

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



ISSUE DATE: January 25, 2021

CASE NO(S):

PL190004

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

Applicant and Appellant:	Homes by DeSantis (Downtown) Inc.
Subject:	Request to amend the Official Plan – Failure of the Town of Grimsby to adopt the requested amendment
Existing Designation:	Downtown Main Street
Proposed Designated:	Site specific exception
Purpose:	To permit the development of a four-storey mixed-use building
Property Address/Description:	21 and 23 Main Street East and 6 Doran Avenue
Municipality:	Town of Grimsby
Approval Authority File No.:	26OP-16-1703
LPAT Case No.:	PL190004
LPAT File No.:	PL190004
LPAT Case Name:	Homes by DeSantis (Downtown) Inc. v. Grimsby (Town)

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

Applicant and Appellant:	Homes by DeSantis (Downtown) Inc.
Subject:	Application to amend Zoning By-law No. 14-45 – Refusal or neglect of the Town of Grimsby to make a decision
Existing Zoning:	Downtown Main Street (DMS) Zone
Proposed Zoning:	Site Specific Downtown Main Street (DMS) Zone
Purpose:	To permit the development of a four-storey mixed-use building

Property Address/Description: 21 and 23 Main Street East and 6 Doran Avenue
Municipality: Town of Grimsby
Municipality File No.: 26Z-16-1710
LPAT Case No.: PL190004
LPAT File No.: PL190005

Heard: January 19, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Town of Grimsby

John Doherty
Jonathan Minnes
Tristan Neill

Homes by DeSantis (Downtown) Inc.

Calvin Lantz
Jonathan Cheng

DECISION DELIVERED BY MARGOT BALLAGH AND ORDER OF THE TRIBUNAL

[1] This Decision and Order results from the settlement hearing in these matters.

[2] Homes by DeSantis (Downtown) Inc. (“DeSantis”) wishes to develop a four-storey mixed use building in the Town of Grimsby (“Town”) on lands municipally known as 21 and 23 Main Street East and 6 Doran Avenue and legally described as being all of Lot 312 and Part of Lots 315, 316 and 317, Corporation Plan 4 (the “subject lands”). In support of this intention, DeSantis applied for an official plan amendment (“OPA”) and associated zoning by-law amendment (“ZBA”). The Town failed to make a decision on these applications and DeSantis appealed these matters to the Tribunal.

[3] The Tribunal was advised that the Parties have reached a settlement in the appeals before the Tribunal as well as in related litigation before the Ontario Superior Court regarding Lane No. 313 in the Town. Accordingly, the hearing on the merits, which had been scheduled for nine days commencing January 19, 2021, was converted to a one-day settlement hearing.

[4] At the settlement hearing, the Tribunal heard expert land use planning evidence in support of the current proposed development from both DeSantis' land use planner, John Ariens, and the Town's land use planner, Allan Ramsay. After considering their evidence, both orally and in writing, the Tribunal is satisfied that the current proposed development meets the legislative and policy requirements, represents good planning and is in the public interest.

[5] The Parties filed a Joint Book of Documents, consisting of a first volume marked as Exhibit 1A, and a second volume marked as Exhibit 1B. While the Parties reviewed with the Tribunal in detail the current proposed development, including the site and neighbourhood context, the applicable policy considerations and the proposed draft instruments, this Decision will provide a summary of the main aspects. The details are provided in the Affidavits of the witnesses at tabs 12 and 14 of Exhibits 1A and 1B, respectively.

[6] The subject lands, which are currently vacant, are in the heart of downtown Grimsby and consist of three "abutting" interior block parcels located on the north side of Main Street East and a fourth parcel on the south side of Doran Avenue. The two Main Street properties are separated from the Doran property by a 3 metre ("m") wide "laneway". The "laneway" separating the Main Street parcels from the Doran Avenue parcel was incorporated into the development scheme as it was a dead end, only 3 m wide and did not provide any connection or purpose. Mr. Ariens told the Tribunal that the proposed development considers all the parcels as one large parcel for the zoning and official plan purposes.

[7] The initial redevelopment proposal which included an eight-storey building, resulted in significant public concerns and interest, with the prime issues identified as height and density of the proposal. These concerns led to several design revisions, eventually culminating in the current proposal of a four-storey mixed use building with commercial units fronting on Main Street at grade and behind them, residential units at grade, as well as some heritage character features. A peer review by SGL Planning

Consultants supported the revised scheme and recommended that it be approved.

[8] Mr. Ariens told the Tribunal that the Town's OP designates the subject lands as Downtown Main Street, identifies the area for intensification, permits four-storey buildings and requires commercial units at grade.

[9] Mr. Ariens explained to the Tribunal that the Parties agree that there should be a site specific OPA to allow the proposed development to locate residential units at grade provided the residential units are behind the commercial units fronting onto Main street and a minimum of 600 square metres of commercial floor area is maintained. He told the Tribunal that the proposed development has a total of two large commercial units fronting Main Street at grade, and 87 residential units throughout the rest of the building, including those behind the commercial space at grade as discussed.

[10] Mr. Ariens said the proposed development has a large parking garage with sufficient parking spaces to comply with the Town's standard residential and commercial parking requirements as set out in the Zoning By-law, such that it meets the parking obligation completely on site. The entrance to the parking garage is off Doran Avenue where it is at grade and then runs underground as it nears Main Street which is at a higher grade than Doran Avenue. He told the Tribunal that the dead-end alleyway will now continue through to Doran Avenue. He said the development is compliant with the angular plane analysis.

[11] Mr. Ariens reviewed with the Tribunal, and recommended for approval, the proposed OPA, being the Revised Site Specific Official Plan Policy 3.5.3.13, as set out in Attachment 1 to this Order.

[12] Mr. Ariens also reviewed with the Tribunal, and recommended for approval, the proposed ZBA, being The Corporation of the Town of Grimsby By-law No. 21-05, A By-law to Amend By-law 14-45, as amended relating to 21 and 23 Main Street East and 6 Doran Avenue, as set out in Attachment 2 to this Order.

[13] As is outlined in Attachments 1 and 2, the building will have a density cap of 87 units and will have site specific building setbacks and other zoning modifications to accommodate the agreed upon built form. The commercial floor space will have a minimum requirement including a mandatory restaurant floor area. Site specific parking modifications are included. Building height along both the Main Street and Doran Avenue frontages will be limited to only four storeys.

[14] Mr. Ariens gives his planning opinion that, in the context of the subject lands being in Downtown Grimsby which is designated as an intensification area by the Town's OP, the four-storey, 87 unit mixed commercial and residential building conforms with OP policy direction. In his view, the permission to allow residential units on the ground floor in the northerly portion of the building closer to Doran Avenue does not deviate from the overall intent of the OP to maintain commercial uses at grade along the main shopping area along Main Street. He explains that the grade along Doran Avenue is several metres lower than Main Street and Doran Avenue is not a viable location for store front development.

[15] In his oral testimony, as well as in his Affidavit sworn January 11, 2021 at Tab 12 of Exhibit 1A, in his Planning Justification Report ("PJR") and in his PJR Addendum, Mr. Ariens provided detailed reasons to support his opinion that the proposed OPA and ZBA, as set out in Attachments 1 and 2 to this Decision and Order, are fully consistent with the Provincial Policy Statement 2020 ("PPS 2020"); conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, as amended by Amendment 1("Growth Plan"), Provincial Greenbelt Plan, the Niagara Escarpment Plan and the Niagara Region's OP; do not result in any significant adverse impact on adjacent lands; represent good planning; and are in the public interest.

[16] Mr. Ramsay told the Tribunal that he concurs with the evidence provided by Mr. Ariens related to the description of the site, and the proposed planning instruments.

[17] Mr. Ramsay reiterated that the proposed OPA clarifies that the height of four storeys is to be measured along both street frontages and that residential units are

permitted at grade behind the commercial units, which ensures commercial units fronting on Main Street. In his view, given the increased size and number of commercial uses to be located along the Main Street frontage, the addition of residential uses on the first storey will not detract from the intent of the policy to promote pedestrian activity and vitality along the street.

[18] Mr. Ramsay told the Tribunal that the parking facility complied with the Town's standards, with the exception of a minor revision to the parking rate for accessible parking, which he reassured the Tribunal would still meet the requirements for accessible parking in the *Accessibility for Ontarians with Disabilities Act*.

[19] In his Affidavit sworn January 12, 2021 at Tab 14 of Exhibit 1B, Mr. Ramsay indicates that the "laneway" issue before the court was resolved in favour of the Town. He notes that the laneway will be extended across the subject lands and out to Doran Avenue through an easement permitting public access.

[20] Mr. Ramsay told the Tribunal that the Town's OP does not establish any minimum or maximum density requirements in the Downtown-Main Street designation. Instead under section 3.5.3.6, the OP states that density will not be specifically regulated within Downtown-Main Street but will be considered a product of the relationship between height and lot coverage. He noted that the number of apartment units under the current proposal has been reduced from 92 to 87 with 87 units identified in the proposed ZBA as the maximum number of units permitted on the site. In his opinion, the proposal represents an appropriate level of intensification within the Downtown-Main Street designation.

[21] Mr. Ramsay gave his opinion that the proposed OPA and ZBA, as set out in Attachments 1 and 2 to this Decision and Order, represent good planning and should be approved.

[22] Mr. Ramsay also gave his opinion, based on detailed reasons set out in his Affidavit at Tab 14 of Exhibit 1B, that the proposed OPA and ZBA are consistent with

the PPS 2020; and conform with the Growth Plan, the Greenbelt Plan, 2017, and the Niagara Region OP. He noted that the proposed OPA and ZBA provide for a moderate amount of residential intensification within the Town's Downtown while maintaining a retail and commercial presence along Main Street.

[23] Mr. Ramsay further opined that the proposed ZBA conforms with the Town's OP. In his view, while the subject lands are part of a larger Major Intensification Area, the Town's OP identifies the area for moderate intensification (section 3.5.3) and the revised proposal with its reduced building height along Doran Avenue appropriately considers the compatibility criteria of section 3.5.6. The revised design, he says, will support the small town atmosphere and preserve and maintain the Downtown's cultural heritage (section 2.3.2.8). Mr. Ramsay says the inclusion of additional retail and commercial floor area and revisions to the maximum widths of retail and commercial units will maintain and enhance the vitality and viability of the downtown and Main Street (section 2.6.9). He says the provision of retail and commercial uses along Main Street will provide visual interest, encouraging the use of sidewalks, promoting retail continuity and viability, and contributing to a safer and more vibrant pedestrian environment (section 3.5.3.5).

[24] The Tribunal is satisfied by the consistent and uncontested opinion evidence provided by both the Town's and DeSantis' land use planners, as well as the whole of the record, that the proposed OPA and ZBA, as set out in Attachments 1 and 2 to this Decision and Order, are consistent with the PPS; conform with the Growth Plan and the Regional and Town OPs, as required; do not result in any adverse impact on adjacent lands; represent good planning; and are in the public interest.

ORDER

[25] The Tribunal orders that the appeals are allowed and the Official Plan for the Town of Grimsby is amended as set out in Attachment 1 to this Order, and further, the Town of Grimsby is directed to amend Comprehensive Zoning By-law No. 14-45 as set out in Attachment 2 to this Order.

[26] The Tribunal may be spoken to in the event any matter or matters should arise in connection with the implementation of this Order.

"Margot Ballagh"

MARGOT BALLAGH
MEMBER

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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

**Revised Site Specific Official Plan
Policy**

- 3.5.3.13 On the properties identified as 21-23 Main Street East and 6 Doran Avenue:
- (a) A maximum building height of four storeys shall apply to:
 - (i) the portion of the building fronting onto Main Street East, with the first storey being the storey closest to grade along Main Street East; and
 - (ii) the portion of the building fronting onto Doran Avenue, with the first storey being the storey closest to grade along Doran Avenue.
 - (b) Residential apartments may be permitted on the first storey of the portion of the building fronting onto Main Street East provided a minimum combined floor area of 600 m² for non-residential uses is maintained in this area."

**The Corporation of the Town of
Grimsby By-law No. 21-05**

**A By-law to Amend By-law 14-45, as
Amended**

**(21-23 Main Street East and 6 Doran
Avenue)**

Whereas the Council of the Corporation of the Town of Grimsby deems it expedient to amend By-law No. 14-45, as amended;

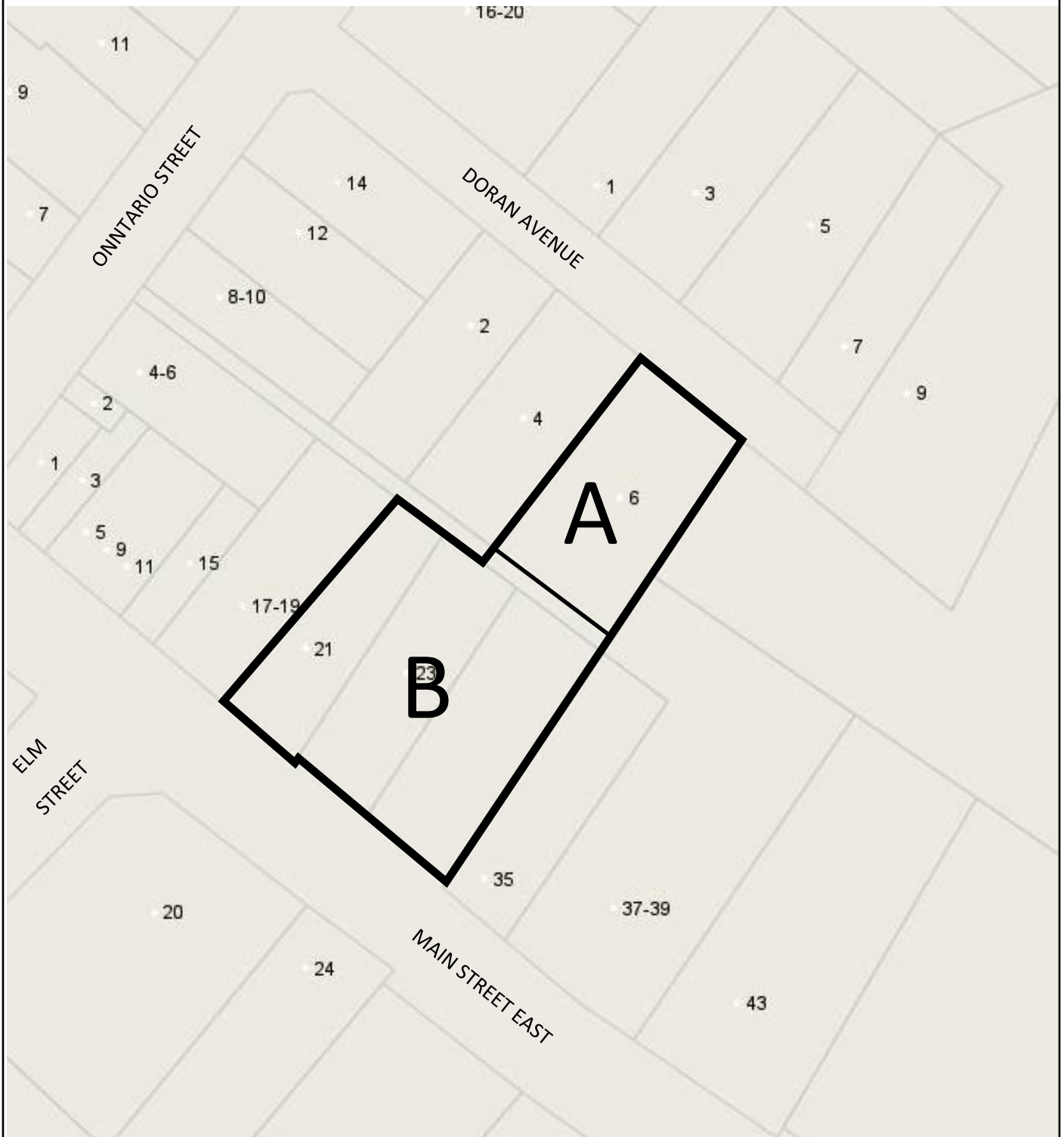
Now therefore the Council of the Corporation of the Town of Grimsby enacts as follows:

1. Schedule 12B of By-law No. 14-45, as amended, is hereby further amended by adding exception number 347 to the lands shown on Schedule "A" to this By-law as Subject Lands.
2. Table 15: Permitted Use, Lot, Building, and Structure Exceptions of Section 8.0 Downtown Zones of By-law No. 14-45, as amended, is hereby further amended by adding the row identified on Table "A" to this by-law.

AS APPROVED PURSUANT TO LOCAL PLANNING APPEAL
TRIBUNAL ORDER/DECISION: _____.



SUBJECT LANDS – MODIFY EXISTING DMS ZONE



THIS IS SCHEDULE "A" TO BY-LAW NO. 21-05
PASSED THIS ____ DAY OF _____, 2020.

FILE NUMBER

PAGE 2 OF 3

MAYOR

26Z-16-1710

CLERK

THE CORPORATION OF THE TOWN OF GRIMSBY

SCALE

NOT TO SCALE

EDC_LAW 2239230\1

**Table "A" to By-law No. 21-05
Permitted Use, Lot, Building and Structure Exceptions**

Site Specific	By-law #	Address	Zone	Additional Permitted Uses	Sole Permitted Uses	Lot Building and Structure Exceptions
347	21-05	Lots 312, 315, 316 & 317, Corporation Plan No. 4 – 23 Main Street, Town of Grimsby	DMS	Dwelling units on the first storey, to the rear of non-residential units fronting onto Main Street East.		<ul style="list-style-type: none"> • Maximum number of dwelling units: 87 • Minimum Interior Side Yard Setback abutting 4 Doran Avenue: 1.3 metres abutting the first floor containing residential units, 3.8 metres abutting the second floor containing residential units • Maximum Interior Side Yard Setback: 5.1 metres • Minimum Rear Yard Setback: 4.7 metres • Maximum Building Height: <ul style="list-style-type: none"> • Area A on Schedule A to By-law No. 21-05: the lesser of 16 metres or 4 storeys as measured at the lot line abutting Doran Avenue • Area B on Schedule A to By-law No. 21-05: the lesser of 16 metres or 4 storeys as measured at the lot line abutting Main Street East • Maximum Width of Individual Retail / Commercial Unit: 14 metres except that the maximum width of a unit containing a restaurant shall be 23 metres • Minimum Retail/Commercial Floor Area: 600 square metres abutting Main Street East • Minimum public gross floor area for a restaurant use: 93 square metres • Minimum parking for a restaurant: as per Section 5.0 or a minimum of 17 spaces, whichever is greater • Minimum parking for combined retail/commercial uses, other than restaurants: as per Section 5.0 or a minimum of 10 spaces, whichever is greater • Minimum Number of Accessible Parking Spaces: 1 space per 31 standard parking spaces • Minimum Accessible Parking Space Dimension: <ul style="list-style-type: none"> o Type A 2.4 metres width x 5.75 metres length, plus 1.5 metre painted access aisle, o Type B 3.4 metres width x 5.75 metres length, plus 1.5 metre painted access aisle • Minimum Number of Loading

Site Specific	By-law #	Address	Zone	Additional Permitted Uses	Sole Permitted Uses	Lot Building and Structure Exceptions
						<p>Spaces: 1 Space</p> <ul style="list-style-type: none">• Minimum Loading Space Size: 3 metres in width x 9 metres in length x 3 metres in height