

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: February 10, 2023

CASE NO(S).:

OLT-21-001834

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Infinity (Plains Road) Corporation and Infinity (Aldershot) Developments Inc.
Subject: Request to amend the Official Plan - Failure of City of Burlington to adopt the requested amendment
Description: To permit the development a 9-storey residential apartment building consisting of 360 units
Property Address: 40, 46, 50, 56, 62, 66, and 70 Plains Road East
Municipality: Burlington/Halton
OLT Case No.: OLT-21-001834
OLT Lead Case No.: OLT-21-001834
OLT Case Name: Infinity (Plains Road) Corporation v. Burlington (City)

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

Applicant and Appellant: Infinity (Plains Road) Corporation and Infinity (Aldershot) Developments Inc.
Subject: Application to amend Zoning By-law No. 2020 - Refusal or neglect of City of Burlington to make a decision
Purpose: To permit the development a 9-storey residential apartment building consisting of 360 units
Property Address: 40, 46, 50, 56, 62, 66, and 70 Plains Road East
Municipality: Burlington/Halton
OLT Case No.: OLT-21-001835
OLT Lead Case No.: OLT-21-001834

Heard: January 23, 2023 by Video Hearing

APPEARANCES:**Parties****Counsel**

Infinity (Plains Road) Corporation
and Infinity (Aldershot)
Developments Inc.

D. Baker and C. deSereville

City of Burlington

B. Hurley

Region of Halton

B. Maione

**MEMORANDUM OF ORAL DECISION DELIVERED S. BRAUN ON JANUARY 23,
2023 AND ORDER OF THE TRIBUNAL**

INTRODUCTION/BACKGROUND

[1] The following decision and Order arise out of the settlement of appeals pursuant to s. 22(7) and 34(11) of the *Planning Act*¹ (“Act”) by Infinity (Plains Road) Corporation and Infinity (Aldershot) Developments Inc. (“Appellant”) against the failure of the City of Burlington (“City”) to make decisions within the legislated timeframe on applications for an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) in relation to 40-70 Plains Road East (“subject lands”/“site”).

[2] The subject site is an assembly of seven properties located on the south side of Plains Road East between Birchwood Avenue and Lasalle Park Road. It is currently developed with seven single detached two-storey dwellings. Surrounding land uses consist of a commercial and residential land uses to the west, existing commercial and planned residential to the north, commercial and residential uses to the east, and existing residential uses to the south.

[3] The Appellant’s initial proposal contemplated the redevelopment of the site with a 10-storey mid-rise mixed-use building containing 423 residential units. The revised proposal, which is the subject of the settlement agreement, and for which the Tribunal’s approval is now sought, contemplates a 12-storey mid-rise mixed-use building with a

¹ R.S.O. 1990, c. P. 13, as amended.

total gross floor area (“GFA”) of 21,970 square metres; 389 residential units; and 1,027 square metres of non-residential GFA. Notably, the revised proposal includes increases in amenity space and setbacks and, in particular, a large setback from the rear lot line which abuts the rear yards of a low-rise residential neighbourhood to the south. The entrance to the building is proposed to the north of the site in alignment with a signalized intersection at Cooke Boulevard and Plains Road East.

[4] In order to give effect to the proposal, an OPA is required to re-designate the site from Residential – Medium Density to Mixed Use Corridor – General and to create a site-specific policy to increase the maximum building height from 6 to 12 storeys and to increase the maximum density from a floor area ratio of 1.5:1 to 4.28. A ZBA is required to rezone the site from Medium Density Residential with Special Exception 346 (RM1-346) to Mixed Use Corridor General (MXG) with site-specific exceptions to allow for an increased building height and density as well as other site-specific performance standards.

[5] The Parties jointly requested that the Tribunal allow the appeals in part and approve the proposed OPA and ZBA. David Falletta, a Registered Professional Planner whom the Tribunal qualified to provide land use planning opinion evidence provided a sworn Affidavit and delivered a comprehensive contextual and planning rationale in support of the settlement. He opined that the proposed planning instruments and the development they will permit satisfy all requisite legislative tests, and are representative of good planning in the public interest.

PARTICIPANTS

Dianna Bullard and Ronald Moore

[6] At a Case Management Conference held on May 25, 2022, before a panel differently constituted, the Region of Halton (“Region”) was granted Party Status. Ronald Moore and Dianna Bullard, neighbours to the east of the site, were granted combined Participant Status. Their written statement was filed in accordance with the Procedural Order (“PO”) and was directly addressed by Mr. Falletta in his Affidavit.

Tom Muir

[7] Shortly after the May 25, 2022 CMC, Tom Muir, an interested area resident who resides outside of the 120 metre circulation area for applications under the *Act*, requested status as a Participant. The Parties advised the Tribunal's Case Coordinator that they would not oppose this request, anticipating that Mr. Muir's written statement would be submitted in accordance with the November 25, 2022 deadline specified in the PO, which it was not.

[8] Counsel for the Appellant expressed some concern, noting Mr. Muir's statement was submitted on January 18, 2023, following the preparation and submission of the settlement materials and, as such, Mr. Falletta's Affidavit did not directly address same. Counsel for the Appellant did, however, note that should the Tribunal choose to accept same, Mr. Falletta had read and was prepared to speak to the relevant portions of Mr. Muir's statement during the course of his testimony. For his part, Mr. Muir explained that a series of communication errors led to his late request for Participant Status as well as the late submission of his written statement.

[9] Notwithstanding the late submission of Mr. Muir's statement, the Tribunal accepted same in the interest of fairness. In the Tribunal's view, so doing resulted in minimal prejudice to the Parties, given that Mr. Muir made his intentions known early on in the process and although his written statement was not filed in accordance with the PO, Mr. Falletta had, in fact, reviewed and was prepared to speak to the relevant planning concerns raised therein.

Troy Guyatt and Robyn Turcsanyi/Adair

[10] On January 12, 2023, the above-named individuals submitted requests for Participant Status. These individuals did not seek status at the CMC, nor did they appear at the hearing to speak to their requests. Counsel for the Parties took the position that the Tribunal should not grant the requests, given the late submissions and noted that, in any event, the concerns raised by Mr. Guyatt and Ms. Turcsanyi/Adair were repetitive of concerns captured in the Participant Statements already before the

Tribunal for consideration. Having reviewed the requests of Mr. Guyatt and Ms. Turcsanyi/Adair and the Bullard/Moore and Muir Participant Statements, the Tribunal agreed with the submissions of Counsel and accordingly, denied their requests.

LEGISLATIVE FRAMEWORK

[11] In deciding on the matters before it, the Tribunal must be satisfied that the proposed development is representative of good planning in the public interest. The proposed planning instruments must be found to: have appropriate regard for the matters of Provincial interest in s. 2 of the Act; be consistent with the Provincial Policy Statement 2020 (“PPS”); conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“GP”); conform to the Region of Halton Plan (“ROP”); and to the City of Burlington Official Plan (“COP”).

PLANNING EVIDENCE

[12] Mr. Falletta opined that the proposal will appropriately intensify, through compact and efficient development, an underutilized site which is well-served by municipal infrastructure, including transit. He characterized the site and surrounding area as “in transition”. Mid- and high-rise residential and mixed-use buildings have evolved, and continue to evolve, along Plains Road East, particularly on the south side. He noted that, because the site is approximately 700 m away from the Aldershot GO and VIA rail stations and is within a mixed-use corridor and a designated Major Transit Station Area (“MTSA”), it is intended to be developed at a higher density.

[13] Existing and planned built forms in the surrounding area include a variety of buildings ranging in height from 6 to 18 storeys. Notably, at the northeast corner of Plains Road East and Cooke Boulevard, the City has approved an 18-storey tower atop an 11-storey base and another 9-storey building and at the northwest corner of Plains Road East and Cooke Boulevard, another 9-storey mixed use building with at grade retail and commercial uses has also been approved.

[14] The residential neighbourhood to the immediate south of the site was characterized by Mr. Falletta as “low-rise suburban and automobile-oriented”. He explained the proposed development has been deliberately designed to have appropriate regard for applicable Urban Design Guidelines² and to achieve compatibility with the neighbourhood, drawing the Tribunal’s attention to the fact that a 45-degree angular plane has been applied to provide appropriate transition to the low-rise residential uses and an enlarged setback has been included at the rear lot line backing onto the rear yards of some of those residential dwellings. The enlarged setback allows for a “significant landscape buffer” with opportunities for additional vegetative plantings and the retention of some mature trees. In his view, all of the foregoing aids in achieving appropriate transition to those existing low-rise uses and mitigates potential privacy and overlook impacts.

[15] He also drew attention to some of the more notable design features of the building which, in his view, complement and reinforce the urban structure of existing and planned mid-rise and tall buildings along Plains Road East, while achieving compatibility with the low-rise neighbourhood to the south. For example, the 6-storey base along Plains Road East steps back to the upper storeys with a “central break” that splits the upper storeys, breaking up the massing to appear as two separate building forms.

[16] With respect to the specific legislative tests to be met, Mr. Falletta testified that the proposed instruments and the development they will permit have regard for the matters of Provincial interest in s. 2 of the Act; are consistent with the PPS; conform with the GP; the ROP and the COP. He opined that the proposal will result in the creation of an attractive development in south Aldershot which efficiently uses land and infrastructure and achieves a number of other provincial, regional and municipal goals, including but not limited to: the creation of new housing and a mix of housing; intensification within a mixed-use corridor, MTSA and Strategic Growth Area which will provide additional ridership for GO-transit, VIA Rail and local public transit and will contribute to achieving minimum intensification targets established by the GP.

²

Including the Plains Road Corridor Urban Design Guidelines; Design Guidelines for Mixed-Use and Residential Mid-Rise Buildings; and Sustainable Building and Development Guidelines.

[17] In addition to the foregoing, he noted that he assessed the proposal against the updated City of Burlington Official Plan, which was adopted in 2020 but is currently under appeal and therefore not in-force (“New COP”). In his view, the proposal conforms to the intent of the New COP, which promotes mixed-use commercial and residential intensification at transit supportive densities as a key component to the City’s growth strategy.

Participant Statements

[18] A number of the concerns raised by the Participants relate to aspects of the planning process, which are not issues before the Tribunal and as such are not addressed in this decision. With respect to the Participants’ objections to the proposed increases in height and density, Mr. Falletta reiterated that such increases are contextually appropriate, given the location of the subject site along a mixed-use corridor and along a road planned for residential intensification at high densities that is well-served by transit. He addressed concerns with respect to shadow impacts noting that shadow studies were completed which show there will be no impacts on the residential neighbourhood to the south and any impacts to the west and east of the site are adequately limited and do not exceed the criteria set out in the City’s terms of reference.

[19] Although the Participants expressed a preference for development in the form of detached dwellings and view the proposed building as disproportionate in size and out of character with the area, Mr. Falletta explained that, from a land use planning perspective, encouraging single detached dwellings along an intensification corridor within a strategic growth area and MTSA would be inappropriate, undesirable, inconsistent with the PPS and would not conform to the applicable planning framework. He reiterated that the area is experiencing transition, changing in character and evolving with the MTSA as evidenced by the existing and planned developments in the area.

[20] One of the Participant Statements asserted that proposal ignores the “protective intentions” of the in-force COP and Zoning in relation to the existing character of the

area and that the City's decision to support this development was "driven by Provincial growth policy". In response, Mr. Falletta provided a comprehensive overview of the provincial planning hierarchy and also explained that the in-force COP and Zoning By-law (and even the New COP) are all out of date and therefore out of step with the 2051 planning horizons and intensification targets of the GP and the ROP.

[21] Finally, he pointed out that the Act, the COP and the New COP include a mechanism (application for OPA) to obtain increases in height and density, noting there have been several site-specific amendments for developments along Plains Road that have led to approved increases in maximum density and height. The OPA process is utilized on a site-specific basis to determine if additional height and density is warranted based on conformity with a policy framework related to compatibility and fit. In this instance, Mr. Falletta noted that a thorough planning analysis was conducted in accordance with the applicable planning framework and was supported by required studies and, from a land use planning perspective, the development is considered compatible with the surrounding neighbourhood.

ANALYSIS AND DISPOSITION

[22] Although this appeal arose out of the City's failure to make a decision on the OPA and ZBA applications, the Tribunal notes that both City and the Region appeared in support of the proposed development and the City Staff Report also recommended approval of same. The Tribunal has reviewed and considered the concerns raised in the Participant Statements but is nevertheless satisfied, based upon the uncontradicted land use planning testimony and the detailed Affidavit of Mr. Falletta, that the proposed development is representative of good planning and is in the public interest and the proposed OPA and ZBA have appropriate regard to the matters of Provincial interest in s. 2 of the Act; are consistent with the PPS; and conform with the GP, ROP and COP.

[23] The Tribunal is satisfied that the proposed development represents an efficient use of land and an appropriate scale of intensification in an evolving area. It achieves objectives outlined in applicable urban design guidelines and demonstrates compatibility

with the surrounding neighbourhood, including the low-rise residential dwellings to the south, and will also be compatible with other planned developments along Plains Road East. Moreover, the proposed development achieves important local, regional and provincial policy objectives, such as creating a mix of housing, and leveraging proximity to transit and existing municipal infrastructure in order to accommodate growth targets.

ORDER

[24] The Tribunal orders that the appeal by Infinity (Plains Road) Corporation and Infinity (Aldershot) Developments Inc. is allowed, in part and:

- a) the Official Plan for the City of Burlington is amended as set out in Attachment 1 to this Order; and
- b) City of Burlington Zoning By-law No. 2020 is amended as set out in Attachment 2 to this Order.

“S. Braun”

S. Braun
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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

ATTACHMENT 1

AMENDMENT NO.133 TO THE OFFICIAL PLAN OF THE BURLINGTON PLANNING AREA

CONSTITUTIONAL STATEMENT

The details of the Amendment, as contained in Part B of this text, constitute Amendment No. 133 to the Official Plan of the Burlington Planning Area, as amended.

PART A – PREAMBLE

1. PURPOSE OF THE AMENDMENT

The purpose of this Amendment is to re-designate the lands at 40, 46, 50, 56, 62, 66, and 70 Plains Road East from *Residential – Medium Density* to *Mixed Use Corridor – General* with a site specific exception in order to permit the development of a 12-storey, mixed use building comprised of 389 residential units, ground floor commercial uses with 2 levels of underground parking, a maximum density of 580 units per hectare and a maximum floor area ratio of 4.41:1.

2. SITE AND LOCATION

The subject site is made up of seven parcels of land located on the south side of Plains Road East, between Birchwood Avenue and Lasalle Park Road. It is generally a rectangular shaped parcel with an overall area of 0.68 hectares (1.68 acre), and frontage of approximately 128.0 metres (420.0 feet) on Plains Road East and a depth of 52.7 m (172.9 feet) from Plains Road East to the rear of the lot line.

Surrounding land uses consist of a commercial and residential land uses to the west, existing commercial and planned residential to the north, commercial and residential uses to the east, and existing residential uses to the south.

3. BASIS FOR THE AMENDMENT

- a) The City's Major Transit Station Areas play an important role in accommodating population and job growth. Mixed use development within a Major Transit Station Area with access to transit contributes to intensification and supports the long term sustainability of the city.

- b) The subject application proposes intensification that is consistent with the Provincial Policy Statement (PPS). The PPS promotes densities for new housing which efficiently use land, resources, infrastructure and public service facilities, and supports the use of public transit.
- c) Directing intensification to areas in proximity to transit and within a strategic growth area and providing policies that identify the appropriate type and scale of development assists the City in achieving its intensification and housing supply targets and meet the intent of the Provincial "A Place to Grow" Growth Plan and the Region of Halton Official Plan.
- d) Build towards the achievement of a complete community that is compact, transit-supportive and makes effective use of investments in infrastructure and public service facilities. Contribute towards a community that is well-designed, offers transportation choices, accommodates people at all stages of life and provides the right mix of housing, and good range of jobs and easy access to stores and services to meet daily needs.
- e) The redesignation of the property to permit a higher density midrise built form supports the City's objective to broaden the range of housing forms and supply to meet City needs in a manner that is compatible with surrounding properties and uses.
- f) The proposed development is located on lands with adequate infrastructure and in close proximity to transit routes, commercial uses and community amenities so meets Official Plan policies to provide housing opportunities in locations that can reduce travel times and decrease dependence on the car;
- g) The applicant submitted technical studies and reports that provide adequate and appropriate information to support the development.

PART B – THE AMENDMENT

1. DETAILS OF THE AMENDMENT

Map Change:

Schedule B – Comprehensive Land Use Plan – Urban Planning Area

The lands designated as “A” on Schedule “A” attached hereto are hereby re-designated from *Residential – Medium Density* to *Mixed Use Corridor – General*.

Text Change:

The text of the Official Plan of the Burlington Planning Area, as amended, is hereby amended as follows:

By adding the following policy t) in Part III, Section 5.3.2, General Policies, as follows:

40-70 Plains Road East	<p>Notwithstanding the policies of Part III, Subsection 5.3.2 a) ii) and d) i), ii) of this Plan, for the lands described as 40-70 Plains Road East, a mixed use building consisting of at-grade commercial and residential apartment uses, with a maximum density of 580 units per hectare, a maximum floor area ratio of 4.41:1 and a maximum building height of 12 storeys <i>shall</i> be permitted.</p> <p>Notwithstanding policy of Part III, Subsection 5.3.2 c), retail, service commercial uses, and residential lobbies are to be located at the street level and along the street façade of the building. Residential uses are also permitted on the ground floor and away from the street facing facade.</p>
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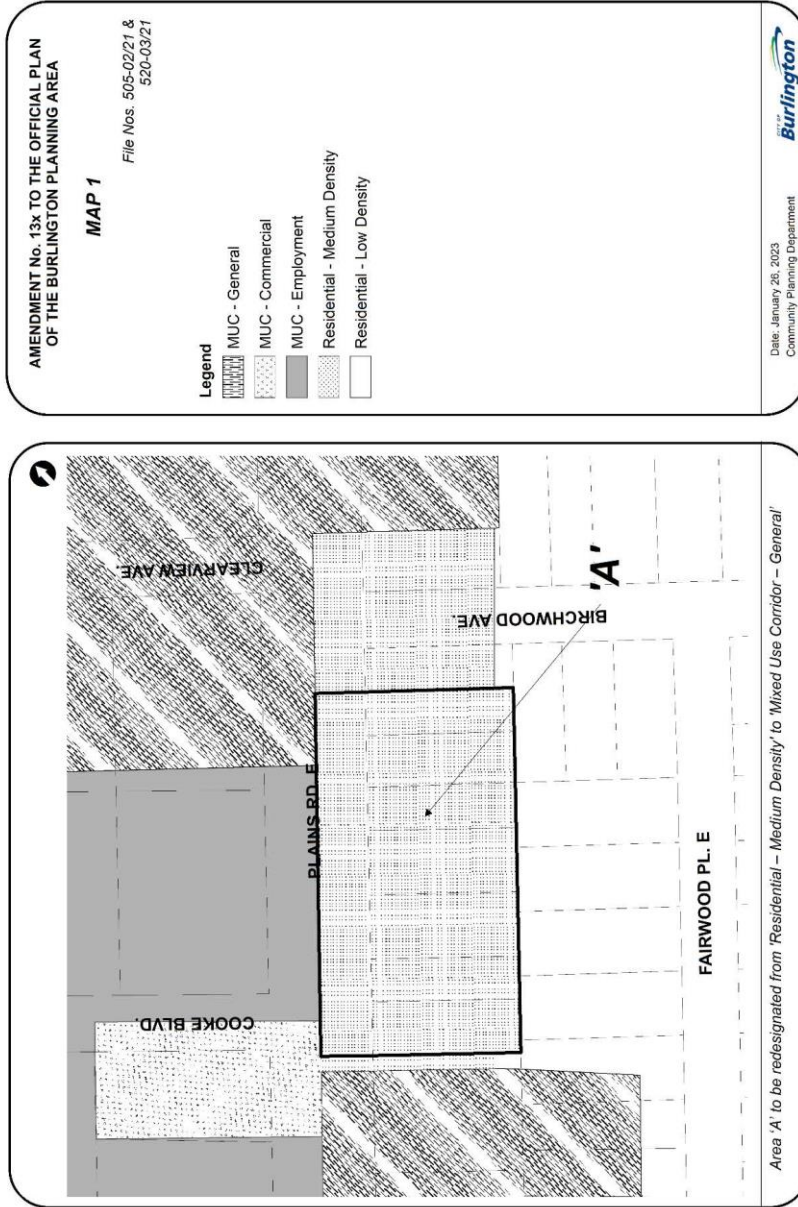
2. INTERPRETATION

This Official Plan Amendment shall be interpreted in accordance with Section 3.0, Interpretation policies of Part VI, Implementation, of the Official Plan of the Burlington Planning Area.

3. IMPLEMENTATION

This Official Plan Amendment will be implemented in accordance with the appropriate “Implementation” policies of Part VI of the Official Plan of the Burlington Planning Area.

SCHEDULE "A"



ATTACHMENT 2

BY-LAW NUMBER 2020.451, SCHEDULE 'A' AND EXPLANATORY NOTE

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 2020.451

Being a By-law to amend By-law 2020, as amended; for 40, 46, 50, 56, 62, 66, and 70
Plains Road East, for the purposes of facilitating the development of a mixed use
building

File Nos.: 505-02/21 & 520-03/21

WHEREAS Section 34(1) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, states that Zoning By-laws may be passed by the councils of local municipalities; and

WHEREAS the Ontario Land Tribunal issued a decision on January 23, 2023, to amend the City's existing Zoning By-law 2020, as amended, to permit a mixed use building with ground floor commercial uses and residential apartments above;

THE ONTARIO LAND TRIBUNAL HEREBY AMENDS THE CITY OF BURLINGTON ZONING BY-LAW 2020 AS FOLLOWS:

1. Zoning Map Number 3E, 3W of PART 15 to By-law 2020, as amended, is hereby amended as shown on Schedule "A" attached to this By-law.
2. The lands designated as "Area A" on Schedule "A" attached hereto are hereby rezoned from RM1-346 to MXG-519.
3. PART 14 of By-law 2020, as amended, Exceptions to Zone Designations, is amended with the following exception:

Exception 519	Zone MXG	Map 3E, 3W	Amendment 2020.451	Enacted (OLT) January 23, 2023
<ol style="list-style-type: none"> 1. Additional Permitted Use: <ol style="list-style-type: none"> a) Supermarket/Grocery Store with a floor area greater than 365m² 2. Commercial uses are only permitted on the ground floor facing Plains Road East. 3. Notwithstanding Part 5, Section 4.3, Table 5.4.2, the maximum floor area for retail or service commercial uses does not apply. 4. For the purposes of this by-law, the following definitions shall apply: <ol style="list-style-type: none"> i. Rooftop Terrace – means an outdoor amenity area located on the roof of a building; ii. Balcony – means an unenclosed or partially enclosed attached platform projecting from the face of a wall that is only directly accessible from within a building, surrounded by a balustrade, partial wall, or railing where required and without direct exterior access to grade. 				

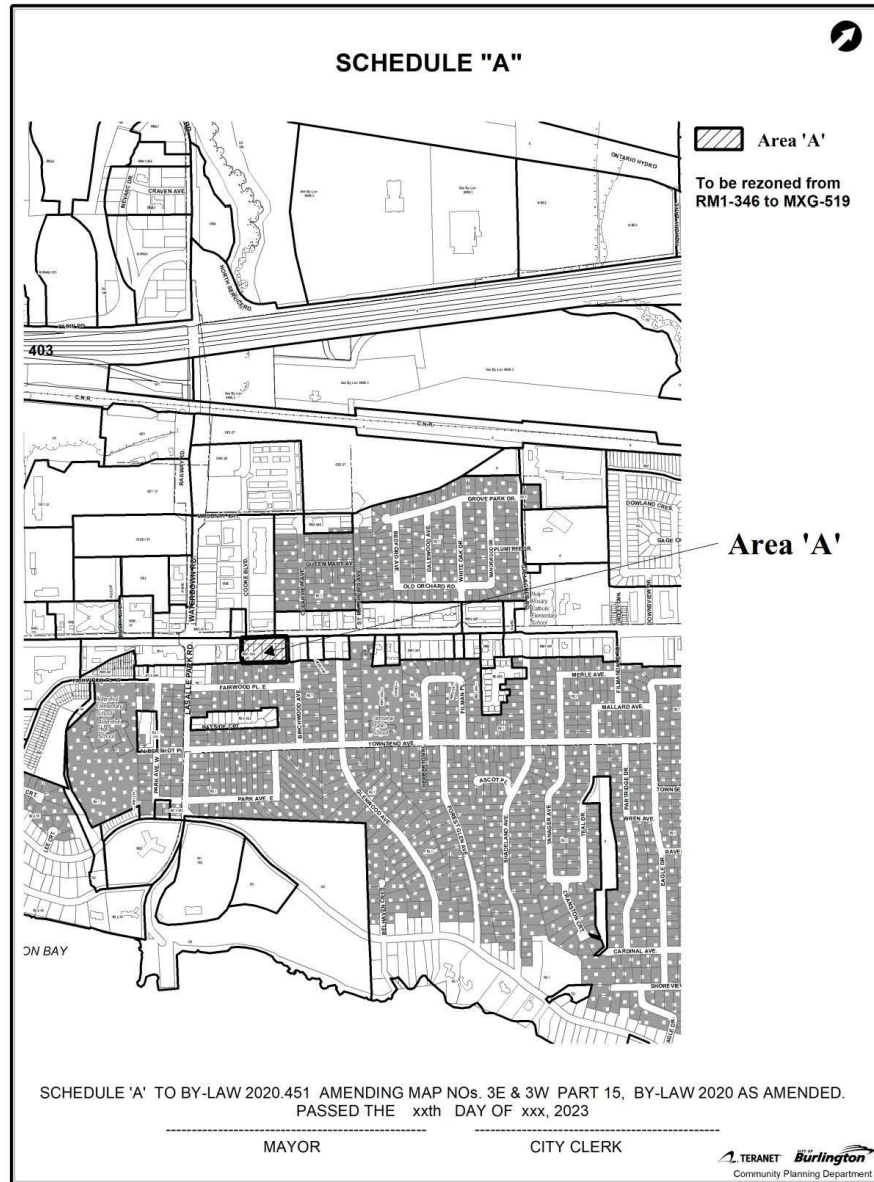
Exception 519	Zone MXG	Map 3E, 3W	Amendment 2020.451	Enacted (OLT) January 23, 2023
4. Regulations for an Apartment Building with ground floor Commercial uses:				
a) Total ground floor retail and/or service commercial area			1,027m ²	
b) Lot Area			0.68 ha	
c) Maximum Floor Area Ratio			4.41:1	
d) Maximum Number of Residential Units			389 units	
e) Separation Distance between Floors above the 6 th storey			15m	
f) Yard Abutting Plains Road East: i) Floor 1 ii) Floors 2 to 6 iii) Floor 7 iv) Floor 8 to 11 v) Floor 12 vi) Outdoor Pool			3m 3m to building, 1.2 to balconies 6m to building, 3m to rooftop terrace 6m to building, 4.2m to balconies 9m to building, 6m to rooftop terrace 7 m	
g) Rear Yard (south zone boundary): i) Floor 1 ii) Floors 2 and 3 iii) Floor 4 iv) Floor 5 v) Floor 6 vi) Floor 7 vii) Floor 8 viii) Floor 9 ix) Floors 10 x) Floors 11 and 12			10.5 m 10.5m to building, 10.1m to rooftop terrace, 8.7m to balconies 13.3m to building, 10.5m to rooftop terrace 16.4m to building, 13.3m to rooftop terrace 19.5m to building, 16.4m to rooftop terrace 22.5m to building, 19.2m to rooftop terrace 25.5m to building, 22.2 to rooftop terrace 28.5m to building, 25.5 to rooftop terrace 29m to building, 28.2m to rooftop terrace 29 m	
h) Side Yard (east zone boundary): i) Floors 1 to 10 ii) Floor 11			5.5m to building, 3.7m to balconies 11.2m	
i) Side Yard (west zone boundary): i) Floors 1 to 6 ii) Floors 7 to 9			2.7m 3.7m to building, 3m rooftop terrace / balconies	

Exception 519	Zone MXG	Map 3E, 3W	Amendment 2020.451	Enacted (OLT) January 23, 2023
iii) Floors 10 to 12			3.7 m	
j) Below-Grade Parking Structure: i) Abutting Rear Yard (south zone boundary) ii) Abutting all other property lines			3 m 0 m	
k) Maximum Building Height i) Floor 1 (minimum)			12 storey up to 42m 4.5m	
l) Amenity Area			21m ² per unit	
m) Parking Requirements: i) Occupant Parking ii) Visitor and Commercial			0.91 spaces per residential unit 0.06 spaces per residential unit	
n) Landscape Area: i) Abutting a street			0 m	
o) Landscape Buffer Abutting a residential zone: i) Rear Yard (south zone boundary) ii) Side Yard (east zone boundary)			3m (1.9m encroachment permitted for below-grade parking ramp, drive aisle and 2 parking spaces) 0m	
p) Driveway and Parking Spaces abutting R1, R2, R3 Zones			1.1m	

Except as amended herein, all other provisions of this By-law, as amended, shall apply

This By-law shall be deemed to have come into force on the day it was approved by the Ontario Land Tribunal.

Schedule 'A' to By-law 2020.451



EXPLANATION OF PURPOSE AND EFFECT OF BY-LAW 2020.451

By-law 2020.451 rezones lands 40-70 Plains Road E, to permit a mixed use building with retail commercial uses at grade and residential apartments above.

For further information regarding By-law 2020.451, please contact Kyle Plas of the City of Burlington Community Planning Department at (905) 335-7600, extension 7824.