

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** January 17, 2019

**CASE NO(S):** PL160066

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Greg Lawson
Appellant:	Justin Lewis
Appellant:	Peggy Lewis
Appellant:	D. Scott Munro; and others
Subject:	Proposed Official Plan Amendment No. 43
Municipality:	City of Hamilton
OMB Case No.:	PL160066
OMB File No.:	PL160066
OMB Case Name:	Lawson v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Greg Lawson
Appellant:	Justin Lewis
Appellant:	Peggy Lewis
Appellant:	D. Scott Munro; and others
Subject:	By-law No. 15-299
Municipality:	City of Hamilton
OMB Case No.:	PL160066
OMB File No.:	PL160067

**Heard:** April 3-7 and December 4-8, 2017 in Hamilton, Ontario

**APPEARANCES:**

<b><u>Parties</u></b>	<b><u>Counsel*/Representative</u></b>
Centurian (Dundas) Holdings Ltd.	S. Snider*, A. Toumanians*
City of Hamilton	S. Snider*, A. Toumanians*
D. Scott Munro and Greg Lawson	M. Connell*, replaced by Jeanne Norris
Justin Lewis	Self-represented
Art Samson	Self-represented
Peggy Lewis	Self-represented

**DECISION DELIVERED BY STEFAN KRZECZUNOWICZ AND ORDER OF THE TRIBUNAL**


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**INTRODUCTION**

[1] This was a hearing into several appeals of amendments to the Hamilton Official Plan (“OPA 43”) and Hamilton Zoning By-Law 15-299 (the “ZBLA”). The amendments would permit a nine storey multiple dwelling to be constructed at a site located at 17 Main Street and 10 Baldwin Street, in the community of Dundas, in the City of Hamilton (“the site”). The amendments were approved by the City of Hamilton (the “City”) on December 9, 2015.

[2] The developer is Centurian (Dundas) Holdings Ltd. (“Centurian”). The Appellants - D. Scott Munro, Greg Lawson, Justin Lewis, Art Samson, and Peggy Lewis - are residents of Dundas. Mr. Lewis, Mr. Samson, and Ms. Lewis testified at the hearing.

[3] The Tribunal heard evidence from numerous experts: land use planners Gerry Tchisler, Allan Ramsay, and Brenda Khes; transportation planners Richard Penicky and William O’Brien; and urban designers Khaldoon Ahmad and David Premi.

[4] David Horwood, who manages the Centurian development on behalf of Effort Trust Company, also testified.

[5] Jeanne Norris gave evidence as a Participant.

## **The Redevelopment Proposal**

[6] Dundas is a historic community and former town that merged with other municipalities to form the City of Hamilton in 2001. The site is located about 200 metres away from King Street, the main commercial street in the Dundas downtown. In the community context, King Street is a relatively dense, busy, main street lined with mixed use buildings ranging from one to two storeys to six storeys high. Retail uses predominate at ground level.

[7] The site is connected to King Street by Main Street, an arterial road that links Dundas with the western part of Hamilton. Main Street is an eclectic streetscape, with a variety of land uses, architectural forms, and building types. The site itself comprises two lots: the larger fronts Main Street and is currently vacant; the smaller fronts Baldwin Street and contains a single detached dwelling.

[8] The site adjoins a seven storey apartment building to the south (“75 Main Street”) and a two storey building to the north (“63 Main Street”). The 63 Main Street building houses several small scale commercial and institutional uses and has a one storey addition which abuts the site. Though not designated a heritage building, the 63 Main Street building is listed on the City’s inventory of buildings of architectural and/or historical interest.

[9] A small, self-contained residential area extends eastward of the rear of the site along Baldwin Street and Governors Road. This area contains, for the most part, one and two storey single and semi-detached homes. An alleyway between the rear yards of homes in this area extends along the site’s southern boundary.

[10] The Dundas Municipal Centre, a tall two storey building that used to serve as the Dundas town hall, lies opposite the site across Main Street. This building is a designated heritage building.

[11] Centurian proposes to merge the two lots on the site and construct a nine storey building with 64 apartment units fronting Main Street. The building would have a modified three storey podium and tower design, including intricate articulations and

stepbacks, particularly at the rear. There would be 64 parking spaces on two floors - the ground floor and an underground floor - and at the rear of building. The dwelling and adjoining alleyway currently on the Baldwin Street property would be retained under the proposal.

### **The Proposed Amendments**

[12] OPA 43 would permit the proposed building to a maximum height of 29.1 metres and a minimum parking standard of one space per dwelling unit on the site. It would also remove the site entirely from a UD-5 Special Policy Area that applies to the Baldwin Street lot (Exhibit 2, Tab 2, pp.69-71).

[13] The site is split zoned under the old Dundas Zoning By-Law No. 3581-86: the larger part fronting Main Street is zoned Central Area Commercial Modified; the smaller part fronting Baldwin Street is zoned Low Density Residential. The amending zoning by-law (see Exhibit 2, Tab 2, pp.74-82) would divide the site into:

- a. Block 1, which would be rezoned to Medium to High Density Multiple Dwelling to accommodate the apartment building. The by-law would confirm the building height and parking standards of OPA 43 and would impose additional site specific requirements for, among other things, building setbacks, density, and landscaping.
- b. Block 2, to the rear of the site, which would also be rezoned to Medium to High Density Multiple Dwelling.
- c. Block 3, fronting Baldwin Street, which would remain Low Density Residential. Provisions in the by-law would effectively freeze development on this block so that the single detached dwelling remains in perpetuity and all existing non-conforming uses would conform to the by-law.

[14] The amending by-law would also remove the entire site from the UD-5 Special Policy Area. A holding provision is included in the by-law and may only be removed when four conditions - which address title, access, traffic, and external works issues - are met.

## **Core Issues**

[15] A Procedural Order of the Tribunal, prepared in advance of the hearing, identified numerous points of difference between the parties. However, the Tribunal's view is that these differences can be distilled into two core, and interrelated, issues:

- a. First, is the level of intensification proposed for the site appropriate?
- b. Second, is the use, form and design of the development compatible with the existing physical character of the area?

## **LEGISLATIVE TESTS**

[16] In considering OPA 43 and the ZBLA, the Tribunal must determine whether the applications have sufficient regard to the Provincial interests listed in section 2 of the *Planning Act* (the "Act"), whether they are consistent with the Provincial Policy Statement 2014 ("PPS") and conform to the Growth Plan for the Greater Golden Horseshoe 2017 ("Growth Plan") and, in the case of the ZBLA, whether it conforms to the Urban Hamilton Official Plan ("UHOP").

[17] The Tribunal must also have regard to the decisions of City Council on the applications and the information the Council had when making its decisions. In this respect, a detailed record of the application process, including the applications themselves and their voluminous supporting documents, were entered into evidence. All were carefully reviewed by the Tribunal.

## **DECISION AND ANALYSIS**

[18] The Tribunal finds that the proposed development represents appropriate intensification in the community context. Moreover, the proposed use, form, and design of the development respects the existing physical character of the surrounding area, particularly the residential area to the rear of the property. Reasons for this finding are set out below.

## Policy Context

[19] The PPS and Growth Plan are replete with policies that encourage efficient development by way of intensification. In these documents, intensification is particularly encouraged in areas that have already been settled, where existing municipal infrastructure and services, particularly transit services, are available. As such, there was universal agreement among the planning experts that the site is suitable for intensification under the Provincial planning policy framework. A key question in this appeal is whether the proposed development is *too* intense for this location.

[20] The UHOP is the key implementing document for the PPS and Growth Plan intensification policies. Under the UHOP, residential intensification is an important part of Hamilton's growth strategy and is to be focussed in nodes and corridors throughout the City. In these areas "greater changes in built form can be expected to occur" particularly in the form of higher density housing.

[21] Urban design policies in the UHOP recognize that future growth in the City will be transformative in nodes and corridors: "a departure from the existing character of some of these areas". That said, the UHOP also requires that new development respect the existing built form character in some of these areas. Thus the plan includes, for example, a policy to ensure that the effects of shadowing and overview of new development are minimized on adjacent neighbourhoods through a gradation in building heights. All told, the urban design policies seek to strike a delicate balance between development that incorporates denser, high quality buildings and more vibrant streetscapes than what currently exists while at the same time reinforcing the existing physical character of older communities like Dundas.

[22] In this last respect, the UHOP also contains policies that emphasize the need for new development to be contextually appropriate in relation to the city's cultural heritage.

[23] The site has a Mixed Use Medium Density land use designation under the UHOP and falls within a designated Downtown Dundas Community Node. A small portion of the site, covering part of the alleyway to the south, falls within a UD-3 Special Policy Area. Another portion of the site, roughly covering the 10 Baldwin Street property to the

rear, falls within a UD-5 Special Policy Area. Briefly:

- a. The Downtown Dundas Community Node, roughly equivalent to the downtown of the old town of Dundas, is intended to accommodate a range of land uses - including a range of housing opportunities as well as community scale retail stores and services - in close proximity to one another and to transit. Development in the node is generally planned to achieve 100 persons and jobs per hectare. Moreover, multi-storey, mixed use buildings with retail and commercial services at grade are encouraged. It is noted that the City has not, as yet, implemented a secondary plan for the Community Node.
- b. The Mixed Use Medium Density land use designation is a key element of the Downtown Dundas Community Node. The overall intent of the designation is to facilitate mixed use development at a moderate scale. Buildings with commercial uses at grade are promoted, although mid-rise, single-use buildings such the one proposed by Centurian are permitted. Building heights are, however, limited to six storeys; or eight storeys provided there are no demonstrable adverse shadow impacts created on residential uses in adjacent designated Neighbourhoods and buildings are appropriately stepped back from such Neighbourhoods as well as the street. UHOP policy 4.6.8 b) states that “the Zoning by-law may include an angular plane requirement to set out an appropriate transition and stepping back of heights”.
- c. Under the UHOP, the design of new development within Mixed Use Medium Density designation is to have a strong pedestrian focus. The urban design policies also reinforce the need for mixed use development and for building heights and densities to be stepped back from adjacent neighbourhoods to minimize shadow and overview impacts.
- d. The UD-5 Special Policy Area seeks to preserve the low-rise residential form and scale that exists to the rear of the site.

- e. The UD-3 Special Policy Area, which covers only a sliver of the south part of the site, addresses the local floodplain.

### **The Appellants' Concerns**

[24] The Appellants' land use planning case was articulated chiefly by Messrs. Ramsay, Ahmad, and Lewis, as well as Ms. Norris. Mr. Ramsay's view was that the Centurian proposal falls short of achieving the UHOP policies for several reasons. First, at roughly 700 persons per hectare, the development would be overly dense both in the context of what currently exists in the community as well as with reference to the density target for the Community Node. His analysis of existing densities led him to conclude that this would be the densest development in the Dundas downtown (see his table at paragraph 96 of his witness statement). Second, the building would be too tall - in fact the tallest building in the Dundas Mixed Use Medium Density designation and taller than any building along King Street. Third, the development represents a single use (residential) rather than a mixed use of the site, which is preferred by the UHOP.

[25] Mr. Ramsay testified that the proposal does not respect the residential areas to the rear of the site that are protected by the UD-5 Special Policy Area. In his view, it would unjustifiably shrink the UD-5 area. As well, notwithstanding the shadow studies completed for Centurian, the proposed building articulations and gradations would not sufficiently minimize shadowing or overview impacts and they would not achieve a 45 degree angular plane, the accepted minimum standard for building step-back design. Moreover, with parking access and surface parking at the rear of the building, vehicular traffic would be too close to the rear yards along the Baldwin Street homes.

[26] With respect to other elements of the proposed design, Messrs. Ramsay and Ahmad were of the view that the massing and scale of the building would not respect the Dundas Municipal Centre across the road as well as the 63 Main Street property, which Mr. Ramsay suggested was a building worthy of heritage designation. They suggested that the relatively small balconies proposed for the Centurian building, coupled with the proposed landscaping around the building (10% of the site area), were insufficient outdoor amenity space for residents. They stated that the lack of commercial



uses at grade, and the design of the front of the building, would not contribute to a pedestrian-friendly streetscape as contemplated by the UHOP. Moreover, they were of the view that front facade setback would be too close to the street; closer than the adjacent buildings and unappealing from the pedestrian perspective.

[27] Mr. Ahmad also highlighted UHOP policies that require that building gradation respect adjacent neighbourhoods. His view was that, in the context of these policies, the building was too tall in relation to its immediate neighbours: more specifically the seven storey building at 75 Main Street and the two storey building at 63 Main Street.

[28] Finally, Mr. Ramsay noted that the height, density, setbacks, and landscaping standards in the ZBLA are markedly reduced from existing zoning standards. This was evidence, in his view, of a development that was pushing the permitted zoning envelope too far.

[29] For the above reasons Mr. Ramsay was also of the opinion that the Centurian proposal was inconsistent with the PPS and did not conform to the Growth Plan.

[30] Messrs. Ramsay and Ahmad's concerns were echoed, to varying degrees, by Mr. Lewis, Mr. Samson, Ms. Lewis, and Ms. Norris.

[31] Mr. Lewis raised additional concerns about the impact of the development on air quality and the integrity of the floodplain in the broader valley community, light, noise, snow accumulation, and wind shearing in the residential area to the rear of the site, groundwater pollution both on and off site, local traffic congestion and public parking, and the protection of archaeological heritage.

[32] Mr. Lewis, Ms. Lewis, Mr. Samson, and Ms. Norris were collectively critical of the public process leading up to City Council's approval of the amendments.

Fundamentally, the objected to a process that would tailor planning policies and zoning to a specific development rather than the other way round. As Ms. Norris stated:

[The OPA and ZBLA] were written for this specific development on this specific lot. In this case, instead of an architect and developer designing an appropriate building for this lot with its unique situation and characteristics, they are asking the City to tailor the lot to fit this building. Again, this is not good planning.

### **Analysis of Appellants' Concerns**

[33] How much intensification on this site is too much? That is one crux of this appeal. On the one hand the City and Centurian argued that the site is eminently suitable for intensifying an area which the City has identified as a Community Node - that is an area for implementing Provincial policies that encourage intensification. Both posited that certain exemptions from the UHOP policies for Mixed Use Medium Density designated lands, as well as associated zoning standards, are required to make the proposal viable. They were adamant that the proposed exemptions represent good planning for this site, even if it means relaxing some of the standards the City has established for redevelopment.

[34] The Appellants felt that the relaxed standards that are proposed do not sufficiently offset the negative effects arising from additional shadows, the loss of privacy, new overlook conditions, the streetscape aesthetic, as well as the overall design of the proposal in its immediate physical context. In their view, the relaxed standards have more to do with shoehorning what is too large a building onto too small a site, with scant regard for how the result might look and feel in this area. In their view, the driving force behind the relaxing of standards is to maximise the number of apartments in the building.

[35] The Tribunal recognizes that the Centurian proposal would be a prominent building, certainly in the context of the immediately surrounding properties, but less so in the context of the node. The Tribunal also agrees with the planning experts that this is a good site for intensification.

[36] The Tribunal is not, however, convinced that the proposed development represents an overdevelopment of the site. Mr. Ramsay's analysis of existing building heights and lot densities in Dundas was detailed and thorough. However, his analysis reveals that the Community Node already has a diverse mix of built form and that tall buildings are not uncommon. The node contains several mid-rise and high rise apartment buildings, including the substantial Creeks development and several other tall

buildings, including a 15 storey building, along Governors Road.

[37] Moreover, although the proposed density would be high in the community context the Tribunal is of the view that the UHOP anticipates higher densities when redevelopment takes place on smaller sites. The Tribunal heard no evidence to suggest that the density proposed would jeopardize achieving the UHOP's density target of 100 persons and jobs per hectare for the Community Node. Nor did the Tribunal hear evidence that the UHOP regulates density on individual sites in a manner that would prohibit the Centurian proposal. On the contrary, UHOP policies generally encourage denser built forms in nodes provided they are compatible with their physical surroundings.

[38] As such, in this case the Tribunal finds compatibility to be more determinative of the merits of the proposal than the absolute height of the building and/or density of the site.

[39] In terms of the proposed land use, a key question is whether a mid-rise apartment building must necessarily have ground related commercial uses on this site. The Tribunal's view is that such uses, while desirable, are not required. It is noted that the physical character of Main Street is quite different from King Street. The latter is an overwhelmingly commercial thoroughfare with an animated pedestrian streetscape. By contrast, Main Street is far less pedestrianized and contains a wide range of land uses and building forms, including many residential buildings. It is unlikely to benefit greatly from having what would be relatively isolated small scale retail uses at the Centurian site. Importantly, the absence of commercial uses in the proposed building would still leave residents of the Centurian development with easy access to the plethora of retail activities that King Street, and the commercial plaza at the corner of Main Street and Governor's Road, offer.

[40] The Tribunal cannot agree with Mr. Ramsay's assertion that a single use apartment building is not permitted in Mixed Use Medium Density designated areas. UHOP policies 4.6.5 and 4.6.10 are unequivocal: multiple dwelling uses are permitted; and they are permitted in single use buildings.

[41] The Tribunal appreciates that OPA 43 effectively moves the UD-5 zone boundary slightly to the east so that the protections afforded to the low rise areas at the rear of the site are pushed back from Main Street. This allows for a taller building on Main Street than would otherwise be permissible.

[42] However, with respect to the UD-5 protections, the Tribunal notes that the residential areas to the rear of the site are not designated Neighbourhoods. A measure of flexibility must therefore be afforded when balancing the UD-5 protections against the UHOP's policy imperative to promote intensification along major streets such as Main Street. Moreover, the Tribunal is persuaded that, notwithstanding that the boundary of the UD-5 area has been pushed eastwards, the proposed ZBLA effectively maintains the UD-5 protection on the previous Baldwin Street lot. From the perspective of the casual observer of the Baldwin Street property, the effect of moving the UD-5 boundary will, in the Tribunal's view, be negligible.

[43] The Tribunal finds that the proposed development is not required to achieve an angular plane (of 45 degrees or otherwise) to meet UHOP Policy 4.6.8 b). This policy states that an angular plane requirement *may* be included in a zoning by-law to regulate building step-backs. The Dundas by-law includes no such requirement. In any case, although the proposed development does not meet the 45 degree angular plane requirement, it comes very close.

[44] The Tribunal accepts Mr. Premi's conclusion that the shadow studies he conducted comparing the shadows cast by the proposed building with those cast by a theoretical building permitted "as of right" demonstrate that "adjacent properties, adjacent public spaces and the public sidewalk on one side of the street" receive "a minimum of five hours of sunlight throughout the day measured on March 21<sup>st</sup>" thus meeting the minimum requirements of the City's City-Wide Corridor Planning Principles and Design Guidelines. Mr. Premi's conclusions were not seriously challenged during the hearing and were eventually accepted by Mr. Ramsay.

[45] The Tribunal is satisfied that the impacts from additional light, noise, and wind shearing arising from the proposed building on the residential homes to the east will not

be unduly adverse in the context of a relatively dense, urban area such as this. Moreover, there will be sufficient buffers at the property's rear (the single detached dwelling; the landscaping; the 1.8 metre fence) to sufficiently mitigate these impacts.

[46] The Tribunal finds that the complex step-back design of the building sufficiently minimizes privacy and overlook impacts in all directions. It is noted in this regard that rear yard views of the building from residential areas within the UD-5 zone fall within the 45 degree angular plane. Nevertheless, the Tribunal accepts the proposal by counsel for Centurian and the City that the balconies on the rear face of the proposed building be removed to further reduce overlook impacts.

[47] The Tribunal cannot agree with Mr. Ahmad's conclusion that the height of the proposed building needs to step up/step down from its adjacent buildings in order to satisfy the height gradation policies of the UHOP. These policies speak of new buildings respecting the "existing built form of adjacent neighbourhoods", not adjacent buildings. The Tribunal heard no evidence to show that building heights in Dundas are required to slope evenly up or down along a street in order to achieve this policy. Staggered building heights, provided they are sensitive to existing patterns, are anticipated by the UHOP. In this regard, the Tribunal notes that the site is already located next door to a seven storey building.

[48] The Tribunal was not persuaded that a significant setback and/or step back of the front wall of the building is required to create a pedestrian friendly streetscape as suggested by Messrs. Ahmad and Ramsay. Indeed, several UHOP policies (3.3.3.5.9 for example) suggest that building facades and entrances should be located as close to the street as possible.

[49] The Tribunal finds that the development, by creating small apartment dwellings in the Dundas downtown close to shopping and transit services, contributes to a range and mix of housing that is promoted by the Provincial policy framework and the compact, mixed land use vision for the area contemplated by the UHOP.

[50] The Tribunal is satisfied that Mr. Lewis's concerns about traffic and parking have been adequately studied and addressed. Specifically,

- a. Mr. Pernicky, a transportation planner, conducted a traffic study on behalf of Centurian that analyzed the impact of the proposed development on local traffic congestion, including at the nearest major road intersections as well as the entranceway into the site. His conclusion was that there would be no effective change in congestion patterns in the immediate environs and there was therefore no reason to deny the applications on the basis of traffic concerns.
- b. Transportation planner Mr. O'Brien undertook a parking study on behalf of Centurian. He concluded that the parking supply and utilization near the site, coupled with the nature of the dwellings being proposed, justified the parking ratio of one space per apartment unit (including a provision for visitor parking) proposed under the amending planning instruments.

[51] The Tribunal is satisfied that Mr. Lewis's concerns about the integrity of the floodplain and archeological interests on the site were adequately addressed by the City in its evaluation of the site, including its assessment of the effect of removing the UD-3 Site Specific policies.

[52] The Tribunal heard no compelling technical evidence to suggest that Mr. Lewis's concerns about air pollution would lead the proposal to fall foul of the provisions of s.2 of the Act.

[53] Mr. Ramsay's contention that the building at 63 Main Street was worthy of heritage status and special protective measures was not substantiated by expert evidence.

[54] The Tribunal finds no firm policy basis to deny the proposed development on the basis of the outdoor amenity space proposed for the site. The Tribunal notes, however, that off-site amenities abound in downtown Dundas and are within easy walking distance of the site.

[55] Mr. Ramsay's criticism of the proposed zoning for the site as being substantively different from the existing zoning does not, in the Tribunal's view, fully appreciate that the existing zoning by-law, at more than thirty years' old, predates PPS, Growth Plan,

UHOP, and the amalgamation of the City. The Tribunal is of a similar mind when considering Mr. Lewis's contention that the parking ratio on the site should be 1.25 spaces per unit per the existing by-law. The current planning policy that seeks to shift modes of transportation away from personal vehicles and onto public transit is almost certainly not reflected in 1980s parking standards.

[56] Finally, in reviewing the background reports prepared and released during the planning process, the Tribunal is satisfied that the City undertook appropriate private and public consultation and coordination of public bodies in a manner contemplated by the Act and that City Council had sufficient information available in making its decisions to approve the amendment applications, including information from local residents (among them, many of the Appellants) who opposed the development.

[57] The Tribunal is mindful of the Appellants' concern that reshaping planning policy and zoning to suit site specific needs can be bad planning. However, the Tribunal is of the view that, in this case, the Appellants' position fails to acknowledge that the policies and zoning standards are blunt instruments that are either out of date, as in the case of the Dundas zoning by-law, or inattentive to site specific requirements. Good planning can require that policies and standards be amended where it is appropriate to do so. The legislation and the UHOP recognize this fact and set out processes by which amendments are to be implemented.

[58] In this case, the Tribunal is satisfied that the specific characteristics of this site warrant the nine storey height and adjusted UD-5 protections granted by the amendments. Any future development in Dundas seeking similar amendments will have to demonstrate similar merits. To be clear: by this decision the Tribunal does not intend that nine storeys be the new height standard for buildings in Dundas.

## **CONCLUSION AND ORDER**

[59] In the Dundas context, the Tribunal finds the subject site to be suitable for a dense development, including a nine storey single use apartment building. The UHOP allows for an eight storey building on the site with three conditions that, in the Tribunal's view, are met. As such a nine storey building, provided it meets the same conditions, is

not a materially different prospect provided it “fits” into the existing physical environment including, importantly, the low rise residential character to the rear of the site.

[60] The Tribunal finds that the Centurian development does just that. Though relatively tall and dense for Dundas (but by no means an outlier) it would adjoin another, slightly lower apartment building. It would be located on a major street and within walking distance of the community’s main commercial thoroughfare.

[61] The Tribunal finds that the cumulative land use planning impacts arising from the building on the residential area to the east, while not negligible, are not unacceptably negative and, in the UHOP context, are planned for. The site plan and building design appropriately mitigate these impacts on the residential area, as well as on the cultural heritage of the neighbourhood and the streetscapes of Main Street and Baldwin Street.

[62] As such, the Tribunal finds that the ZBLA conforms to the UHOP. Moreover, the ZBLA and OPA 43 uphold the Provincial interest set out in s. 2 of the Act and in the PPS and Growth Plan.

[63] The Tribunal therefore orders that the appeal of OPA 43 is dismissed.

[64] The Tribunal orders that the appeal of the ZBLA be allowed in part and approves the amending by-law as set out in Exhibit 11 with one modification:

to include provision(s) so as to ensure that the eight balconies on the rear (east) face of the building are removed.

[65] Should any difficulties arise in implementing these orders the Tribunal may be spoken to.

*“Stefan Krzeczunowicz”*

STEFAN KRZECZUNOWICZ  
MEMBER



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**Local Planning Appeal Tribunal**

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Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248