Local Planning Appeal Tribunal

Tribunal d'appel de l'aménagement local



20-138-LPAT Attachment 2

ISSUE DATE:

June 24, 2020

CASE NO(S).:

Ontario

PL190020

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:

King Stuart Developments Inc. and 1376533

Ont. Inc.

Subject:

Failure of City of Hamilton to announce a decision respecting Proposed Official Plan

Amendment No. OPA-17-08

Existing Designation:

Proposed Designated:

Purpose:

"Local Commercial"

"Mixed Use"

To permit the redevelopment of the Property

with an 11 storey (approximately 34 metre) commercial-residential mixed-use building with

two storeys of underground parking

Property Address/Description:

Municipality:

41 Stuart Street City of Hamilton

Approval Authority File No.:

LPAT Case No.:

LPAT File No.:

LPAT Case Name:

OPA-17-08

PL190020

PL190020

King Stuart Developments Inc v. Hamilton

(City)

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

Applicant and Appellant:

King Stuart Developments Inc. and 1376533

Ont. Inc.

Subject:

Application to amend Zoning By-law No. 6593 -

Neglect of the City of Hamilton to make a

decision

Existing Zoning:

"J" - Light and Limited Heavy Industry

Proposed Zoning:

"CR-1 - Commercial-Residential - Modified"

Purpose: To permit the redevelopment of the Property

2

with an 11 storey (approximately 34 metre) commercial-residential mixed-use building with

two storeys of underground parking

Property Address/Description:

41 Stuart Street

Municipality:

City of Hamilton

Municipality File No.:

ZAC-17-019

LPAT Case No.:

PL190020

LPAT File No.:

PL190021

Heard:

June 16, 2020 by telephone conference call

APPEARANCES:

<u>Parties</u> <u>Counsel</u>

King Stuart Developments Inc. and

Denise Baker

1376533 Ontario Inc.

Patrick MacDonald

City of Hamilton

MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON JUNE 16, 2020 AND ORDER OF THE TRIBUNAL

- [1] King Stuart Developments Inc. and 1376533 Ontario Inc. ("Appellants") appealed the failure of the City of Hamilton ("City") to make decisions on the Appellants' applications for official plan and zoning by-law amendments. The applications are to facilitate the redevelopment of lands located at 41 Stuart Street ("subject property") with a commercial-residential mixed-use building.
- [2] The Appellants seek to amend the designation of the subject property within the City's West Harbour (Setting Sail) Secondary Plan ("Secondary Plan") from "Local Commercial" to "Mixed Use" and to establish a Special Policy Area, and to amend the zoning on the subject property from a "J" (Light and Limited Heavy Industry) District to "CR-1" (Commercial Residential) District, Modified.
- [3] This proceeding was commenced after April 3, 2018 and has proceeded subject

to the provisions of the *Planning Act* as they existed between April 3, 2018 and September 3, 2019 ("Bill 139"). In July 2019, the Tribunal held a case management conference ("CMC") at which the Tribunal scheduled hearing dates as well as dates for Tribunal-led mediation. At the CMC, the Romanian Orthodox Church of the Holy Resurrection ("Church") requested Party status. The Tribunal deferred its decision on party status for the Church until after mediation had been completed. However, the Tribunal permitted the Church to participate in mediation.

- [4] The Parties participated in mediation in late 2019. In April 2020, the Appellants advised the Tribunal that the Appellants and the City had reached a settlement. They requested that the Tribunal hold a settlement hearing to dispose of the matter under ss. 22(11.0.10) and 34(26.3) of the *Planning Act*.
- [5] On June 16, 2020, the Tribunal convened a settlement hearing by telephone conference call.
- [6] The Church opposes the proposed settlement and requests Party status or, alternatively, Participant status in order to make submissions at the settlement hearing.

REQUEST FOR STATUS

- [7] In regard to the Church's request for status, the Tribunal received oral submissions at the commencement of the settlement hearing on whether ss. 22(11.0.10) and 34(26.3) of Bill 139 apply in this case, and, if they do apply, the roles of Parties and Participants at a settlement hearing under Bill 139, and the procedures that must be followed.
- [8] The Appellants submit that this proceeding is subject to Bill 139 and that there is no role for Added Parties or Participants at a settlement hearing under ss. 22(11.0.10) and 34(26.3). The Appellants submit that solely the consent of the Appellants and the City to the proposed instruments is required. The Appellants argue that there are no provisions in Bill 139 or the *Local Planning Appeal Tribunal Act, 2017*, as it read

between April 3, 2018 and September 3, 2019, permitting Added Parties or Participants to provide evidence or make submissions at a settlement hearing. Moreover, the Appellants argue that the *Local Planning Appeal Tribunal Act, 2017*, as it read between April 3, 2018 and September 3, 2019, does not permit Added Parties or Participants to be involved in oral hearings at all. The Appellants submit that there is no role for the Church at the settlement hearing and its request for status should be denied.

- [9] The City does not oppose the Church's request for status; but it agrees with the Appellants that there is no role for Added Parties or Participants in settlement hearings under Bill 139.
- [10] The Church submits that it seeks status solely in order to make submissions at the settlement hearing. It states that its concerns remain those set out in its original request for status which was considered at the July 2019 CMC. These concerns include whether the proposed development would cause privacy, overlook and shadow impacts as a result of its scale, height and massing, whether it would be compatible with the character of the existing neighbourhood, and whether it would have sufficient parking.

Analysis and Findings

[11] Sections 22(11.0.10) and 22(11.0.19) of Bill 139 state:

22(11.0.10) Unless subsection (11.0.16) applies, if a revised amendment is presented to the Tribunal with the consent of all of the parties specified in subsection (11.0.19), the Tribunal shall approve the revised amendment as an official plan amendment except for any part of it that is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or, in the case of an amendment to the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan.

22(11.0.19) For the purposes of subsection (11.0.10) and (11.0.16), the specified parties are:

- 1. The municipality or planning board that received the request for an official plan amendment.
- 2. The appropriate approval authority, if the approval authority is a party.

- 3. The Minister, if the Minister is a party.
- 4. The person or public body that requested an amendment to the official plan.
- [12] Sections 34(26.3) and 34(26.11) of Bill 139 state:

34(26.3) Unless subsection (26.9) applies, if a draft by-law is presented to the Tribunal with the consent of all of the parties specified in subsection (26.11), the Tribunal shall approve the draft by-law except for any part of it that is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.

34(26.11) For the purposes of subsection (26.3) and (26.9), the specified parties are:

- 1. The municipality.
- 2. The Minister, if the Minister is a party.
- 3. If applicable, the applicant.
- 4. If applicable, all appellants of the decision which was the subject of the appeal.
- [13] Under these sections, if the City and the Appellants consent to the proposed instruments presented to the Tribunal, the Tribunal must approve the proposed instruments except for any parts of them that are inconsistent with the Provincial Policy Statement, 2020 ("PPS"), fail to conform with the Growth Plan for the Greater Golden Horseshoe, 2019 ("Growth Plan"), or fail to conform with an applicable official plan. These sections do not provide a role for Added Parties or Participants in this process.
- [14] Given the application of Bill 139 to these proceedings and the requirements in Bill 139 ss. 22(11.0.10) and 34(26.3), the Tribunal finds that there is no role for Added Parties or Participants to make oral submissions in the present settlement hearing process. As a result, the Church's request for Party status, or, in the alternative, Participant status, is denied.

PROPOSED SETTLEMENT

[15] At the settlement hearing, the Tribunal qualified Mr. Kloibhofer to provide opinion

evidence in the area of land use planning on behalf of the Appellants.

- [16] In response to questions from the Tribunal, Mr. Kloibhofer opined that the proposed Official Plan and Zoning By-law Amendments have regard to the matters of provincial interest set out in s. 2 of the *Planning Act*, are consistent with the PPS, conform with the Growth Plan, conform with the former Hamilton-Wentworth Official Plan ("HWOP"), conform with the former City of Hamilton Official Plan, and conform with the Secondary Plan.
- [17] Mr. Kloibhofer opined that the proposed Official Plan and Zoning By-law Amendments have regard for the matters of provincial interest set out in s. 2 of the *Planning Act*. He stated that the proposed instruments would facilitate mixed use intensification that provides compact built form that is transit-supportive, is compatible with nearby cultural heritage assets (including the Hamilton Custom House), and provides for increased density in proximity to the West Harbour GO Transit Station and municipal transit routes. He said the proposed development can be fully serviced by existing municipal infrastructure, supports the creation of complete communities, and adds to the range and mix of available dwelling types in the neighbourhood.
- [18] Mr. Kloibhofer opined that the proposed Official Plan and Zoning By-law Amendments are consistent with the PPS. He reiterated that the proposed instruments would facilitate a development that is transit supportive and compact. He opined that the proposed development represents an appropriate form of intensification which takes into account existing building stock in the area. He said the proposed instruments would facilitate development that does not pose a risk to public health and safety.
- [19] Mr. Kloibhofer opined that the proposed Official Plan and Zoning By-law Amendments conform to the Growth Plan. He reiterated that they would facilitate a development that would contribute to the range and mix of available dwelling types, housing options and densities within the neighbourhood, and facilitate the achievement of complete communities.

[20] Mr. Kloibhofer stated that at the time of adoption of the City's Urban Hamilton Official Plan ("UHOP"), the Secondary Plan was not brought into UHOP and the subject property is not subject to it. Therefore, he assessed the proposed instruments in terms of conformity with the HWOP, the former City of Hamilton Official Plan, and the Secondary Plan.

- [21] Mr. Kloibhofer opined that the proposed Official Plan and Zoning By-law Amendments conform to the HWOP. He stated that the subject property is designated "Urban" under the HWOP and conforms with its policies encouraging the development of higher density urban forms within the Urban Area and promoting transit-oriented development.
- [22] Mr. Kloibhofer opined that the proposed instruments conform with the former Hamilton Official Plan. He said they facilitate a redevelopment of underutilized lands in the form of a compact, mixed-use development that efficiently uses infrastructure and supports the viability of higher-order transit. He said the design of the proposed development provides for step backs for its upper storeys resulting in a 45-degree angular plane to address shadow, overlook and privacy concerns of neighbours. He said it also includes design features that complement the adjacent Hamilton Customs House heritage building. He said the proposed development would provide appropriate setbacks and transition from the lower height and massing of neighbouring residential and commercial buildings. He opined that it would complement neighbouring lower density dwellings with sufficient spacing to maintain privacy, amenity and value. He said the proposed development would make efficient use of existing infrastructure, add to the range of dwelling types in the area, and enhance the character of the neighbourhood.
- [23] Mr. Kloibhofer said the subject property is designated as "Stable Areas" and "Local Commercial" under the Secondary Plan. He opined that with the building of the West Harbour GO Transit Station close to the subject property, the Secondary Plan's restrictions on multiple storey mixed-use buildings do not conform with the Growth Plan.

He stated that the proposed Official Plan Amendment would address this by permitting appropriate mixed-use development adjacent to higher order public transit. He said the proposed development would enhance the character of the neighbourhood, provide compatible development on underutilized land, and provide appropriate transition so that it respects the type, scale and character of the area.

[24] Mr. Kloibhofer reiterated that the proposed development would not have adverse privacy, overlook or shadow impacts. He stated that the step backs on its upper floors and the required setbacks required under the proposed instruments mitigate impacts from the scale, height and massing of the proposed development and provide for compatibility with the character of the neighbourhood. He said the proposed Zoning By-law Amendment requires 0.7 parking places per dwelling unit, which he opined is appropriate given the proximity of the West Harbour GO Transit Station and municipal public transit to the subject property.

Analysis and Findings

[25] Based on Mr. Kloibhofer's uncontested opinion evidence, and the submissions of the Parties, the Tribunal finds that the proposed Official Plan and Zoning By-law Amendments have regard to the matters of provincial interest in s. 2 of the *Planning Act*, are consistent with the PPS, conform with the Growth Plan, and conform with the applicable Official Plans. The Tribunal finds that the proposed instruments will facilitate development that is compact, transit-supportive and compatible with the neighbouring area. It finds that the proposed development respects the design, scale, massing, setbacks, height and use of neighbouring buildings and provides for a sensitively designed residential development. The Tribunal concludes that the requirements of the *Planning Act* in effect, as it was amended by Bill 139, have been satisfied.

ORDER

[26] The Tribunal Orders that the appeal under s. 22(7) of the *Planning Act* is allowed in part and the proposed Official Plan Amendment is approved as set out in Attachment

1 to this Decision and Order.

[27] The Tribunal Orders that the appeal under s. 34(11) of the *Planning Act* is allowed in part and Zoning By-law No. 6593 is amended as set out in Attachment 2 to this Decision and Order.

[28] The Tribunal authorizes the municipal clerk to assign numbers to these instruments for record keeping purposes

9

[29] In all other respects, the Tribunal orders the appeal is dismissed.

"Hugh S. Wilkins"

HUGH S. WILKINS MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Amendment No. 243

to the

City of Hamilton Official Plan

The following text, together with Appendix "A", attached hereto, constitutes Official Plan Amendment No. 243 to the City of Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to redesignate lands and establish a Special Policy Area to permit a 10-storey mixed use building within the West Harbour (Setting Sail) Secondary Plan.

2.0 Location:

The lands affected by this Amendment are known municipally as 41 Stuart Street, in the City of Hamilton.

3.0 Basis:

The basis for permitting this Amendment is as follows:

- The proposal is located within a major transit station area with existing or planned local and regional transit;
- The proposal achieves compatible residential intensification with the surrounding neighbourhood in terms of use, scale, and built form transitions;
- The proposal implements the vision of the West Harbour (Setting Sail) Secondary Plan; and,
- The Amendment is consistent with the Provincial Policy Statement, 2020 and the Growth Plan for the Greater Golden Horseshoe, 2019.

4.0 Changes:

4.1 Text Changes:

4.1.1 That a new Special Policy Area be added, to read as follows:

"A.6.3.3.1.17.1 The following policies shall apply to the lands known

municipally as 41 Stuart Street, designated Mixed Use and identified as Special Policy Area 8:

- i) Notwithstanding Policy A.6.3.3.1.17 iv), a maximum 10-storey mixed use building shall be permitted, subject to the following:
 - a) The building height is appropriately transitioned to the adjacent residential uses to the south, by providing the appropriate step backs to achieve a 45 degree angular plane measured 14m up from average grade at the southern lot line which may be implemented by the Zoning By-law.
 - b) The westerly building setback shall be 3.0 metres to respect the cultural heritage value of the property located at 51 Stuart Street.
- ii) Notwithstanding Policy A.6.3.3.2.10, no dedication of private lands shall be required in order to achieve the right-of-way widths set out in Policy A.6.3.3.2.4.

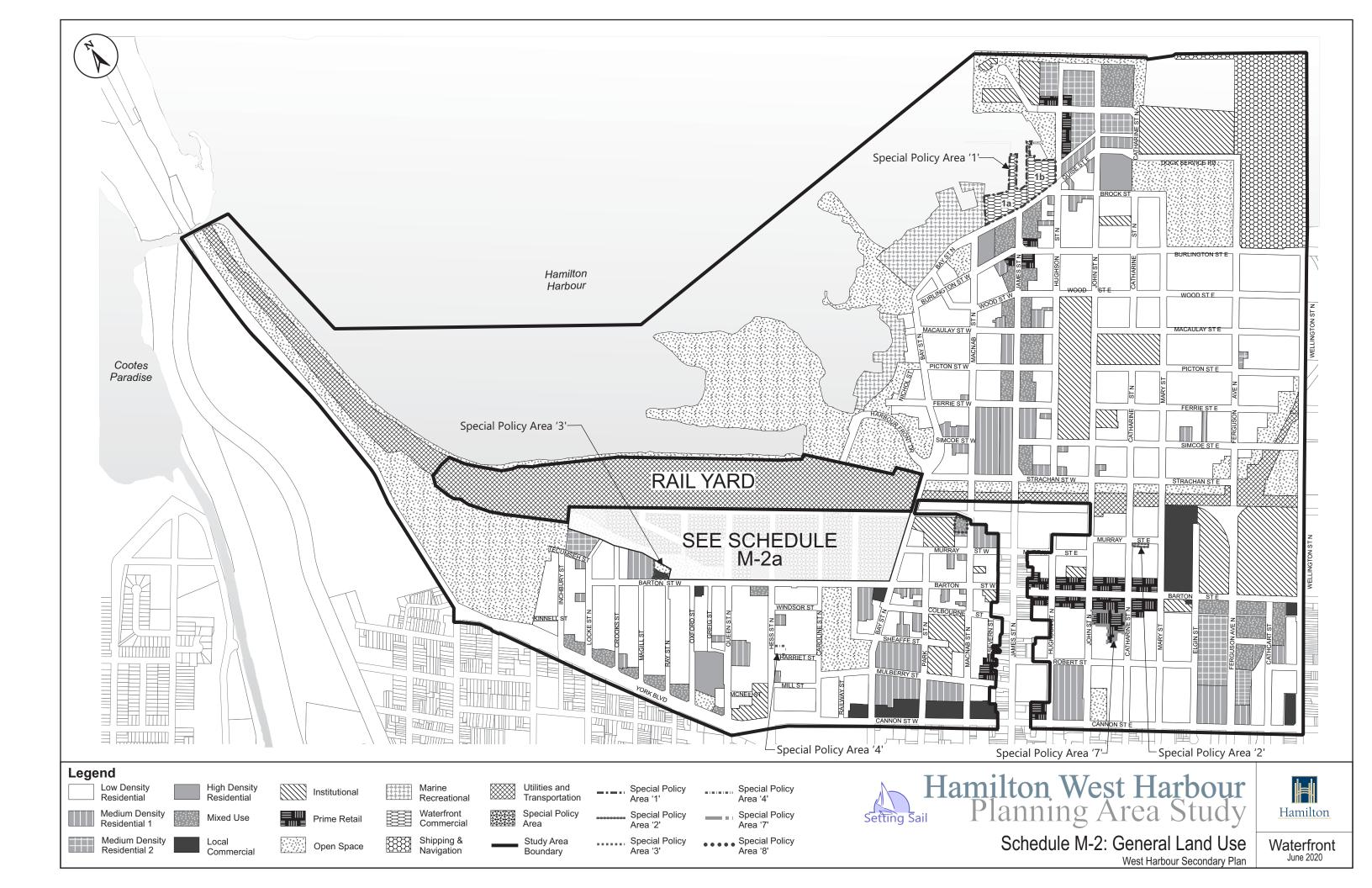
4.2 Schedule Changes:

- 4.2.1 That Schedule "M-2": General Land Use, of the West Harbour (Setting Sail) Secondary Plan is amended by:
 - a) redesignating lands from "Local Commercial" to "Mixed Use"; and,
 - b) identifying the lands as "Special Policy Area 8", as shown on Appendix "A" to this Amendment.

5.0 Implementation:

An implementing Zoning By-law Amendment and Site Plan will give effect to this Amendment.

This Official Plan Amendment is Schedule "1" to By-law No. 20-137-LPAT pursuant to the Decision/Order of the Local Planning Appeals Tribunal issued in Case No. PL190020.



ATTACHMENT 2

CITY OF HAMILTON BY-LAW NO.

To Amend Zoning By-law No. 6593 Respecting Lands Located at 41 Stuart Street, Hamilton

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Schedule C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the "The Corporation of the City of Hamilton" and is the successor to the former regional municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the *City of Hamilton Act, 1999* provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in full force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951 (File No. P.F.C. 3821);

AND WHEREAS pursuant to the Order/Decision of the Local Planning Appeal Tribunal Issued on June24, 2020, under Tribunal File No. PL190020, approved that Zoning By-law No. 6593 (Hamilton) be amended as hereafter provided;

AND WHEREAS this by-law will be in conformity with the Former City of Hamilton Official Plan upon approval of Official Plan Amendment No. 243.

NOW THEREFORE pursuant to the Order/Decision of the Local Planning Appeal Tribunal issued on June 24, 2020, under Tribunal File No. PL190020:

- 1. The Sheet No. W-3 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), as amended, is further amended by changing the zoning from the "J" (Light and Limited Heavy Industry, Etc.) District to the "CR-1/S-1765-H" (Commercial Residential) District, Holding, Modified on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
- 2. That the "CR-1" (Commercial Residential) District provisions, as contained in Section 15B, applicable to the subject lands, be further modified to include the following special requirements:

- a) Notwithstanding Section 2(2)J.(xiii) Stuart Street shall be deemed the Front Lot-Line.
- b) Notwithstanding Section 15B(3)(a), the following residential use shall be permitted:
 - i) A multiple dwelling.
- c) Section 15B(4) shall not apply.
- d) Notwithstanding Section 15B(8)(a), no building or structure shall exceed 10 storeys or 31.3 metres in height.
- e) In addition to Subsection 2.d) above, an indoor amenity area, outdoor amenity area, and any portion of a building which provides access to an indoor or outdoor amenity area shall be excluded for the purposes of calculating building height in accordance with Subsection 2 d), above.
- f) In addition to Subsection 2.e) above, an indoor amenity area, mechanical penthouse and portion of a building which provides access to an indoor or outdoor amenity area which exceed the maximum permitted building height in Subsection 2.d) above shall have a combined floor area not greater than 490 square metres and shall not exceed a height of 36.3 metres.
- g) Section 15B(8)(d) shall not apply.
- h) Notwithstanding Sections 15B(9), (10), (11) and (12), the following yards shall be provided and maintained:
 - i) A yard abutting a street not less than 0 m.
 - ii) A westerly side yard not less than 3.0 m.
 - iii) A rear yard not less than 3.0 m, except that:
 - 1. For any portion of the building with a height greater than 12.7 m, a rear yard not less than 4.7 m.
 - 2. For any portion of the building with a height greater than 18.7 m, a rear yard not less than 7.7 m.
 - 3. For any portion of the building with a height greater than 21.7 m, a rear yard not less than 10.8 m.

- 4. For any portion of the building with a height greater than 24.7 m, a rear yard not less than 13.7 m.
- 5. For any potion of a building with a height greater than 27.7m, a rear yard not less than 17.4m.
- iv) Any wholly enclosed or partially enclosed amenity area, or portion of a building designed to provide access to a rooftop amenity area, a mechanical penthouse, or a portion of a building that encloses an elevator and/or stairwell shall be permitted to project into the rear yard required through Subsection 2.h)iii) above.
- v) In addition to Subsection 2.h) iii), above, a sun shelter or canopy shall be permitted to encroach into a required rear yard to a maximum of 3.0 metres.
- i) Section 15B(15) shall not apply.
- j) Notwithstanding Section 15B(19), a minimum total residential amenity area of 900.0 square metres shall be provided.
- k) Notwithstanding Section 15B(21), a minimum 200.0 square metres of landscaped area shall be provided at grade.
- Notwithstanding Section 18.(3)(vi)(b)(i), a canopy, cornice, eave or gutter may project into a required front yard up to 0 metres from a street line.
- m) Notwithstanding Section 18.(3)(vi)(cc)(i), a bay, balcony or dormer may project into a required front yard up to 0 metres from a street line.
- n) In addition to Section 18A, a parking stacker system shall be permitted and required parking may be provided by means of a parking stacker system. A parking stacker system shall permit a parking space that is positioned above or below another parking space and is accessed by means of an elevating device.
- o) Notwithstanding Section 18A Table 1 1.(g), a minimum of 0.7 spaces per Class A dwelling unit shall be provided.
- p) Section 18A.(1)(b) shall not apply.
- q) Notwithstanding Section 18A.(1)(c), one loading space shall be provided with a minimum size of:

i) Length: 8.0 m

ii) Width: 3.7 m

- iii) Height: 3.7 m
- r) Notwithstanding Section 18A.(7), every required parking space, other than a parallel parking space, shall have dimensions not less than 2.6 metres wide and 5.5 metres long.
- s) In addition to Sections 18A.(24)(b)(iii) and (iv), for parking spaces provided within a parking stacker system, markings on the surface to delineate parking spaces and bumpers or wheel barriers shall not be required.
- 3. That the 'H' symbol applicable to the lands referred to in Section 1 of this By-law shall be removed conditional upon:
 - a) The Owner enters into a conditional building permit agreement with respect to completing a Record of Site Condition or a signed Record of Site Condition (RSC) being submitted to the City of Hamilton and the Ministry of the Environment, Conservation and Parks (MOECP). This RSC must be to the satisfaction of the Director of Planning and Chief Planner, including a notice of acknowledgement of the RSC by the MOECP, and submission of the City of Hamilton's current RSC administration fee.
 - District level to identify the upgrades on the existing watermains required to support the development proposal for the subject lands if the building design cannot be modified to bring the Required Fire Flow to a level below the Actual Fire Flow, and to complete the works at 100% Owner's cost, all to the satisfaction of the Manager of Development Engineering Approvals.
- 4. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "CR-1" (Commercial Residential) District provisions, subject to the special requirements referred to in Sections 2 and 3 of this By-law.
- 5. That Sheet No. W3 of the District Maps is amended by marking the lands referred to in Section 1 of the By-law as "CR-1/S-1765-H".
- 6. That By-law No. 6593 is amended by adding this By-law to Section 19B as Schedule S-1765.

Pursuant to the Order/Decision of the Local Planning Appeal Tribunal Issued on June 24 2020, under Tribunal File No. PL190020.

ZAC-17-019 OPA-17-008

