

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 10, 2022

CASE NO(S):

PL180302

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

Applicant and Appellant: Knightstone Capital Management II Inc.
Subject: Application to amend Zoning By-law No. 05-200 - Refusal or neglect of City of Hamilton to make a decision

Existing Zoning: Downtown Multiple Residential (TOC1, H63)
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit the institutional student resident development

Property Address/Description: 1190 Main Street West et al
Municipality: City of Hamilton
Municipality File No.: ZAC-17-065
OLT Case No.: PL180302
OLT File No.: PL180302
OLT Case Name: Knightstone Capital Management II Inc. v. Hamilton

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

Appellant: Concerned Residents of Westdale
Subject: Proposed Official Plan Amendment No.
Municipality: City of Hamilton
OLT Case No.: PL180302
OLT File No.: PL200015
OLT Case Name: Concerned Residents of Westdale v. Hamilton (City)

Heard: December 15, 2021 by telephone conference call

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Knightstone Capital Management II Inc.	Zachary Fleisher David Bronskill
City of Hamilton	John Hart
Concerned Residents of Westdale ("CROW")	Meredith Baker

**MEMORANDUM OF ORAL DECISION DELIVERED BY T.F. NG ON
DECEMBER 15, 2021 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Tribunal is an appeal filed by Knightstone Capital Management II Inc. (the "Applicant/Appellant") against the City of Hamilton (the "City") appealing the City Council's non-decision within the prescribed time of a Zoning by-law Amendment ("ZBA") application to Zoning By-law No. 05-200 ("ZBL") to permit the institutional student residence development on lands municipally known as 1190 Main Street West; 43, 47, 51 and 55 Forsyth Avenue South; 75, 77, 81, 83, 99, 103, 107, 111, and 115 Traymore Avenue; and 50 Dalewood Avenue (Hamilton) (the "subject lands"/"subject site").

[2] The Appellant filed applications to amend the Urban Hamilton Official Plan ("UHOP") and the ZBL to redesignate and rezone the subject site to facilitate the development of a student residence with accessory educational, retail and service commercial uses. In respect of the Official Plan Amendment ("OPA"), it culminated in OPA 127 which was brought into effect on July 16, 2020 when certain appeals were withdrawn and resolved. On August 21, 2020, City Council endorsed the settlement relating to the ZBA.

[3] The Appellant, the McMaster University (owner of the subject lands), the City and CROW have settled the matter through a Minutes of Settlement dated December 3, 2021 (the "Settlement Proposal"). Following the Settlement Proposal, a Zoning By-law Amendment ("draft ZBA") that implements the settlement was presented as Schedule B in the Settlement Proposal to the Tribunal.

[4] David Falletta, the Appellant's planner testified in support of the settlement and the Tribunal qualified him to provide opinion evidence in land use planning matters. His Affidavit dated December 8, 2021 was marked as Exhibit 1 and the Minutes of Settlement was marked as Exhibit 2.

[5] The Tribunal considered the uncontested testimony of Mr. Falletta, the Settlement Proposal, the ZBA and having reviewed the materials filed, allows the appeal in part and withholds final order for the reasons set out below.

PLANNING EVIDENCE

[6] Mr. Falletta testified with regards to the application, took the Tribunal through the relevant policy framework when the initial ZBA was filed: the Provincial Policy Statement ("PPS") 2014; the PPS 2020; the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") 2017; Growth Plan 2019; the UHOP, the Ainslie Wood Westdale Secondary Plan ("AWWSP"); OPA 127 and the ZBL. He opined that the zoning by-law amendment represents good land use planning.

SITE CONTEXT

[7] The subject site is designated Mixed-Use Medium Density on Schedule E-1 Urban Land Use Designation of the UHOP. Under the ZBL, the subject site is dual zoned with the southern half of the block zoned TOC1 H63 (Mixed Use-Holding 63) and the northern half of the block is zoned TOC1 Exception 296, H63 (Mixed use Exp. 296, H63).

[8] The subject lands occupy the entire block bounded by Main Street West, Forsyth Avenue South, Traymore Avenue and Dalewood Avenue and is generally rectangular with an area of 0.79 hectares. The subject site has frontages of 150.7 metres along Main Street West, 170.8 metres along Traymore Avenue, 59.1 metres along Dalewood Avenue, and 47.8 metres along Forsyth Avenue South. The average depth of the site is approximately 53 metres measured from Main Street West to Traymore Avenue.

[9] The subject site is currently a grassed parcel with trees along its edges to the south fronting Main Street West, with 14 single detached houses that cover the remainder of the site. The subject lands are generally surrounded by residential uses of 1 to 3 storey detached dwellings, institutional, recreational and commercial uses.

[10] Topographically, the subject site slopes down approximately 0.5 metres from the Main Street West lot line to the Traymore Avenue lot line along Dalewood Avenue and 1.86 metres from Main Street West downward to Traymore along Forsyth Avenue South.

[11] To the immediate west of the subject site is an above-grade parking structure serving the McMaster Children's Hospital, as well as the McMaster University campus.

[12] The predominant uses along Main Street to the west of the subject site include small-scale retail, restaurants, institutional uses and other similar uses that support the residential and student functions of the area.

THE APPLICATION

[13] The application is for a Zoning By-law Amendment in order to permit the redevelopment of the subject site into a McMaster University student residence facility within two buildings of 15 and 10 storeys that are tiered to the surrounding uses and

include large courtyard spaces as shown on the proposed Site Plan as Exhibit “C” attached to Exhibit 1.

1. The subject site has a gross area of 0.79 hectares, and the following is a summary of the key statistics related to the proposal:
 - a. Institutional Gross Floor Area (“GFA”) – 1,252 square metres
 - b. Accessory Commercial GFA – 211 square metres
 - c. Student Residence GFA – 44,551 square metres
 - d. Total GFA – 53,100 square metres
 - e. Total Student Residence Beds – 1,379
 - f. Total Lodging Units – 556
 - g. Total Grade-Related Dwelling Units (Fronting Traymore Avenue) – 16
 - h. Total Vehicular Parking Spaces – 42 (including 5 barrier-free)
 - i. Bicycle Parking – 352 long and 140 short term spaces

ANALYSIS

[14] The Tribunal agrees with Mr. Falletta that the proposal has regard for the matters of Provincial interest set out in s. 2 of the *Planning Act*. The Tribunal finds that the Settlement Proposal and ZBA have regard in particular to sections 2 (h) the orderly development of safe and healthy communities; (j) the adequate provision of a full range of housing; (p) the appropriate location of growth and development; (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and (r) the promotion of built form that is well-designed and encourages a sense of place.

Provincial Policy Statement, 2020

[15] The Tribunal concurs with Mr. Falletta that the proposal will provide for mixed-use intensification in a compact built form within the built-up urban area; in proximity to

transit and in a form that promotes active transportation and transit. The development will provide housing for students close to the university campus to shorten commute journeys and decrease transportation congestion. The proposal is consistent with the PPS policies that speak to a full range and mix of housing options, since it will provide purpose-built housing for students (policies: 1.1.1, 1.1.3, 1.4.3, 1.6.4, 1.6.5, 1.6.7, 1.7.1, 1.8.1, and 2.6 of the PPS).

[16] The Tribunal finds that the proposed Zoning By-law Amendment application to permit student residence development is consistent with the PPS.

The Growth Plan

[17] In Mr. Falletta's opinion, the Proposal conforms with both the 2017 and 2019 Growth Plan (as amended); required by s. 3(5) of the *Planning Act*, in particular Policies 2.2.1.2, 2.2.1.4, 2.2.4, 3.2.3 of the 2019 Growth Plan.

[18] The Tribunal acknowledges that the proposal conforms to these policies since it will introduce a compact urban form of development on the subject site in a transit-supportive manner within a built-up area, along a priority transit corridor and a strategic growth area. This will help the City achieve its growth and intensification targets. The development will also expand the housing options for students living in the neighbourhood by providing a purpose-built student housing complex that will be operated by McMaster University.

[19] The Tribunal finds that the proposal conforms to the Growth Plan.

[20] In Mr. Falletta's opinion, the proposed ZBA conforms to the policies of the UHOP and AWWSP and will implement the land use and built form policies of OPA 127, which is now in effect.

Findings

[21] The proposed development represents an expansion of the university campus and an appropriate form of intensification in a well-planned and suitable location. Intensification on the subject site is in keeping with the numerous policy directions articulated in the PPS, the Growth Plan, the UHOP and the AWWSP, all of which support intensification on sites within built-up urban areas that are well served by municipal infrastructure, including transit.

Urban Hamilton Official Plan

[22] The subject site is located along a Primary Corridor on Schedule E – Urban Structure of the UHOP. Policy E.2.4.3 states that Urban Corridors shall be the location for a range of higher density land use along the corridor, including mixed-uses where feasible, supported by higher transit on the Primary Corridors. Policy E.2.4.6 states that Urban Corridors shall function as commercial spines providing retail stores and commercial services that cater primarily to weekly and daily needs of residents within the surrounding neighbourhoods.

[23] The proposed development will also contribute to the range and mix of housing types and densities to meet growth targets established in the Growth Plan and UHOP.

[24] The subject site is located in the built-up area, within a Major Transit Station Area along a transit priority corridor (“LRT”), making it a Strategic Growth Area. The Tribunal agrees with Mr. Falletta that the subject site will also contribute to achieving the anticipated ridership levels, both currently and in the future when the anticipated LRT is in place.

[25] The UHOP promotes mixed-use commercial and residential intensification as a key component to the City’s growth strategy, particularly intensification of the existing built-up area of the City (policies 2.4.1.1 and 2.4.1.2). Mixed-use intensification on the

subject site would be located within the built-up area along an intensification corridor (Primary Corridor) and would contribute to the 40% residential intensification target.

[26] The proposed development would take advantage of the wide array of services, restaurants and cultural facilities along Main Street West and within the Ainslie Wood Westdale, as well as the proximity of the subject site to the university, employment opportunities and urban amenities.

[27] The optimization of density on the subject site is consistent with both good planning practice and overarching Provincial and City policy direction, subject to achieving appropriate built form relationships.

Ainslie Wood Westdale Secondary Plan

[28] The AWWSP also supports mixed-use commercial and residential intensification of the subject site as policy 6.2.5.3(b) provides that higher residential densities are directed to major roads through new or redeveloped residential or mixed-use development.

[29] Further, policy 6.2.5.3(e) of the AWWSP provides that additional locations suitable for higher density housing units, including units suitable for student housing, are identified at various locations and densities, to reduce the over-intensification of such housing in some residential areas. The policy further notes that housing forms shall be encouraged for new rental housing and student units with mixed-use commercial/residential and medium-rise apartments along major roads.

Official Plan Amendment 127

[30] OPA 127 establishes land use and built form policies that confirm a vision for the site that achieves an appropriate built form relationship that is compatible with the surrounding context. The proposal conforms to the UHOP and the AWWSP, specifically

the land use and built form policies established for the subject site. The existing buildings and as-of-right zoning permissions represent an underutilization of land and infrastructure, which is inconsistent with the evolving planning framework.

[31] The purpose and effect of OPA 127 was to establish a Site-Specific Policy Area within the Mixed Use – Medium Density designation in the AWWSP to permit the proposed 10 and 15 storeys student residence facility with institutional and accessory commercial uses.

[32] Mr. Falletta opines that the ZBA application will be implementing the Council approved and adopted OPA 127 to permit the proposed development.

Height and Massing

[33] The proposed height, massing and density are based on a number of contextual and urban design considerations, including:

- a. The site's location along Main Street West, a Primary Corridor identified in the UHOP;
- b. Proximity to existing and planned transit services;
- c. The right-of-way width of Main Street West;
- d. Campus built form structure;
- e. Separation distance from, and transition to, properties designated Neighbourhoods (through the stepping of heights); and,
- f. Size and depth of the site.

[34] The proposal includes massing step backs and transition from its midrise form at Main Street West to its low-rise form at Traymore Avenue. The massing responds with an appropriate low-rise built form with grade related residential uses that properly interface with the low-rise single detached dwellings on the north side of Traymore Avenue.

[35] Mr. Falletta's view is that, the height of the proposed building is a contextually appropriate location for a 10 and 15-storey building, given its location along a Primary Corridor with good access to transit. The proposed massing would represent an improvement in the quality of built form on the site, especially along Main Street West. The Tribunal finds that the proposed buildings will create a consistent street wall along Main Street West. The proposed height and built form are appropriate and the proposed ZBA will be implementing the Council approved and adopted OPA 127.

Zoning By-law

[36] The subject site is dual zoned. The subject ZBA application proposes to rezone the subject site to a site-specific Mixed Use Medium Density C5 zone in order to permit the proposed building heights and other site specific performance standards to facilitate the development proposal.

[37] The Tribunal concurs with Mr. Falletta's opinion that the ZBA application conforms to the applicable planning policy framework and would be implementing OPA 127 for the redevelopment of the subject site.

Conclusions

[38] The Tribunal finds that the proposed development within the urban built-up area will promote intensification on the under-utilized subject site which is well served by the municipal infrastructure including public transit. Main Street West is a high order transit corridor, a primary urban corridor and a strategic growth area identified under the Growth Plan. The Tribunal agrees with Mr. Falletta and finds that the Settlement Proposal, represents good planning and urban design and that the proposed ZBA has regard for the matters of Provincial interest set out in s. 2 of the *Planning Act*, is consistent with both the 2014 and 2020 PPS; conforms to the Growth Plan; conforms to

the policies of the UHOP; conforms to the AWWSP and will implement the land use and built form policies of OPA 127.

[39] The introduction of a wider range of uses, including student residences and institutional and commercial uses, together with an enhanced streetscape will contribute to the ongoing revitalization of the Main Street West corridor. The Tribunal finds that the drawings and plans for the proposed development demonstrate that a significant amount of thought and planning details have gone into the proposal. The plethora of supporting plans on erosion and sediment control, and the landscape master plan with vegetative and tree planting details do ensure the subject site landscape is visually compatible to the surroundings. Compatibility with the public realm and streetscape is achieved with the proposal.

[40] From an urban design perspective, the proposal will complement and reinforce the urban structure of mid-rise and tall buildings along Primary Corridors. The Tribunal is impressed with the tiered building design that is purposefully incorporated to maintain compatibility with the existing and planned built context of the area. Sufficient open amenity spaces are provided by the east and west courtyards. The student residences, lodgings and dwellings will be invaluable in increasing the residential supply in this primary corridor, providing the necessary economic impetus of retail and commercial enhancement to the area adjacent to the McMaster University facility.

[41] The proposal will lead to active uses on Main Street West with additional entrances and community interactions. This development is vital for student accommodation for the educational community, where this under-utilized large parcel can be more beneficially developed to attract residential, retail and commercial usages. The Tribunal finds that the proposal is the answer to the ever-increasing need for student housing.

[42] It is without question that architecturally, these twin buildings will be landmarks within the neighbourhood. The appropriate well-designed built form, scale, height and

massing will urbanize this length of Main Street West which present streetscape is otherwise generally underwhelming.

[43] Pursuant to s. 34(26)(b) of the *Planning Act*, the Tribunal may, on an appeal, under s. 34(11), amend the by-law in such manner as the Tribunal may determine. The ZBA consented to by the parties will be attached to the Decision.

ORDER

[44] **The Tribunal Orders** that:

1. the Appeal is allowed in part and Zoning By-law No. 05-200 is hereby amended in the manner set in Attachment 1 to this Order.
2. The Final Order is withheld until the Tribunal is advised in writing that the Parking Agreement has been executed by the parties.
3. The parties shall update the Tribunal in writing on the status of the Parking Agreement on or before January 14, 2022.

“T.F. Ng”

T.F. NG
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.

PL180302 – Attachment 1**CITY OF HAMILTON****BY-LAW NO. _____**

To Amend Zoning By-law No. 05-200, Respecting Lands located at 1190 Main Street West, 43, 47, 51 and 55 Forsyth Avenue South, 75, 77, 81, 83, 99, 103, 107, 111 and 115 Traymore Avenue and 50 Dalewood Avenue (Hamilton)

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

AND WHEREAS the first stage of Zoning By-law No. 05-200 came into force and effect on the 25th day of May, 2005;

AND WHEREAS the Ontario Land Tribunal, in its Decision/Order No. XXX, dated XX day of XXXX 2022, approved the amendment to Zoning By-law No. 05-200 as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan, as amended by Official Plan Amendment No. 127.

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

1. That Map No. 948 of Schedule “A” – Zoning Maps of By-law No. 05-200 is hereby amended by changing the zoning to the Mixed Use - Medium Density (C5, 733) Zone, to the extent and boundaries of which are shown on Schedule “A” annexed hereto and forming part of this By-law.
2. That Schedule “C” Special Exceptions of By-law No. 05-200 is amended by adding an additional exception as follows:

“733. Within the lands Zoned Mixed Use - Medium Density (C5) Zone, and identified on Map No. 948 of Schedule “A” Zoning Maps and described as at 1190 Main Street West, 43, 47, 51 and 55 Forsyth Avenue South, 75, 77, 81, 83, 99, 103, 107, 111 and 115 Traymore Avenue and 50 Dalewood Avenue, the following special provisions shall apply:

- (a) Notwithstanding Section 3, as it relates to Amenity Area and for the purposes of Special Exception 733, roof top amenity areas shall be prohibited.
- (b) Notwithstanding Section 3, as it relates to the definitions of a Lodging House and Lodging Unit for the purposes of Special Exception 733, it shall also include up to 16 accessory Dwelling Units.
- (c) In addition to the definitions in Section 3, the following definition shall apply for the purposes of Special Exception 733:

“Storey” shall mean that the portion of the building or structure, other than a cellar, included between the surface of any floor and the surface of the floor, roof deck, or ridge next above it, except an attic storey.

- (d) Notwithstanding Section 4.6 e), no balcony shall be permitted on any part of a building abutting Traymore Avenue, Forsyth Avenue South, or Dalewood Avenue.
- (e) Notwithstanding Section 5.1 a), as it relates to the parking provision for a Lodging House and permitted accessory uses, the following shall apply:
 - i) A minimum of 43 parking spaces shall be provided on the lot.
 - ii) The greater of 35 parking spaces or 2.5 percent of the required parking shall be provided either on the lot

containing the Lodging House use or on another lot within 300 metres of the lot containing the Lodging House use;

- iii) The remainder of the required parking for a Lodging House may be provided on a lot that is greater than 300 metres from the lot containing the Lodging House use;
- iv) Where the required parking is provided in accordance with Subsection ii) above, the owners of both lots shall enter into an agreement with the City to be registered against the title of both the lot upon which parking is to be provided and the lot containing the use requiring the parking. The lot upon which the parking is located, pursuant to the agreement, shall continue to be so used only for such purposes until alternate parking spaces in conformity with the regulations of this By-law are provided; and,
- v) The permitted accessory uses in (f) i) B) 1. shall not require parking.

(f) Notwithstanding 5.6 c), as it relates to a Lodging House, in addition to Section 5.7 c) and e), the following shall apply:

i)	Parking		1 space per 4.5 beds.
ii)	Bicycle Parking	A)	352 long term bicycle parking spaces shall be provided.
		B)	102 short term bicycle parking spaces shall be provided.
		C)	In addition to B) above, short term bicycle parking spaces are prohibited along any portion of the site with outdoor frontage and access on Traymore Avenue.

- (g) Notwithstanding Section 10.5.1, only the following uses shall be permitted:

i)	Permitted Uses	A)	Lodging House
		B)	1. In addition to A) above, the following uses shall only be permitted as accessory uses to a Lodging House: Educational Establishment; Personal Service; Restaurant; and, Retail.
			2. Notwithstanding 1. above, accessory uses shall have no frontage, no access and no signage on any part of a building abutting Traymore Avenue or Dalewood Avenue.

- (h) In addition to Section 10.5.4 and notwithstanding Section 10.5.4 a) and b), the following special provisions shall apply:

i)	Building Setbacks	Shall be provided in accordance with Figure 21 of Schedule F – Special Figures.	
ii)	Building Height	A)	Maximum building height shall be limited in each Area shown on Figure 21 of Schedule F – Special Figures, by the heights, as shown and as follows:

			Area A1: 7.1 metres or 2 storeys; Area A2: 6.0 metres or 1 storey; Area A3: 10.0 metres or 2 storeys; Area B1: 33.0 metres or 8 storeys; Area B2: 14.0 metres or 3 storeys; Area C1: 39.0 metres or 10 storeys; Area D1: 51.0 metres or 15 storeys.
		B)	Three mechanical penthouses shall only be permitted in accordance with Areas C1, D1, and M on Figure 21 of Schedule "F" – Special Figures, shall be permitted to exceed the heights established in B) above by a maximum of 6.4 metres.
iii)	Maximum Gross Floor Area		53,500 square metres.
iv)	Built Form for New Development	A)	The principal entrance shall be provided from Main Street West and shall consist at least four doors.

3. That Schedule F – Special Figures of Zoning By-law No. 05-200 is amended by adding Figure 21: Maximum Building Heights and Building Setbacks from a Street Line attached to By-law No. 05-200.

4. The by-law is passed and shall come into effect immediately upon the date of decision by the Ontario Land Tribunal.

APPROVED this ____ day of _____, 2022.



<p>This is Schedule "A" to By-law No. 20-</p> <p>Passed the day of, 2020</p>	<p>-----</p> <p style="text-align: center;">Mayor</p> <p>-----</p> <p style="text-align: center;">Clerk</p>
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<h2 style="margin: 0;">Schedule "A"</h2> <p style="margin: 10px 0 0 0;">Map Forming Part of By-law No. 20-_____</p> <p style="margin: 0 0 0 0;">to Amend By-law No. 05-200 Map 948</p>	<p>Subject Property</p> <p>1190 Main Street West, 43, 47, 51 & 55 Forsyth Avenue South, 75, 77, 81, 99, 103, 107, 111 & 115 Traymore Avenue, 50 Dalewood Avenue</p> <p> Change in zoning from Transit Oriented Corridor - Mixed Use - Medium Density (TOC1, H63) Zone; and, Transit Oriented Corridor - Mixed Use - Medium Density (TOC1, 296, H63) to Mixed Use - Medium Density (C5, 733) Zone</p>
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<p>Scale: N.T.S.</p>	<p>File Name/Number: ZAC-17-065</p>	<p>Hamilton</p>
<p>Date: July 27, 2020</p>	<p>Planner/Technician: AD/VS</p>	
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>		

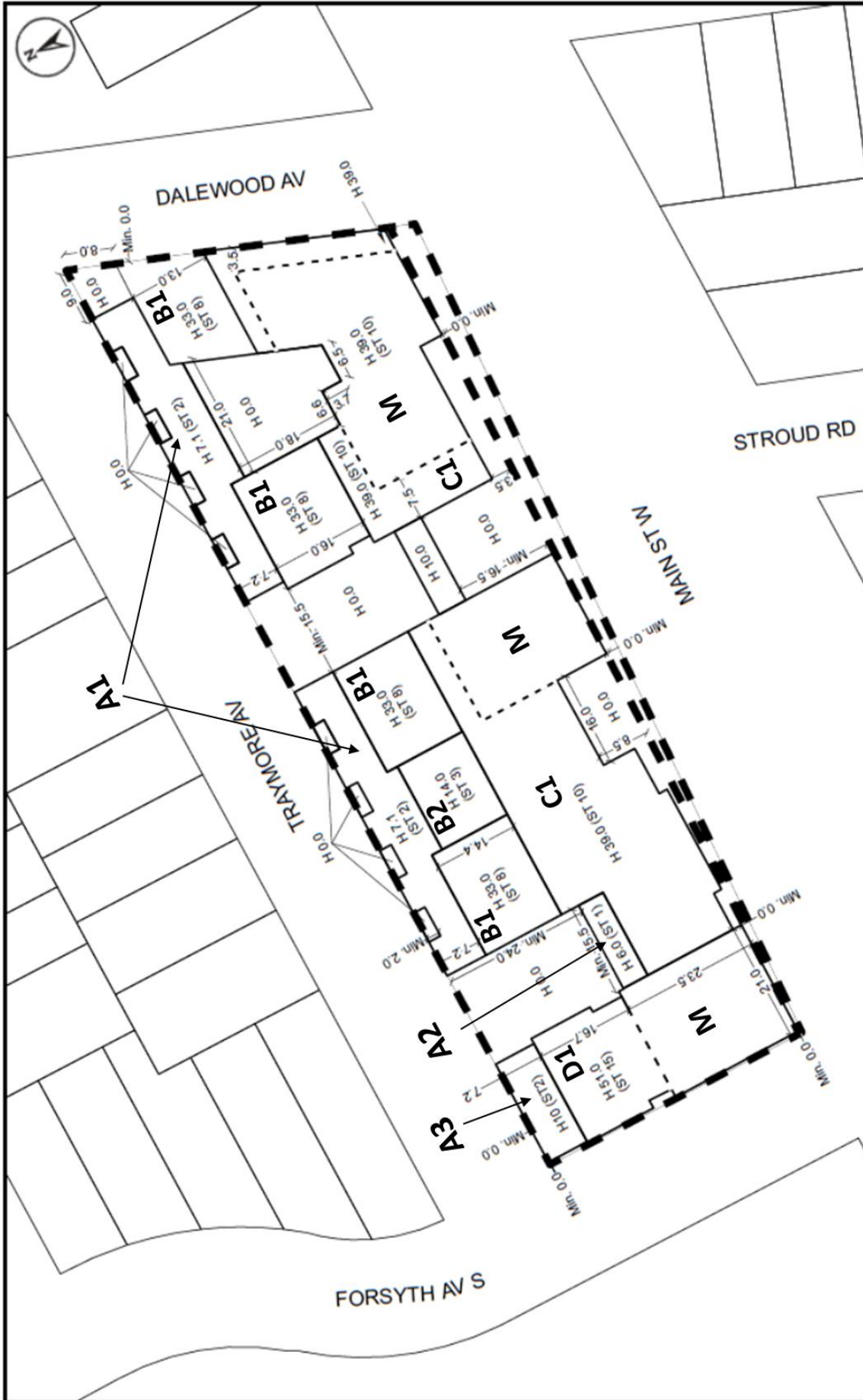


Figure 21: 1190 Main Street West, 43, 47, 51 and 55 Forsyth Avenue South, 75, 77, 81, 83, 99, 103, 107, 111 and 115 Traymore Avenue and 50 Dalewood Avenue (Hamilton)

Date:
August 2021



Legend

- ■ ■ Subject Area