and shall not emit any undue noise, odour, fumes, or particulate matter that would not otherwise be present in a typical residential neighbourhood.
10. This agreement does not supersede or allow impedance of the right-of-way that exists across the rear property line on the Lands from Belmont Street to access the property at 108 Church Street (PID 25013897). The right-of-way is 18 feet wide along Belmont Street and 28 feet wide along the property line shared with 106 and 108 Church Street.
11. Other than by the Owner, parking by pottery studio staff or customers shall not be permitted on private property adjacent to 106 Church Street, including 1 Belmont Street.
12. The Owner shall keep the Land and building and any portion thereof clean and in good repair. All elements of the development on the Land shall be regularly maintained and kept in a tidy state, and free from unkept materials of any kind.
13. The Owner shall ensure that exterior lighting does not shine directly onto adjacent properties.
14. Storm water runoff on the south east side of the roof shall be channeled directly into the municipal storm water system.
15. Signage shall be limited to a maximum of one sign affixed to the building wall along Church and Belmont Street and one projecting sign. All such signs shall be a maximum of 1.2 square metres in area. Signs that pertain to parking or functioning of the building shall be permitted.
16. Signage shall be posted at the rear of the building indicating no customer parking is permitted and any parking shall not block the right-of-way.

Lillian Thorsteinson  
108 Church Street  
Amherst Nova Scotia, B4H 3B5

May 21, 2023

Town of Amherst Planning Advisory Committee  
Town of Amherst  
98 Victoria St. E.  
Amherst Nova Scotia, B4H 4A1

Dear Town of Amherst Planning Advisory Committee,

I am writing this letter to express my concerns about the application for a Development Agreement for the property located at 106 Church Street (PID: 25013871). I am very concerned about the negative environmental impact that would result from changing the use of the property from a dance studio to a clay studio.

My first environmental concern would be the impact on the air quality. If the business plans to operate kilns to produce ceramics, what steps will be taken to contain the air pollutants created in this process?

Will there be impurities in the material used that will be burned and exhausted into the air? Also, there will be air contaminants produced when burning toxic chemicals such as glazes. What will be done to control the amount of pollution created when burning toxic chemicals at high temperatures for long periods of time? What will be done to protect the health of the families living close to 106 Church Street?

I am also concerned about the storage of chemicals. Will the chemicals be stored in a safe place? How will waste be handled? Currently the property owner is using the back of the property as storage. What will be done to prevent storage of unsightly industrial waste at the back of the property? I have already had to submit two complaints to the Town of Amherst about industrial waste stored at the back of the property.

To address my environmental concerns, I ask the Town of Amherst Planning Advisory Committee to conduct an environmental assessment on the impact of a clay manufacturing business in the area. Also, I hope that the premises be inspected by an environmental agency.

I am also concerned about the safety of operating kilns so close to our homes. I believe the proposed business creates a risk for fire. With my property so close I fear that if there was a fire, that fire would spread to my property as well. What will be done to minimize the risk of fire from operating the kilns?

It is not just the risk of fire that impacts my property. The operation of a manufacturing business creates industrial noise. The property owner has been unloading trucks during evening hours, after 11 PM. This noise has been waking me up at night and has been detrimental to my health. What protections will be put in place to ensure the business owner operates their business during business hours and does not disrupt the neighboring residents?

Also, there are ongoing concerns with my usage of Right-Of-Way. The property of 106 Church Street is subject to the burden of right-of-way. The driveway to my garage passes across 106 Church to 108 Church. I am often unable to leave my home since this right-of-way is blocked and I cannot drive my car onto the street.

The current property owner leaves vehicles in the path of right-of-way that prohibits it's use. I believe if the property is changed to a clay studio, this problem will get worse. There will be large trucks unloading materials and loading clay shipments, blocking the right-of-way.

How can the Town enforce the right-of-way? What can be done to alleviate the personal suffrage caused by not being able to leave my home?

My property will also be impacted by house insurance. Mine and the surrounding neighbor's insurance premiums will increase due to the hazard of being close to a clay manufacturing business. I also believe there will be a decrease in property value for the surrounding properties if the property in question was changed to a clay studio.

I believe that this type of business would be better suited to an Industrial Area or designated Commercial Zone. The dance studio received permission to operate a commercial business in a residential zone. To extend this permission to a business which possesses potential health and safety risks would cause undue stress to the residents of a residential zone.

Has the Town of Amherst Planning Advisory Committee reviewed a Business Plan to determine if the proposed business is indeed a studio or a ceramics manufacturer? Will the majority of the studio's customers be locals purchasing ceramics or will the bulk of the business involve shipping large orders to other businesses/customers?

As a Amherstonian I share the Town's future vision for Amherst as stated in Town of Amherst Municipal Planning Strategy – Bylaw P-1, Section 2.1. I too believe we should be custodians of the local environment. This involves keeping our air pure and our waste minimized. To live a healthy lifestyle free from air contaminants and industrial waste.

As stated in Town of Amherst Municipal Planning Strategy – Bylaw P-1, Section 3.8 Environment, E-4. It is the intention of the Council to discourage the development of industries which could have a potential to decrease the air quality of the area. I ask that the Council take this into consideration when determining to allow a clay manufacturing business to exhaust toxicants into the air close to where the town's population lives.

Thank you for taking these concerns into consideration,

Lillian Thorsteinson

# MEMO

**TO:** Planning Advisory Committee  
**FROM:** Abiola Falaye, Land Use Planner  
**DATE:** June 5, 2023  
**RE:** Land Use Bylaw amendment to allow a drive-through on 55 Victoria Street East.

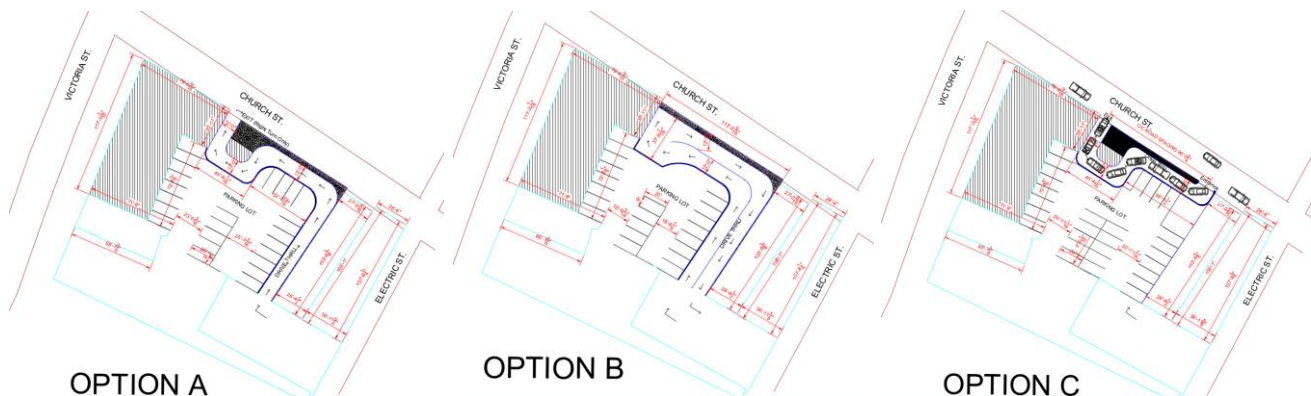
## PROPOSAL

An application by Casey Realty Limited to amend the Land Use By-law to allow a drive-through on 55 Victoria Street East (PID: 25005166). Other affected parcels include 13 and 17 Church Street (PIDs: 25013566 and 25013582).

## BACKGROUND INFORMATION

The subject properties are a combined area of approximately 2,196 m<sup>2</sup> (0.5 acre) is located at the intersection between Victoria Street and Church Street. This area is within the Downtown Core Area where vehicle-oriented uses including drive-throughs are prohibited (Section 8.4.1. of the Town's LUB). The existing building at 55 Victoria East Street, previously occupied by Tim Hortons, is currently vacant, while the remaining affected parcels serve as parking.

The proponent of this application explained that efforts to attract a new food and beverage chain to this property have been so far unsuccessful due to the prohibition of drive-through in this zone. They contend that allowing a drive-through in this location will increase the likelihood of re-establishing another franchise, such as Starbucks in the location. As shown in the attached Application Briefing, three options were provided by the proponent to support the case for a drive-through in the area.



While considering the proposal, it should be noted that one of the major reasons why drive-throughs are prohibited in the Downtown Core Area is to preserve the historic built form of this zone. This includes promoting a pedestrian friendly neighborhood through limited setbacks and entrances directly in front of and connecting to public sidewalks or open spaces. Also, options A and B constitute an encumbrance on a portion of a Town owned property at 22 Electric Street.

In 2010 the Town adopted and partially implemented the Centre First: Downtown Action Strategy. This strategy provided recommendations aimed at creating a vibrant downtown core area. A generally accepted principle of a vibrant downtown is creating public and private spaces that are pedestrian-friendly. Doing so means making decisions that do not allow vehicles to dominate the streetscape. Some of the recommendations in strategy involved promoting the conversion of parking areas into building lots, and more specifically, not allowing drive-throughs in the downtown core area principal street.

It should also be noted that traffic and cues for the East Victoria – Church Street intersection creates traffic congestion at the subject location. When Tim Hortons was operating, there was significant concern around traffic movement that led to ‘No Stopping’ signs being placed between the intersection and driveway closest to the building. The following are comments from the Chief of Police, Dwayne Pike expressing concerns about a drive-through at this location.

*From a quick review, a drive-through downtown, especially in this area is problematic. This can be a high traffic pedestrian area, especially if it is developed. It was a very busy spot when Tim Horton’s was there.*

*For Options A and C, coming out of a drive-through and turning right into traffic onto Church Street in that spot is especially problematic as traffic coming onto Church from Victoria has often run into problems and congestion if there are vehicles in this area. This is the reason there has been a ‘no stopping’ sign posted here. It’s just too much traffic coming around the turn to get by anything that may be stopped there (or trying to pull out). A previous Chief had some significant concerns about this area to the point where he would often assign members to stand out there and ensure that people obeyed the sign and no one stopped in this area.*

*Other issues are with traffic coming out of the Drive-through blind and cannot see both pedestrian and vehicular traffic coming from Victoria, which is likely why this was designed as a one-way street going in, not out. I can see some serious issues with this that could easily result in accident with pedestrians, motor vehicles and cyclists. The front end of any vehicle would already be across the sidewalk and almost into traffic before you could see what was coming. Pedestrians especially would be at risk.*

*Regardless, that back parking lot sees a lot of pedestrian traffic who will be ‘walking’ through drive-through traffic, regardless of what option (but especially B which has two way traffic). All three options basically have traffic driving through a slalom of parking spots. This area, especially in the summer also sees significant pedestrian traffic, which is concerning. Option B seems way too tight for vehicles to navigate through, especially with two opposing lanes and considering pedestrians in the area.*

*In my opinion, all three options would create dangerous conditions.*

## **PUBLIC PARTICIPATION OPPORTUNITY**

A public participation opportunity advertised in accordance with the Policy for Public Participation and Notification was held on May 24, 2023. A video of the meeting has been made available, and a summary is provided as part of the information package. At the meeting a member of the public raised concerns about the impact the proposed drive-through will have on traffic along Church Street and the interference with Electric Street which is earmarked as a festival street.

## RELEVANT LAND USE BY LAW AND POLICIES

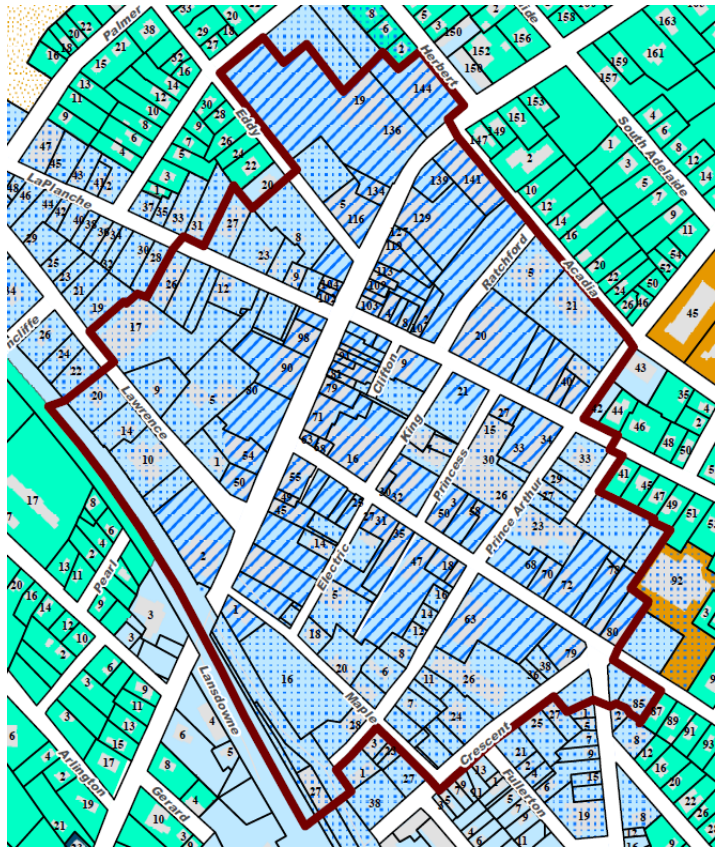
### 1. Land Use Bylaw Section 8.4.1 (Vehicular Oriented Uses in a Downtown District)

*In the Core Area District, the following shall not be permitted on Victoria Street, Church Street, Havelock Street, King Street, Electric Street, or Ratchford Street, and may be permitted elsewhere in a Downtown District, subject to any other relevant section of this bylaw:*

- a) Motor Vehicle Fueling Stations*
- b) Motor Vehicle Sales, Rental, or Repair*
- c) Car Washes*
- d) Drive-thru's*
- e) Self Storage Facilities*

This section of the Bylaw corresponds with CP-3 (Downtown Zone and Core Area District), and it clearly disallows a drive-through on the street(s) where the proposal is located.

To allow a drive-through in this location, the above noted Bylaw section will need to be amended to remove the restriction for drive-throughs on Church and/or Electric Streets.



### 2. Commercial Policies

#### CP-13 (Development Agreement, Automobile Uses in Downtown Zone)

*Within the Downtown zone, it shall be the intention of Council, in areas where automobile uses are permitted, to require that all motor vehicle related uses, including but not limited to, motor vehicle repair, sales and fueling stations, as well as any drive thru establishment, be subject to a Development Agreement. In negotiating such an agreement Council shall:*

- (a) ensure that the development provides sufficient on-site parking, and appropriate access to, and egress from the street;*
- (b) ensure that the location of parking facilities does not dominate the surrounding area, including the utilization of vegetation and fences to mitigate the aesthetic impacts of parking lots;*
- (c) ensure that any on site outdoor lighting does not negatively impact the surrounding properties;*
- (d) require the use of vegetation to improve the aesthetic quality of the development.*

Although the proposal is currently not in a part of downtown where drive-throughs are permitted, it is important to review this policy as it would be the yardstick to decide whether or not the proposal is appropriate. After assessing the three alternative site plans submitted by the applicant, it is determined that although there is sufficient on-site parking in the area, access to and from the proposed drive-through is not appropriate. The planned turning radius is restrictive and vehicular movement in and out of the driveway will significantly impact traffic flow along Church, Electric and Victoria Street at the intersection. In addition, the proposed development will most likely dominate this portion of the downtown core. The proposal will undermine safe access for pedestrians in the area and limit space for a vegetative landscape.

### **3. Land Use Bylaw Section 5.9 (Vehicle Stacking for Drive-Through Uses)**

*Businesses providing drive-through services including but not limited to banks, automatic car-wash facilities, and restaurants, shall provide, exclusive of driveways or isles, stacking for vehicle queuing in accordance with the following requirements:*

- (i) 5 inbound spaces*
- (ii) 2 out-bound spaces*

The three proposed options show that the proposal meets the requirement of this section of the bylaw with respect to 5 inbound queuing spaces; however, it is difficult to imagine how the minimum requirement for 2 outbound spaces could be accommodated, except in Option B. Options A & C would result in vehicles leaving the service window and immediately blocking the sidewalk as the building wall obstructs their view of oncoming Church Street traffic. For this reason, outbound traffic at this driveway is currently not permitted.

### **4. Implementation Policy**

#### **A-5 (Amendment Criteria)**

*It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:*

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.*
- (b) That the proposal is not premature or inappropriate by reason of:*
  - (i) the financial capability of the Town to absorb any costs relating to the development;*
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;*
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development*
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:*
  - (i) type of use;*
  - (ii) height, bulk and lot coverage of any proposed building;*
  - (iii) parking, traffic generation, access to and egress from the site;*
  - (iv) any other matter of planning concern outlined in this strategy.*

The proposal does not conform with the general intent of the Municipal Planning Strategy and Land Use Bylaw, particularly for the Downtown Core Area. While it is undisputable that there is the need to attract more commercial activities to the downtown area, the use being proposed is not in line with the tenets and objectives of the town's Municipal Planning Strategy. Notwithstanding the adequacy of municipal water, sanitary sewer and storm sewer services, a drive-through is not appropriate in the location considering the existing road network, traffic, adjacent development and activities in the area. Therefore, the proposal does not meet the criteria to amend the bylaw.

## **DISCUSSION & CONCLUSION**

There is a need to boost commercial activities in the town center, but it should not be at the expense of pedestrian safety, other uses/ activities in the town center or the historic downtown design that gives Amherst its uniqueness. Staff feel that amending the Bylaw to permit a drive-through in this area will set a precedence for more vehicular oriented uses downtown and would not support a vibrant, pedestrian-friendly downtown environment.

Alternatively, should the PAC be of the opinion that the drive-through is appropriate for this location, the Bylaw section 8.4.1 must be amended to allow such uses on Church and Electric Streets in the Downtown District (ie. Core Area).

## **OPTIONS:**

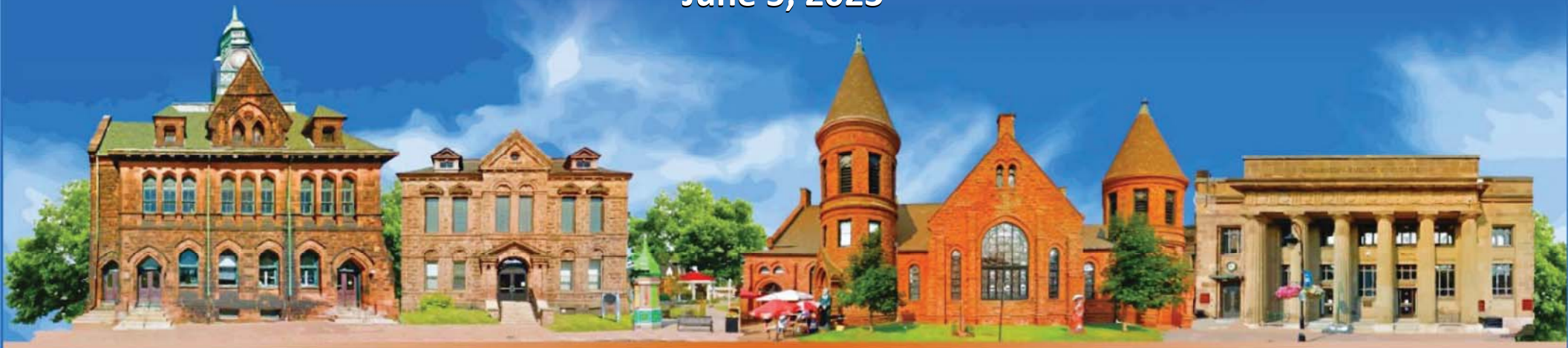
- Option One: Recommend that Council amend Section 8.4.1 of the Land Use By-Law to allow drive-throughs on all streets within the Core Area District.
- Option Two: Recommend that Council amend Section 8.4.1 of the Land Use By-Law to allow drive-throughs on Church Street within the Core Area District.
- Option Three: Recommend that Council not amend Section 8.4.1 of the Land Use By-Law and the status quo be retained.

**STAFF RECOMMENDATION: Option Three.**

# Application Briefing

Application to amend the Municipal Planning Strategy and Land Use Bylaw to permit a drive-through in the Downtown Zone.

**June 5, 2023**



# LUB AND MPS AMENDMENT PROCESS



*\*All meetings of the Planning Advisory Committee and Council are open to the public.*

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# APPLICATION DETAILS

**Applicant/ Owner:** Casey Realty Limited

**Summary of Proposal:** Application to amend the Municipal Planning Strategy and Land Use Bylaw to permit the installation of a drive-through on 55 Victoria Street East.

**Location:** 55 Victoria Street East (PID: 25005166)

**Property Area:** 796 m<sup>2</sup> (8568 sqft).

**Other affected parcels:**

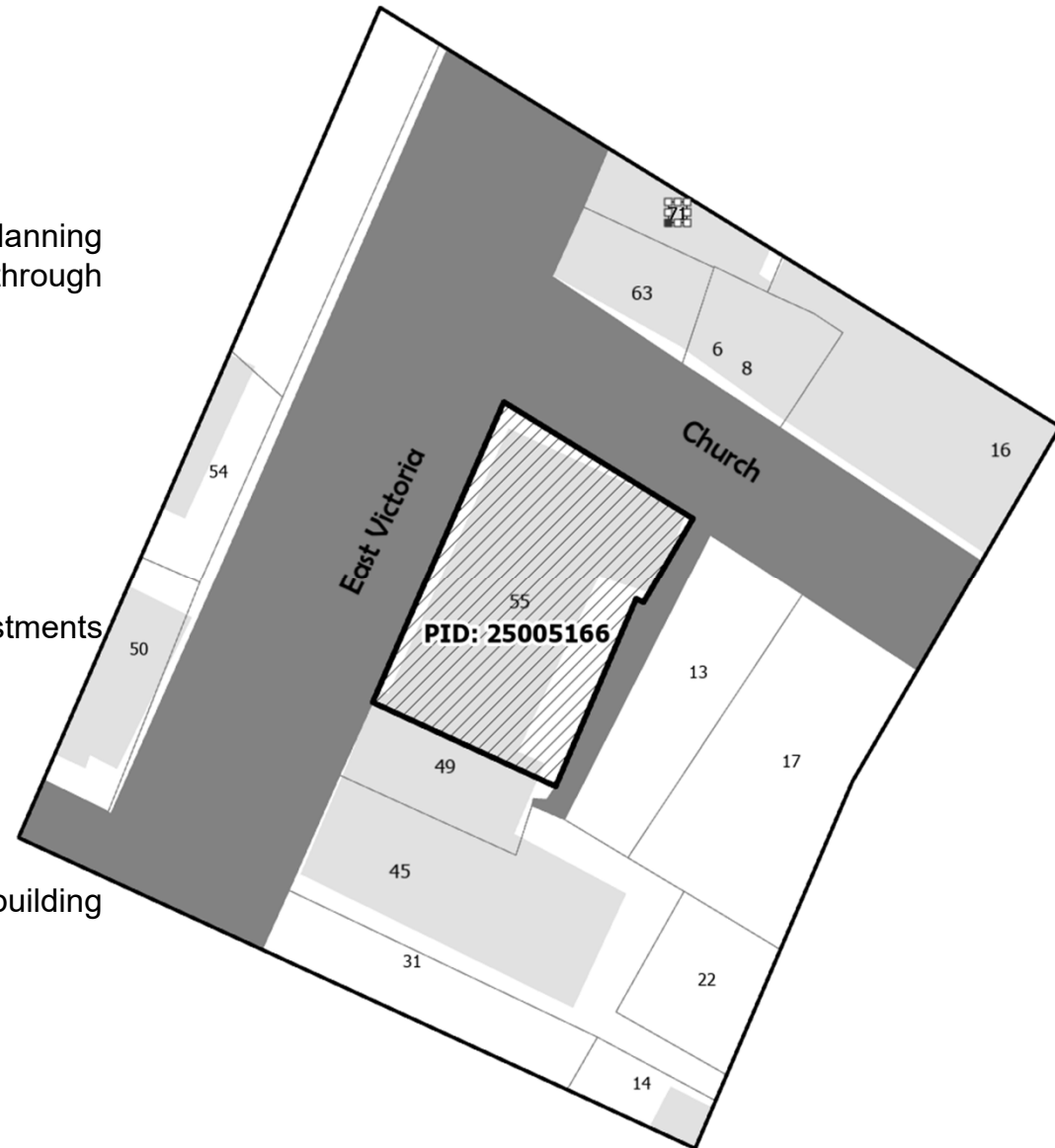
13, Church Street (PID: 25013566) owned by Casey Realty.

17, Church Street (PID: 25013582) owned by Rosedale Investments Limited

**Area of the all the affected parcels:** 1935m<sup>2</sup> (20828 sqft).

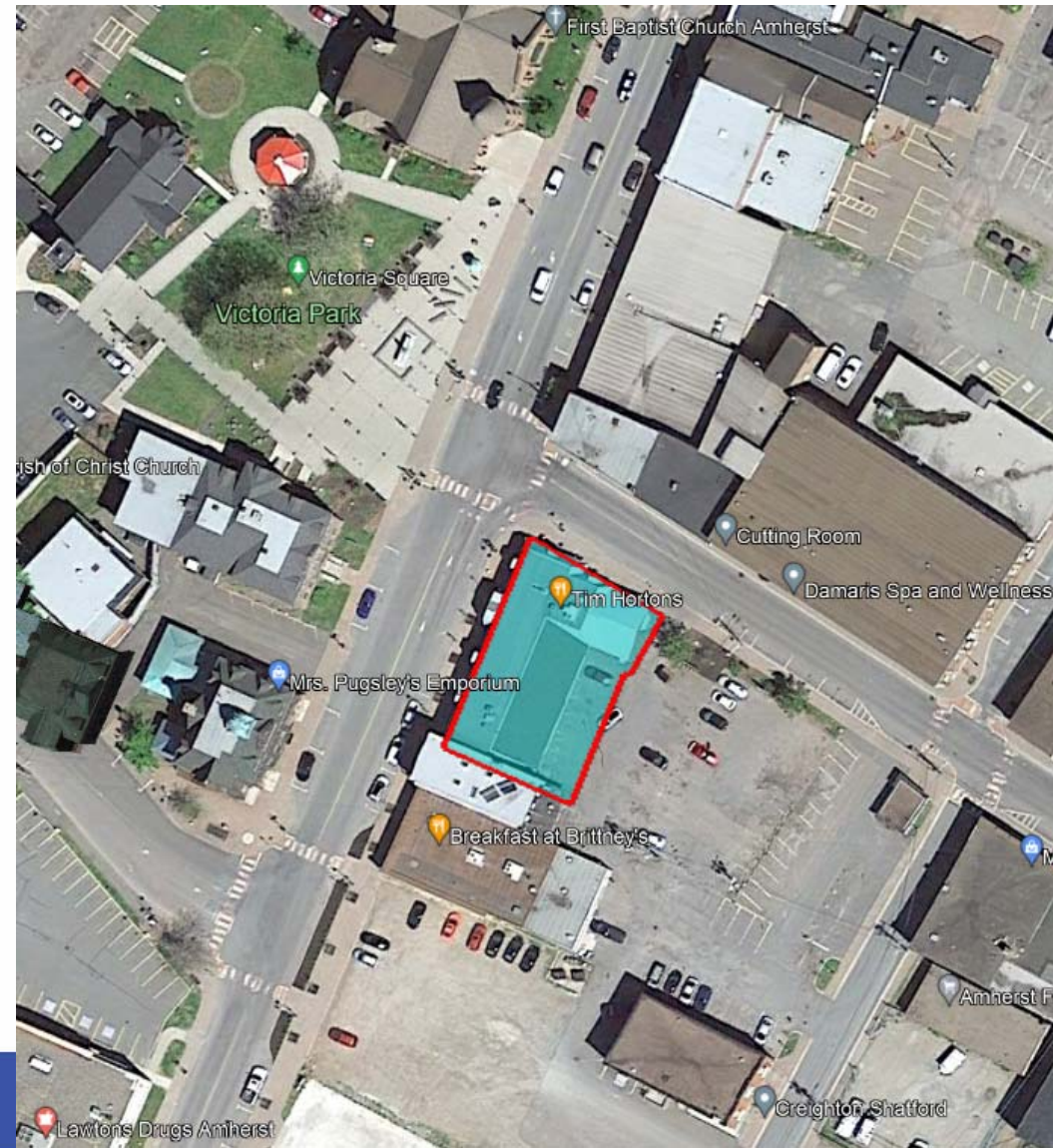
**Existing Zoning:** Downtown (Core Area District)

**Existing Land Use:** 55 Victoria Street is currently has a vacant building and the rest of the affected parcels are used for parking.



# NEIGHBOURHOOD CONTEXT

- ❑ The site is strategically located at the intersection between Victoria Street and Church Street which are town prominent Streets in the Town.
- ❑ The downtown area features a mix of commercial activities, and services particularly near this site with would enhance patronage.
- ❑ The site is bordered by historically significant buildings, restaurants, commercial offices and stores, a parking lot and an open garden (Victoria Park)
- ❑ There is an existing sidewalk along Victoria, Church and Electric Street.



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# NEIGHBOURHOOD CONTEXT



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# NEIGHBOURHOOD CONTEXT



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# NEIGHBOURHOOD CONTEXT

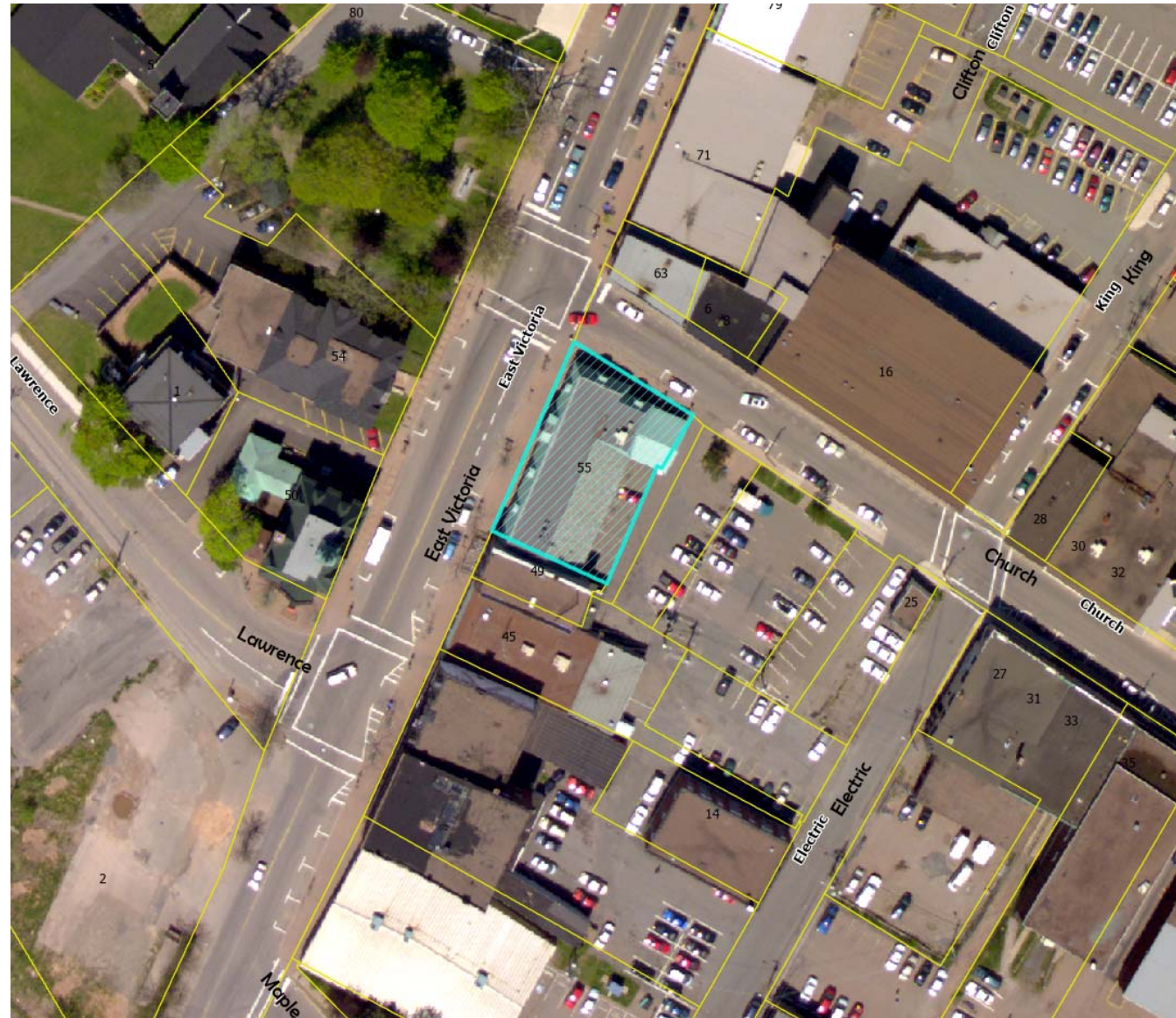


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# GENERAL DESCRIPTION

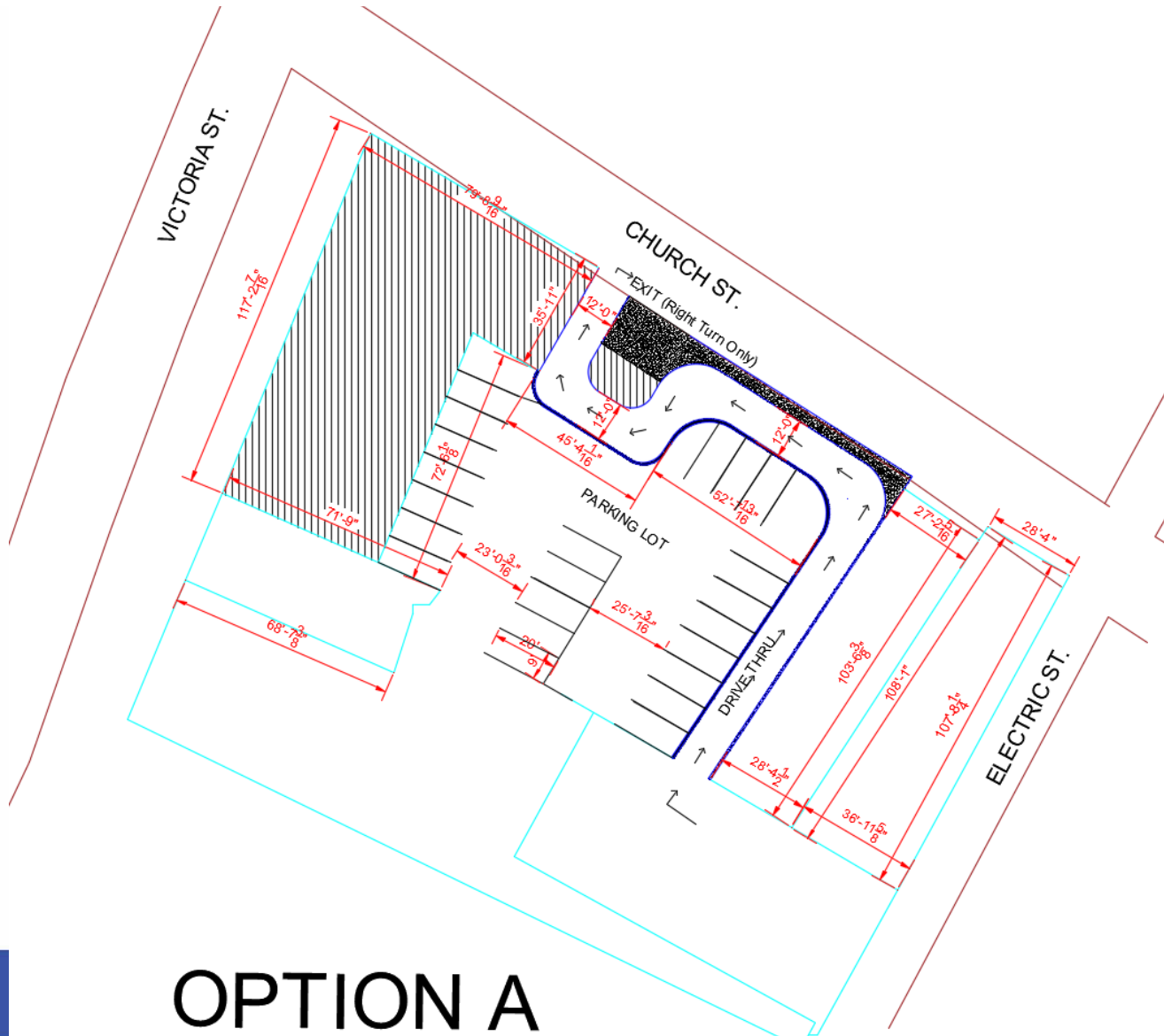
- ❑ The applicant has stated that since the closure of Tim Horton's in the location efforts to re-establish a major food and beverage chain has been limited by the prohibition on drive-throughs under Section 8.4.1. of the Town's LUB.
- ❑ Section 8.4.1 restricts new vehicle oriented uses including drive-throughs in the Core Area of the Downtown Zone.
- ❑ One of the major reasons why a drive through was prohibited in the Downtown Zone is to preserve the historic urban design of this zone. This includes the limited setbacks and entrances directly in front of and connecting to public sidewalks or open spaces.



# SITE PLAN

The proponents has put forward three potential options.

- ❑ The first option has a one-way entry off Electric Street. Users will have to meander through the parking lot and exit in the right direction along church street.
- ❑ This option although has a distant entry point from the building, it gives room for more vehicle stacking (approximately 10 cars) and has a limited impact on the flow of traffic along Church Street.
- ❑ Increased patronage, however, could increase the traffic along Electric Street.
- ❑ This design option will also affect the inflow and outflow of vehicles into the existing parking lot because the entry along Church Street would be lost.

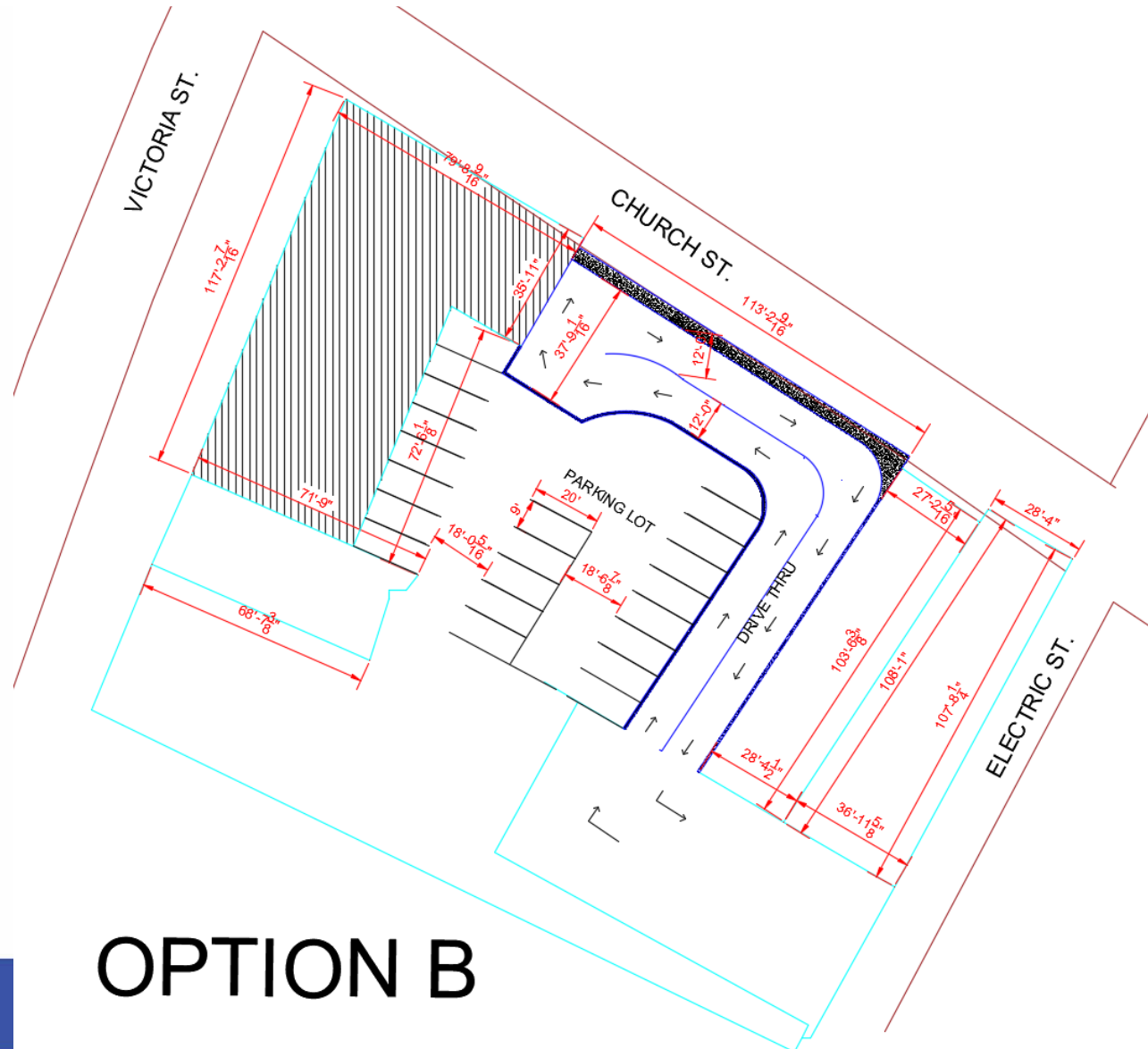


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## OPTION A

# SITE PLAN

- ❑ The second option is a two-way off Electric Street which serves as the entry and exit.
- ❑ The wider road gives room for more vehicle stacking (approximately 18 cars) with no impact on the flow of traffic along Church Street. However, there will be a significant increase the traffic along Electric Street.
- ❑ Also, the direction of vehicular movement mirrors the norm in Canada. Hence, a high tendency to confuse road users.
- ❑ This design option will also affect the inflow and outflow of vehicles into the existing parking lot because the entry along Church Street would be lost. Some of the existing parking spaces will also be lost.

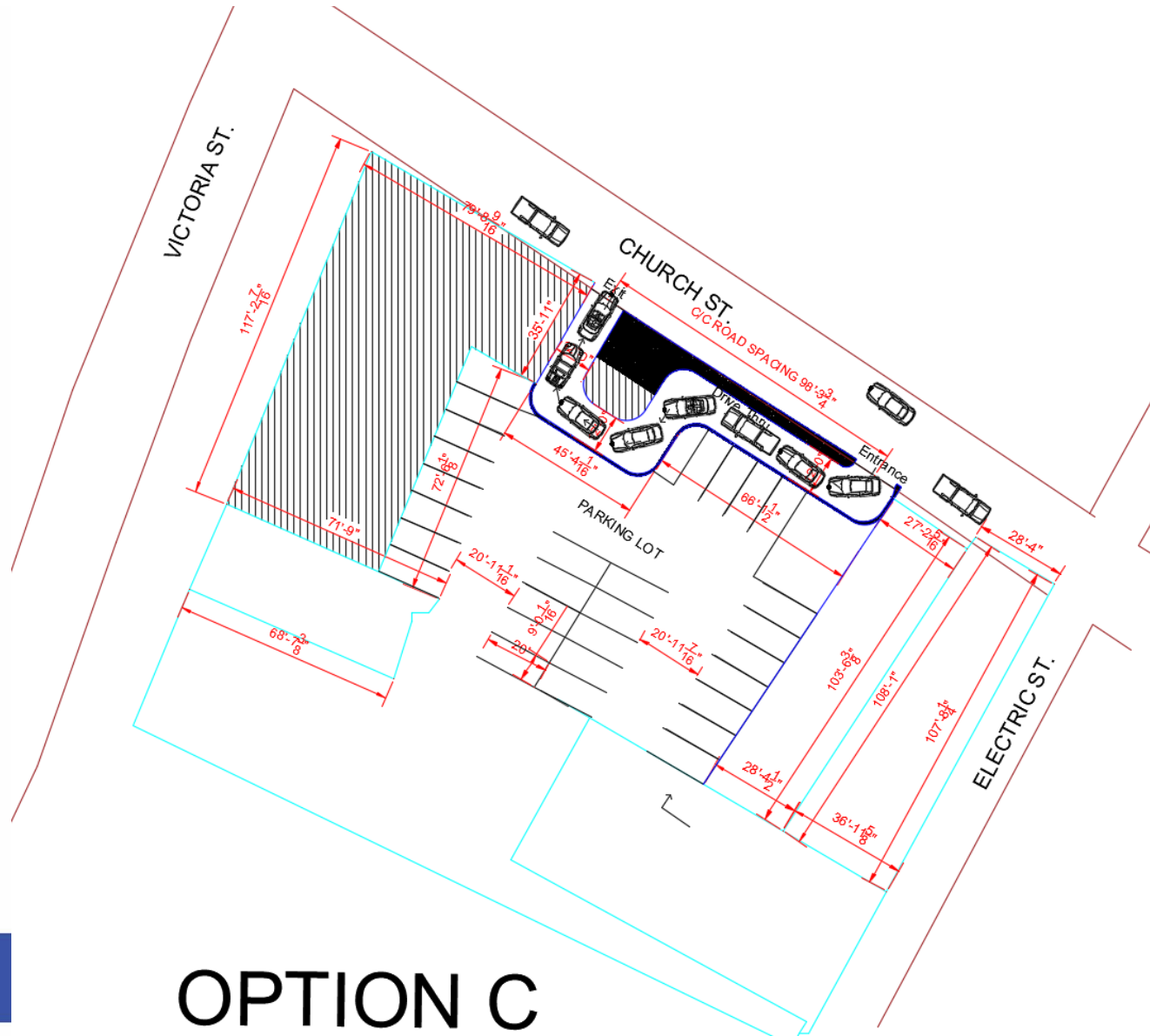


## OPTION B

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# SITE PLAN

- ❑ The third option is a one-way off Church Street which serves as the entry and exit.
- ❑ This option has the least spatial coverage and has no impact on the traffic on Electric Street.
- ❑ Navigating through this limited spaces with acute curves raises concern.
- ❑ This design is will also impact pedestrian and vehicular movement along Church Street due to possible turning of vehicles in all direction by patrons of the proposed development.



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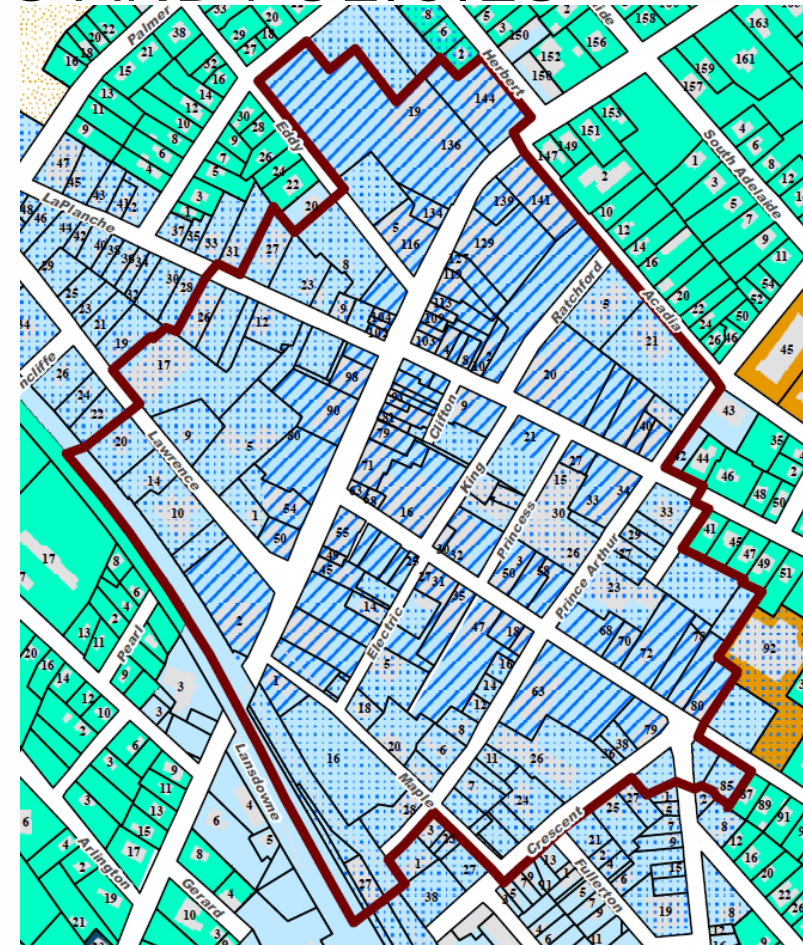
## OPTION C

# RELEVANT PLANNING BYLAWS AND POLICIES

## 1. Land Use Bylaw Section 8.4.1 (Vehicular Oriented Uses in a Downtown District)

In the Core Area District, the following shall not be permitted on Victoria Street, Church Street, Havelock Street, King Street, Electric Street, or Ratchford Street, and may be permitted elsewhere in a Downtown District, subject to any other relevant section of this bylaw:

- a) Motor Vehicle Fueling Stations
- b) Motor Vehicle Sales, Rental, or Repair
- c) Car Washes
- d) Drive-thru's**
- e) Self Storage Facilities



Core Area District



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# RELEVANT PLANNING BYLAWS AND POLICIES

## 2. Commercial Policies

### CP-13 (Development Agreement, Automobile Uses in Downtown Zone)

Within the Downtown zone, it shall be the intention of Council, in areas where automobile uses are permitted, to require that all motor vehicle related uses, including but not limited to, motor vehicle repair, sales and fueling stations, as well as any drive thru establishment, be subject to a Development Agreement. In negotiating such an agreement Council shall:

- (a) ensure that the development provides sufficient on-site parking, and appropriate access to, and egress from the street;
- (b) ensure that the location of parking facilities does not dominate the surrounding area, including the utilization of vegetation and fences to mitigate the aesthetic impacts of parking lots;
- (c) ensure that any on site outdoor lighting does not negatively impact the surrounding properties;
- (d) require the use of vegetation to improve the aesthetic quality of the development.

### 3. Land Use Bylaw Section 5.9 (Vehicle Stacking for Drive-Through Uses)

Businesses providing drive-through services including but not limited to banks, automatic car-wash facilities, and restaurants, shall provide, exclusive of driveways or isles, stacking for vehicle queuing in accordance with the following requirements:

- (i) 5 inbound spaces
- (ii) 2 out-bound spaces

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# RELEVANT PLANNING BYLAWS AND POLICIES

## 4. Implementation Policies

### A-5 (Amendment Criteria)

It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.
- (b) That the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the Town to absorb any costs relating to the development;
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:
  - (i) type of use;
  - (ii) height, bulk and lot coverage of any proposed building;
  - (iii) parking, traffic generation, access to and egress from the site;
  - (iv) any other matter of planning concern outlined in this strategy.



# MEMO

**TO:** Planning Advisory Committee

**FROM:** Abiola Falaye, Planner

**DATE:** June 5, 2023

**RE:** **Development Agreement – Apartment Building – Prince Arthur Street**

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## **PROPOSAL**

An application by Casey Realty Limited for a development agreement to allow a 3-story, 24-unit apartment building on a portion of the existing parking lot behind the Amherst Theatre (PID: 25514563).

## **BACKGROUND INFORMATION**

The attached application briefing provides the site details, neighborhood context, and building proposal details.

## **PUBLIC PARTICIPATION OPPORTUNITY**

A public participation opportunity advertised in accordance with the Policy for Public Participation and Notification was held on May 24, 2023. A video of the meeting has been made available, and a summary is provided as part of the information package. Written submissions are also part of the information package.

Inputs received from the public during the meeting are summarized as follows:

- It is a great development to have a multi-unit residential development in the downtown area.
- The proposal raises the hope for revitalizing and expanding commerce in the downtown zone.
- The green space provided appears inadequate and unattractive.
- There is a push for a more visually appealing architecture, clean building and ground floor commercial use.
- Request for fencing on the rear yard and concern about the loss of parking available to the Lions Club.

While some of these concerns were addressed by the applicant during the meeting, others were noted for revision.

## RELEVANT POLICIES

### 1. Residential Policies (RP)

#### RP-11 Affordable Housing

*It shall be the intention of Council to encourage and promote the provision of affordable housing units within all residential areas of the Town by: (a) encouraging a mix of housing types and densities; and, (d) cooperating with Federal and Provincial Governments to facilitate affordable housing within the town.*

The proponent noted that 50% of the proposed residential units will be affordable (i.e., below market rate) with support from senior levels of government. Furthermore, these additional dwelling units will broadly address the housing shortage by increasing supply, which tends to put downward pressure on rental rates.

### 2. General Land Use and Development Policies (GP)

#### GP-7 Compatibility

*It shall be the intention of Council to allow a mix of compatible land uses to minimize their impacts by:*

- (a) requiring adequate buffering and setbacks;*
- (b) screening development by the use of visual barriers; and,*
- (c) regulating the location of parking, storage buildings and other accessory uses or facilities.*

The proposal does meet the minimum yard setback standards in the LUB for the Downtown Commercial Zone. On top of that, the parking area (underground and surface) for the development is distributed in a manner that it does not dominate the area by limiting accessibility, utilization of vegetation, or aesthetic quality. Nevertheless, it may be beneficial to install a fence at the rear of the building for privacy between the development and the neighboring buildings that front along Prince Arthur Street.

#### GP-8 Density

*It shall be the intention of Council to allow development at a density appropriate to the overall desired character of the town.*

High density built to minimum setbacks is appropriate in the downtown core area where this development is proposed.

### 3. Municipal Service Policies (MS)

#### MS-11 (In-fill Development)

*It shall be the intention of Council to encourage and facilitate the development of vacant land located on existing municipal services in order to make more efficient use of such services.*

The proposal is an infill development, which speaks to the efficient use of land that does not require extension of existing town infrastructure. Moreover, the development is in the downtown core area, which reduces vehicle dependency.

#### **4. Sustainability Policies (SP)**

##### **SP-1 (Residential Development)**

*It shall be the intention of Council to encourage high density residential development in the Downtown Zone.*

This proposal fulfils the intent of this policy by providing twenty-four (24) new residential units, including fourteen 2-bedroom and ten 1-bedroom units in the center of the town.

#### **5. Commercial Policies (CP)**

##### **Land Use Bylaw Section 8.3.2 (Permitted uses by Development Agreement)**

*In the Downtown Zone, a development permit application for the following uses shall be considered by development agreement in accordance with the applicable Municipal Planning Strategy (MPS) Policies:*

*(d) Ground floor residential uses subject to MPS Policy CP-15.*

##### **CP-15 (Ground Floor Residential)**

*It shall be the intention of Council to consider applications for ground floor residential uses in the Downtown Zone by Development Agreement excluding that portion of a building that abuts Church, Victoria and Havelock Streets. Outside said streets, applications for new residential buildings or ground floor conversion of existing commercial and institutional buildings will not be considered for residential uses unless it can be shown that such a conversion will not detract from the commercial character of the surrounding streetscape.*

*In negotiating such a development agreement, Council shall take into account:*

- (a) the location, height, bulk of the building;*
- (b) the architecture of the building;*
- (c) signage;*
- (d) parking facilities;*
- (e) landscaping;*
- (f) pedestrian access;*
- (g) the unique characteristics of the property and its relationship to the surrounding streetscape;*
- (h) that the ground floor frontage of any building fronting on Church, Havelock or Victoria Streets shall be used for commercial purposes.*

From all indications, the proposal will not undermine the commercial attributes in the area where it is being proposed. Instead, the development will enhance vibrancy and safety to businesses in the area by virtue of the presence of people downtown in the evening and night hours of the day. Besides, since the proposed building does not front Church, Victoria and Havelock Streets, it is not mandatory to have ground floor commercial uses.

Also, the overall design and layout of the development including matters such as height, parking, signage, accessibility among other issues outlined in this policy are addressed in the proposal. The 24 underground parking spaces are exclusive to the residents, while the remaining surface car park will be open to visitors. Furthermore, the applicant agreed to improve the visual quality of the building through painting and material finishes.

## 6. Recreation Policies

### R-21 High Density Open Space

*It shall be the intention of Council to require multiple unit residential properties to provide usable open space for use of residents on the site.*

The proposed building covers only 27% of the entire lot area leaving over 70% of the area for other open space uses. Notwithstanding that a significant amount of the remaining space is dedicated to parking, patches of green areas are distributed over the site. The applicant has also recently purchased the property at 16 Prince Arthur Street and this area will be used as an additional open space for the residents in the meantime. Moreover, the proposed development is within close proximity to Victoria Park, which is a public open space, hence, an additional comfort space for the potential residents to explore.

## 7. Implementation Policy

### A-5 (Amendment Criteria)

*It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:*

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.*
- (b) That the proposal is not premature or inappropriate by reason of:*
  - (i) the financial capability of the Town to absorb any costs relating to the development;*
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;*
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development*
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:*
  - (i) type of use;*
  - (ii) height, bulk and lot coverage of any proposed building;*
  - (iii) parking, traffic generation, access to and egress from the site;*
  - (iv) any other matter of planning concern outlined in this strategy.*

The proposal would be in compliance with the relevant town bylaws and regulations. In terms of subsection (b), there would be no significant burden on the Town's finances. The street network and town water, sanitary and storm sewer services can accommodate the development. With regard to subsection (c), the proposed use does not conflict with the existing uses in the neighborhood and the dimensions fit other existing developments in the area. Parking is split between the surface and underground, and traffic is off Prince Arthur Street, which is reasonable.

## DISCUSSION & CONCLUSION

The proposal will have a positive impact on the Town. Currently, there is a lack of housing in Amherst, particularly within close walking distance of the downtown core area to support downtown amenities and increase its vibrancy. This building is appropriate in the downtown core area in terms of its height, bulk and general built form. In addition, the development will result in more people living in the town center and increase activity during and after the regular business hours. Consequently, more people will be drawn to spend their leisure time in the area, which further supports the case for other commercial and residential investments in this area.

Other positive elements include 24 barrier-free energy efficient building units, with 50% below market rate. This development would cater to those looking for a living option with a relatively low carbon footprint that supports lower dependence on a personal vehicle. By virtue of the location, there is ample parking nearby to cater for the Lion's Club.

While improving the building façade, landscape and fencing on the rear yard are encouraged, staff agree that the proposed development is in keeping with the general intent of the relevant policies in the Town's Municipal Planning Strategy.

The following decision options is therefore put forward:

### OPTIONS:

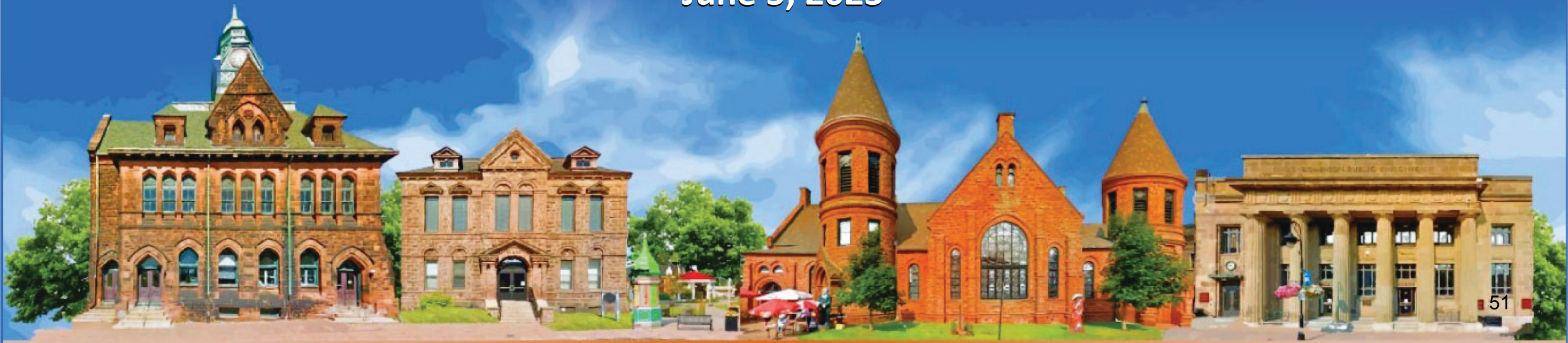
- Option One: Recommend that Council enter into the Development Agreement for Lot 22-2 Prince Arthur Street as drafted, subject to any changes that may arise.
- Option Two: Recommend that Council not enter into the Development Agreement for Lot 22-2 Prince Arthur Street.

**STAFF RECOMMENDATION: Option One.**

# Application Briefing

**Development Agreement to permit the construction of a 3-story, 24-unit apartment building on Prince Arthur Street**

June 5, 2023



# DEVELOPMENT AGREEMENT PROCESS



*\*All meetings of the Planning Advisory Committee and Council are open to the public.*

# APPLICATION DETAILS

**Applicant/ Owner:** Casey Realty Limited

**Summary of Proposal:** Development Agreement to permit the construction of a 3-story, 24-unit apartment building on Prince Arthur Street.

**Location:** Lot 22-2 Prince Arthur Street (PID: 25514563).

**Property Area:** 2699m<sup>2</sup> (0.66 acre).

**Existing Zoning:** Downtown (Core Area District)

**Existing Land Use:** Parking

**Street Frontage:** 5.79m along Prince Arthur Street



# NEIGHBOURHOOD CONTEXT

- ❑ The subject property exists in the downtown core.
- ❑ The property is a flag lot bounded by a mix of different uses including the Amherst Lions Club, a dental clinic, restaurants, the Amherst Theatre, and a variety of detach residential units.
- ❑ The downtown core area with a variety commercial uses and services is within a very short walking distance to this site.
- ❑ Directly opposite the driveway to this site is the Holy Family Catholic Church.



# NEIGHBOURHOOD CONTEXT



#seewhyweloveit

# GENERAL DESCRIPTION

**Units:** A 3-story, 24-unit apartment building. 14 two-bedroom units and 10 one-bedroom units.

**Proposed building area:** 737m<sup>2</sup> (2418 sqft).

**Lot coverage:** 27%.

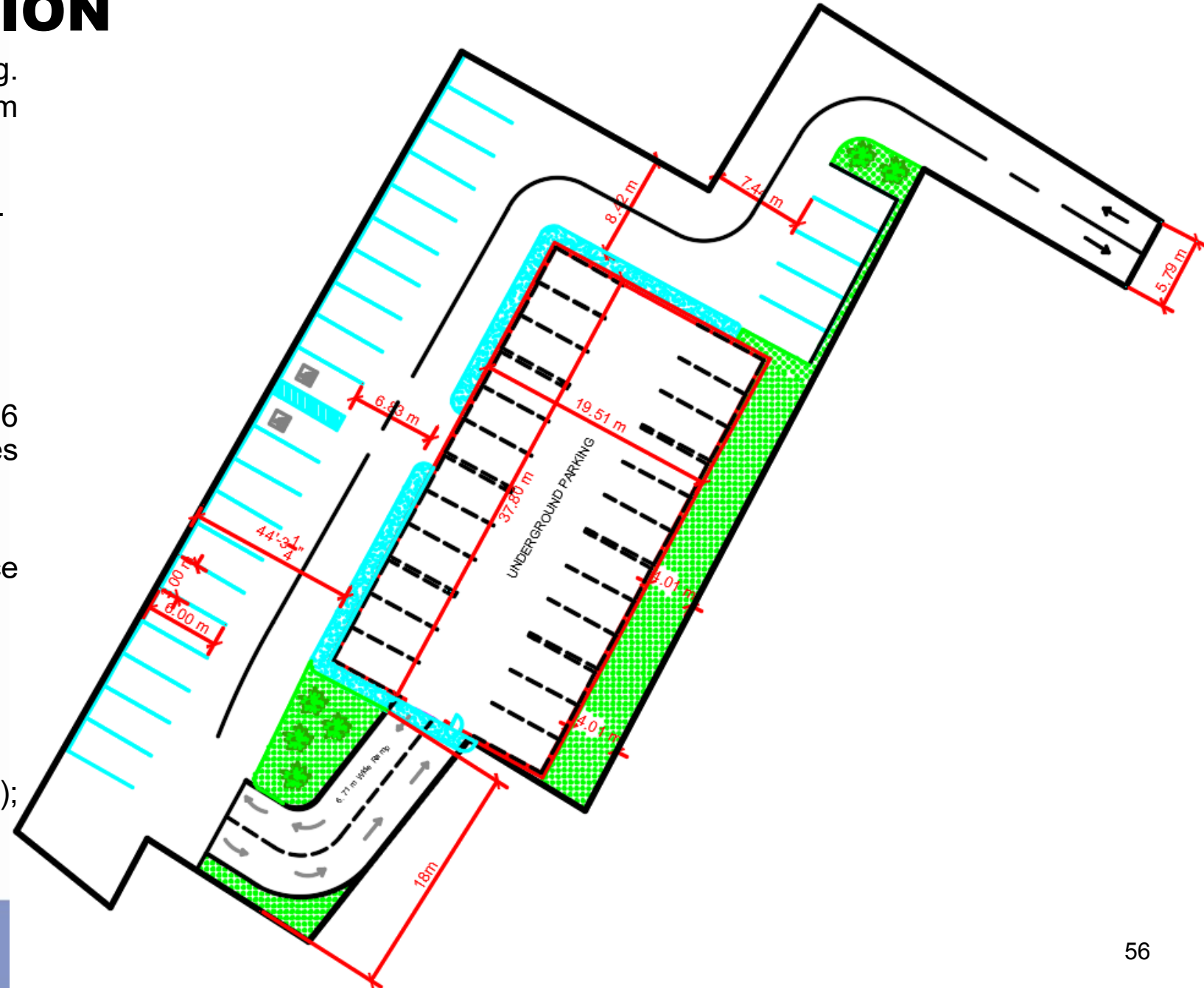
**Density:** 36 units / acre

**Parking:** 50 parking spaces including 26 surface and 24 underground parking spaces (i.e. 2 spaces/unit)

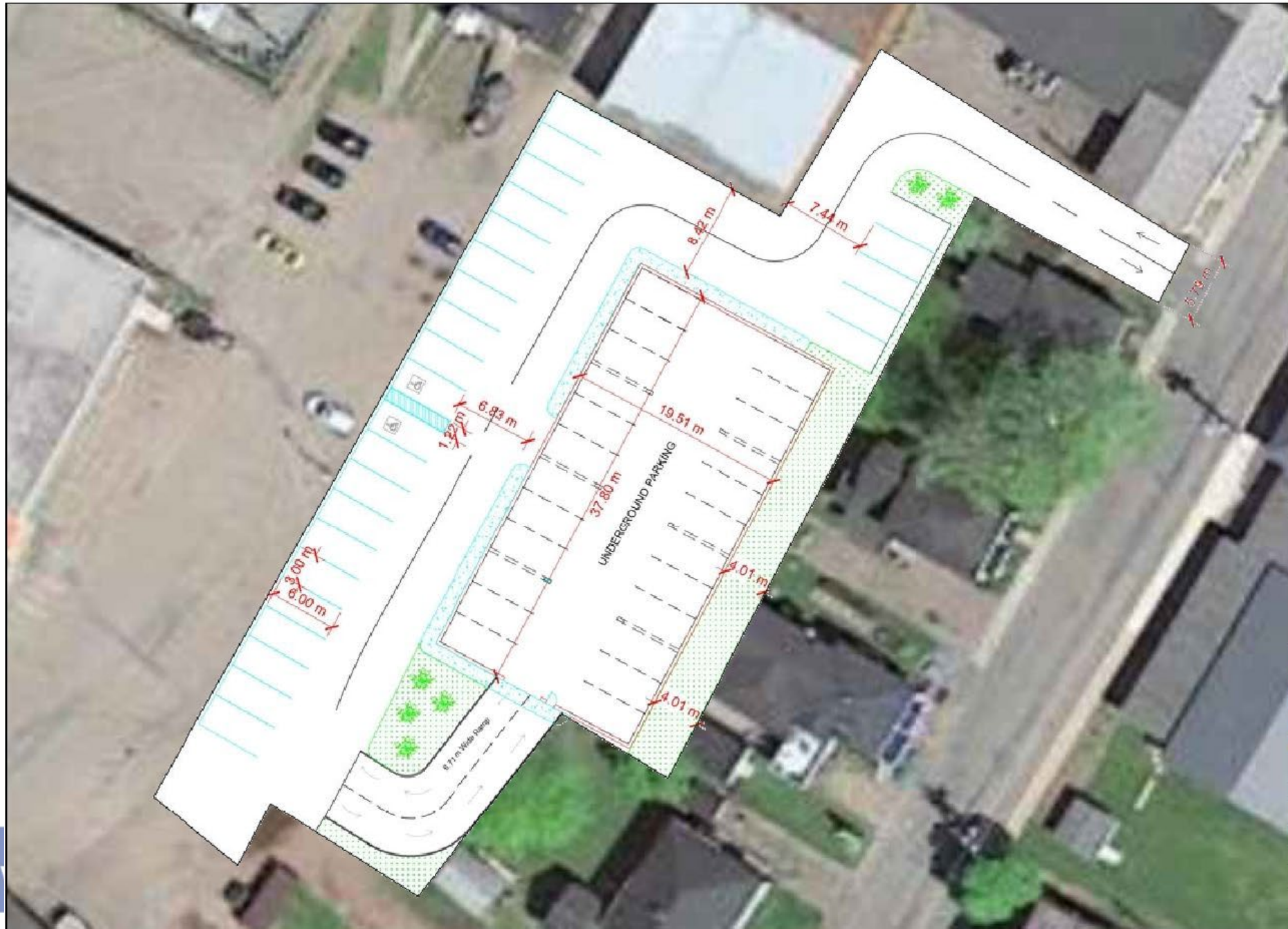
**Access:** Access to the property is via Prince Arthur Street.

## Building Setbacks (approximate):

- Front Yard (west): 13.5m (44 ft)
- Side Yards: 18m (62 ft) and 8.42m (31ft); south and north, respectively.
- Rear Yard (east): 4m (14.2ft)



# Site Plan



Notes:  
Underground Parking  
Spaces= 20

Ground Level Parking  
spaces= 26

ORIENTATION



PROJECT  
CASEY APARTMENTS 24  
UNITS, AMHERST, N.S.

TITLE  
LOT 22-2, Prince Arthur St.  
Amherst

CLIENT  
CASEY REALTY

DRAWN BY : AK

CHECKED BY: JH

DATE: 2023-04-24

Project Id. 23- 525

Scale: NTS

Drawing No. 1 | REV 1

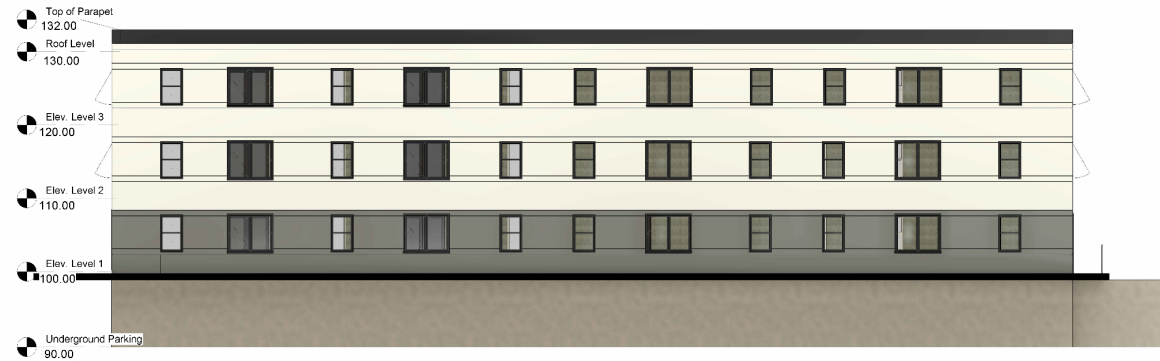
# Building Elevation



1 East  
1 : 100



4 West  
1 : 100



2 North  
1 : 100



3 South  
1 : 100



Rev	Description	Date

CODE SUITABILITY DESCRIPTION

STATUS PURPOSE OF ISSUE

PROJECT CASEY APARTMENTS 24 UNITS

TITLE LOT 21-1 Electric St, Amherst

CLIENT Casey Realty

DRAWN BY JK	CHECKED BY JH	DATE 23/04/26
SCALE (@ A1) 1:100	PROJECT NUMBER 22-539	
DRAWING NUMBER 2	REV	



# Building Elevation (3D)



#seewhywel



# RELEVANT PLANNING BYLAWS AND POLICIES

## 1. Land Use Bylaw Section 7.2.2 (Permitted Uses by Development Agreement )

In a Residential Zone, an application for the following uses shall be considered by development agreement in accordance with the applicable Municipal Planning Strategy (MPS) Policy:

(e) Apartment buildings greater than 4 units in accordance with Policy RP-9 of the MPS.

## 2. Residential Policies

### RP-9 (Medium and High Density by Development Agreement)

It shall be the intention of Council to ensure medium and high density residential development occur in a manner compatible with a low density residential neighborhood. Specifically, Council shall require that all residential developments greater than 4 dwelling units per property, be subject to a Development Agreement.

In negotiating such an agreement Council shall ensure that:

- (a) ensure that the structure(s) is located on the lot in such a manner as to limit potential impacts on surrounding low density residential developments;
- (b) ensure that the development provides sufficient on-site parking, and appropriate access to, and egress from the street;
- (c) ensure that the location of parking facilities does not dominate the surrounding area, including the utilization of vegetation and fences to mitigate the aesthetic impacts of parking lots;
- (d) ensure that any on site outdoor lighting does not negatively impact the surrounding properties;
- (e) ensure that any signage on the property is sympathetic to the surrounding residential properties;
- (f) require the use of vegetation to improve the aesthetic quality of the development;
- (g) ensure that the architecture of the building is sympathetic to any existing development in the surrounding area.

# RELEVANT PLANNING BYLAWS AND POLICIES

## RP-11 (Affordable Housing)

It shall be the intention of Council to encourage and promote the provision of affordable housing units within all residential area of town by: (a) encouraging a mix of housing types and densities.

## 3. General Land Use and Development Policies

### GP-7 (Compatibility)

It shall be the intention of Council to allow a mix of compatible land uses and to minimize their impacts by:

- (a) requiring adequate buffering and setbacks;
- (b) screening development by the use of visual barriers;
- (c) regulating the location of parking, storage buildings or other accessory uses or facilities.

### GP-8 (Density)

It shall be the intention of Council to allow development at a density appropriate to the overall desired character of the town.

## 4. Municipal Service Policies

**MS-11 (In-fill Development):** It shall be the intention of Council to encourage and facilitate the development of vacant land located on existing municipal services in order to make more efficient use of such services.

## 5. Sustainability Policies

**SP-1 (Residential Development):** It shall be the intention of Council to encourage high density residential development in the Downtown Zone.

**SP-2 (Residential Development):** It shall be the intention of Council to encourage multiunit residential on the upper floors in the Downtown Zone.

# RELEVANT PLANNING BYLAWS AND POLICIES

## 6. Land Use Bylaw Section 8.3.2 (Permitted uses by Development Agreement)

In the Downtown Zone, a development permit application for the following uses shall be considered by development agreement in accordance with the applicable Municipal Planning Strategy (MPS) Policies:

(d) Ground floor residential uses subject to MPS Policy CP-15.

## 7. Commercial Policies

### P-15 (Ground Floor Residential)

It shall be the intention of Council to consider applications for ground floor residential uses in the Downtown Zone by Development Agreement excluding that portion of a building that abuts Church, Victoria and Havelock Streets. Outside said streets, applications for new residential buildings or ground floor conversion of existing commercial and institutional buildings will not be considered for residential uses unless it can be shown that such a conversion will not detract from the commercial character of the surrounding streetscape.

In negotiating such a development agreement, Council shall take into account:

(a) the location, height, bulk of the building;

(b) the architecture of the building;

(c) signage;

(d) parking facilities;

(e) landscaping;

(f) pedestrian access;

(g) the unique characteristics of the property and its relationship to the surrounding streetscape;

(h) that the ground floor frontage of any building fronting on Church, Havelock or Victoria Streets shall be used for commercial purposes.

# RELEVANT PLANNING BYLAWS AND POLICIES

## 8. Implementation Policy

### A-5 (Amendment Criteria)

It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.
- (b) That the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the Town to absorb any costs relating to the development;
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:
  - (i) type of use;
  - (ii) height, bulk and lot coverage of any proposed building;
  - (iii) parking, traffic generation, access to and egress from the site;
  - (iv) any other matter of planning concern outlined in this strategy.

Case No: DA-2023-XX

This Agreement made this \_\_\_\_\_ Day of \_\_\_\_\_ 2023.

Between:

**CASEY REALTY LIMITED** (owner of Lot 22-2 Prince Arthur Street, Amherst [PID: 25514563], hereinafter called the "Owner"),

of the one part, and

**The Town of Amherst** (a body corporate in the Province of Nova Scotia, hereinafter called the "Town"),

of the other part.

WHEREAS the Owner wishes to obtain permission pursuant to Policy CP-15 of the Municipal Planning Strategy of the Town of Amherst, to construct a 3-story, 24-unit apartment building on three abutting properties along Prince Arthur Street (PID: 25514563).

AND WHEREAS a condition of the granting of approval of Council is that the Owner enter into an Agreement with the Town;

AND WHEREAS the Council of the Town, at its meeting on the \_\_\_\_<sup>th</sup> Day of \_\_\_\_\_ 2023, approved the said Development Agreement, subject to the registered Owner of the land described herein entering into this Agreement;

AND WHEREAS the following Schedules shall be attached to and form part of this Agreement:

- (a) Schedule 'A' - Terms and Conditions
- (b) Schedule 'B' - Property Location Map
- (c) Schedule 'C' – Site Plan
- (d) Schedule 'D' – Building Elevations

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the Town of the Development Agreement requested by the Owner, the Owner agrees as follows:

- 1) That the Owner is the registered owner of the aforesaid Land in the Town of Amherst, hereinafter called the "Land". The aforesaid Land is the only land in the Town of Amherst to which this Agreement applies, and the Land is illustrated in the plan shown on Schedule B attached.
- 2) That the Owner may construct a maximum of a 24-unit, 3-level apartment building on the said Land, subject to Schedules A, B, C, and D attached.
- 3) Nothing in this Agreement shall exempt or be taken to exempt the Owner or any other person from complying with the requirements of any Bylaw of the Town applicable to the Property (other than the Land Use Bylaw to the extent varied by this Agreement) or any Provincial or Federal statute, act, or regulation.

- 4) Any failure of the Town to insist upon strict enforcement of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Town may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.
- 5) Should the Owner fail to act in accordance with any aspect of this Agreement, the Town shall retain the right to discharge the Agreement upon 30 days notification and / or enter the property and conduct the required work. The cost of the said work will become a lien on the property tax bill.
- 6) The Town shall issue the necessary Development Permit for the development upon expiration of the appeal period specified for Development Agreements under Section 249 of the *Municipal Government Act*, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken.
- 7) The Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Town in accordance with Section 229 of the *Municipal Government Act*.

**SIGNED, SEALED AND DELIVERED**

In the presence of

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**THE TOWN OF AMHERST**

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David Kogon MD, Mayor

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Jason MacDonald, MCIP, LPP, CAO

**FOR THE OWNER**

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## Schedule A

## Lot 22-2, PID 25514563, Prince Arthur Street, Amherst

### Terms and Conditions:

#### 1.0 USE OF LAND AND BUILDINGS

- 1.1 The use of the property shall be limited to a 24-unit, 3-level apartment building in the general location as shown on Schedule 'C'.
- 1.2 A minimum of 46 parking spaces shall be provided on the Land and shall be generally configured as shown on Schedule 'C'.
- 1.4 Accessory buildings may be permitted on the Land in accordance with the *Town of Amherst Land Use Bylaw* and shall not be considered a substantial change to this agreement.
- 1.5 The building shall generally conform to the designs shown on Schedule 'C' and 'D'. Variations to the architectural details and footprint of the dwellings may be permitted, to the satisfaction of the Development Officer. Such changes shall not be considered substantial.
- 1.6 The Owners shall be responsible for landscaping unpaved areas and maintenance on the Land.
- 1.7 The Owner shall install a fence along the property line that abuts properties fronting on Prince Arthur.
- 1.8 The Owner shall be responsible for maintaining screened solid waste containment areas, generally in the locations shown on Schedule 'C'.
- 1.9 Paving of the driveways and parking areas shall be completed for the facility within twelve (12) months from the date an Occupancy Permit is issued.

#### 2.0 GENERAL REQUIREMENTS

- 2.1 The Owner shall keep the Land, building and any portion thereof clean and in good repair. All elements of the development on the Land shall be regularly maintained and kept in a tidy state, and free from unkept materials of any kind.
- 2.2 The Owner shall ensure that exterior lighting does not shine directly onto adjacent properties.
- 2.3 Solid waste management shall be in conformance with the Town of Amherst *Solid Waste Bylaw*.
- 2.4 The Owner shall be responsible for storm water management during and after construction.
- 2.5 The Owner shall take all reasonable steps to maintain a clean worksite during construction by picking up building material waste.

# SCHEDULE 'B'



# SCHEDULE 'C'





# MEMO

**TO:** Planning Advisory Committee  
**FROM:** Abiola Falaye, Planner  
**DATE:** June 5, 2023  
**RE:** **Development Agreement – Apartment Building – Electric Street**

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## **PROPOSAL**

An application by Casey Realty Limited for a development agreement to allow a 3-story, 24-unit apartment building on three abutting properties along Electric Street (PIDs: 25508698, 25005430 and 25033747 respectively).

## **BACKGROUND INFORMATION**

The attached application briefing provides the site details, neighborhood context, and building proposal details.

## **PUBLIC PARTICIPATION OPPORTUNITY**

A public participation opportunity advertised in accordance with the Policy for Public Participation and Notification was held on May 24, 2023. A video of the meeting has been made available, and a summary is provided as part of the information package. Written submissions are also part of the information package. Input provided at the meeting could be summarized as follows:

Inputs received from the public during the meeting are summarized as follows:

- It is a great development to have a multi-unit residential development in the downtown area.
- The proposal raises the hope for revitalizing and expanding commerce in the downtown zone.
- The green space provided appears inadequate and unattractive.
- There is a push for a more visually appealing architecture, clean building and ground floor commercial use.
- Possibility of defacing Victoria Street by the residents of the proposed building prior to implementing phase-2 of the development.

While some of these concerns were addressed by the applicant during the meeting, others were noted for revision.

## RELEVANT POLICIES

### 1. Residential Policies (RP)

#### RP-11 Affordable Housing

*It shall be the intention of Council to encourage and promote the provision of affordable housing units within all residential areas of the Town by: (a) encouraging a mix of housing types and densities; and, (d) cooperating with Federal and Provincial Governments to facilitate affordable housing within the town.*

The proponent noted that 50% of the proposed residential units will be affordable (i.e., below market rate) with support from senior levels of government. Furthermore, these additional dwelling units will broadly address the housing shortage by increasing supply, which tends to put downward pressure on rental rates.

### 2. General Land Use and Development Policies (GP)

#### GP-7 Compatibility

*It shall be the intention of Council to allow a mix of compatible land uses to minimize their impacts by:*

- (a) requiring adequate buffering and setbacks;*
- (b) screening development by the use of visual barriers; and,*
- (c) regulating the location of parking, storage buildings and other accessory uses or facilities.*

The proposal does meet the minimum yard setback standards in the LUB, and fencing or other forms of visual barrier is not essential since this proposal is compatible with other land uses in the area. On top of that, the parking area (underground and surface) for the development is distributed in a manner that it does not dominate the area by limiting accessibility, utilization of vegetation, or aesthetic quality.

#### GP-8 Density

*It shall be the intention of Council to allow development at a density appropriate to the overall desired character of the town.*

High density built to minimum setbacks is appropriate in the downtown core area where this development is proposed.

### 3. Municipal Service Policies (MS)

#### MS-11 (In-fill Development)

*It shall be the intention of Council to encourage and facilitate the development of vacant land located on existing municipal services in order to make more efficient use of such services.*

The proposal is an infill development, which speaks to the efficient use of land that does not require extension of existing town infrastructure. Moreover, the development is in the downtown core area, which reduces vehicle dependency.

## 4. Sustainability Policies (SP)

### SP-1 (Residential Development)

*It shall be the intention of Council to encourage high density residential development in the Downtown Zone.*

This proposal fulfils the intent of this policy by providing twenty-four (24) new residential units, including fourteen 2-bedroom and ten 1-bedroom units in the downtown zone.

## 5. Commercial Policies (CP)

### Land Use Bylaw Section 8.3.2 (Permitted uses by Development Agreement)

*In the Downtown Zone, a development permit application for the following uses shall be considered by development agreement in accordance with the applicable Municipal Planning Strategy (MPS) Policies:*

*(d) Ground floor residential uses subject to MPS Policy CP-15.*

### CP-15 (Ground Floor Residential)

*It shall be the intention of Council to consider applications for ground floor residential uses in the Downtown Zone by Development Agreement excluding that portion of a building that abuts Church, Victoria and Havelock Streets. Outside said streets, applications for new residential buildings or ground floor conversion of existing commercial and institutional buildings will not be considered for residential uses unless it can be shown that such a conversion will not detract from the commercial character of the surrounding streetscape.*

*In negotiating such a development agreement, Council shall take into account:*

- (a) the location, height, bulk of the building;*
- (b) the architecture of the building;*
- (c) signage;*
- (d) parking facilities;*
- (e) landscaping;*
- (f) pedestrian access;*
- (g) the unique characteristics of the property and its relationship to the surrounding streetscape;*
- (h) that the ground floor frontage of any building fronting on Church, Havelock or Victoria Streets shall be used for commercial purposes.*

From all indications, the proposal will not undermine the commercial attributes in the area where it is being proposed. Instead, the development will enhance vibrancy and safety to businesses in the area by virtue of the presence of people downtown in the evening and night hours of the day. Given that the proposed building does not front Church, Victoria and Havelock Streets, it is not mandatory to have ground floor commercial uses.

Also, the overall design and layout of the development including matters such as height, parking, signage, accessibility among other issues outlined in this policy is addressed in the proposal. Also, the overall design and layout of the development including matters such as height, parking, signage,

accessibility among other issues outlined in this policy are addressed in the proposal. The applicant has also agreed to improve the visual quality of the building through painting and material finishes.

## 6. Recreation Policies

### R-21 High Density Open Space

*It shall be the intention of Council to require multiple unit residential properties to provide usable open space for the use of residents on the site.*

The proposed building covers only 27% of the entire lot area leaving over 70% of the area for other open space uses. Notwithstanding that a significant amount of the remaining space is dedicated to parking, patches of green areas are distributed over the site. Moreover, the proposed development is within close proximity to Victoria Park, which is a public open space, hence, an additional comfort space for the potential residents to explore.

## 7. Implementation Policy

### A-5 (Amendment Criteria)

*It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:*

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.*
- (b) That the proposal is not premature or inappropriate by reason of:*
  - (i) the financial capability of the Town to absorb any costs relating to the development;*
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;*
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development*
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:*
  - (i) type of use;*
  - (ii) height, bulk and lot coverage of any proposed building;*
  - (iii) parking, traffic generation, access to and egress from the site;*
  - (iv) any other matter of planning concern outlined in this strategy.*

The proposal would be in compliance with the relevant town bylaws and regulations. In terms of subsection (b), there would be no significant burden on the Town's finances. The street network and town water, sanitary and storm sewer services can accommodate the development. With regard to subsection (c), the proposed use does not conflict with the existing uses in the neighborhood and the dimensions fit other existing developments in the area. Parking and traffic generation is split between an underground and surface parking area with access off Maple Avenue and Electric Street.

## **DISCUSSION & CONCLUSION**

The proposal will have a positive impact on the Town. Currently, there is a lack of housing in Amherst, particularly within close walking distance of the downtown core area to support downtown amenities and increase its vibrancy. This building is appropriate in the downtown core area in terms of its height, bulk and general built form. In addition, the development will result in more people living in the town center and increase activity during and after the regular business hours. Consequently, more people will be drawn to spend their leisure time in the area, which further supports the case for other commercial and residential investments in this area.

Other positive elements include 24 barrier-free energy efficient building units, with 50% below market rate. This development would cater to those looking for a living option with a relatively low carbon footprint that supports lower dependence on a personal vehicle.

While improving the building façade and landscape on the site is encouraged, staff agree that the proposed development is in keeping with the general intent of the relevant policies in the Town's Municipal Planning Strategy.

The following decision options is therefore put forward:

### **OPTIONS:**

Option One: Recommend that Council enter into the Development Agreement for Electric Street as drafted, subject to any changes that may arise.

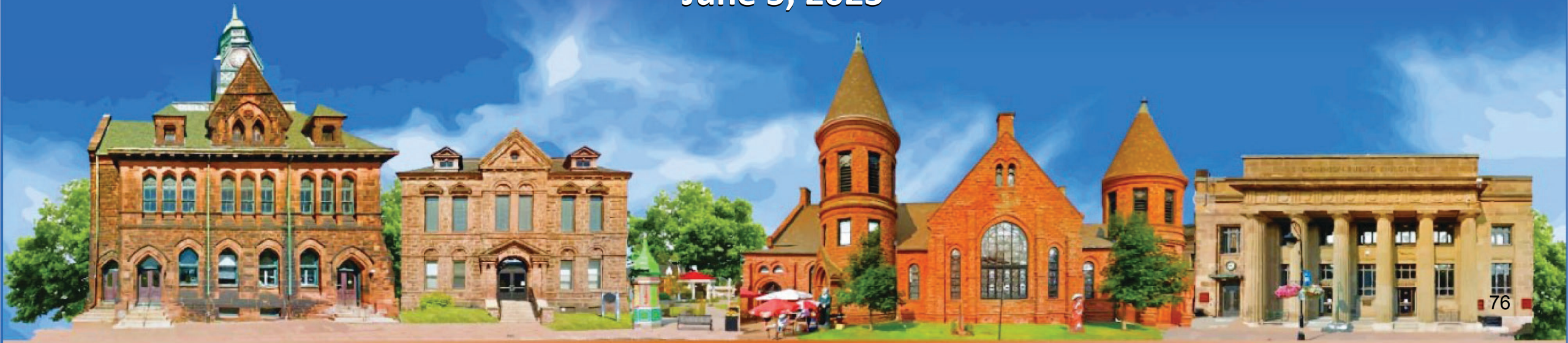
Option Two: Recommend that Council not enter into the Development Agreement for Electric Street.

**STAFF RECOMMENDATION: Option One.**

# Application Briefing

**Development Agreement to permit the construction of a 3-story, 24-unit apartment building on Electric Street**

June 5, 2023



# DEVELOPMENT AGREEMENT PROCESS



*\*All meetings of the Planning Advisory Committee and Council are open to the public.*

# APPLICATION DETAILS

**Applicant/ Owner:** Casey Realty Limited

**Summary of Proposal:** Development Agreement to permit the construction of a 3-story, 24-unit apartment building on three abutting properties along Electric Street,

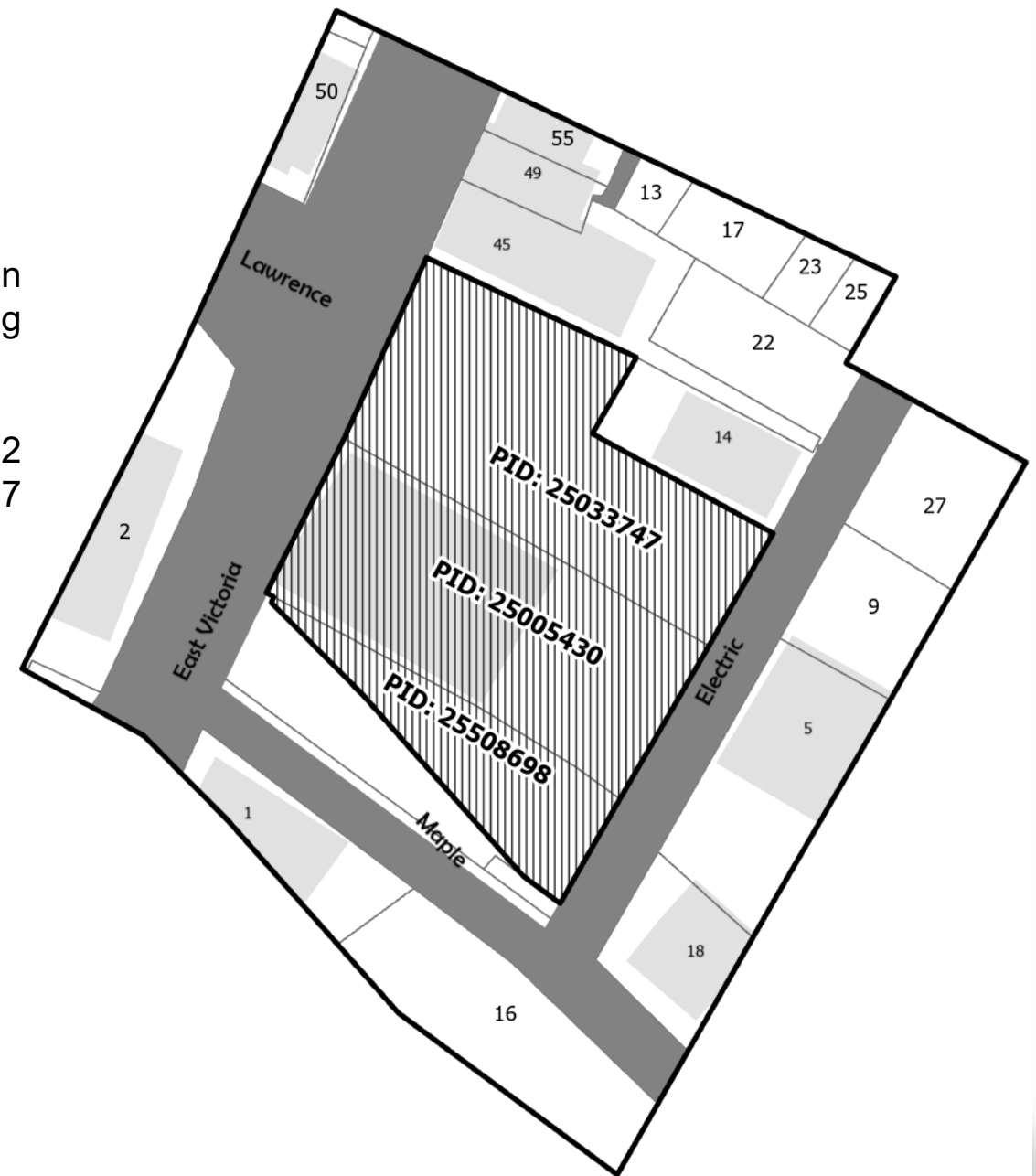
**Location:** Lots 21-1 Maple Avenue, 92-1 Victoria Street East, and 32 Victoria Street East (PIDs: 25508698, 25005430 and 25033747 respectively).

**Property Area:** 4586m<sup>2</sup> (1 acre).

**Existing Zoning:** Downtown (Core Area District)

**Existing Land Use:** Parking

**Street Frontage:** 62m along Maple Avenue and 70m along Electric Street



# NEIGHBOURHOOD CONTEXT

- ❑ The subject property exists in the downtown core.
- ❑ The property is a corner lot bounded by Victoria Street, Maple Avenue and Electric Street on the West, South and West respectively.
- ❑ The downtown core area with a variety commercial uses and services is within a very short walking distance to the site. This includes restaurants (Britney, Duncan's Pub, Art of Eating), Commercial Offices (Arthur J. Gallagher, Creighton Shatford), recreational facilities (Victoria Park, Dooly's, Amherst Lions Club), and health facilities (Lawtons Drugs Amherst).
- ❑ Moving further north along Victoria Street, the neighborhood consists of several historically significant building.
- ❑ Further down in the southwest direction is the rail track and blocks of general residential neighborhoods.



# NEIGHBOURHOOD CONTEXT



#seewhyweloveit



# GENERAL DESCRIPTION

**Units:** A 3-story, 24-unit apartment building. 14 two-bedroom units and 10 one-bedroom units.

**Proposed building area:** 737m<sup>2</sup> (2418 sqft).

**Lot coverage:** 16%.

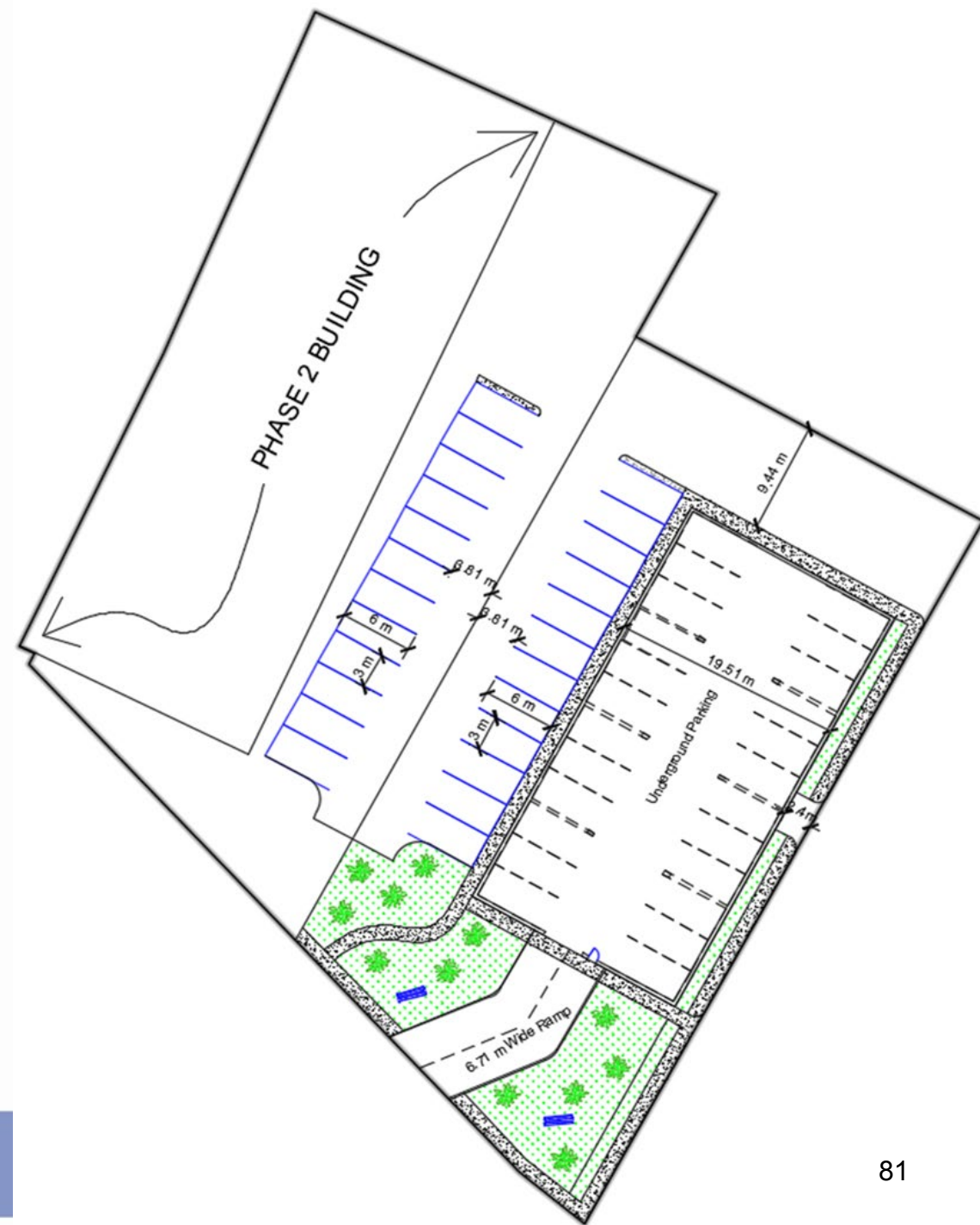
**Density:** 24 units / acre

**Parking:** 48 parking spaces including 24 surface and 24 underground parking spaces (i.e. 2 spaces/unit)

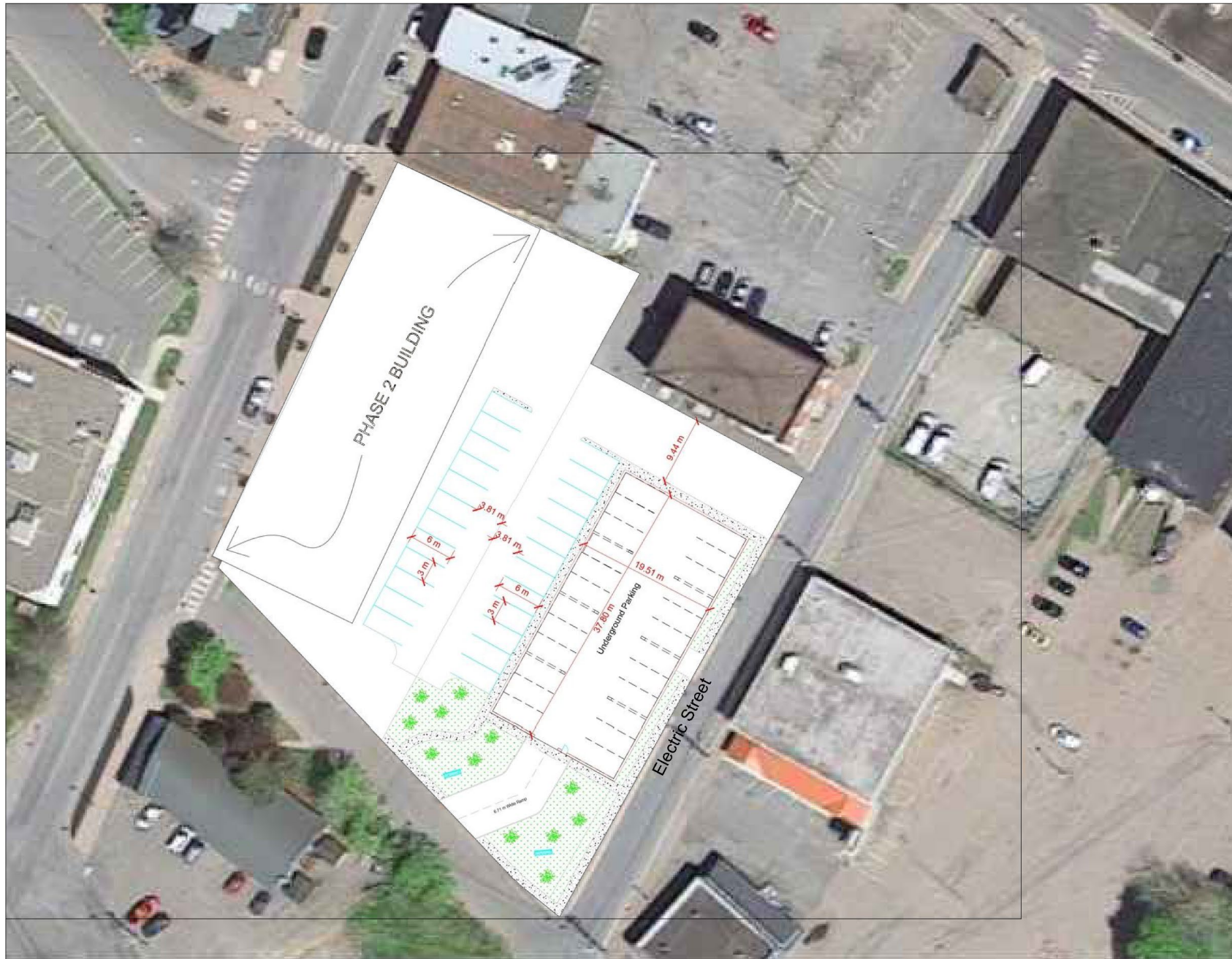
**Access:** Maple Avenue (underground parking) & Electric Street (Surface parking). The existing side walk along Maple Avenue and Electric Street will be extended around the building to ease pedestrian movement.

## Building Setbacks (approximate):

- Front Yard (Electric Street): 2.4m (8ft)
- Flank Yard (Maple Street): 11m (37ft) at the closest point
- Side Yard: 9.44m (31ft)
- Rear Yard: 43m (142ft)



# Site Plan



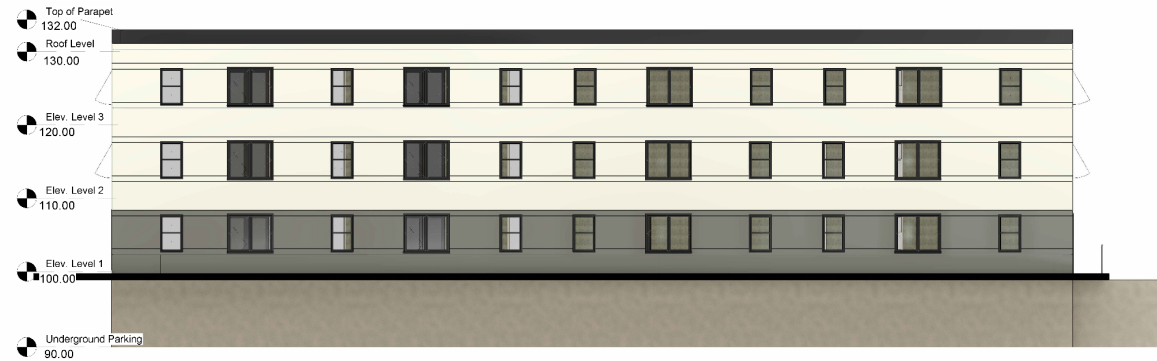
# Building Elevation



1 East  
1 : 100



4 West  
1 : 100



2 North  
1 : 100



3 South  
1 : 100

**M**aritech  
Construction Inc.

Rev	Description	Date

CODE SUITABILITY DESCRIPTION  
STATUS PURPOSE OF ISSUE

PROJECT CASEY APARTMENTS 24 UNITS

TITLE LOT 21-1 Electric St, Amherst

CLIENT Casey Realty

DRAWN BY JAK CHECKED BY JH DATE 23/04/26  
SCALE (@ A1) 1:100 PROJECT NUMBER 22-539  
DRAWING NUMBER 2 REV



# Building Elevation (3D)



#seewhywel



# RELEVANT PLANNING BYLAWS AND POLICIES

## 1. Land Use Bylaw Section 7.2.2 (Permitted Uses by Development Agreement )

In a Residential Zone, an application for the following uses shall be considered by development agreement in accordance with the applicable Municipal Planning Strategy (MPS) Policy:

(e) Apartment buildings greater than 4 units in accordance with Policy RP-9 of the MPS.

## 2. Residential Policies

### RP-9 (Medium and High Density by Development Agreement)

It shall be the intention of Council to ensure medium and high density residential development occur in a manner compatible with a low density residential neighborhood. Specifically, Council shall require that all residential developments greater than 4 dwelling units per property, be subject to a Development Agreement.

In negotiating such an agreement Council shall ensure that:

- (a) ensure that the structure(s) is located on the lot in such a manner as to limit potential impacts on surrounding low density residential developments;
- (b) ensure that the development provides sufficient on-site parking, and appropriate access to, and egress from the street;
- (c) ensure that the location of parking facilities does not dominate the surrounding area, including the utilization of vegetation and fences to mitigate the aesthetic impacts of parking lots;
- (d) ensure that any on site outdoor lighting does not negatively impact the surrounding properties;
- (e) ensure that any signage on the property is sympathetic to the surrounding residential properties;
- (f) require the use of vegetation to improve the aesthetic quality of the development;
- (g) ensure that the architecture of the building is sympathetic to any existing development in the surrounding area.

# RELEVANT PLANNING BYLAWS AND POLICIES

## RP-11 (Affordable Housing)

It shall be the intention of Council to encourage and promote the provision of affordable housing units within all residential area of town by: (a) encouraging a mix of housing types and densities.

## 3. General Land Use and Development Policies

### GP-7 (Compatibility)

It shall be the intention of Council to allow a mix of compatible land uses and to minimize their impacts by:

- (a) requiring adequate buffering and setbacks;
- (b) screening development by the use of visual barriers;
- (c) regulating the location of parking, storage buildings or other accessory uses or facilities.

### GP-8 (Density)

It shall be the intention of Council to allow development at a density appropriate to the overall desired character of the town.

## 4. Municipal Service Policies

**MS-11 (In-fill Development):** It shall be the intention of Council to encourage and facilitate the development of vacant land located on existing municipal services in order to make more efficient use of such services.

## 5. Sustainability Policies

**SP-1 (Residential Development):** It shall be the intention of Council to encourage high density residential development in the Downtown Zone.

**SP-2 (Residential Development):** It shall be the intention of Council to encourage multiunit residential on the upper floors in the Downtown Zone.

# RELEVANT PLANNING BYLAWS AND POLICIES

## 6. Land Use Bylaw Section 8.3.2 (Permitted uses by Development Agreement)

In the Downtown Zone, a development permit application for the following uses shall be considered by development agreement in accordance with the applicable Municipal Planning Strategy (MPS) Policies:

- (d) Ground floor residential uses subject to MPS Policy CP-15.

## 7. Commercial Policies

### P-15 (Ground Floor Residential)

It shall be the intention of Council to consider applications for ground floor residential uses in the Downtown Zone by Development Agreement excluding that portion of a building that abuts Church, Victoria and Havelock Streets. Outside said streets, applications for new residential buildings or ground floor conversion of existing commercial and institutional buildings will not be considered for residential uses unless it can be shown that such a conversion will not detract from the commercial character of the surrounding streetscape.

In negotiating such a development agreement, Council shall take into account:

- (a) the location, height, bulk of the building;
- (b) the architecture of the building;
- (c) signage;
- (d) parking facilities;
- (e) landscaping;
- (f) pedestrian access;
- (g) the unique characteristics of the property and its relationship to the surrounding streetscape;
- (h) that the ground floor frontage of any building fronting on Church, Havelock or Victoria Streets shall be used for commercial purposes.

# RELEVANT PLANNING BYLAWS AND POLICIES

## 8. Implementation Policy

### A-5 (Amendment Criteria)

It shall be the intention of Council, when considering an amendment to this or any other planning document, including the entering into or amendment of a development agreement, to consider the following matters, in addition to all other criteria set out in the various policies of this planning strategy:

- (a) That the proposal conforms to the general intent of this plan and all other municipal bylaws and regulations.
- (b) That the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the Town to absorb any costs relating to the development;
  - (ii) the adequacy of municipal water, sanitary sewer and storm sewer services;
  - (iii) the adequacy of road networks, in, adjacent to, or leading to the development
- (c) That consideration is given to the extent to which the proposed type of development might conflict with any adjacent or nearby land uses by reason of:
  - (i) type of use;
  - (ii) height, bulk and lot coverage of any proposed building;
  - (iii) parking, traffic generation, access to and egress from the site;
  - (iv) any other matter of planning concern outlined in this strategy.

Case No: DA-2023-XX

This Agreement made this \_\_\_\_\_ Day of \_\_\_\_\_ 2023.

Between:

**CASEY REALTY LIMITED** (owner of three abutting properties along Electric Street, Amherst [PIDs: 25508698, 25005430 and 25033747], hereinafter called the “Owner”),

of the one part, and

**The Town of Amherst** (a body corporate in the Province of Nova Scotia, hereinafter called the “Town”),

of the other part.

WHEREAS the Owner wishes to obtain permission pursuant to Policy CP-15 of the Municipal Planning Strategy of the Town of Amherst, to construct a 3-story, 24-unit apartment building on three abutting properties along Electric Street (PIDs: 25508698, 25005430 and 25033747 respectively).

AND WHEREAS a condition of the granting of approval of Council is that the Owner enter into an Agreement with the Town;

AND WHEREAS the Council of the Town, at its meeting on the \_\_\_\_<sup>th</sup> Day of \_\_\_\_\_ 2023, approved the said Development Agreement, subject to the registered Owner of the land described herein entering into this Agreement;

AND WHEREAS the following Schedules shall be attached to and form part of this Agreement:

- (a) Schedule ‘A’ - Terms and Conditions
- (b) Schedule ‘B’ - Property Location Map
- (c) Schedule ‘C’ – Site Plan
- (d) Schedule ‘D’ – Building Elevations

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the Town of the Development Agreement requested by the Owner, the Owner agrees as follows:

- 1) That the Owner is the registered owner of the aforesaid Land in the Town of Amherst, hereinafter called the “Land”. The aforesaid Land is the only land in the Town of Amherst to which this Agreement applies, and the Land is illustrated in the plan shown on Schedule B attached.
- 2) That the Owner may construct a maximum of a 24-unit, 3-level apartment building on the said Land, subject to Schedules A, B, C, and D attached.
- 3) Nothing in this Agreement shall exempt or be taken to exempt the Owner or any other person from complying with the requirements of any Bylaw of the Town applicable to the Property

(other than the Land Use Bylaw to the extent varied by this Agreement) or any Provincial or Federal statute, act, or regulation.

- 4) Any failure of the Town to insist upon strict enforcement of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Town may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.
- 5) Should the Owner fail to act in accordance with any aspect of this Agreement, the Town shall retain the right to discharge the Agreement upon 30 days notification and / or enter the property and conduct the required work. The cost of the said work will become a lien on the property tax bill.
- 6) The Town shall issue the necessary Development Permit for the development upon expiration of the appeal period specified for Development Agreements under Section 249 of the *Municipal Government Act*, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken.
- 7) The Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Town in accordance with Section 229 of the *Municipal Government Act*.

**SIGNED, SEALED AND DELIVERED**

In the presence of

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**THE TOWN OF AMHERST**

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David Kogon MD, Mayor

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Jason MacDonald, MCIP, LPP, CAO

**FOR THE OWNER**

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## **Schedule A**      **PID 25508698, 25005430 and 25033747, Electric Street, Amherst**

### Terms and Conditions:

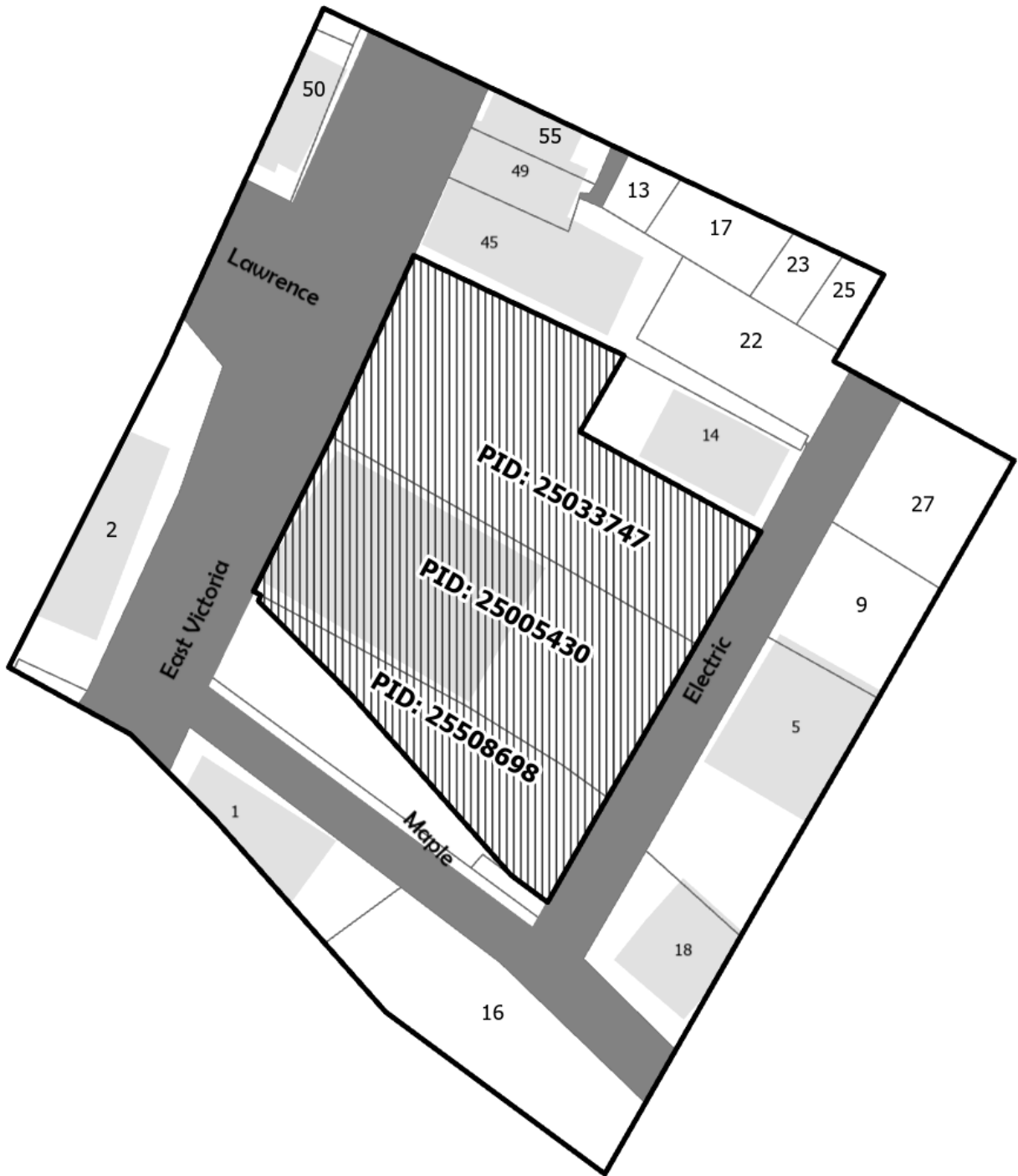
#### 1.0 USE OF LAND AND BUILDINGS

- 1.1 The use of the properties shall be limited to residential uses within a maximum of a 24-unit, 3-level apartment building in the general location as shown on Schedule 'C'.
- 1.2 A minimum of 48 parking spaces shall be provided on the Land and shall be generally configured as shown on Schedule 'C'.
- 1.4 Accessory buildings may be permitted on the Land in accordance with the *Town of Amherst Land Use Bylaw* and shall not be considered a substantial change to this agreement.
- 1.5 The building shall generally conform to the designs shown on Schedule 'C' and 'D'. Variations to the architectural details and footprint of the dwellings may be permitted, to the satisfaction of the Development Officer. Such changes shall not be considered substantial.
- 1.6 The Owners shall be responsible for landscaping unpaved areas and maintenance on the Land.
- 1.7 The Owner shall be responsible for maintaining screened solid waste containment areas, generally in the locations shown on Schedule 'C'.
- 1.8 Paving of the driveways and parking areas shall be completed for the facility within twelve (12) months from the date an Occupancy Permit is issued.

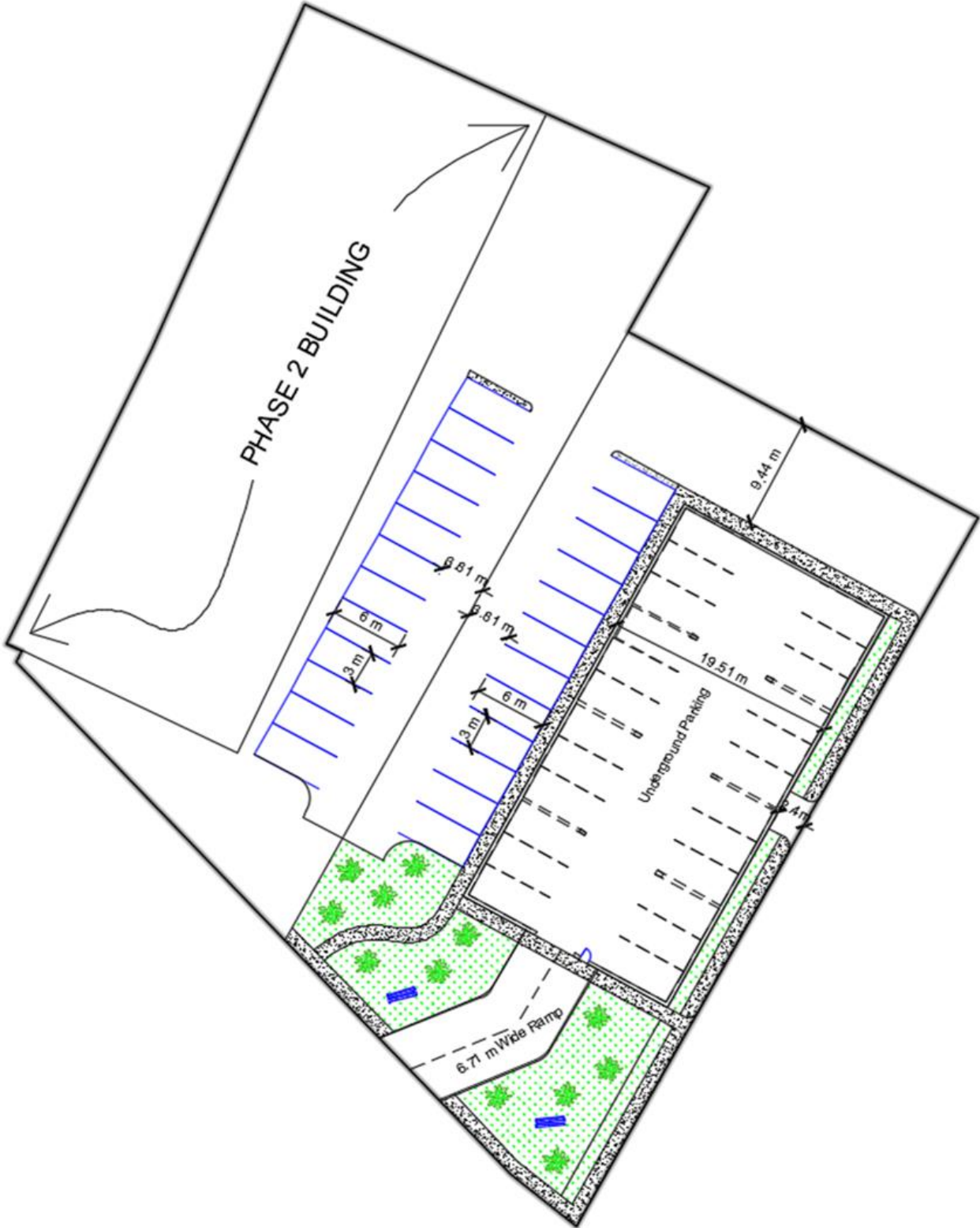
#### 2.0 GENERAL REQUIREMENTS

- 2.1 The Owner shall keep the Land, building and any portion thereof clean and in good repair. All elements of the development on the Land shall be regularly maintained and kept in a tidy state, and free from unkept materials of any kind.
- 2.2 The Owner shall ensure that exterior lighting does not shine directly onto adjacent properties.
- 2.3 Solid waste management shall be in conformance with the Town of Amherst *Solid Waste Bylaw*.
- 2.4 The Owner shall be responsible for storm water management during and after construction.
- 2.5 The Owner shall take all reasonable steps to maintain a clean worksite during construction by picking up building material waste.

# SCHEDULE 'B'



**SCHEDULE 'C'**



# SCHEDULE 'D'



**Town of Amherst  
Public Participation Opportunity**

**Date:** May 24, 2023  
**Time:** 5:00 pm  
**Location:** Council Chambers, Town Hall

**Council Present:** Councillor George Baker  
Councillor Hal Davidson  
Councillor Charlie Chambers  
Councillor Lisa Emery  
Councillor Dale Fawthrop

**Staff Present:** Andrew Fisher, Director, Planning & Strategic Initiatives  
Abiola Falaye, Planner/ GIS Coordinator  
Marc Buske, Building Official / Development Officer  
Natalie LeBlanc, Municipal Clerk  
Cindy Brown, Administrative Assistant

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**1. Introduction**

Andrew Fisher introduced Town of Amherst staff, and members of Council and the Planning Advisory Committee in attendance as observers, and explained the development agreement process.

**2. 106 Church Street**

**2.1 Staff Reports / Presentations**

Andrew Fisher presented the application for a Development Agreement for property located at 106 Church Street (PID: 25013871) to permit the change of use from a dance studio to a clay studio.

**2.2 Public Participation Opportunity**

**Lillian Thorsteinson** of 108 Church Street expressed her concerns, the first being about her property value going down and about her homeowner's insurance coverage. She has the deed to the right away at the back of the lot in question and has had issues in the past with trucks using it and blocking her driveway and her inability to leave her property. She also feels there is not enough parking. She is worried about the lighting on the building and the hours of operation. Ms. Thorsteinson also expressed concern about the air quality if this change of use is permitted, and how the chemicals will be stored, adding she had issues with the previous owner over unsightly conditions at the rear of the property. She would like an environmental impact assessment and inspection done concerning this application, and would like environmental monitoring conducted on a regular basis. She also is worried about fire control, and that if the subject property catches on fire, it could affect her property. She is also worried about the increased traffic in the front and at the rear of the property. Ultimately, she pointed out that a clay studio is best suited for an industrial and not a residential zone.

She has submitted her concerns in a written letter.

There being no further questions or comments, Mr. Fisher closed the public participation opportunity for this application.

**3. 55 Victoria Street East**

### 3.1 **Staff Reports / Presentations**

Andrew Fisher presented the application to amend the Municipal Planning Strategy and Land Use Bylaw to permit the installation of a driveway at 55 Victoria Street East (PID: 25005166).

### 3.2 **Public Participation Opportunity**

**Mikhial Mansour** spoke to the application indicating he has purchased the now vacant property and has reached out to several restaurant chains who have all asked for a drive-thru to be installed before they would consider locating to this property.

**Beth Munroe** expressed concerns with the proposed options to installing a drive-thru, particularly that Electric Street was re-purposed to be a "festival street" and that if this development is approved as proposed it would limit the ability to block this street off for festival purposes. She is also concerned with the other options being proposed where all traffic leaving the drive-thru would exit onto Church Street. Mr. Mansour replied that their preference would be to have the exit onto Electric Street, Ms. Munroe again reiterated this would limit the ability to close Electric Street for festival purposes.

There being no further questions or comments, Mr. Fisher closed the public participation opportunity for this application.

## 4. **22-2 Prince Arthur Street**

### 4.1 **Staff Reports / Presentations**

Abiola Falaye presented the application for a Development Agreement for property located at Lot 22-2 Prince Arthur Street (PID: 25514563) to permit the construction of a 3-story, 24-unit apartment building.

### 4.2 **Public Participation Opportunity**

**Mikhial Mansour** spoke to the application noting their intent is for this development to be 50% affordable housing and the rest market value, adding that the area needs residential development so people are in the downtown area outside of the 9-5 business hours.

**Beth Munroe** spoke to the green area and that it is not attractive to her. She added that Amherst deserves better than just an ordinary "cookie cutter" building and advocated for a more visually appealing architecture and clean building. She also expressed concern with construction of such a large building on the proposed site as it would limit the parking spaces available to the Lions Club who has been a major contributor to development in the Town. She added that this long-term parking lot may be needed in the future even though there is a need to have places of residence for people in the downtown area.

**Maria Smith** thinks it is great to see new residential construction in the downtown area and believes the developer can work to address the concerns expressed.

**Carol McCall** asked if the main floor would be commercial, to which the reply was no. She agreed it is a good idea to have more residential units downtown and hopes it will bring back a grocery retailer to this area of town.

-There being no further questions or comments, Mr. Fisher closed the public participation opportunity for the application.

## 5. Electric Street

### 5.1 Staff Reports / Presentations

Abiola Falaye presented the application for a Development Agreement for properties located at Lots 21-1 Maple Avenue/92-1 Victoria Street East/32 Victoria Street East (PID: 25508696/25005430/25033747) to permit the construction of a 3-story, 24-unit apartment building.

### 5.2 Public Participation Opportunity

**Mikhail Mansour** spoke to this application, noting that it is very similar to the proposed development at 22-2 Prince Arthur Street.

**Maria Smith** again noted it will be great to bring life back to the downtown and have people around after business hours. She explained that Maple Avenue got its name from the prominence of maple trees on the alley and that it would be great not to lose track of this. She added that there should be more maple trees and green spaces as the recent hurricane Fiona had done a lot of damage to the many trees in town. Pointing out one oak tree that continues to grow, she believes the tree shows the strength of our community.

**Jim Furlong**, General Manager of Casey Realty who is working with Mr. Mansour on these applications, indicated that he grew up on Church Street in Amherst and that he would not only like to get people living in the downtown area again, but would also like to get people off the highway coming into our downtown rather than them all exiting onto South Albion Street. He added that these applications being put forth today are just the start of what they hope will be the rejuvenating of the downtown area.

**Beth Munroe** again expressed she agreed it will be awesome to get people in the downtown area; however, she has concerns with this application and that it is fronting on East Victoria Street. She believes if a phase 2 building is going to be proposed in the future it should be considered now. She also explained that she does not like the "cookie cutter" style building and would like to see it designed to be "greener".

**Mr. Furlong** replied they are putting thought into making the buildings "green" including high efficiency solar, energy efficient walls and maximizing any energy efficiencies that they can. He added that the buildings have already been designed, and to Ms. Smith's point, that his mother would be very happy if he can plant maple trees along Maple Street.

**Brent Noiles** asked if these proposed developments will be happening all at once? Mr. Furlong replied that if the applications are approved, they will be applying for building permits the day after the development agreements are signed.

There being no further questions or comments, Mr. Fisher closed the public participation opportunity for this application.

Mr. Fisher advised those in attendance that the next Planning Advisory Committee meeting will be held on June 5, 2023, at 4:30 PM. He noted that although the meeting is open to the public, it is not an opportunity for the public to address the Committee.

He thanked everyone for coming and for their inputs, and adjourned the public participation opportunity.