

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 17, 2023

CASE NO(S):

OLT-22-001995

PROCEEDING COMMENCED UNDER section 45(12) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended.*

Applicant/Appellant	NHDG (Waterfront) Inc.
Subject:	Minor Variance
Description:	To permit the construction of a new mixed-use development consisting of three (3) residential towers above ground floor commercial uses
Reference Number:	SC/A-21:346
Property Address:	310 Frances Avenue (310 Frances Avenue)
Municipality/UT:	Hamilton/Hamilton
OLT Case No:	OLT-22-001995
OLT Lead Case No:	OLT-22-001995
OLT Case Name:	NHDG (Waterfront) Inc. V. Hamilton (City)

PROCEEDING COMMENCED UNDER section 41(12) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended.*

Subject	Site Plan
Reference Number:	DA-19-020
Property Address:	310 Frances Avenue
Municipality/UT:	Hamilton/Hamilton
OLT Case No:	OLT-22-003190
OLT Lead Case No:	OLT-22-001995
OLT Case Name:	NHDG (Waterfront) Inc. V. Hamilton (City)

Heard: May 25, 2023 by video hearing

APPEARANCES:

Parties

Counsel

NHDG (Waterfront) Inc.

D. Bronskill

City of Hamilton

P. MacDonald

DECISION DELIVERED BY KURTIS SMITH AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)

INTRODUCTION

[1] This is a Settlement Hearing with respect to minor variance and site plan appeals by New Horizons Development Group (Waterfront) Inc. (“NHDG”) pursuant to s. 45(12) and s. 41(12) of the *Planning Act* (“Act”), for the property municipally known as 310 Frances Avenue (“Subject Property”) in the City of Hamilton (“City”).

[2] The Subject Property is approximately 2.061 hectares, with 58 metres (“m”) of frontage along North Service Road, a frontage of 139 m along Green Road, and a curved frontage of 180 m along Frances Avenue. The site is vacant except for a sales trailer located in the southwest quadrant.

[3] Prior to the commencement of the hearing, Lakewood Beach Community Council informed the Tribunal that they have withdrawn their Party status.

[4] The Settlement Proposal, which was presented at the February 3, 2023 Case Management Conference, was agreed to in principle by the parties to permit the construction of a mixed-used development.

[5] The proposal before the Tribunal amends the variances originally sought and are provided in Attachment 1.

[6] Pursuant to s. 45 (18.1) and (18.1.1) of the Act, the Tribunal has the discretion to allow amendments to a minor variance application without the requirement for further public notice if it is of the opinion that such amendments are minor by virtue of s. 45(18.1) and (18.1.1) of the Act. In this case, the Tribunal finds the amended application to be minor and no further notice is required.

[7] The proposal will develop the Subject Property with three residential towers: standalone Tower A, 34 storeys atop a one floor podium; Tower B, 44 storeys and Tower C, 37 storeys atop of mutual 4-5 storey podium.

[8] The proposal contains 600 square metres of commercial space at grade, 1,390 residential apartment units (at grade and above), and vehicular access from Frances Avenue and Green Road.

LEGISLATIVE TESTS

[9] An appeal to this Tribunal pursuant to s. 45 of the Act is a hearing *de novo* and the onus of establishing that the four tests under s. 45(1) of the Act are met is on the Applicant, NHDG. In addition, in making a decision under the Act with respect to a minor variance, the Tribunal must have regard to matters of provincial interest as set out in s. 2 and to the decision of the approval authority under s. 2.1. The decision must be consistent with the Provincial Policy Statement, 2020 (“PPS”) under s. 3(5) and conform with any provincial plans that are in effect, being A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (“GP”).

[10] Applications for minor variance must satisfy all four tests set out under s. 45(1) of the Act, namely that the requested variances:

- a. maintain the general intent and purpose of the Official Plan,

- b. maintain the general intent and purpose of the Zoning By-law,
- c. are desirable for the appropriate development or use of the land, building or structure; and
- d. are minor in nature.

HEARING

[11] To support the proposal, the sole witness called was Sarah Knoll, a Land Use Planner who, upon review of her Curriculum Vitae and Acknowledgement of Expert's Duty form, was qualified on consent by the Tribunal to provide opinion evidence in land use planning.

[12] Ms. Knoll provided the Tribunal with a detailed overview of the site, surrounding area and the proposed development. Ms. Knoll opined that the minor variances, as amended, meet all the applicable four tests of the Act and the provincial policy tests. The amended application, has regard to matters of provincial interest in s. 2 of the Act, conforms and does not conflict with the GP, is consistent with the PPS and represents good land use planning.

Maintains the General Intent and Purpose of the Official Plan

[13] The Subject Property is designated Neighbourhoods on Schedule E – Urban Structures and designated Neighbourhoods on Schedule E-1 – Urban Land Use Designations in the Urban Hamilton Official Plan (“UHOP”). Ms. Knoll opined that “all of the proposed uses are permitted with the UHOP”. She further explained that the planned function of the site, being mixed-use (commercial and residential) is maintained, meeting the intent and purpose of the UHOP designation.

[14] Ms. Knoll testified that the reduction in landscaping, parking, and lot frontage calculation meet the general intent and purpose of the UHOP. She further opined that the parking proposed is an adequate supply on site and has been supported by the Parking Study prepared by Paradigm Transportation Solutions Ltd.

Maintains the General Intent and Purpose of the Zoning By-law

[15] The Subject Site is zoned a site-specific Mixed Use Commercial MUC-4 zone within the former City of Stoney Creek Zoning By-law 3692-92.

[16] Ms. Knoll opined that the proposed development maintains the general intent and purpose of the ZBL. There is suitable transition between the built form and the townhouses across the street on the north side of Frances Avenue, a required minimum amount commercial space at grade and at grade residential units in a specific location (which will not impose on the commercial area).

[17] The Subject site has ample frontage onto the public road; however, a technical variance is needed as the defined front yard does not meet the zoning requirements.

[18] Ms. Knoll informed the Tribunal that the required amenity area has “never been applied to any built development in the former City of Stoney Creek”. Additionally, she noted that there is sufficient landscape open space and as mentioned above an appropriate ratio of onsite parking.

Desirable and Appropriate

[19] It is the opinion of Ms. Knoll that the proposed development is desirable and appropriate for the lands. She further testified that the “variances will not negatively affect the surrounding neighbourhood”. The site has suitable amenity space for the residential units, and the landscape design will be supported by low impact

development implementation.

Minor in Nature

[20] Finally, it is the opinion of Ms. Knoll that the final test, being minor in nature, is met. The location of the at-grade residential units does not impact the site's ability to provide commercial uses, the reduction of landscape open space is a reduction of 5%, and the parking ratio will not result in over-spill onto off site locations.

SITE PLAN

[21] The Site Plan before the Tribunal is on the basis of the minor variances above. On consent of the City, the Applicant provided the Tribunal with:

- a. Attachment 3 – Conditional site plan approval letter from the City
- b. Attachment 4 – Redline Site Plan
- c. Attachment 5 – Redline Landscaping Plan
- d. Attachment 6 - Redline Elevations

[22] Through the site plan process, all components of such meet the requirements of the ZBL, subject to the amended minor variances, satisfies the requirements of s. 41 of the *Act*, are consistent with the PPS, have had regard to matters of Provincial Interest, conforms to the UHOP, and represent good planning.

FINDINGS

[23] The Tribunal accepts the uncontested planning evidence and opinions of Ms. Knoll and is satisfied that the amended minor variances have regard for matters of provincial interest, are consistent with the PPS, conforms to the Growth Plan and meets all four tests under s. 45(1) of the Act. Furthermore, the Tribunal finds that the proposed site plan is representative of good planning; has appropriate regard for matters of Provincial Interest; is consistent with the PPS; conforms to the Growth Plan, UHOP; and is compliant with the ZBL subject to the aforementioned minor variances.

ORDER

[24] **THE TRIBUNAL ORDERS** that:

- a. the appeal is allowed and the variances to Former City of Stoney Creek Zoning By-law No. 6593 are authorized subject to the conditions set out in Attachment 2 to this Order.
- b. the site plan prepared by Granziani Corazza Architects dated February 10, 2023 is approved subject to the conditions set out in Attachments 3 through 6 to this Order.

“Kurtis Smith”

KURTIS SMITH
MEMBER

Ontario Land Tribunal

Website: www.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

	Minor Variance	Settlement Changes	Final Wording
1.	Accessory and communal areas related to a residential use (which may include; amenity areas, fitness areas, meeting rooms, bike/vehicle parking areas, lobbies and mail areas) shall be permitted on the ground floor level whereas the by-law only permits residential uses to be located above a commercial use.	<p>Provided clarity that apartment dwelling units may be permitted above commercial <u>and/or</u> accessory/communal areas related to the residential use.</p> <p>Permits apartment dwelling units at grade within the four storey portion along Frances Ave, with apartment dwelling units above.</p>	<p>Minor Variance No. 1</p> <p>Notwithstanding section 8.8.2 (h), Apartment Dwelling Units above commercial uses or above accessory and communal areas related to a residential use (which may include amenity areas, fitness areas, meeting rooms, bike/vehicle parking areas, lobbies and mail areas) shall be permitted. Apartment Dwelling Units may also be permitted at grade, within the four storey portion of the building along Frances Avenue.</p>
2.	The amenity area required for each one-bedroom dwelling unit shall be provided at a rate of 8.8m² 9.8m² per unit instead of the minimum required amenity area of 18.0m ² per unit.	<p>Increased amenity number to 17m² for all units.</p> <p>Capped interior amenity area at 1,000m².</p> <p>Added balconies and terraces within the rate.</p>	<p>Minor Variance No. 2</p> <p>Notwithstanding s. 8.8.3 (j) and Part 2 Definitions, 17 square metres of amenity area per dwelling unit shall be required, which may include 1,000 square metres of amenity area internal to the building and balconies / terraces.</p>
3.	The amenity area required for each two-bedroom dwelling unit shall be provided at a rate of 8.8m² 9.8m² per unit instead of the minimum required amenity area of 53.0m² per unit.	Included above	N/A
4.	A minimum of 36% of the lot area shall be comprised of landscaped open space instead of the minimum required 50%.	<p>Increased landscaped open space number to 45%.</p> <p>1.,2.,3. are verbatim from zoning regulation – no change.</p>	<p>Minor Variance No. 3</p> <p>Notwithstanding s. 8.8.3 (l), Landscaped Open Space shall not be less than 45 percent of the lot area within the MUC-4 Zone. A portion shall also constitute the following:</p> <ol style="list-style-type: none"> 1. A landscaped strip having a minimum width of 5 metres shall be provided adjacent to any street. 2. A landscaped strip having a minimum width of at least 9 metres shall be provided adjacent to every portion of any lot line that abuts any zone other than a commercial or industrial zone. 3. A landscaped strip having a minimum width of 1.5 metres shall be provided adjacent to every portion of any lot line that abuts another lot.
5.	A landscape strip being 6.0m wide shall be provided abutting the P5 zone instead of the minimum 9.0m wide landscape strip required to be provided abutting any non-commercial or non industrial zoned lands.	Minor Variance removed pre Hearing.	N/A

	Minor Variance	Settlement Changes	Final Wording
6.	Pedestrian walkways and vehicular driveways shall be permitted within a required landscape strip and landscaped open space and may also include the following: Servicing structures and fixtures, i.e. catch basins, manholes, valve boxes etc., Existing and proposed transformers, Traffic control signs, Light standards and fixtures, Armour stone landscape walls, Site and maintenance accesses and Rain Gardens and Infiltration (clear stone) Galleries.	(Agreed statement of facts confirmed meets 4 Tests.) Added: mechanical intake and exhaust shafts, stairs, wind screens, bicycle parking, bicycle repair facilities.	Minor Variance No. 4 Notwithstanding Part 2 Definitions, pedestrian walkways and vehicular driveways shall be permitted within a required landscaped strip and landscaped open space and may also include but not be limited to the following: servicing structures and fixtures, catch basins, manholes, valve boxes, mechanical intake and exhaust shafts, existing and proposed transformers, traffic control signs, light standards and fixtures, armour stone landscape walls, stairs, site and maintenance accesses, wind screens, rain gardens, bicycle parking, bicycle repair facilities, and infiltration (clear stone) galleries.
7.	Parking for apartment dwelling units shall be provided at a rate of 4.25 1.15 parking spaces per dwelling unit instead of the minimum required 1.5 parking spaces per unit	Modified sliding scale ratio based on phases for residential parking: Min 1.25 for Phase 1 Min 1.1 for remaining phases. Commercial and residential parking may be shared. Added commercial parking rate for all commercial uses.	Minor Variance No. 5 Notwithstanding s. 8.8.3 (n), the following parking spaces shall be required: a. Residential Uses – minimum 1.25 parking spaces per unit for Phase 1, and minimum 1.1 parking spaces per unit for subsequent phases. b. Commercial Uses - i) 0 parking spaces for commercial uses less than 450.0 square metres in gross floor area; and ii) minimum 1 parking space and maximum 2 parking spaces for each 30 square metres of gross floor area which accommodates such use for that portion of a building that is in excess of 450.0 square metres. c. Commercial and residential visitor parking may be shared. d. Each shared commercial and residential visitor parking space shall: i) be maintained for the use of both the commercial and residential visitor parking; ii) have a sign erected and legibly marked that the parking spaces are for the use of both commercial and residential visitor parking; and, iii) be maintained and readily accessible for either use, free and clear of all obstructions. e. Commercial and residential parking shall not require separate points of ingress and egress.
8.	Commercial and residential parking may not be separate with separate points of ingress and egress.	(Agreed statement of facts confirmed meets 4 Tests.) None	Same – Included in Minor Variance No. 4 above.
9.		Added due to Site Plan dedication requirement.	Minor Variance No. 6 Notwithstanding s. 8.8.3 (b), Minimum frontage shall not be less than 20.0 metres.

	Minor Variance	Settlement Changes	Final Wording
Conditions added through Settlement			
1		*Added through settlement because phasing line is indicated on site plan.	The development shall be implemented in phase and a Phasing Plan shall be provided, to the satisfaction of the Director of Planning and Chief Planner.
2		*Added through settlement to ensure no ambiguity with providing commercial with the development.	A minimum overall total of 600 square metres of commercial GFA shall be provided, of which a minimum of 400 square metres of commercial GFA shall be provided in Phase 1 and a minimum of 200 square metres of commercial GFA shall be provided in subsequent phase(s), to the satisfaction of the Director of Planning and Chief Planner.
3		*Added through settlement because phasing line would not provide the minimum apartment dwelling units required in the Zoning -Bylaw	A minimum of 585 apartment dwelling units upon the completion of all phases shall be provided, to the satisfaction of the Director of Planning and Chief Planner.
4		*Added through settlement to ensure TDM measures in place to allow for reduced parking ratio.	A minimum of 1.1 parking spaces per unit for subsequent phases after Phase 1 shall be conditional upon the planned implementation of Transportation Demand Management (TDM) measures as outlined in the document dated March 14, 2023 prepared by Paradigm Transportation Solutions Limited, to the satisfaction of the Director of Planning and Chief Planner.

ATTACHMENT 2

1. Apartment Dwelling Units shall also be permitted above accessory and communal areas related to a residential use (which may include amenity areas, fitness areas, meeting rooms, bike/vehicle parking areas, lobbies and mail areas), and Apartment Dwelling Units, including accessory uses and communal areas, shall also be permitted at grade, with Apartment Dwelling Units above, within the four storey portion of the building along Frances Avenue, notwithstanding that the By-law requires Apartment Dwelling Units to be located above commercial uses.
2. Notwithstanding s. 8.8.3 (j) and Part 2 Definitions, 17 square metres of amenity area per dwelling unit shall be required, which may include 1,000 square metres of amenity area internal to the building and balconies / terraces.
3. Notwithstanding s. 8.8.3 (l), Landscaped Open Space shall not be less than 45 percent of the lot area within the MUC-4 Zone. A portion shall also constitute the following:
 1. A landscaped strip having a minimum width of 5 metres shall be provided adjacent to any street.
 2. A landscaped strip having a minimum width of at least 9 metres shall be provided adjacent to every portion of any lot line that abuts any zone other than a commercial or industrial zone.
 3. A landscaped strip having a minimum width of 1.5 metres shall be provided adjacent to every portion of any lot line that abuts another lot.
4. Notwithstanding any provisions or definitions to the contrary, pedestrian walkways and vehicular driveways shall be permitted within a required landscaped strip and landscaped open space and may also include but not be limited to the following: servicing structures and fixtures, catch basins, manholes, valve boxes, mechanical intake and exhaust shafts, existing and proposed transformers, traffic control signs, light standards and fixtures, armour stone landscape walls, stairs, site and maintenance accesses, wind screens, rain gardens, bicycle parking, bicycle repair facilities, and infiltration (clear stone) galleries.
5. Notwithstanding s. 8.8.3 (n), the following parking spaces shall be required:
 - a. Residential Uses – minimum 1.25 parking spaces per unit for Phase 1, and minimum 1.1 parking spaces per unit for subsequent phases.
 - b. Commercial Uses -
 - i) 0 parking spaces for commercial uses less than 450.0 square metres in gross floor area; and
 - ii) minimum 1 parking space and maximum 2 parking spaces for each 30 square metres of gross floor area which accommodates such use for that portion of a building that is in excess of 450.0 square metres.
 - c. Commercial and residential visitor parking may be shared.
 - d. Each shared commercial and residential visitor parking space shall:
 - i) be maintained for the use of both the commercial and residential visitor parking;
 - ii) have a sign erected and legibly marked that the parking spaces are for the use of both commercial and residential visitor parking; and,
 - iii) be maintained and readily accessible for either use, free and clear of all obstructions.

e. Commercial and residential parking shall not require separate points of ingress and egress.

6. Notwithstanding s. 8.8.3 (b), Minimum frontage shall not be less than 20.0 metres.

Subject to the following conditions:

1. The development shall be implemented in phases and a Phasing Plan shall be provided, to the satisfaction of the Director of Planning and Chief Planner.
2. A minimum overall total of 600 square metres of commercial GFA shall be provided, of which a minimum of 400 square metres of commercial GFA shall be provided in Phase 1 and a minimum of 200 square metres of commercial GFA shall be provided in subsequent phase(s), to the satisfaction of the Director of Planning and Chief Planner.
3. A minimum of 585 apartment dwelling units upon the completion of all phases shall be provided, to the satisfaction of the Director of Planning and Chief Planner.
4. A minimum of 1.1 parking spaces per unit for subsequent phases after Phase 1 shall be conditional upon the planned implementation of Transportation Demand Management (TDM) measures as outlined in the document dated March 14, 2023 prepared by Paradigm Transportation Solutions Limited, to the satisfaction of the Director of Planning and Chief Planner.

ATTACHMENT 3



Hamilton

Planning and Economic Development Department
Heritage and Urban Design
71 Main Street West, 4th Floor, Hamilton ON L8P 4Y5
Phone: 905-546-2424 Fax: 905-546-5611

June 07, 2023

File: DA-19-020

Sarah Knoll
GSP Group Inc.
162 Locke Street South, Suite 200
Hamilton ON, L8P 4A9

Dear Sarah Knoll:

**Re: Concurrent Site Plan / Building Plan Review Process
Site Plan Control Application by NHDG (Waterfront) Inc. for Lands Located
at 310 Frances Avenue, Stoney Creek (Ward 10)**

The above noted Site Plan Application has been considered by the Development Review Team. Your application to develop three multiple dwelling towers with heights of 44, 37, and 34 storeys and a total of 1,390 dwelling units along with 600 sq m of commercial GFA was conditionally approved by the Ontario Land Tribunal on May 25, 2023, subject to an Undertaking pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, c.P.13 being entered into. The conditional approval relates to the attached revised site plan dated February 10, 2023 and the comments received as a result of circulation of the application as well as any changes / modifications or revisions required to the plans to implement its conditions of approval.

The conditional approval has been structured to allow the Applicant to participate in the Concurrent Site Plan / Building Plan Review Process subject to the Applicant entering into the Acknowledgement with the Building Division.

Upon clearance of the Section 2 conditions below, and subject to receiving a clearance letter from Development Planning, the Applicant may submit building plans for Building Plan Review under the Concurrent Site Plan process. Upon clearance of the conditions in Section 2 and Section 3, and subject to receiving a clearance letter from Development Planning, a building permit application may be submitted to the Building Division and, subject to the satisfaction of the Building Division, a building permit may be issued.

The approval requires satisfactory completion of all the following conditions:

1. SITE PLAN

1. (a) To develop and maintain the site in compliance with the Site Plan, dated February 10, 2023 attached hereto and hereinafter referred to as the "Site Plan". Minor changes to the Site Plan or condition(s) shall be permitted only upon written approval from the City's Manager of Heritage and Urban Design.

Site Plan and Underground Parking Plan

1. (b) To develop and maintain the site in compliance with the Site Plan and underground parking plan, attached hereto each of which is dated February 10, 2023 and hereinafter collectively referred to as the "Site Plan". Minor changes to the Site Plan or conditions shall be permitted only upon written approval from the City's Manager of Heritage and Urban Design.

Approval Limitation

1. (c) That in the event there has been no submissions made to clear conditions for a period of two (2) years this approval shall be considered inactive. To reactivate this approval a notice to the Manager of Heritage and Urban Design shall be provided with a description of any changes to the proposed development and payment of a second Site Plan Control Full Application Clearing of Conditions Fee (fee determined based on fee schedule in effect at the time of reactivation). The applicant is responsible to monitor when submissions have been made to ensure that the application remains active.

Ground Cover to Prevent Soil Erosion

1. (d) Where the construction or demolition of a building, or buildings, or site development works are, in the opinion of the City's Director of the Building Division, substantially suspended or discontinued for more than 45 days the Owner shall forthwith provide suitable ground cover to prevent soil erosion by wind, rain and snow for the protection of adjoining lands to the satisfaction of the said Director.

Garbage Collection

1. (e) The Owner acknowledges that garbage collection for the proposed development shall be in accordance with the applicable Municipal By-Law.

Phasing

1. (f) That the proposed development may be implemented in phases. Where conditions are required to be completed prior to building permit or occupancy, or within one year of occupancy, such timing shall relate to all site works within the boundary of the particular phase with specific details and extent of each phase to be approved by the City's Manager of Heritage and Urban Design.

2. PRIOR TO THE SUBMISSION FOR BUILDING PLAN REVIEW

Erosion and Siltation Control

2. (a) To show all erosion and siltation control features in detail on a Grading and Drainage Control Plan hereinafter described in Section 3(b); to the satisfaction

of the City's Manager of Development Engineering Approvals and the Hamilton Conservation Authority and to implement all such erosion and siltation control measures. The Owner further agrees to maintain all such measures to the satisfaction of the City's Manager of Development Engineering Approvals until the site has been fully developed as determined by the City's Manager of Heritage and Urban Design.

Tree Management

2. (b) To prepare a Tree Preservation/Enhancement Plan as part of the required Landscape Plan hereinafter described in Section 3(e), showing the location of drip lines, edges and existing plantings, the location of all existing trees and the method to be employed in retaining trees required to be protected; to obtain approval thereof from the City's Manager of Heritage and Urban Design; and to implement all approved tree savings measures. Prior to the implementation of the Plan or any site alteration, the applicant shall provide the associated securities and a Verification of Tree Protection Letter, prepared by a qualified professional and approved to the satisfaction of the Director of Planning and Chief Planner.

Fill Permits

2. (c) To obtain a permit from the Hamilton Conservation Authority, pursuant to the Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses Regulation under Ontario Regulation 97/04.

Building Elevations

2. (d) To submit a digital copy of final building elevations to the satisfaction of the City's Manager of Heritage and Urban Design. Minor changes to the Building Elevations or condition(s) shall be permitted only upon written approval from the City's Manager of Heritage and Urban Design.

Foundation Support & Construction

2. (e) To submit a set of Shoring Plans prepared by a Licensed Professional Engineer showing the proposed shoring design and location of any existing municipal services and utilities within the municipal right-of-way as well as any existing adjacent privately-owned utilities, services and structures, all to the satisfaction of the City's Manager of Development Engineering Approvals.

Interior Garbage Storage/Outdoor Garbage Containers

2. (f) To show the following on the required Site Plan:
 - i) The location of any vaults, central storage and collection areas, or other facilities for the storage of garbage and recyclable material, including those which may be internal to a proposed or existing building; or

- ii) The location of any outdoor garbage and recycling containers and details for a supporting concrete pad and, if required by the City's Manager of Heritage and Urban Design, a roofed enclosure having a height sufficient to conceal the containers.

Cost Estimate and Letter of Credit

- 2. (g) i) To provide cost estimates for 100% of the total cost of all exterior on-site works to be done by the Owner. Such cost estimates shall be in a form satisfactory to the City's Manager of Heritage and Urban Design; or be prepared in accordance with the Guides for estimating security requirements for landscaping and engineering.
- ii) Calculate the lump sum payment for exterior works using the City's Letter of Credit Policy or Surety Bond Policy to the satisfaction of the City's Manager of Heritage and Urban Design.
- iii) To provide an irrevocable Letter of Credit or Surety Bond to the City's Manager of Heritage and Urban Design for 75% of the total cost of all on-site development works in a form satisfactory to Finance (Development Officer, Budget, Taxation and Policy) to be held by the City as security for the completion of the on-site development works required in this Agreement.

Alternatively, the owner may choose to provide a lump sum payment for on-site works in accordance with 2. (g) ii). above.
- iv) The Letter of Credit or Surety Bond shall be kept in force until the completion of the required site development works in conformity with the approved design and requirements, securities may be reduced in accordance with the City's Letter of Credit Policy or Surety Bond Policy. If the Letter of Credit or Surety Bond is about to expire without renewal thereof and the works have not been completed in conformity with their approved designs, the City may draw all of the funds so secured and hold them as security to guarantee completion unless the City Solicitor is provided with a renewal of the Letter of Credit or Surety Bond forthwith.
- v) In the event that the Owner fails to complete, to the satisfaction of the City's Manager of Heritage and Urban Design, the required site development works in conformity with its approved design within the time required, then it is agreed by the Owner that the City, its employees, agents or contractors may, at the City's sole option and in addition to any other remedies that the City may have, enter on the lands and so complete the required site development works to the extent of monies received under the Letter of Credit or Surety Bond. The cost of completion of such works shall be deducted from the monies obtained from the Letter of Credit or Surety Bond. In the event that there is a surplus, the City shall pay it forthwith to the Owner. In the event that there are required site development works remaining to be completed, the City may exercise its authority under (Section 446 of the Municipal Act)

to have such works completed and to recover the expense incurred in doing so in like manner as municipal taxes.

3. PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS

3. (a) Satisfy all pre-grading conditions set out in Section 2 above.

Grading and Drainage Control

3. (b) i) To prepare a detailed Grading and Drainage Control Plan showing drainage details for the subject property, abutting properties and public rights-of-way so as to ensure compatible drainage, and to show thereon all existing and proposed connections to the municipal storm sewer to provide for that drainage i.e. catch basins/leads etc. to the satisfaction of the City's Manager of Development Engineering Approvals and the Hamilton Conservation Authority.
- ii) To pay a fee (current rate at time of payment) for the final inspection all aboveground features, such as but not limited to, landscaping, drainage, roads, driveways, noise barriers/fencing, lighting, etc., to the satisfaction of the City's Manager of Development Engineering Approvals.

Storm Water Management Design

3. (c) To submit to the satisfaction of the City's Manager of Development Engineering Approvals and the Hamilton Conservation Authority a detailed engineering design for storm water management or to receive from the said Manager an exemption from this requirement.

Landscape Plan

3. (e) To prepare a Landscape Plan showing planting and surfacing details for all areas not covered by buildings, structures, loading areas or parking areas; and to obtain approval thereof from the City's Manager of Heritage and Urban Design.

Fencing/Visual Barriers

3. (f) To obtain approval of the details of all fencing and visual barriers as indicated on the Site Plan, from the City's Manager of Heritage and Urban Design, as part of the approval of the Landscape Plan.

Boulevard Sodding

3. (g) To show on the required Landscape Plan, planting and surfacing details for the portion of all adjacent public property located between the sidewalks, curbs or streets and the Owner's property line so as to ensure a contiguous landscaped area between the public streets and the Owner's proposed development to the satisfaction of the City's Manager of Heritage and Urban Design.

Treatment of Future Development Areas

3. (h) To make provision on the required Landscape Plan for the surface treatment of areas intended for future development so as to prevent the occurrence of noxious weeds and erosion to the satisfaction of the City's Manager of Heritage and Urban Design.

Site Lighting-Design

3. (i) To prepare a Site Lighting Plan, including lighting for any underground parking facilities, and to submit said plan with a signed certification from an Electrical Engineer stating that said plan complies with Section 3.9 "Lighting" of the City of Hamilton Site Plan Guidelines to the satisfaction of the City's Manager of Heritage and Urban Design.

Multiple Unit Identification Sign

3. (j) To prepare a concept plan for a multiple unit identification sign for emergency access or for a multiple unit development that shows unit numbers and to obtain approval thereof from the City's Manager of Legislative Approvals/Staging of Development.

Site Servicing Plan

3. (k)
 - i) To submit to the City's Manager of Development Engineering Approvals a satisfactory Site Servicing Plan and pay the applicable drawing review fee based on the approved User Fees Schedule for the year that the Servicing Plans are submitted for review.
 - ii) To pay for and obtain the required Site Servicing Permits, the cost of which will be calculated based on the approved servicing design.

Ministry of Transportation

3. (m) To obtain a Building/Land Use Permit from the Ministry of Transportation.

Cash-in-Lieu of Parkland

3. (n) To pay to the City of Hamilton Park Trust Fund Account the required cash-in-lieu of parkland contribution based on the value of the lands the day before the issuance of a Building Permit.

Development Charges

3. (o) To pay to the City of Hamilton all applicable Development Charges in accordance with the Development Charges By-law, as amended, to the satisfaction of the City's Director of the Building Division.

Site Plan Drawing

3. (p) To submit a digital copy of the final site plan drawing to the satisfaction of the City's Manager of Heritage and Urban Design.

Taxes

3. (q) To submit proof from the Taxation Division that the Municipal Taxes are current on the subject lands to the satisfaction of the City's Manager of Heritage and Urban Design.

Tariff of Fees

3. (r) To pay to the City of Hamilton the applicable additional charges as per the Tariff of Fees By-law for the proposed development type as follows:
- i) Residential (including institutional) – current rate at time of payment for the first 10 units and current rate at time of payment for units 11 to a maximum of 50 units to the satisfaction of the City's Manager of Heritage and Urban Design.
 - ii) Industrial – current rate at time of payment per m² of new gross floor area to a maximum of 5,000m² to the satisfaction of the City's Manager of Heritage and Urban Design.
 - iii) Commercial – current rate at time of payment per m² of new gross floor area to a maximum of 50,000m² to the satisfaction of the City's Manager of Heritage and Urban Design.

Wastewater Assessment

3. (s) To submit a wastewater generation assessment using Part 8 of the latest edition of the Code and Guide for Sewage Systems to establish an updated equivalent population density, to the satisfaction of the City of Hamilton Public Works Department.

Water Service Assessment

3. (t) To submit a water service assessment which tabularizes the expected occupancy and provides a water demand estimation and needed fire flow calculation based on City of Hamilton Policy PW19096, to the satisfaction of the City Public Works Department.

4. PRIOR TO OCCUPANCY

Prior to occupancy of the proposed development the Owner agrees to fulfill each of the conditions which follow:

Driveway Closure

4. (a) To complete the closure of all redundant driveways to the City's or Ministry of Transportation's standards.

Driveway Installation

4. (b) To install, at the Owner's cost and to the City's or Ministry of Transportation's standards, new driveway ramps at grade with the (existing, proposed or future) sidewalk. That the Owner must apply for and receive an Access Permit from the Public Works Department or the Ministry of Transportation.

Relocation of Municipal and/or Public Utilities

4. (c) That the relocation of any Municipal and/or Public Utilities, such as but not limited to, street furniture, transit shelters, signs, hydrants, utility poles, transformers, communication pedestals, wires or lines, required due to the location of buildings, structures, walkways, boulevards, driveways, curbing or parking, be arranged and carried out at the Owner's cost, to the satisfaction of the appropriate City Department or Public Utilities.

Emergency/Fire Routes

4. (d) That any required "Emergency/Fire Routes" shall be established by the City's Director of the Building Division and that such signage shall be installed at the Owner's cost and to the satisfaction of the City's Director of the Building Division.

Traffic Control Signs

4. (e) To install, at the Owner's cost, all required traffic signs, including directional, visitor parking and barrier-free parking signs, to the satisfaction of the City's Senior Project Manager, Corridor Management, Public Works.

Multiple Unit Identification

4. (f) To erect the multiple unit identification sign in accordance with the approved concept plan to the satisfaction of the City's Manager of Legislative Approvals/Staging of Development.

Fire Hydrant

4. (g) To install at the Owner's cost, any fire hydrant required by the Ontario Building Code as directed by the City's Director of the Building Division.

Site Servicing

4. (h) To complete site servicing to the satisfaction of the City's Manager of Development Engineering Approvals.

5. WITHIN ONE YEAR OF OCCUPANCY (PRIOR TO RELEASE OF CREDIT)

Grading and Drainage Completion

5. (a) To complete the site grading and drainage scheme in accordance with the Grading and Drainage Control Plan approval.

Storm Water Management Implementation

5. (b) To complete any storm water management scheme and all related drainage control facilities in accordance with the approval Plan.

Tree Management

5. (c) To complete the tree management requirements for the lands in accordance with the approved Tree Preservation/Enhancement Plan.

Landscape Completion

5. (d) To complete the landscaping in accordance with the approved Landscape Plan.

Interior Garbage Storage/Outdoor Garbage Container Installation

5. (e) To install or demarcate on-site any vaults, central storage and collection areas, or other facilities for the storage of garbage and recyclable material, in accordance with the approved Landscape Plan.

Fencing/Visual Barriers Installation

5. (f) To install all fencing and visual barriers as indicated on the Site Plan in accordance with the approved Landscape Plan.

Boulevard Sodding

5. (g) To complete, at the Owner's cost, the landscaping on all adjacent public property in accordance with the approved Landscape Plan.

Curb Installation

5. (h) To install 0.15 metre raised curbing in the locations shown on the Site Plan.

Site Lighting Installation

5. (i) To implement the approved Site Lighting Plan.

Paving

5. (j) To pave all areas intended to facilitate on-site vehicular movement, parking and loading, as shown on the Site Plan with hot-mixed asphalt or equivalent and to demarcate the parking on said surface.

Certification of Site Development Works

5. (k) To submit to the City's Director of Growth Management, Site Development Works Certification Forms prepared by the appropriate consultants, certifying that the site development works required under this approval have been completed in accordance with the respective plans prepared by such consultant and accepted by the City.

In addition to the foregoing conditions, the following **special conditions** are also part of this approval:

PRIOR TO THE SUBMISSION FOR BUILDING PLAN REVIEW

1. That the Owner conduct a Stage 2 Archaeological Assessment and submit to the Ministry of Citizenship and Multiculturalism and the City of Hamilton, to the satisfaction of the Manager of Heritage and Urban Design.
2. That the Owner submits a copy of the letter from the Ministry of Citizenship and Multiculturalism confirming the acceptance of Stage 1 Archaeological Assessment (P059-0810-2019), to the satisfaction of the Manager of Heritage and Urban Design.
3. That the Owner submits a list and floor plans to the Legislative Approvals Section, indicating the mailing address unit number of each residential / commercial unit on each floor, to the satisfaction of the Director, Growth Management & Chief Development Engineer.
4. That the Owner finalizes municipal addressing with the Legislative Approvals Section, to the satisfaction of the Director, Growth Management & Chief Development Engineer.
5. That the Owner shall include in the engineering design and cost estimate schedules provisions for the installation of all works associated with a multi-use path or enhanced cycle track facility along the south side of Frances Avenue from Green Road to the existing Waterfront Trail connection. Costs associated with these works maybe funded in part by the City of Hamilton in accordance with the City's Financial Policies, and subject to any Council approval if necessary. The final engineering design shall be completed to the satisfaction and approval of the Manager of Transportation Planning and the Manager of Transportation Operations & Maintenance.

6. That the Owner submit a letter of intent regarding the Transportation Demand Management (TDM) measures as outlined in the document dated March 14, 2023 prepared by Paradigm Transportation Solutions Limited, to the satisfaction and approval of the Manager, Transportation Planning.
7. That the Owner submit a revised parking assessment indicating the potential number of parking stalls that can be provided within the area indicated as 'POSSIBLE PARKING STRUCTURE EXTENSION' in future phase, as well as a conceptual drawing indicating how the extension area will be incorporated in the full-buildout of the site, to the satisfaction and approval of the Manager, Transportation Planning.
8. That the Owner shall include in the engineering design and cost estimate schedules provisions for the installation of all works associated with the required protected intersection at the intersection of Frances Avenue & Green Road. Costs associated with these works maybe funded in part by the City of Hamilton in accordance with the City's Financial Policies, and subject to any Council approval if necessary. The design shall incorporate but is not limited to required street lighting, signage, pavement markings, textured pavement treatments, and concrete works. The final engineering design shall be completed to the satisfaction and approval of the Manager of Transportation Planning and the Manager of Transportation Operations & Maintenance.
9. That the Owner shall include in the engineering design and cost estimate schedules provisions for the installation of all works associated with the lay-by parking area along Frances Avenue. Costs associated with these works maybe funded in part by the City of Hamilton in accordance with the City's Financial Policies, and subject to any Council approval if necessary. The final engineering design shall be completed to the satisfaction and approval of the Manager of Transportation Planning and the Manager of Transportation Operations & Maintenance.
10. That the Owner submits a Turning Plan for each driveway to verify both loading/waste collection vehicles can be adequately serviced by a typical load/waste collection vehicle without conflicts or limitations, to the satisfaction and approval of the Manager of Transportation Planning and the Manager of Transportation Operations & Maintenance.
11. That the Owner submits a set of Shoring Plans prepared by a Licensed Professional Engineer showing the proposed shoring design and location of any existing municipal services and utilities within the municipal right-of-way as well as any existing adjacent privately-owned utilities, services and structures, all to the satisfaction of the Director of Development Engineering.
12. That the Owner enters into with the City of Hamilton, a Shoring Agreement to address construction of the shoring system and further satisfy all requirements of

the City based on the design of the proposed shoring system, to the satisfaction of the Director of Development Engineering.

13. That the Owner submits a comprehensive Construction Management Plan addressing: Construction Details/Management, Traffic Management, and Public Communication, and pay the CMP Review Fee for the current year, to the satisfaction of the Director of Development Engineering.
14. That the Owner dedicates the box culvert lands, comprised of Block G, 62M-101 to the City of Hamilton, to the satisfaction of the Director of Development Engineering.
15. That the Owner dedicates a 6.0m wide easement as identified on the redlined plan, to the satisfaction of the Director of Development Engineering.
16. That the Owner provides a Watermain Hydraulic Analysis, identifying the modelled system pressures at pressure district (PD1) level under various boundary conditions and demand scenarios, and demonstrating that the required domestic and fire flows are available within the appropriate pressure ranges and that the impact of this development on the surrounding pressure district is not adverse, to the satisfaction of the Director of Hamilton Water.
17. That the Owner provides a Geotechnical and/or Hydrogeological Brief conducted by a qualified professional (P.Eng, P.Geo) that discusses soil/groundwater conditions to properly characterize potential dewatering needs, to the satisfaction of the Director of Hamilton Water.

PRIOR TO ISSUANCE OF ANY BUILDING PERMITS

1. That the Owner prepares and implements stewardship initiatives to the satisfaction of the Manager of Development Planning, Heritage and Design.
2. That the Owner submits a report prepared by a Professional Engineer qualified to perform acoustical engineer services in the Province of Ontario that reviews the floor plans and elevations for all units to ensure that glazing constructions and acoustical barriers as recommended have been incorporated, to the satisfaction of the Manager of Heritage and Urban Design.
3. That the Owner \$80,000 to be used for the purpose of installing traffic calming devices along Frances Avenue at the discretion of Transportation Operations & Maintenance staff, to the satisfaction and approval of the Manager, Transportation Planning.

PRIOR TO OCCUPANCY

1. That the Owner submits a letter certified by a Professional Engineer qualified to provide acoustical engineer services in the Province of Ontario that the sound

control measures have been properly installed and constructed, to the satisfaction of the Manager of Heritage and Urban Design.

2. That the Owner provides documentation outlining the implementation of the Transportation Demand Management (TDM) measures outlined in the document dated March 14, 2023 prepared by Paradigm Transportation Solutions Limited, which may include a copy of the Welcome Packet, an agreement with a car share provider for on-site car share services, an agreement to provide preloaded presto passes, and an agreement with a smart commute service to offer residents with a convenient way to share rides or carpool, to the satisfaction and approval of the Manager, Transportation Planning.

If you are agreeable to the conditions of approval, please sign and date in the space provided below and **return a copy to Mark Michniak within 5 days**. Please note that by signing, you are also acknowledging that in the event a building permit for the proposed development has not been issued within one (1) year from the date of conditional site plan approval, the approval shall lapse. Prior to the approval lapsing, a request for an extension for a period up to, but not exceeding a one (1) year period, may be made directly to the Manager of Heritage and Urban Design, with written justification and the required fee. The applicant is responsible for making this request and ensuring the conditional site plan approval does not lapse.

If you have any questions or concerns with the conditions of this Site Plan Approval, please contact Mark Michniak at 905.546.2424 ext. 1224 or by e-mail at Mark.Michniak@hamilton.ca immediately.

Owner's Signature

Date

Once the applicable conditions have been satisfied, a Building Permit may be issued.

Notes:

1. **The City of Hamilton is in the process of creating a new comprehensive Zoning By-law for the entire City. The new Zoning By-law is being prepared in phases by Land Use topic. New zoning may be implemented which could be different than the current zoning. Accordingly, if a Building Permit has not been issued by the City prior to the new zoning coming into effect, the approved site plan may be affected, related to zoning compliance, which may require further planning approvals (i.e. Minor Variance, Zoning Amendment, etc.).**
2. **The above conditions of site plan approval are separate and independent of any review under the Ontario Building Code (OBC) as part of the Building Permit review**

process. In the event that a building permit application does not comply with the OBC, a letter outlining the deficiencies or areas of non-compliance will be issued to the owner and/or agent. Site plan review and building permit review are separate and independent processes.

3. Please note that the Development Charge rates change on July 5, 2023.

KC:mm

Attachment(s)

cc:

Councillor Jeff Beattie, Ward 10

S. Robichaud, Director of Planning and Chief Planner

A. Fabac, Manager, Development Planning

T. Vrooman Area Planning Manager, Development Planning

Attn: Mark Michniak

J. Beckett, Manager, Building Engineering

B. Korah, Director, Development Engineering

Zivko Panovski, Senior Project Manager, Development Engineering

Attn: Sandra Al-Dabbagh

Hamilton Conservation Authority,

Attn: Mike Stone

H. Travis, Manager, Legislative Approvals/Staging of
Development

A. Amir, Planning Technician II, Growth Planning

P. MacDonald, Solicitor, Legal Services

GIS Planning & Analysis

Development Officer, Budgets & Finance

Hamilton Water Approvals, Water & Wastewater Systems Planning

Transportation Planning

E. Coe, Supervisor of Zoning

M. Viveiros, Development Application Intake Coordinator

NHDG (Waterfront) Inc.

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