

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire

**22-046-OLT Appendix 2**  
**22-047-OLT Appendix 3**



**ISSUE DATE:** January 20, 2022

**CASE NO(S):** PL200302

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

Applicant and Appellant:	T. Valeri Construction Ltd.
Subject:	Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation:	"Neighbourhoods" (UHOP)
Proposed Designated:	Site-Specific-to be determined
Purpose:	To permit the demolition of the current existing single detached dwelling and construct a 10 storey multiple dwelling, consisting of approximately 244 dwelling units and 250 vehicular parking spaces
Property Address:	73-89 Stone Church Road West and 1029 West 5 <sup>th</sup> Street
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-019-08
OLT Case No.:	PL200302
OLT File No.:	PL200302
OLT Case Name:	T. Valeri Construction Ltd. 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:	T. Valeri Construction Ltd.
Subject:	Application to amend Zoning By-law No. 6593 - Neglect of the City of Hamilton to make a decision "DE- S-ITOO" and "AA"
Existing Zoning:	"DE- S-ITOO" and "AA"
Proposed Zoning:	Site-Specific-to be determined
Purpose:	To permit the demolition of the current existing single detached dwelling and construct a 10 storey multiple dwelling, consisting of approximately 244 dwelling units and 250 vehicular parking spaces
Property Address:	73-89 Stone Church Road West and 1029 West 5 <sup>th</sup> Street
Municipality:	City of Hamilton
Municipality File No.:	ZAC-19-029

OLT Case No.: PL200302  
OLT File No.: PL200303

**Heard:** October 18, 2021 by video hearing

**APPEARANCES:**

**Parties**

**Counsel**

T. Valeri Construction Ltd.  
("Applicant")

Russell Cheeseman  
Stephanie Fleming

City of Hamilton ("City")

Patrick MacDonald

**DECISION DELIVERED BY DAVID L. LANTHIER AND A. CORNACCHIA ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] These appeals before the Tribunal arise from the City's failure to make decisions within the prescribed timelines regarding the following three Applications:

- (a) an Application to amend the Urban Hamilton Official Plan ("OPA"),
- (b) an Application for an amendment to the City of Hamilton Zoning By-law 6593 ("ZBLA") and
- (c) an Application for Site Plan Approval. ("SPA").

[2] The Applications were originally submitted by the Applicant to facilitate the development of a ten-storey rental apartment complex at 73-89 Stone Church Road West and 1029 West 5th Street, in Hamilton ("Subject Property"). As explained herein, the Applications have undergone a number of revisions and iterations to the final form now before the Tribunal in this hearing.

## HEARING

[3] These appeals were previously the subject of case management and have been governed by a Procedural Order and Issues List. Two Participants were previously granted status. Only Mr. Conrad Walczak filed the required Participant Statement in accordance with the Procedural Order, which has been marked as Exhibit 9.

[4] As evidence in the Hearing the Tribunal received, in electronic format, 19 exhibits, which were collated and identified sequentially during the hearing. The List of electronic documents filed as Exhibits to this proceeding is appended as **Appendix “1”** to this Decision and Order.

[5] The Applicant called Mr. Matthew Johnston as its planning witness and the City called Mr. James Van Rooi, a Planner with the City, as its planning witness. Both Mr. Johnston and Mr. Van Rooi were qualified by the Tribunal to provide expert evidence in the area of Land Use Planning, without objection, and their Acknowledgements of Expert's Duty were filed in the Exhibits.

[6] The other witness appearing at the hearing was Mr. Wayne Harrison, who was called by the Applicant and was qualified by the Tribunal to provide evidence in the field of Architecture and Urban Design. Mr. Harrison's Acknowledgement of Expert's Duty was also filed in the Record.

[7] The City and the Applicant were able to resolve their differences with respect to transportation planning and did not call any witnesses relating to this matter.

## PROPOSED DEVELOPMENT AND APPLICATIONS

[8] The development proposal for the Subject Property described below evolved during discussions with the City and the public consultation process. Initially, the proposal was for a ten-storey apartment complex which was adjusted significantly to respond to various concerns.

[9] The development proposal now before the Tribunal (“Proposed Development”) is a nine-storey residential, rental apartment building containing 216 units (1, 2 and 3-bedroom apartments) with 221 parking spaces, 167 of which will be in an underground parking garage, with the remainder located as surface parking. The proposed maximum residential density for the structure will be 309 units per hectare (“ha”).

[10] The Proposed Development will be an inverted U-shaped building with the interior courtyard used for parking and loading and a driveway opening to the south. The north portion of the building fronting onto Stone Church Road West, will be articulated in a manner intended to define a number of three-storey townhouse-like units which step down from the main nine (9) storey structure to blend with the streetscape of the facing three-storey townhouse units on the other side of Stone Church Road. A road widening is proposed along Stone Church Road West, which will extend around the south east corner of the intersection and continue along West 5th Street. Ground floor terraces for units at street level are shown on the Final Concept Plan and there are three terraces at the fourth-floor level, two of which will serve as private terrace areas and one of which is an amenity terrace.

[11] The west wing of the U-shaped building fronts onto West 5th Street and has ground floor units which face the street side and, across the street, the rear yards of the two-storey townhouse units in the subdivision located on the west side of West 5th Street. As indicated the road widening of West 5th Street will also extend along the front of the building here. There are also ground floor terraces located at street level.

[12] The ends of the west and east wings, and the opening of the U-shaped building form and inner court, face towards the south and the retirement building and land immediately adjacent to, and south of, the Subject Property (“Retirement Home Property”). The courtyard parking and loading area are accessed from the interior entrance driveway accessible from West 5th Street and running along the south portion of the property. There is additional parking proposed along this south portion of the lands between the south façade of the building and the south boundary line. The

Concept Plan identifies a 6.52 metres (“m”) wide separation between the driveway and the boundary to the Retirement Home Property, on the south side of the Subject Property. There is a separation distance of 1.71 m between the property line and the southern edge of the row of parking.

[13] The façade of the east wing faces the St. Timothy’s Anglican Church property (“the Church Property”). A large portion of the Church Property adjacent to the Subject Property contains a surface parking lot. The Church is located near the boundary with the Subject Property in the general area of the southern-most portion of the east wing. The setbacks of the east façade of the Proposed Development from the east boundary vary, range between 6.75 m at the widest, and 3.79 m at the narrowest.

[14] The Final Concept Plan and Final Architectural Elevations of the Proposed Development are attached as Appendices 4 and 5 respectively.

[15] There is one underground parking level accessible from a ramp entering from the south driveway. The Final Concept Plan indicates that the outer perimeter of the underground parking level is larger than, and extends beyond, the ground floor building envelope (and surface parking area in the south). On the east side the setback distance to the boundary line from the perimeter of the underground garage is accordingly minimal, reduced to 2.07 and 2.57 m, however this is not discernible above-ground.

[16] The three applications under Appeal before the Tribunal that will enable the Proposed Development have evolved through the City and public consultation process.

[17] The proposed OPA attached as **Appendix “2”** will create a Site-Specific Designation for the Proposed Development which will permit the proposed residential density of 309 units per hectare, rather than a maximum residential density of 200 units per hectare permitted for a high density residential complex under the OP.

[18] The proposed ZBLA is attached as **Appendix “3”**. Its purpose is to change the

zoning of the Subject Property from the Current Mixed Zoning to a site specific “DE-2” (Multiple Dwelling) District to permit the Proposed Development and permit modifications to height, front yard setback, interior side yard setback, flankage yard setback, rear yard setback, gross floor area, parking ratio, loading space size, required landscape area, and parking space size for the Proposed Development.

[19] The Proposed Conditions of SPA are attached as **Appendix “4**. With the agreement of counsel, at the conclusion of the hearing the request was made to the Tribunal to permit them additional time to continue discussions as to the final form of an additional condition to the Proposed Conditions relating to transportation and traffic, which had been resolved by the parties prior to the commencement of the hearing. That additional condition was subsequently received by the Tribunal, reviewed, and has been added to the Proposed Conditions of SPA in Appendix “4”.

## **THE SUBJECT PROPERTY**

[20] The Subject Property is comprised of five different lots/parcels located on the south-east corner of Stone Church Road West and West 5th Street and has a total frontage of 80.4 m (West 5th Street), a depth of 88.2 m (south) and a lot area of approximately (0.788 ha). The lots at 73 and 77 Stone Church Road West and at 1029 West 5th Street all contain, or contained, single family dwellings, while the properties located at 83 and 89 Stone Church Road West, are vacant since the dwellings formerly located there were demolished.

[21] The Subject Property is designated as “Neighbourhoods” within the Urban Hamilton Official Plan (“UHOP”) and is also covered by an Area Specific Policy known as UH-5 within Volume 3 Chapter B of the UHOP, which exempts it from the minimum density requirements.

[22] The five lots comprising the Subject Property are zoned differently, and as follows under the City of Hamilton Zoning By-law No. 6593 (“ZBL”):

73 Stone Church Road West – “C” (Urban Protected Residential, Etc.) District, and “AA” (Agricultural) District;

77 Stone Church Road West – “C” (Urban Protected Residential, Etc.) District, and “AA” (Agricultural) District;

83 Stone Church Road West – “DE-2/S-1700” (Multiple Dwelling) District, Modified;

89 Stone Church Road West – “DE-2/S-1700” (Multiple Dwelling) District, Modified; and,

1029 West 5th Street – “AA” (Agricultural) District. (collectively “Current Mixed Zoning”)

[23] The 83 and 89 Stone Church Road West lots were the subject of a prior zoning by-law amendment in 2013, which envisioned a multiple unit development of stacked townhouses. This zoning, now applying to a portion of the Subject Property, as it has already been amended, permits as-of-right building height to eight storeys or 26.0 m. Multiple Dwelling units are permitted.

[24] With respect to services, the Subject Property has community facilities/ services including public transit, schools, public parks and active and passive recreational facilities within walking distance of the Proposed Development. The Parkland Spatial Analysis confirmed that approximately 70 ha of park and open space are within two kilometers of the Subject Property. There is no issue that municipal services and infrastructure are adequate to support the Proposed Development. The Subject Property has direct access to two Minor Arterial Roads and is 300 m away from a Major Arterial Road. All issues regarding road capacity have been resolved.

## **HIGHER ORDER PROVINCIAL POLICY – PPS, GROWTH PLAN AND *PLANNING ACT***

[25] In considering these Appeals, the Tribunal must determine whether the Proposed Development, as it will be permitted with the OPA and ZBLA:

- has regard for matters of provincial Interest – s. 2 of the *Planning Act* (“*Act*”);
- is consistent with the Provincial Policy Statement 2020 (“PPS”) pursuant to s. 3(5) of the *Act*; and
- conforms with any applicable Provincial Plans pursuant to s. 3(5) of the *Act*, and specifically *A Place to Grow, Growth Plan for the Greater Golden Horseshoe 2020* (“Growth Plan”).

[26] The Tribunal can, in a summary fashion, address the extent to which the Proposed Development addresses these higher order Provincial planning policies and matters contained in the *Act*, the PPS and the Growth Plan and make its findings as to consistency, conformity and regard for s. 2 of the *Act*.

[27] Both planning experts were in agreement that both the PPS and the Growth Plan support the intensification of the Subject Property and that some form of higher density development is appropriate. Both Mr. Johnston and Mr. Van Rooi reviewed the various policies of the PPS and the Growth Plan and concluded that the proposed planning instruments, as they would permit a higher density, multiple-unit apartment building, with varied forms of units, within the delineated built boundary, supported by infrastructure, and transit supportive, were consistent with the PPS and conform to the policies of the Growth Plan.

[28] Mr. Johnston further opined that the Proposed Development also had regard for matters of Provincial interest as provided for in s. 2 of the *Act* which is not challenged by the City.



[29] The Tribunal accepts this uncontroverted planning evidence in all respects and finds that the Proposed Development, as it would be permitted by the draft planning instruments, is consistent with the policies of the PPS and conforms to the policies of the Growth Plan. The Tribunal also finds that the Proposed Development has regard for those matters of Provincial interest set out in s. 2 of the *Act*, and in particular, the adequate provision of a full range of housing, including affordable housing in subparagraph (j) and the Subject Property's appropriate location for growth and development under subparagraph (p).

## **ISSUES**

[30] As indicated, the higher-level policies are not substantially in dispute between the parties and there is no real dispute that intensification and development of the underutilized Subject Property is in order. The key issues are really associated with conformity with the UHOP, and primarily focus upon the level of intensification that should be permitted on the Subject Property and matters of compatibility with adjacent and nearby properties and land uses. The character of the neighbourhood and area context is a preliminary issue related to intensification and compatibility.

[31] The City takes the position that the Proposed Development represents excessive intensification of the Subject Property, does not conform with the UHOP policies that address intensification, compatibility and urban design, and asserts that there are adverse impacts arising from the design in relation to adjacent properties arising from the height, massing, setbacks and step-backs in the design. The Applicant's position is that the Subject Property is, due its neighbourhood and area context and the UHOP policies, appropriate as a site for higher intensification and that the final iteration of the Proposed Development represents good design in all respects and is compatible. The Applicant's position is that there are no such adverse impacts.

[32] As the evidence has been presented, and upon the submissions of the Parties, the key issues can accordingly be narrowed to the following three matters:

(a) **Neighbourhood and Area Context**

A preliminary issue must first be determined as it impacts the core issues of intensification and compatibility. The Applicant and the City take different approaches to defining and characterizing the neighbourhood and area: the City focuses upon the immediate neighbourhood and identifies the area as predominantly a low-rise residential area; the Applicant takes a broader approach to context, focusing on the varied and undeveloped nature of the surrounding area as a neighbourhood in transition.

(b) **Intensification**

The primary issue is the appropriate level of intensification of the Proposed Development for the Subject Property? The City takes the position that the Applicant's proposal is "simply going too far" for this particular property and that intensification is not intensification at any cost.

The Applicant contends that the Proposed Development is appropriate higher-density intensification of the Subject Property in a transitioning urban area of the City that provides for such higher density due to the location and character of the Subject Property and the applicable UHOP policies.

(c) **Compatibility**

The second issue is interrelated to the issue of intensification since the policies relating to intensification address compatibility. The Tribunal must determine whether the Proposed Development is compatible with adjacent properties and the character of the neighbourhood? The City's position is that the Proposed Development is without appropriate consideration of the character of the broader neighbourhood and the adjacent properties, is

incompatible and will create adverse impacts. With design concerns, insufficient set-back and massing issues, the Development will not properly relate to adjacent properties or to the street. The City's concerns extend to argued non-conformity with urban design policies in the UHOP.

The Applicant's position is that there are no such adverse impacts or matters of compatibility, which is demonstrated to a great extent by the noticeable absence of objection from any adjacent or nearby owner. The Applicant submits that the Proposed Development is compatible in every respect with adjacent properties from both an urban design and planning perspective and compatible with the broader nearby area in transition.

[33] There are additional issues relating to the Site Plan Appeal which are resolved as a result of the determination of the above contentious issues.

#### **THE PLANNING AND URBAN DESIGN EVIDENCE GENERALLY**

[34] While the testimony of both Mr. Johnston and Mr. Van Rooi was the same on certain planning matters, their evidence differed on other significant planning issues.

[35] The Tribunal generally preferred the evidence of Mr. Johnston. There were several inconsistencies in the evidence of Mr. Van Rooi and the Tribunal found that Mr. Van Rooi's interpretations of the UHOP often overlooked important provisions of the UHOP or sought to ascribe priorities or relevance to them that were not supportable on the facts. Mr. Van Rooi, in cross-examination, either changed or resiled from, his rather entrenched positions and expressed points of view on several fundamental issues addressed in the municipal planning reports and his witness statement. This included whether there was any unacceptable adverse impact from the Proposed Development to the neighbouring Church Property.

[36] Wayne Harrison was engaged by the Applicant and was the only architectural and urban design witness to be qualified and testify at the hearing. The City did not call

any architectural and urban design witnesses to testify at the hearing despite having an urban design department at the City. The Tribunal found Mr. Harrison's evidence to be well presented, well reasoned and was uncontroverted, without exception. The City's submissions and position on matters of urban design were ultimately unsupported by any expert evidence and did not challenge what was essentially Mr. Harrison's unchallenged urban design evidence.

## **ISSUE 1 - NEIGHBOURHOOD CONTEXT AND PLANNED CONTEXT**

[37] The geographic reach and character of the neighbourhood and area surrounding the property is of significance in the determination of the issues before the Tribunal. So too is the planned context for the area.

[38] Mr. Van Rooi's evidence was focused on a very narrow view of the Neighbourhood. It was restricted to the Church Property and the Retirement Home Property which abut the Subject Property and the Three Storey Townhouse Units and Two Storey Townhouse Units which face the Subject Property across arterial roads. He characterizes the Neighbourhood as low rise residential. In contrast Mr. Johnston took a much broader perspective of the Neighbourhood. The overview of the broader area, including a review of the Upper James Urban Corridor, the Upper James Community Node, a number of developments, and the extent of the undeveloped and developable lands leads Mr. Johnston to define the broader area as a part of the City that is in transition.

[39] The evidence on the extent and character of the surrounding neighbourhood and area was presented in a somewhat piecemeal fashion in the hearing. In considering the totality of the evidence, following receipt of all of the evidence, the Tribunal has nevertheless been able to make determinations with respect to the context of the Proposed Development.

[40] The Tribunal generally preferred the planning evidence of Mr. Johnston on this issue.

[41] First, given the nature of the Applications and the Proposed Development, the area to be examined by the Tribunal in considering the issues is not a confined one as Mr. Van Rooi has suggested. As the Subject Property is located within this part of the City, the Tribunal is of the view that the broader area is certainly one in transition and an area where there is a lack of uniformity of built-form, uses, development type or neighbourhood character. There are many undeveloped lands, opportunities for infill, and land use designations that indicate that the Subject Property is one of many in an urban area of Hamilton that has already changed and is undergoing change that is anticipated and planned for. The relevant contextual study area to be considered in these Appeals is not, in the Tribunal's view, appropriately to be restricted to the immediacy of only the adjacent lands or within only 200 m.

[42] That being said, in the Tribunal's view, even the immediate area of the Subject Property is varied. While townhouse developments are located on both the north and west sides, of the two facing streets, even they differ in form. The townhouses on West 5th Street are two-storey rear-facing units, with high fenced-in rear amenity space, while those three-storey townhouses to the north of the Subject Property front onto Stone Church Road West or to interior streets. A retirement home, zoned institutional, is located to the south while a church, also zoned institutional, sits to the east. There is no uniformity of streets, lot and block patterning or sizes or frontages for the many properties and parcels of land shown in the evidence.

[43] The adjacent lands to the north, east, south and west of the Subject Property are designated "Neighbourhoods" in the UHOP. Their zoning in the ZBL is as follows:

- (a) The lands to the north, across from Stone Church Road West, are zoned "RT-20" (Townhouse-Maisonette) District and contain three storey townhouses with the front of the houses facing the street. ("Three Storey Townhouse Units"). The Three Storey Townhouse Units occupy approximately half the block.
- (b) The lands to the west, across the street from West 5th Street, are zoned

“RT-20” (Townhouse-Maisonette) District and contain two storey townhouses with backyards facing the street. (“Two Storey Townhouse Units”)

- (c) The Church Property immediately to the east is zoned Neighbourhood Institutional (I1) Zone and contain the Church building and the large parking area. The parking lot essentially covers the entire north half of the property on the eastern boundary of the Subject Property. The Church is set back at the end of the parking lot and is visible on the Concept Plan. The exact size of the Church Property was not provided in the documentary evidence but the Tribunal observes from the Street Tour Sketch (Exhibit 1, p. 1516) that it appears to be at least as large, and perhaps slightly larger than, the two western parts of the Subject Property, having an area thus of at least 4,850 m<sup>2</sup> or 0.485 ha. (Exhibit 1, p. 502 – 55 m x 88 m). Mr. Johnston testified that it was 1.35 acres in area, which, converted, would be 0.546 ha and thus consistent with the visual and documentary evidence. The Church, relative to the size of the Church Property, is relatively modest in size, having a footprint of approximately 813 m<sup>2</sup>.
- (d) The adjacent Retirement Home Property to the south, on the east side of West 5th Street is zoned Neighbourhood Institutional (I1, 462) and contains a four-storey retirement home.

[44] A comparison chart and map were provided (Exhibit 1, Tab P) identifying surrounding buildings in the immediate area to the Subject Property and their heights. Essentially the buildings in the Townhouse subdivisions to the north, northwest, and west of the Proposed Development were identified, as was the four-storey building on the Retirement Home Property to the south. The Church on the Church Property to the east was also identified, as well as a few one and two storey buildings located on the south side of Stone Church Road West, to the east of the Church. The remainder of the

lands to the east, and along the south of Stone Church Road West to the corner of Stone Church Road and Upper James Street, are comprised of the Barton Stone United Church and Cemetery. Visual exhibits (Exhibit 1, Tab O) of this immediate area context was also provided

[45] Farther afield, the evidence indicates that William Connell Park, a sizeable area of recreational lands is located south and to the west of the Subject Property, within the sizeable tract of land identified below, with the entrance located off of West 5th Street a short distance from the Subject Property.

[46] Other residential and vacant lands designated for residential development appear to be located to the south of the Retirement Home Property.

[47] To the north, and east of the Townhouse development, an adjacent car dealership occupies the remainder of the block at the corner of Stone Church Road West. The car dealership occupies a large expanse of land at the corner and is used for the outside storage of cars and low rise commercial automotive uses. The side yards of the Three Storey Townhouse Units face the Proposed Development with a significant green space buffer area to the street. The Church Property is also faced by the front yards of a different row of Three Storey Townhouse Units buffered from the street by a private drive and green space.

[48] With respect to the broader area, of the whole of the large tract of lands to the west of the Subject Property (the "Tract") shown in Exhibit 1, page 1515, bounded by Stone Church Road West to the north, West 5th Street to the east, Rymal Road West to the south, and Garth Street to the west, a good portion of it remains largely undeveloped at present, containing a variety of uses and built forms. The residential Two-Storey Townhouse Units identified above, and some additional residential development, are located in the northeast corner of the Tract and along Stone Church Road.

[49] William Connell Park, identified as 20.0 ha in size, forms a large part of this

Tract. There are some larger residential lots with detached homes otherwise along the east side of the Tract fronting West 5th Street, and likewise along a portion of the south part of the Tract, fronting the north boundary of Rymal Road West. There appears to be a small subdivision located off Rymal Road West in the southeastern portion of the Tract and a larger subdivision located in the southwestern quadrant of the Tract. The western, northwestern and interior portions of the Tract are largely undeveloped with some intermittent residential development.

[50] The Tribunal's attention was drawn to a residential development located cater corner to the southeast corner of this Tract, municipally known as 445 Rymal Road West ("445 Rymal"). The location of 445 Rymal was identified on page 1515 of the Joint Document Book, and visible in photos 2 and 3, pages 1517 and 1518. Two Google Earth photos of the building at 445 Rymal, Exhibit 10 and 11, were also introduced in evidence. This ten (10)-storey residential development at 445 Rymal, on the southwest corner of the intersection of Rymal Road West, and Garth Street, was comparatively addressed by each of the three witnesses and is dealt with in the evidence below.

[51] In addition to the various townhouse developments completed on the portions of the nearby area shown in the documentary evidence, the Tribunal heard also that an eight (8)-storey mixed use building and four multiple dwellings have been approved nearby to the east, at the corner of Upper James Street and Stone Church Road East.

[52] With respect to the planning policy context of the immediate and surrounding areas:

- (a) The Subject Property is within the Urban Boundary of the UHOP;
- (b) The Subject Property is identified as a part of the Mewburn Neighbourhood Plan area located in the northwestern corner of the identified study area for that Neighbourhood Plan (Page 1466, Exhibit 1). The Mewburn Neighbourhood Plan is bounded by Stone Church Road to



the North, West 5th Street to the West, Upper James Street to the east and Rymal Road West to the south. It is not a plan under the *Act* but is nevertheless updated for development uses and speaks to various objectives for development in this Neighbourhood.

- (c) In the UHOP, the Upper James Street corridor, located about 300 meters to the east of the Subject Property, (and partly within the Mewburn Neighbourhood Plan) is designated: (1) as a Primary Corridor; (2) a Major Arterial Road; (3) as commercial and mixed uses in the UHOP schedules.
- (d) The same defined area of the Mewburn Neighbourhood Plan is located within the “UH-5 Policy Area” which provides that this area is not subject to minimum net residential density requirements.
- (e) That portion of the Upper James Street corridor to the east of the Subject Property is also identified as a “Community Node” on Schedule E of the UHOP.
- (f) Both Stone Church Road West and West 5<sup>th</sup> Street are designated as Minor Arterial Roads in the UHOP.

[53] On the whole of the evidence, in first considering the contextual framework for the location of the Subject Property, the Tribunal is inclined to agree with Mr. Johnston’s opinion that the area surrounding the Subject Property is an area in transition and is in the process of intensifying from low-rise, low-density built forms to additionally located developments with higher densities. The development at 445 Rymal, the development approved for the corner of Upper James Street and Stone Church Road East, the large inventory of lands available for infill in the years ahead, including those vacant lands on the same side of West 5th Street, establish, for the Tribunal, that this is an area that is undergoing, and will undergo change.

[54] Mr. Van Rooi tried to distinguish the proposed and approved eight (8)-

storey/multiple dwelling Stone Church Corner Development from the Proposed Development since, in his view, it was within a different planning context, located on the Upper James Urban Corridor. The Tribunal prefers Mr. Johnston's approach on this subject and accepts that despite its location within the Corridor it is nevertheless only 315 m away from the Proposed Development and represents part of the existing neighbourhood context. As the Subject Property is in close proximity to the Corridor, and such proximity is identified as a relevant consideration in the UHOP in assessing its viability for higher intensification, the Tribunal considers that this approved Corridor development is relevant. This nearby development represents significant intensification for the neighbourhood generally and in the immediate neighbourhood specifically and does represent the transitional nature of the Subject Property's area context.

[55] Similarly, Mr. Van Rooi sought to distinguish the 445 Rymal Development due to its distance from the Proposed Development. It is the Tribunal's view that this development also cannot be ignored as it within the broader area in transition, and itself represents an example of that transition as it developed a large underutilized block of lands on a major arterial road. Spatially, despite its distance from the Subject Property, the Tribunal finds that 45 Rymal is very much a part of the broader area surrounding the Subject Property in a state of transition and evolution as low rise dwellings and vacant lands evolve to a more dense residential built form such as multiple dwellings or townhouses. Excluding 445 Rymal from consideration merely by its distance of approximately 1600 m from the Subject Property, when it shares characteristics of the area, is unreasonable.

[56] Upon the whole of the evidence, the Tribunal is unable to accept Mr. Van Rooi's characterization of the area, or the City's submission, that the surrounding area is one made up only of ground based housing, low in form, with singles and town houses. While indeed such subdivisions and lots containing single dwellings and town houses do clearly exist within the area, and although there are two townhouse subdivisions to the north and west, the evidence does not support the uniform low rise characterization suggested by the City or the suggestion that a nine-storey multi-unit building such as

the Proposed Development would represent the type of anomaly suggested by Mr. Van Rooi.

[57] The Tribunal noted that Mr. Van Rooi did agree, when questioned during cross-examination, that the area is indeed an area in transition. Mr. Van Rooi confirmed that 445 Rymal represented an appropriate *form* of transition, but too far afield from the Subject Property to be considered contextually.

[58] In summary based on the planning evidence and information presented, the Tribunal finds that the neighbourhood at large is that identified by Mr. Johnston in his evidence, and is one of mixed uses and mixed densities, with higher density residential development occurring throughout the area, and in transition as its residential density increases through site intensification.

## **ISSUE 2 - INTENSIFICATION**

[59] With respect to the intensification of development on the Subject Property, the Tribunal endorses the basic principle often advanced, as argued by the City in this case, that intensification of a site, supported by Provincial policy, nevertheless cannot occur to the detriment of, and without conformity to, local level planning policies relating to intensification, compatibility of development and urban design. The Tribunal thus must focus on these core policies and issues.

### **UHOP Policies on Growth and Intensification**

[60] The Subject Property is designated as Neighbourhoods in the UHOP. In Hamilton, Neighbourhoods are generally regarded as stable areas with each neighbourhood having a unique scale and character (section 2.6.7). While Neighbourhoods are to be regarded as stable, they are not static and it is noteworthy that the UHOP expressly provides that Neighbourhoods are expected to evolve to accommodate 40 percent of the City's growth (Section B2.4.1.3).

[61] The goal of the UHOP is to promote and support intensification of an appropriate scale in appropriate locations within neighbourhoods. (Section 3.1.5). Residential intensification within Neighbourhoods is to enhance and be compatible with the scale and character of the existing residential neighbourhood in accordance with Section B.2.4 and other applicable policies of the UHOP (Section 3.2.4).

[62] The Tribunal would agree with Mr. Johnston's observation that the UHOP does not identify specific appropriate areas or locations for intensification within the urban area but instead provides guidance as to the appropriate locations for high density residential development based upon the characteristics of each site and its context.

[63] Section 3.6 provides that high density residential uses are to be located within safe and convenient walking distance of existing or planned community facilities and services including public transit, schools and recreational facilities. As well, proximity to the Downtown Urban Growth Centre or Community Nodes "shall be considered desirable for high density residential uses."

[64] Section 3.6.6 of the OP identifies the quantitative level of intensification that is appropriate for a high-density residential area. It states the following:

3.6.6 In high density residential areas, the permitted net residential densities, identified on Appendix G – Boundaries Map shall be:

- a) greater than 100 units per hectare and not greater than 500 units per hectare in Central Hamilton; and,
- b) greater than 100 units per hectare and not greater than 200 units per hectare in all other Neighbourhoods designation areas.
- c) Notwithstanding the maximum density requirement in Policy E.3.6.6 b), for smaller sites fronting on arterial roads, an increase in density may be without an amendment to this Plan, provided the policies of this Plan are met. (OPA 109)

[65] The OPA is required due to the maximum net residential density of 200 set out in

s. 3.6.6 of the UHOP.

[66] The UHOP then, in s. 3.6.7 sets out the qualitative criteria to be evaluated for development within the high density residential category which includes the following: direct access to a collector or major or minor arterial road; that high profile multiple dwellings shall not generally be permitted immediately adjacent to low profile residential uses, generally requiring that there be a separation distance in the form of a suitable intervening land use such as a medium density residential use, or where such separation cannot be achieved, the use of transitional features such as effective screening and/or design features in the design of the high density development to mitigate adverse impact on adjacent low profile residential uses; adequate landscaping or buffering; and compatibility with existing and future uses in the surrounding area in terms of heights, massing and arrangement of buildings and structures.

[67] The residential intensification tests in Section B.2.4 of the UHOP require a balanced evaluation of the enumerated criteria set out therein such as: the relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built-form; contributes to maintaining and achieving a range of dwelling types and tenures; and the compatible integration of the development with the surrounding area in terms of use, scale, form, and character.

[68] The Tribunal must also evaluate: compatibility with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic and other nuisance effects; the relationship of the proposed building(s) with the height, massing, and scale of nearby residential buildings; transitions in height and density to adjacent residential buildings; the relationship of the proposed lot with the lot pattern and configuration within the neighbourhood; the ability to respect and maintain or enhance the streetscape patterns including block length, setback and building separations.

[69] The UHOP, in s. B.3.3, (consistent with s. E.3.0 which similarly addresses development and compatibility in Neighbourhoods) also requires that the Proposed

Development conform to the urban design policies that speak to compatibility and development in Neighbourhoods. Utilizing commonly used language, the UHOP policies include those that require the Proposed Development to: promote intensification that makes appropriate and innovative use of buildings and the site and is compatible in form and function to the character of existing communities and neighbourhoods; respect existing character, development patterns, built form and landscape in nearby areas; and contribute to the character and ambiance of the community through appropriate design of streetscape and amenity areas.

[70] The General Policies for Residential Uses in the UHOP (section 3.3) identify that Higher Density residential uses and building forms should be on the periphery of Neighbourhoods, on major or minor arterial roads and must be compatible with existing and future uses in the surrounding area. Section E3.6.1 of the UHOP emphasizes the suitability of such areas for High Density Residential.

[71] The UHOP sets out the vision for growth within the City. It forecasts a population of 660,000 by 2031 (section 1.2) and sets a residential intensification target of 40% for its built-up area by 2015. The City has also adopted a Growth-Related Integrated Development Strategy ("GRIDS Strategy") approach to guide growth and has been considering alternatives for achieving growth in the decades ahead to 2051 (Exhibits 7 and 7b). This includes the recommended "Ambitious Density" target increasing density within the existing urban area to 50% between 2021 and 2031, increasing thereafter. It was Mr. Johnston's view that in order to meet the required growth targets without expanding existing urban boundaries, between 7 to 9 buildings similar to the Proposed Development will be required each year. While the growth strategies are not yet formally in effect, such anticipated and required increases in density and growth in this area of the City are, in the Tribunal's view, consistent with Mr. Johnston's approach to considering and applying the UHOP policies regarding intensification.

[72] Both the UHOP and the approach used in the GRIDS Strategy make it clear that growth is to occur from residential intensification which must be encouraged generally.

This intensification is to be focused in or near Urban Nodes and Urban Corridors within the City, especially on vacant or underused land. Growth must not occur at the expense to Neighbourhood stability, but Neighbourhoods can not remain static, and they must accommodate change.

### **Analysis of the UHOP Intensification Policies.**

[73] The Tribunal has considered whether the Subject Property is an appropriate location for intensification under the UHOP policies against the evidence and findings relating to both its immediate, neighbourhood and area context and its planning context. It is the Tribunal's view that the characteristics and location of the Subject Property and the City's planning policies outlined above clearly support the intensification of the Subject Property. As Mr. Johnston indicates, the Proposed Development "checks off all the boxes" when viewing the qualitative criteria set out in the UHOP and in particular in s. 3.6.

[74] In the Tribunal's view, what is appropriate is a level of intensification well beyond that of detached, semi-detached dwellings or of townhouse built forms, and the Subject Property, under the criteria, warrants a multi-unit building with a rather significant density. The Tribunal arrives at this conclusion because:

- (a) the Subject Property is within the Urban Boundary 400 metres of the Upper James Street Urban corridor ("Upper James Corridor");
- (b) it is on the periphery, or the perimeter, of the Upper James Community Node located at Upper James Street and Rymal Road. ("Upper James Community Node");
- (c) the transit supportive Upper James Corridor is currently well served by a City bus line and is potentially earmarked for the City's proposed rapid transit route;

- (d) the Subject Property fronts onto both Stone Church Road and West 5th Street, and thus has direct access to two minor arterial roads in the OP which are also currently serviced by City bus routes;
- (e) in addition to transit, it is in proximity to major neighbouring park areas, schools, recreational facilities and serviced by municipal infrastructure;
- (f) the Subject Property, in it's immediate and broader context, can be considered to be on the periphery of the neighbourhood and it is not a site intrenched within a neighbourhood characterized by only low-rise residential dwellings;
- (g) the Subject Property is also not immediately adjacent to low-profile residential uses and benefits from a separation distance from any low-rise residential properties by wide roadways and amenity space and buffering to the north and west, the adjacent place of worship and a four-storey retirement residence;
- (h) achieves a transition in height and massing from the centre of the Mewborn Neighbourhood to the four-storey Retirement residence to the 9-storey Subject Property;
- (i) as it will introduce a higher-density multi-unit residential development with a range of unit types and tenures, it will serve to contribute to the 40% of growth expected to be accommodated in the City's evolving Neighbourhoods and conform to the approach of the GRIDS Strategy and some form of imminent strategy for growth; and
- (j) finally, and of significance, the Subject Property is, as the Tribunal has found, within an area that is in transition and which reflects a lack of uniformity of built-form, uses, development type or neighbourhood character. As such, the Proposed Development will maintain and



enhance that character as it will add a proportionally higher density multi-unit apartment built-form into the periphery of that neighbourhood

[75] Mr. Harrison's evidence, from an urban design perspective, also supported the Subject Property's suitability as a site for higher density development. His oral testimony firmly fleshed out what was contained in his witness statement, opining on the following:

- (a) the variety of unit typologies, including those with accessibility, will serve to provide an alternative residential type to townhomes and single dwelling and contribute to the community's housing needs, and a complete community, as provided for in the UHOP;
- (b) "the surrounding neighbourhood is characterized by its transitional and varietal forms of development" and in that respect, the proposed development is compatible with the character of the existing neighbourhood;
- (c) with the Church to the east and the additional institutional use to the south, and the roadways to the north and west, the intervening medium density residential uses in the townhouse complexes and the low rise residential uses beyond serve to create appropriate separation distances and transitions in scale to support the positioning of the higher density multi-unit Proposed Development at this location;
- (d) the Subject Property is located approximately 300 m from the Upper James Primary Urban Corridor, and Upper James Community Node and the retail and commercial services and transit routes; both West 5<sup>th</sup> Street and Stone Church Road are designated Minor Arterial Roads – all factors to be considered for the location of a higher density and larger built-form.

[76] The Tribunal has considered, but generally rejects Mr. Van Rooi's expressed

opinion that the Proposed Development on the Subject Property does not meet the residential intensification tests. Mr. Van Rooi's focus upon neighbourhood and "area" character was narrowed to the immediacy only of the adjacent properties and the townhouses across the street rather than area context considered by the Tribunal above. Mr. Van Rooi's limited context and his identification of the scale of the neighbourhood as strictly a "low rise character area", has formed a substantial part of the basis for his opinion as to the need for low or medium density intensification on the site. This is unfortunately at odds with the determination of the first Issue adopting the broader context and characterization of an area in transition and existing and potential multi-unit development adopted by the Tribunal.

[77] Mr. Van Rooi's approach is also, in the Tribunal's view, at odds with its findings as to the UHOP's qualitative criteria and site-centric approach to determining appropriate intensification, and locations for high density development. In carefully considering Mr. Van Rooi's evidence the Tribunal is also of the view that Mr. Van Rooi was not necessarily opposed to describing the neighbouring area surrounding the Subject Property as one in transition. Mr. Van Rooi acknowledged on cross-examination that the Subject Property is a proper area for intensification and is considered a High Density designation under the UHOP policies, differing only with respect to the degree of higher density that is appropriate.

[78] Upon the whole of the evidence, the Tribunal finds that the Subject Property is in an area where higher-density intensification is to be accommodated, encouraged and thus appropriate under the UHOP policies.

### **Appropriate Degree of Intensification for the Subject Property**

[79] The City takes issue with the proposed scale of intensification of the Proposed Development which will have a density of 309 units per ha. Mr. Van Rooi's evidence was that this level of intensification was completely inappropriate. In his view, the lower residential densities associated with the town homes in the immediate area make the proposed scale of intensification incompatible and that only lower scale medium density

is appropriate. The Three Storey Townhouse Units and the Two Storey Townhouse Units that will face the Proposed Development across minor arterial roads have a density levels of 43 units per hectare and ten (10) units per ha respectively.

[80] Mr. Van Rooi also points to s. 3.6.6 b) as limiting the level of intensification to 200 units per ha for a high-density development like the Proposed Development which is in a Neighbourhoods designated area.

[81] The Tribunal prefers the evidence on Mr. Johnston on this issue since it is based on the policies of the UHOP. Mr. Johnston emphasized that section 3.6.6 c) permits higher densities for a smaller site like the Subject Property if it is on arterial roads, provided the other policies of the UHOP, which are focused on compatibility, are met. The UHOP supports a density higher than 200 units per ha for the Subject Property if the Proposed Development is compatible and otherwise complies with section 3.6.6 c). Furthermore, the City, in Mr. Johnston's view, contemplates a higher density since the two Stone Church Road West lots Zoned "DE-2/S-1700" (Multiple Dwelling) District, Modified, which form part of the Subject Property, permit an eight-storey multiple residential building according to the ZBL as amended.

[82] The Tribunal finds, upon all of the evidence, that the Proposed Development, as it will be permitted by the OPA and the ZBLA, conforms with the UHOP policies as they relate to the location of high density residential in the form proposed by the Applicant. In the Tribunal's view, the Subject Property, in its existing context both immediate and broad, and in its planned context, is an appropriate and desirable location for higher density intensification such as that proposed. On a *prima facie* basis, the Tribunal also finds that the proposed density and degree of intensification that would be enabled by the OPA and the ZBLA is not excessive or unreasonable and is supported by the UHOP policies and the factual evidentiary record.

[83] What remains to be determined is whether the proposed level of intensification gives rise to adverse impacts or problems of incompatibility when considering those additional policies that address compatibility for proposed intensification, and in this

case, high density. This also brings into play the issues raised by the City with respect to conformity to urban design guidelines and policies.

### **ISSUE 3 - COMPATIBILITY**

#### **Intensification and Compatibility**

[84] As indicated, s. E2.6 of the UHOP makes it clear that applications for residential intensification within Neighbourhoods, like the application in the current case, are to be permitted provided that they meet the compatibility criteria in Sections B.2.4 – Residential Intensification and E.3.0 - Neighbourhoods Designation of the OP. Sections B.3.3.1.5, B.3.3.1.8, and B.3.3.2.3 of the OP, summarized above, set out the tests for this aspect of compatibility.

[85] The approach to compatibility differs between Mr. Van Rooi and the City, and Mr. Johnston and the Applicant. Mr. Van Rooi wishes to ascribe a very narrow definition to the term compatible. His evidence is focused on his view that the immediate residential uses are low rise and low density compared to the Proposed Development. In considering Mr. Van Rooi's opinion evidence, the Tribunal observes that it is his view that a nine-storey building would "not be the same as, or similar to", three or two storey, low rise, low density townhomes that are in the immediate area and is thus incompatible. Mr. Van Rooi is of the opinion that the height, massing, scale and density, in relation to the immediately adjacent lands and streets, make the Proposed Development so different that it is not compatible.

[86] The Applicant's submission, supported by Mr. Johnston's evidence, in contrast, points out that the approach towards compatibility advanced by Mr. Van Rooi is not supported by the UHOP or the general approach of the Tribunal when considering questions of compatibility. The Tribunal agrees and prefers Mr. Johnston's evidence on the definition of compatible since it is firmly rooted in the definition of the term in the UHOP and the "standard" approach to the issue of compatibility. Mr. Van Rooi's evidence is not consistent with a fundamental premise within the UHOP that

compatibility speaks to: two things being in harmony and coexisting without conflict, rather than; two things being the same as, or similar to, each other.

[87] The definition of compatible in the UHOP makes it clear that it should not be interpreted as meaning “the same as”, or even “similar to”, which appears to be integral to Mr. Rooi’s planning opinion and the City’s submission.

[88] Compatible is defined in Chapter G of the OP as follows:

“Compatibility/compatible: means land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean “the same as” or even as “being similar to”.

[89] Mr. Cheeseman also referred the Tribunal to the following OMB cases dealing with the definition of compatible: *Motisi v. Bernardi*, 1987 CarswellOnt 3719, 20 O.M.B.R. 129 (“*Motisi Case*”); *Re: Keewatin (Town) Zoning By-law 94-013*, 1996 CarswellOnt 5838, 33 O.M.B.R. 293 (“*Keewatin Case*”); and *Oasis Townhouses On Lawrence Inc. v. Toronto (City)* (2019), 2019 Carswell Ont 20193 (“*Oasis Case*”).

[90] Each of these cases dealt with the term compatible. The Tribunal refers to the following extracts from each of these decisions, which also address the element of adverse impact as it is a factor in compatibility:

In the *Motisi Case* the Board stated the fundamental definition widely adopted in planning considerations:

Being compatible with is not the same thing as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being compatible with implies nothing more than being capable of existing together in harmony.

The Board in the *Keewatin Case* elaborated further as follows:

In the view of the Board, as it has repeatedly stated in the past, compatibility turns upon the impact of the proposal on the character of the

environment, both built and natural, with due regard for how that character is likely to evolve in the foreseeable future. Being compatible with is not the same as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to means having a resemblance to another thing; they are like one another, but not identical. Being compatible with means being mutually tolerant and capable of coexisting together in harmony in the same area. In the final analysis, the proposal should not cause an unacceptable adverse impact upon existing built and natural environments.

And in the *Oasis* Case, the Board stated:

The scale of the proposed townhouse blocks reflects the Property's location along a Major Street and is compatible with the existing one and two-storey dwellings located in the neighbourhood to the south. In this respect, "compatible" does not mean "identical to" but rather means the ability to co-exist without unacceptable impacts of one upon the other.

[91] The City does not dispute the definitions and principles set out in these cases. Adopting a consistent approach, these definitions and guiding principles previously endorsed by the Board and Tribunal as to the concept of “compatible” have been obviously adopted in the City’s definition in the UHOP. The Tribunal confirms that the concept of compatibility as set out above should prevail.

[92] A significant consideration of compatibility, based on this approach, is whether the Proposed Development will have any “unacceptable adverse impact” on the neighbourhood and adjacent lands or instead coexists in harmony with these properties.

### **Will the Proposed Development Result in An Unacceptable Adverse Impact?**

[93] To assess whether the Proposed Development is compatible and will result in some measure of unacceptable adverse impact to the Neighbourhood, the Tribunal has considered the evidence presented on the following matters:

- (a) whether the Proposed Development respects, and is sensitive to, the existing Neighbourhood and contributes to the community through good design;

- (b) whether there was an appropriate transition to scale using the angular plane studies for the surrounding residential uses;
- (c) whether the proposed scale, density and height are appropriate for this location; and
- (d) whether there are possible privacy and overlook issues for surrounding properties including the Church Property.

### **Relationship with Existing Neighbourhood and Area and Appropriate Design**

[94] A recognized criteria in determining compatibility is whether the Proposed Development respects, and is sensitive, to the existing surrounding neighbourhood and whether its design contributes to the neighbourhood.

[95] Mr. Van Rooi's evidence criticizes the Proposed Development for not providing a suitable transition in building height and adequate buffering including appropriate setbacks or step-backs. The massing and scale of the built-form is, in Mr. Van Rooi's view, excessive and incompatible. His evidence is that greater setbacks with more landscaping are necessary to better relate to the adjacent properties. He is specifically concerned that the setback to the Church Property is inadequate. He also has pointed to overlook and privacy issues with the Church Property in his evidence in chief.

[96] Despite these opinions, the City did not introduce any urban design evidence to support such criticisms of urban design and matters of built-form.

[97] In contrast, Mr. Johnston's planning evidence, supported by Mr. Harrison's qualified opinions on matters of urban design, has identified the many changes that the Appellant made to its design in response to community and City concerns and the extent to which the building height, massing, setbacks, density and landscaped area were all adjusted to ensure compatibility with the immediate and broader context.

[98] Mr. Johnston has also provided his views on the subject of unacceptable adverse impact on the surrounding uses. Mr. Johnston's evidence is that the various studies and reports evaluating the Proposed Development, and its relationship with adjacent properties and the streets, were favourable in all respects and supportive of the final concept plan now before the Tribunal. Mr. Johnston has pointed out that upon all of the evidentiary record, there is no evidence to suggest that the Proposed Development will generate any unacceptable adverse impacts to the neighbourhood that cannot be mitigated.

[99] Of significance to the Tribunal is the fact that Mr. Johnston's evidence was also supported by Mr. Harrison's uncontroverted architecture and urban design evidence. In Mr. Harrison's view, in turn, supporting Mr. Johnston's planning opinion:

- (a) the Proposed Development is designed with quality materials and techniques which complement and enhance the Neighbourhood.
- (b) the Proposed Development contributes to and respects the existing character and built form of the Neighbourhood by providing grade-related townhome style units on the ground floor with terraces, pedestrian connections from each ground-related unit to the public sidewalk and an appropriate transition in scale to the surrounding existing development by setting the bulk of its massing away from the neighbouring properties to the south and east.
- (c) the design of the facades facing the north and west have been articulated and designed with a partial "podium" to create streetscape interface on the public street;
- (d) the "uglies" of a building relating to loading, garbage, intake vents, blank walls and ingress have been placed away and out of sight from the public realm;



- (e) the built form is separated from any low rise residential areas by good buffering with the Church Property and Retirement Property, as well as the two streets to the north and west: the parking areas and landscaping areas to the south represent a separation space to the Retirement Property; the road widening to the north and west will extend the public roadway width lying between the Proposed Development and the Townhomes across the street (with the additional rear-yard greenspace on the one side); and the significant separations to the Church structure created by the large surface parking area and setbacks to the Church from the boundary.
- (f) The east interface of the building with the Church is appropriate from an urban design perspective as it is primarily a large parking lot utilized on a part-time basis and will not, in his view, impede the development of the Church Property in the future if redeveloped for other uses. This is particularly due to its significant size and ability to accommodate substantial development;
- (g) The height and scale of the building are appropriate, within the angular plane and have been fairly determined based on the angular plane studies and the corridor planning policies, and as such result in no adverse impacts.

[100] The Tribunal has carefully considered the cross-examination of Mr. Harrison, and the general submissions provided by the City on urban design and architectural matters, and finds that Mr. Harrison's evidence as to the conformity of the Proposed Development with Urban Design policies within the UHOP remains unshaken.

[101] Mr. Harrison's position that the east façade, and the set-backs and absence of step-backs are appropriate in relation to possible future development on the Church Property was subjected to scrutiny during cross-examination. The existing condition of the property, including the significant size of the Church Property, and the fact that the

majority is used for surface parking was important for Mr. Harrison's conclusion that the Proposed Development has more than adequately responded to the Church Property. Further, in the future, if change occurs, the substantial size of the Church Property will allow any proposed development to similarly adequately interface and relate to what will then be on the Subject Property, i.e. the Proposed Development. Based upon Mr. Harrison's extensive experience, it is his view that there will be something more significant than a detached or semi-detached dwelling that will replace the Church, if that occurs.

[102] The Tribunal accepts Mr. Harrison's opinions and finds that specifically, the Proposed Development does not result in any adverse impact and the proposed height, massing and scale for the east side, are appropriate, in conformity to the urban design and compatibility policies of the UHOP, and represent good urban design. The Tribunal finds the Applicant's position, from a planning and urban design perspective, to be reasonable, as the Applicant submits that the locational and spatial characteristics of the Church Property will lend itself to a higher density type of residential development for the same reasons that the Subject Property is appropriate for intensification.

[103] While Mr. Van Rooi has provided some generalized comments regarding the urban design, and spoke to potential adverse impacts, in the Tribunal's view, these were apprehensions that were unsupported by the evidence, and contradicted by the only architectural and urban design evidence. No other witness or party appeared in this hearing to raise any concern of any kind regarding impact, and the extent of Mr. Van Rooi's expressed concerns relate more to the potential for future interfacing with future development on the Church Property, should it ever be subject to redevelopment.

[104] Overall, the Tribunal prefers the evidence of Mr. Johnston and Mr. Harrison on the issue of respect and sensitivity of the Proposed Development to the surrounding Neighbourhood. The Tribunal finds that the design efforts have been made to blend in with the surrounding residential town home uses primarily with the grade-related townhome style units and pedestrian connections with the ground related units and the

interface with the Church Property. The absence of any established unacceptable adverse impacts, upon the evidence, serves to support this finding.

### **Transition to Scale - 45 Degree Angular Plane Analysis**

[105] Mr. Harrison confirms that the City-Wide Corridor Planning Principles and Design Guidelines (“CPPDGs”) apply to the Subject Property since it is within 400 m of the Upper James Corridor. The CCPDGs provide criteria to ensure compatibility and appropriate transition to scale with the immediate neighbouring properties. The CCPDGs recommend that buildings be massed to fit within a 45-degree angular plane taken from the property line where a property is adjacent to a residential use, and from a line at grade at a distance of 80% of the width of the street right-of-way where a property is adjacent to a street.

[106] Along the northern and western elevations, where the Subject Lands are adjacent to Stone Church Road West and West 5th Street respectively, the building mass of the proposed development is contained within the envelope of the angular plane taken at a distance of 80% of the planned right-of-way width as prescribed by Section C.4.5.2 and Schedule C of the UHOP, which will be achieved through the road widening dedication requirements of the Site Plan approval.

[107] The CCPDGs do not require that an angular plane analysis be completed for properties zoned Institutional, like the Church Property and the Retirement Home Property. Mr. Harrison’s evidence was that the Proposed Development, for the most part, passed the angular plane analysis for the Retirement Home Property, acknowledging that the decorative roof stone feature will be in shadow only to a very minor extent. He also advised that the test should not be considered relevant to the Church Property since the Proposed Development would be facing the large parking lot there.

### **Scale, Density, Height and Placement of The Proposed Development**

[108] The scale, density, height and placement of the Proposed Development are all important factors for the compatibility with the Neighbourhood. Mr. Van Rooi's evidence is that building arrangement, height, density, massing, setbacks, step backs, transition and spacing of the Proposed Development do not sufficiently mitigate adverse impacts on the surrounding context. As indicated, Mr. Van Rooi has opined in his evidence in chief that there are adverse impacts but has not explained the nature of these adverse impacts other than to point to possible overlook and privacy issues on the Church Property. Mr. Van Rooi's responses on the existence of such adverse impacts upon the Church Property during cross-examination are addressed below.

[109] The opinion evidence of both Mr. Harrison and Mr. Johnston is that the proposed scale, density, height and placement of the Proposed Development is appropriate and compatible for this location. The following factors were identified:

- (a) The building is designed with a tripartite division of the elevation vertically through use of material variety to minimize any negative scale impacts and provide for a transition in massing to the surrounding existing development.
- (b) Townhome style units are incorporated within the northern facade to promote a human- scale built form which is reflective of the built form of the existing Two Storey Townhouse Units and the Three Storey Townhouse Units to the north and west.
- (c) The building massing is contained within a 45-degree angular plane in order to limit built form impacts on the surrounding residential uses.
- (d) In addition, the building design provides an appropriate buffer to the abutting Church Property and Retirement Home Property by aligning the massing along the roads and with yard setbacks.

[110] In the Tribunal's view, Mr. Harrison's opinion evidence on architectural and urban design matters and the issue of compatibility was presented in a concise, direct and forthright manner and, as indicated, is the only expert evidence on these matters before the Tribunal. As indicated, the City's attempt, in cross-examination, to challenge Mr. Harrison's opinions were wholly ineffective in undermining his clearly expressed conclusions as to the Proposed Development's conformity with the urban design and building policies contained within the UHOP.

[111] The Tribunal prefers the evidence of Mr. Harrison and Mr. Johnston on this issue. Insufficient evidence has been provided by Mr. Van Rooi on the nature of any adverse impacts from the scale, height, density and placement of the Proposed Development. Only concerns relating to possible overlook and privacy adverse impacts on the Church Property remain to be considered.

### **Possible Overlook and Privacy Adverse Impacts on The Church Property**

[112] Mr. Van Rooi initially testified that the reduced setback of 4.72 m rather than 7.5 m, proposed for the eastern side yard at 4.72 m, would create privacy and avoid overlook issues for the current and future uses of the Church Property. In cross-examination however, the Tribunal heard Mr. Van Rooi recant from this position and he admitted that despite the apprehensions, there were no existing overlook, privacy or noise issues, or significant shadow concerns, and no indication of any undue adverse impacts with the Church Property (or the other three sides) from a planning perspective. Further, Mr. Van Rooi acknowledged that future development on the Church Property could be done in such a way that it would not be impacted.

[113] As such Mr. Van Rooi admitted that since there was, and could be, no adverse impact from the Proposed Development, it must therefore be compatible.

[114] Both Mr. Harrison and Mr. Johnston presented evidence confirming that the Proposed Development facing the Church Property will be adjacent to the parking lot on this land. The evidence before the Tribunal is simply that there is, and will be, no known

unacceptable overlook or privacy issues relating to uses or any adverse impacts for that matter.

[115] On the subject of *potential* impacts of overlook and privacy, the argument advanced by Mr. MacDonald, based in part upon Mr. Van Roo's witness statement, that future possible uses of the property may be incompatible with the Proposed Development was, as indicated, unconvincing. Although single family dwellings are permitted on the Church Property due to its zoning, the evidence of Mr. Johnston (and Mr. Harrison) is convincing that the likelihood of the Church Property being redeveloped in this way is remote. It is reasonable to expect that land values for underutilized properties in the area will be enhanced by the Proposed Development. Should the Church Property be available for future redevelopment there will be too much pressure to intensify any potential residential use in order to maximize the value generated by redevelopment.

[116] As has been noted, on the subject of adverse impacts, no representative from the Church located at the Church Property sought participant or party status at the hearing. Had representatives of the Church been concerned by the Proposed Development's impact on current or future uses of the Church Property requests for status could have been made to the Tribunal. None did so.

[117] The only person to submit a participant statement to the Tribunal on this case was Mr. Walczak. Much of his Participant Statement is comprised of questions and is focused on Mr. Walczak's dissatisfaction with other approved developments in the City, the general changes occurring within the City and his concerns that the City is becoming more like Toronto. Mr. Walczak's Participant Statement expressed opposition to the Proposed Development is based primarily upon opposition to intensification generally, which is insupportable in the face of the Provincial and municipal planning policies supporting planned intensification.

[118] Mr. Van Rooi also initially advanced the position that by removing a few storeys or removing a portion of the side of the U-shaped building facing the parking lot of the

Church Property, to increase the setback, the Proposed Development could be adjusted to better achieve conformity and compatibility, particularly with the Church Property. The City put this alternative to both Mr. Johnston and Mr. Harrison during cross-examination.

[119] The Tribunal has considered the responses provided by Mr. Johnston and Mr. Harrison to the City's suggestion of removing storeys, applying step-backs to upper levels and reducing units to reduce the massing and scale of the built-form and finds that they are persuasive and ring true in the context of the evidence. The Tribunal found Mr. Harrison to be appropriately responsive to this suggestion. Mr. Harrison noted that the balconies on the east side had been stepped back to 6.77 m where most of the windows are located and the 1.5 m undulation along the east face for the six sections of recessed spacing is located. The existence of nine (9) storeys, rather than eight, or even seven, results in little change to the degree of impact, and does not create any unacceptable adverse impact, including the Church Property.

[120] Mr. Johnston's opinion essentially was that reducing storeys and imposing upper level step-backs for the sake of reducing height, mass and scale and only for the sake of reduction of density would fail to utilize a more reasonable policy approach to appropriate design for *this* building on *this* property, at *this* location. The focus should be upon achieving planning policy objectives and implementing good site-specific design. Mr. Johnston testified that aside from the construction complications in creating step-backs on the outer side of a center-hallway single loaded corridor design (which is the case in this building) such step-backs and upper floor removal, and the elimination of valuable units, would ignore the importance of achieving broader policy objectives of appropriate intensification and the ability to design a building for this site that is compatible with the neighbourhood, balances all design and planning criteria and has no unacceptable adverse impacts upon adjacent properties.

[121] The Tribunal agrees with this approach and the logic of Mr. Johnston's processes. This approach creates a good building that, in the end, is one that is massed correctly, responds well to interface and its context, and designed to satisfy

planning policy objectives. Achieving good compatible intensification at a site-specific level, without adverse impacts, as provided for in the UHOP, with the required OPA necessary to adjust the level of unit density, in the Tribunal's view represents the right approach and good planning.

[122] For the reasons indicated above, the Tribunal agrees that in the face of the planning policy objectives to be achieved on this site, there is little need for such broad-sweep reductions in height or upper level step-backs, simply for the sake of reducing height, massing, scale and density. This is particularly so since there is no supportable evidence of overlook or privacy issues relating to the Church Property that warrant such reductions. In the Tribunal's view, the City, as noted, has not presented any urban design evidence to support such reductions in any event.

### **Overall Compatibility**

[123] Upon considering the whole of the evidence against the UHOP objectives and policies, the Tribunal finds that:

- (a) The Proposed Development and the local contextual neighbourhood area can coexist together in harmony, while maintaining and enhancing the existing character of the surrounding area, environment, and locale;
- (b) The Proposed Development respects the existing character and built form of the surrounding neighbourhood by providing grade related units on the ground floor, and an appropriate transition in scale to surrounding development.
- (c) The uncontroverted urban design evidence before the Tribunal is that the final built form, and its height, massing and scale, has been designed to be compatible with the existing and future uses in the surrounding area through implementation of setbacks, step backs, the 45 degree angular build-to-plane and appropriate building materiality. As such the Tribunal



finds that the scale, density and height of the Proposed Development is appropriate for this location;

- (d) Other design elements, including adequate landscaping, amenity features, on-site parking, interior driveways and loading areas, maintain and enhance the character of the area neighbourhood. Podium-like features and articulation on the north and west facades facing the public realm have also been designed to co-exist with the surrounding residential town home uses and specifically with the grade-related townhome style units and pedestrian connections with the ground related units;
- (e) The Proposed Development is designed to be compatible with surrounding existing uses and to respect existing character, development patterns, built form and landscape, and to minimize adverse impacts on such surrounding existing development;
- (f) No unacceptable adverse impacts on the surrounding area neighbourhood or adjacent properties have been identified. More specifically, upon the whole of the evidence, there are no unacceptable adverse overlook or privacy issues for the current use, or reasonably anticipated future uses, of the Church Property;
- (g) For all these reasons, and upon these findings, the Proposed Development, as it will be permitted by the proposed planning instruments, conforms to the urban design policies of the UHOP relating to compatibility and is consistent with the City's applicable urban design guidelines.

## THE OFFICIAL PLAN AMENDMENT

[124] The Tribunal has reviewed the OPA presented by the Applicant as **Appendix “2”**. The Tribunal requested a final clean draft of the OPA from the Applicant for

consideration and attachment to the Decision and Order, if appropriate. Upon receipt of the submitted draft a typing or drafting error was noted with respect to the identified unit density per ha (referring to 339 units per hectare instead of 309 units) which has now been corrected.

[125] Upon the findings contained herein with respect to consistence and conformity to Provincial Policy, and with regard to the matters of Provincial Interest, and all other findings upon the evidence the Tribunal is satisfied that the submitted draft OPA in Appendix 2, as it will permit the Proposed Development, should be approved.

### **ZONING BY-LAW AMENDMENT**

[126] For the purposes of these Appeals, the proposed ZBLA, also submitted by the Applicant, must also be reviewed generally to determine conformity with the UHOP as it will be amended by the OPA, and to ensure consistency and conformity with Provincial policy.

[127] No evidence was presented on the proposed ZBLA by Mr. Van Rooi other than to oppose it, as the amended performance standards will permit the Proposed Development. The Tribunal accepts the evidence of Mr. Johnston on the form of the draft instrument and the proposed site-specific performance standards contained within the ZBLA, which was as follows:

- (a) The proposed setbacks vary from those which are required in the “DE-2” Zone to accommodate the site-specific characteristics of the Proposed Development. The amending by-law includes a reduced front yard setback of 2.0 metres, interior side yard of 2.5 metres, and flankage side yard of 2.0 metres for the portion of the building above grade. Setbacks to the underground parking structure vary from 0.0 metres to 0.9 metres. No modification is required for the rear yard setback, which is proposed to be 15.5 metres. These setbacks are appropriate as they will not result in any adverse impacts to the surrounding area. The setbacks along Stone

Church Road West and West 5th Street provide sufficient area for landscaping and streetscape improvements and promote a 'human scale' form of development by establishing the ground floor residential units close to the street. The interior side yard setback along the eastern property line allows for a sufficient distance between the Church Property and the Proposed Development to mitigate issues of overlook, shadowing and compatibility. Moreover, as the Shadow Study prepared by KNYMH Architects demonstrates, the massing of the proposed building will not cast shadows on the church during times of service.

- (b) The proposed ZBLA includes regulations for the number of parking spaces and parking space size. The draft ZBLA reduces the number of parking spaces provided to 1.0 space per dwelling unit from the required 1.25 spaces per dwelling unit for multiple dwellings, and the parking stall size from the required 2.7 metres wide and 6.0 metres long to 3.0 metres wide and 5.8 metres long for surface parking spaces, 2.8 metres wide and 5.8 metres long for spaces within an underground parking garage, and 2.6 metres wide and 5.5 metres long for small car spaces. These site-specific regulations are appropriate as they are in keeping with the City of Hamilton Zoning By-law No. 05-200 parking standards approved by Council on November 8, 2017. Further, as discussed in the Transportation Impact Study prepared by NexTrans, the proposed reduction is appropriate given the proximity of the Subject Property to a variety of uses and public transit, and provision for on-site bicycle storage.
- (c) The Multiple Dwellings "DE-2" Zone limits building height to eight storeys or 26.0 metres in the ZBL. The ZBLA is required to permit a maximum building height of 9 storeys. This site specific regulation is appropriate as it represents a minor increase from the as-of-right zoning applicable to 83-89 Stone Church Road West, forming part of the Subject Property, which was vetted by Staff and approved by Council via ZAC-16-059 (By-law No.

17-131). Moreover, the built form has been designed to emulate the effects of the as-of-right building height for 83-89 Stone Church Road West, ensure that the building is compatible with the existing low-rise built form, and minimize shadowing and overlook by establishing adequate setbacks and step-backs for portions of the building. Moreover, as the Urban Design Report prepared by KNYMH Architects demonstrates, the vertical interface of the building along Stone Church Road West will be effectively integrated with the existing streetscape through the employment of a four-storey projection from the nine-storey building. This projection will help maintain sightlines from the street and avoid the creation of a canyon effect along Stone Church Road West.

- (d) The proposed ZBLA waives the requirement for landscaped area. It is appropriate because it will ensure there is a desirable balance between the developable area, parking and landscaping. Adequate landscaping will be provided in the form of landscape islands throughout the surface parking area and planting strips along the neighbouring property lines. The Applicant will be providing substantial road widening dedications on Stone Church Road West and West 5th Street that will allow for sufficient area for landscaping within the municipal right-of-way. Moreover, the provision of quality and sufficient landscaping will be secured through the SPA.
- (e) The proposed ZBLA seeks to permit a canopy and ground floor terraces to project into the required yards to accommodate the site-specific characteristics of the Proposed Development. These design features will add visual interest to the streetscape and help to establish a positive interface between the private and public realms and are appropriate.

[128] Upon all of the evidence, and the evidence presented by Mr. Johnston, the Tribunal finds that the draft ZBLA submitted to the Tribunal as Appendix 3 is appropriate, conforms to the UHOP as amended by the OPA, and should be approved.

## SITE PLAN APPEAL

[129] The position of the parties as to the proposed Site Plan and related Plans and elevations was tied to the outcome of the Appeals relating to the ZBLA and the OPA. Limited evidence was led with respect to the form of the draft Site Plan Conditions submitted by the Applicant which appeared to be generally acceptable to the City, in principle, subject of course to the positions taken with respect to the form of the Proposed Development as set out in the final submitted Concept Plan and Elevations. In closing argument, the City indicated that subject to the determinations to be made on the OPA and the ZBLA, it was in agreement with the approach to the Site Plan and the Conditions, if those Appeals were allowed by the Tribunal.

[130] The Parties did not otherwise make significant submissions on the SPA other than to request that if the OPA and ZBLA are approved, the SPA should be approved subject to additional conditions of Site Plan approval relating to traffic which were to be negotiated and finalized by the parties. This has now been done.

[131] The Tribunal has received and reviewed the Final draft of the Draft Conditions of Site Plan Approval, (**Appendix “4”**) as amended by the additional Addendum condition submitted on consent by the Parties, the Final draft Architectural Elevations (**Appendix “5”**) and the Final draft Concept Plan (**Appendix “6”**). The Tribunal finds that the plans as submitted reflect the evidence presented in this hearing as they identify the built-form and planned construction for the Proposed Development, which the Tribunal has determined is appropriate and should be approved. The Tribunal has reviewed the Draft Conditions of Site Plan approval and finds that as they will facilitate the orderly development and construction of the Proposed Development, they are appropriate.

[132] As requested, the Panel will remain seized of the matter of the SPA, and specifically with respect to the Site Plan Conditions and may be spoken to in the event of any disagreement arising from this Decision and Order in relation to those Conditions.

## SUMMARY OF FINDINGS

[133] To summarize, the Tribunal finds that:

- (a) For the reasons indicated the Subject Property is located within a neighbourhood and area that is in transition, accommodating various locations and types of higher density development of undeveloped and underdeveloped lands, including multi-unit developments such as the Proposed Development;
- (b) Upon consideration of the objectives of the UHOP, the policy approach to assessing the suitability of a property for intensification within its context, and the requirement for a balanced consideration of the UHOP's criteria, the Tribunal finds that the Subject Property is an appropriate location for higher density, multi-unit intensification in the order proposed by the OPA. The UHOP tests for intensification, and determining whether a more intensive residential development like the Proposed Development is justifiable on the Site have, in the Tribunal's view, been satisfied;
- (c) In terms of its immediate context, the site-specific location and configuration of the Subject Property, with the intervening adjacent and nearby uses and the appropriate separation distances and transitions in scale which exist, is supportive of the Proposed Development and its proposed density;
- (d) For the reasons indicated the Proposed Development respects the existing character, development patterns, built form and landscape in the surrounding area of the Subject Property and is compatible with the surrounding area, environment, and locale, and with existing uses without any unacceptable adverse impacts on surrounding existing development and lands;

- (e) The Proposed Development as it will be permitted under the submitted OPA and ZBLA is accordingly in conformity with all objectives and policies contained in the UHOP, and related planning policies which address intensification, higher intensification, compatibility, development in Neighbourhoods, and urban design.
- (f) As the proposed Development will result in the addition of 216 rental apartment units to the housing stock within the urban settlement boundary of the City and appropriately utilize the current City infrastructure, the higher density of 309 units per hectare, as will exist in the Proposed Development, and permitted by the OPA is appropriate intensification that is justified for the Subject Property under the policies of the UHOP, and represents good planning in the public interest.
- (g) With respect to s. 2 of the *Act*, the Tribunal is satisfied that the Proposed Development, as permitted by the OPA and the ZBLA has appropriate regard for matters of Provincial Interest and in particular, the adequate provision of a full range of housing, including affordable housing in subparagraph (j) and the Subject Property's appropriate location for growth and development under subparagraph (p).
- (h) The Proposed Development, as enabled by the planning instruments, is consistent with the policies of the PPS including: the importance of growth within current settlement areas and healthy, liveable and safe communities; the appropriate intensification of an existing built up area and efficient utilization of existing infrastructure; residential intensification development that will contribute to the range and mix of housing in the area by adding rental units for families in an area characterized by low and medium density housing; and transit supportive development with access and proximity to existing and planned transit.
- (i) The Proposed Development and draft OPA and ZBLA conform to the

relevant policies of the Growth Plan including: primarily, prioritizing intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability; achieving complete communities; the direction of growth in the Province to current settlement areas; encouraging growth within an underutilized area of the City; and supporting a range and mix of housing options including a variety of sizes of badly needed rental housing in the City.

- (j) The drafts of the OPA and ZBLA, as now amended, are appropriate and should be approved for directed enactment and adoption.
- (k) The final draft of the Site Plan drawings and the draft Conditions to Site Plan Approval are also appropriate and should be approved in the form appended to the Order, subject to any further matters which the Parties may wish to address before the Tribunal in relation to this Decision and Order.

[134] The Tribunal finds that the three appeals should be allowed in part and the necessary Orders made to permit the Proposed Development and approve the draft OPA, ZBLA and Site Plan with Conditions.

## ORDER

[135] **THE TRIBUNAL ORDERS** that the Appeal under s. 22(7) of the *Planning Act* relating to the proposed Official Plan Amendment is allowed in part, and the Urban Hamilton Official Plan for the City of Hamilton is amended as set out in **Appendix 2** to this Order. The Tribunal authorizes the municipal clerk of City of Hamilton to assign a number for the Official Plan Amendment and specific policy numbers where required.

[136] **THE TRIBUNAL ORDERS** that the Appeal under s. 34(11) of the *Planning Act* relating to the proposed Zoning By-law Amendment is allowed in part and directs the City to amend By-law No. 6593 as set out in **Appendix 3** to this Order. The Tribunal



authorizes the municipal clerk of City of Hamilton to assign a number to this by-law for record keeping purposes.

[137] **THE TRIBUNAL ORDERS** that the Appeal under s. 41(12) of the *Planning Act* relating to the proposed Official Plan Amendment is allowed in part, and the site plan prepared by KNYMH Architecture Solutions attached in two parts as **Appendix 4** and **Appendix 5** is approved subject to the Conditions set out in **Appendix 6** to this Order and such further matters that may arise as a result of the determinations and Orders made with respect to the Official Plan Amendment and Zoning By-law Amendment;

[138] The panel will remain seized with respect to the Site Plan and the Conditions of Site Plan approval and may be spoken to in the event of a disagreement between the parties.

*“David L. Lanthier”*

DAVID L. LANTHIER  
VICE-CHAIR

*“A. Cornacchia”*

A. CORNACCHIA  
MEMBER

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://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.

APPENDIX 2

URBAN HAMILTON OFFICIAL PLAN AMENDMENT NO. 163

The following text constitutes Official Plan Amendment No. 163 to the Urban Hamilton Official Plan.

**1.0 PURPOSE AND EFFECT:**

The purpose of the Official Plan Amendment (OPA) is to permit a multiple dwelling development, having a maximum residential density of 309 units per hectare, whereas Policy E.3.6.6 b) permits greater than 100 units per hectare and not greater than 200 units per hectare in high density residential areas of the “Neighbourhoods” designation.

**2.0 LOCATION:**

The lands affected by this Amendment are Part of Lot 15, Concession 8, Geographic Township of Barton, in the City of Hamilton, municipally known as 73-89 Stone Church Road West & 1029 W 5<sup>th</sup> Street.

**3.0 BASIS:**

The basis for permitting this Amendment is as follows:

- The proposed development supports the residential intensification policies of the Urban Hamilton Official Plan and assists in the creation of an active and vibrant pedestrian realm;
- The proposed development is considered to be compatible with the planned and existing development in the immediate area;
- The proposed Amendment is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe.

#### 4.0 **Actual Changes:**

### **Volume 3 – Urban Site Specific Policies**

#### 4.1 **Text Changes**

##### 4.1.1 Urban Hamilton Official Plan, Volume 1, Chapter E, Urban Systems and Designations is amended by:

(a) Adding a new Site-Specific Policy – UHN-30 to read as follows:

#### **UHN-30 LANDS KNOWN AS 73-89 STONE CHURCH ROAD WEST & 1029 WEST 5<sup>TH</sup> STREET, FORMER CITY OF HAMILTON**

1.0 Notwithstanding the minimum density permitted in Section E.3.6.6 b) of Volume 1, for the lands designated “Neighbourhoods” located at 73-89 Stone Church Road West and 1029 West 5<sup>th</sup> Street, the maximum net residential density shall be 309 units per hectare.

## 4.2 **MAP CHANGES**

- 4.2.1 Volume 3 – Map 2 Urban Site Specific Policies Key Map is amended by identifying the lands located at 73-89 Stone Church Road West and 1029 West 5<sup>th</sup> Street as UHN-30 as shown on Appendix “A”, attached.

### **IMPLEMENTATION:**

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

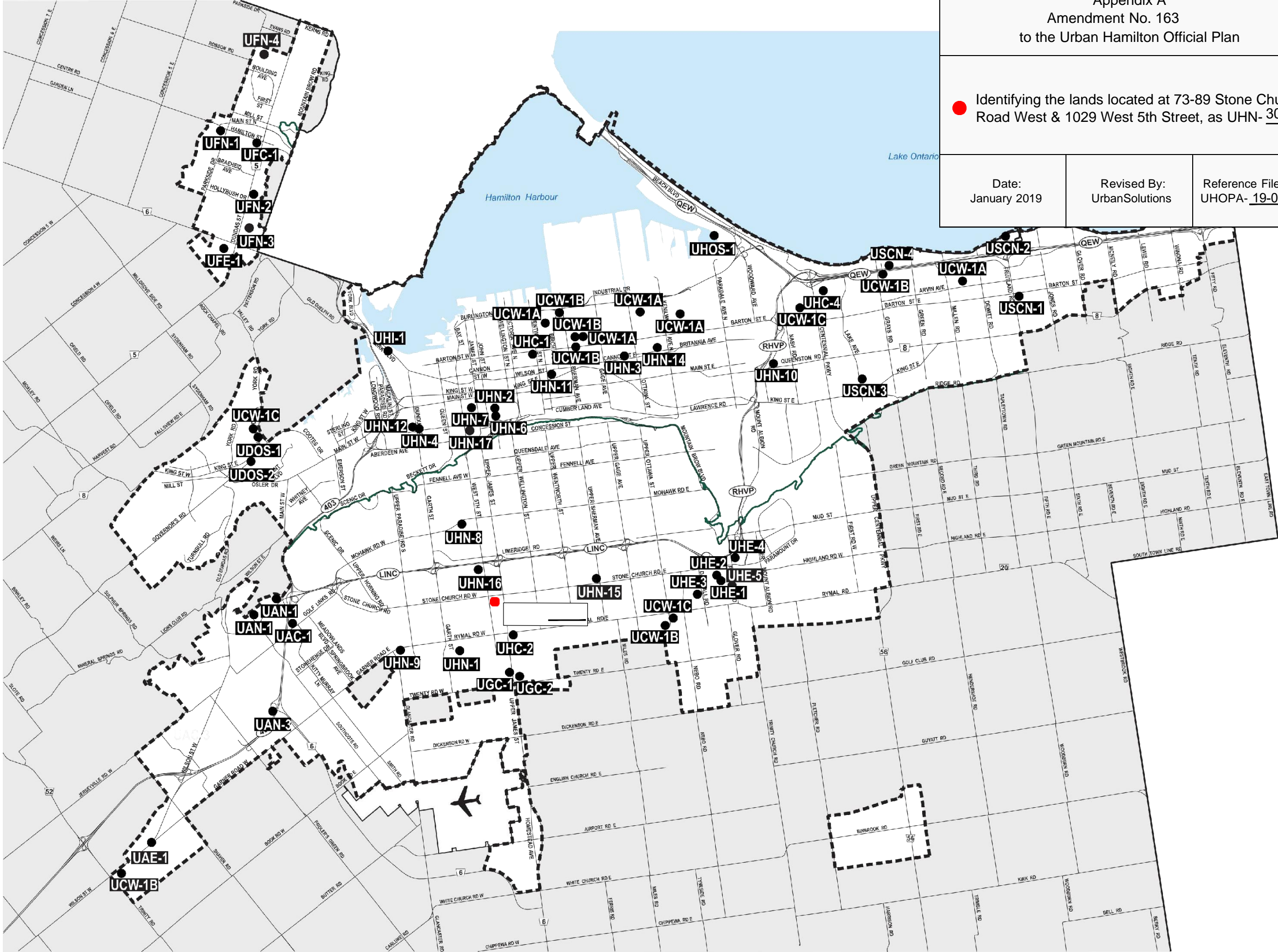
Amendment. This is Schedule “1” to By-Law No. 22-046-OLT, passed on the 20<sup>th</sup> day of January, 2022.

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Mayor

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Clerk



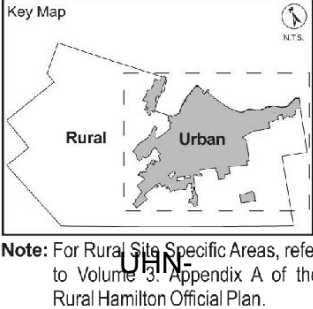
Appendix A  
Amendment No. 163  
to the Urban Hamilton Official Plan

Identifying the lands located at 73-89 Stone Church Road West & 1029 West 5th Street, as UHN- 30

Date:  
January 2019

Revised By:  
UrbanSolutions

Reference File No:  
UHOPA- 19-08



APPEAL

The southern urban boundary that generally extends from Upper Centennial Parkway and Mud Street East in the east, following the hydro corridor and encompassing the Red Hill Business Park to Upper James Street remains under appeal – see illustration on Schedules E and E-1, Volume 1

Legend

- Site Specific Areas (SSA)
- Refers to Urban Site Specific Area #, Volume 3, Chapter B
- Other Features
  - Rural Area
  - John C. Munro Hamilton International Airport
  - Niagara Escarpment
  - Urban Boundary
  - Municipal Boundary

Council Adoption: July 9, 2009  
Ministerial Approval: March 16, 2011  
Effective Date: August 16, 2013

Urban Hamilton Official Plan  
Volume 3: Map 2  
Urban Site Specific Key Map

**APPENDIX 3**

**CITY OF**

**HAMILTON**

**BY-LAW NO. 22-047-OLT**

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**To Amend Zoning By-law No. 6593, Respecting Lands Located at 73-89 Stone Church Road West and 1029 West 5<sup>th</sup> Street, in the City of Hamilton**

**WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

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

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

**AND WHEREAS** Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July 1950, which was approved by the Ontario Municipal Board by Order dated the 7<sup>th</sup> date of December 1951, (File. No. O.F. C. 3821);

**AND WHEREAS** the Ontario Land Tribunal heard an appeal relating to this proposed By-law at a hearing conducted between October 18 and 21, 2021, and for the reasons set out in the Decision and Order issued by the Tribunal on January 20, 2022, allowed the appeal and ordered that Zoning By-law No. 6593 be amended by this By-Law as it was approved by the Tribunal as Attachment 3 to its Decision and Order;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

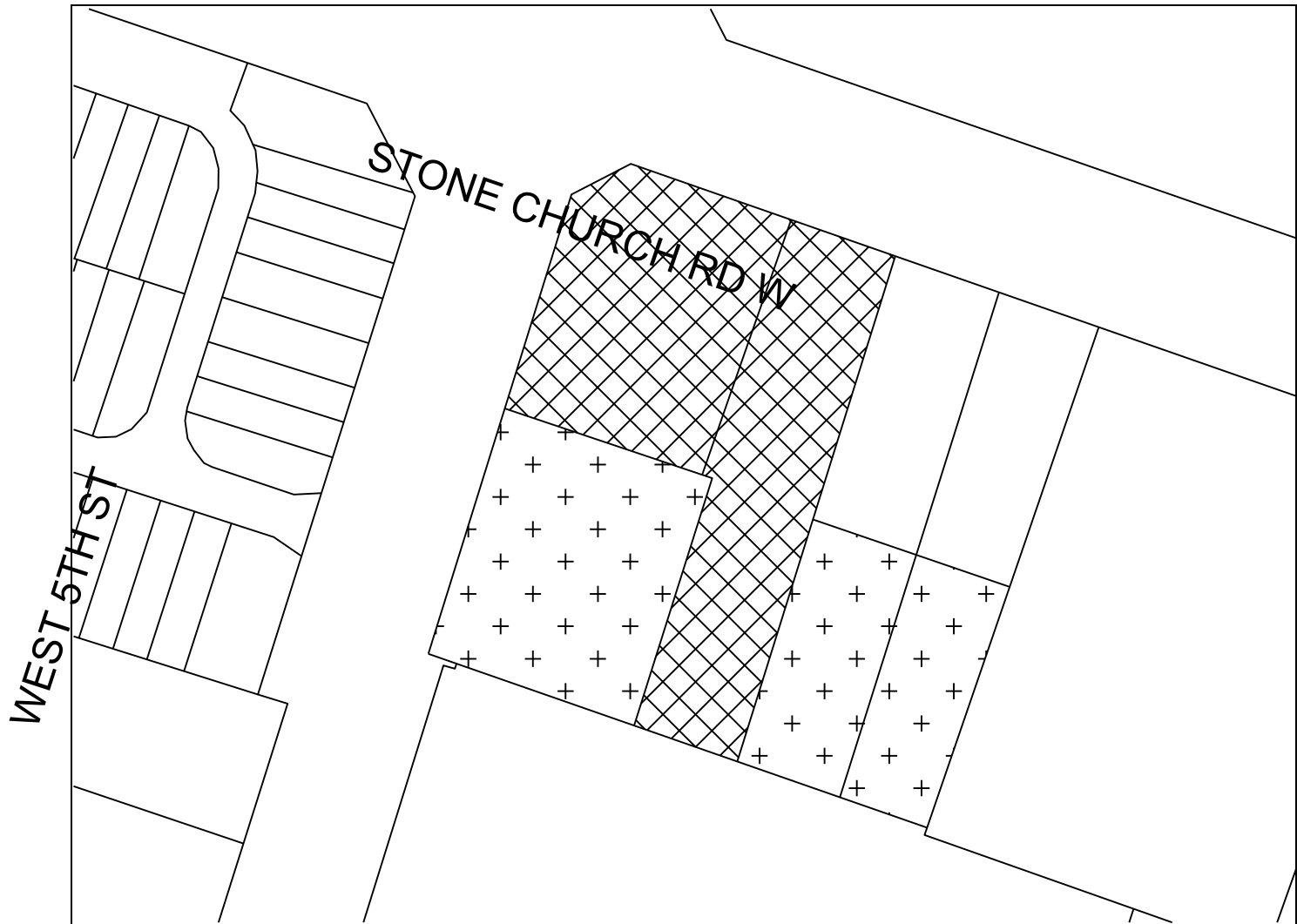
1. That Sheet No. W9d and E9c of the District Maps as amended to and forming part of By-law No. 6593 (Hamilton), is amended as follows by changing the zoning from the “DE-2/S-1700” (Multiple Dwellings) District, Modified, “C” (Urban Protected Residential) District, and “AA” (Agricultural) District to the “DE-2/S-1816” (Multiple Dwellings) District, Modified, on the lands the extent and boundaries of which are more particularly shown on Schedule “A” annexed hereto and forming part of this By-law.
2. That the “DE-2” (Multiple Dwelling) District regulations, as contained in Section 10B, are modified to include the following special requirements:
  - a. Notwithstanding Section 10B(2), no building or structure shall exceed 9 storeys or 29.0 metres in height.
  - b. Notwithstanding Section 10B(3)(i), a minimum front yard of 2.0 metres for the first 3 storeys, a minimum front yard of 6.5 metres shall be provided for all storeys above the 3<sup>rd</sup> storey, and a minimum front yard of 0.8 metres shall be provided for the portion of the building below grade.

- c. Notwithstanding Section 10B(3)(ii), a minimum interior side yard of 4.5 metres shall be provided and maintained for the portion of the building above grade, and a minimum interior side yard of 2.4 metres shall be provided and maintained for the portion of the building below grade.
- d. A minimum flankage yard of 3.5 metres shall be provided and maintained for the portion of the building above grade, and a minimum flankage yard of 1.0 metre shall be provided and maintained for the portion of the building below grade.
- e. Notwithstanding Section 10B(3)(iii), a minimum rear yard of 15.2 metres shall be provided and maintained for the portion of the building above grade, and a minimum rear yard of 0.8 metres shall be provided and maintained for the portion of the building below grade.
- f. Sections 10B(5) and 10B(6) shall not apply.
- g. Notwithstanding Section 18A(1)(a) and 18A(1)(b) and Tables 1 and 2, 1.0 parking space per dwelling unit shall be provided and maintained.
- h. Notwithstanding Section 18A(1)(c) and Table 3, one loading space 3.0 metres wide and 13.9 metres long shall be provided.
- i. Notwithstanding Section 18A(7), parking space sizes shall be 2.8 metres wide and 5.8 metres long.
- j. Notwithstanding Subsection 2(g) herein, the minimum parking space size of not more than 10% of the required parking spaces shall be a width of 2.6 metres and a length of 5.5 metres, provided that any such parking space is clearly identified as being reserved for the parking of small cars only.
- k. Notwithstanding Section 18A(11), the boundary of every parking area and loading space on a lot containing five or more parking spaces located on the surface of a lot adjoining a residential district shall be fixed not less than 0.9 metres from the adjoining residential district boundary.
- l. Notwithstanding Section 18(3)(vi)(b), a canopy may project into a required flankage yard.

- m. Notwithstanding Section 18(3)(vi)(e), a terrace, uncovered porch, or platform which does not extend more than 1.0 metres above the floor level of the first storey, may project into a required yard.
  - n. An ornamental feature may project into a required flankage yard.
- 3. The By-law No. 6593 is amended by adding this by-law to Section 10B as Schedule A;
  - 4. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED AND ENACTED this 20th day of January , 2022.





This is Schedule "A" to By-law No.22-147-OLT

Passed the 20th day of January 2022

Clerk

Mayor

## DRAFT Schedule "A"

Map Forming part of  
By-law No. 22-147-OLT

to Amend By-law No. 6593

Scale:  
N.T.S

Date:

File Name/Number:

Planner/Technician:

PLANNING AND ECONOMIC  
DEVELOPMENT DEPARTMENT

### Subject Property

73-89 Stone Church Road West and 1029 West 5th Street.

Block 1 - change in zoning from  
"AA" to "DE-2/S-1816"

Block 2 - change in zoning from  
"DE-2/S-1700" to "DE-2/S-1816"

Block 3 - change in zoning from "C"  
to "DE-2/S-1816"

**APPENDIX 4**

73-89 Stone Church Road West & 1029  
West 5<sup>th</sup> Street Proposed  
Conditions of Site Plan Approval

**1. SITE PLAN**

**1. (a)** To develop and maintain the site in compliance with the Site Plan, dated July 16, 2020 attached hereto and hereinafter referred to as the “Site Plan”. Minor changes to the Site Plan or condition(s) shall be permitted only upon written approval from the City’s Manager of Development Planning, Heritage and Design.

**Site Plan and Underground Parking Plan**

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

***Approval Limitation***

**1. (c)** That, in the event a building permit for the proposed development has not been issued within one

(1) year from the date of site plan approval, the approval shall lapse. Prior to the approval lapsing, a request for an extension for a period up to, but not exceeding a one (1) year period, may be made directly to the Manager of Development Planning, Heritage and Design, with written justification and the required fee. The Manager of Development Planning, Heritage and Design will consider the request in light of current requirements and:

- i) May deny the request;
- ii) May grant the request; or
- iii) May grant the request with revisions or additional conditions.

**Ground Cover to Prevent Soil Erosion**

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

***Garbage Collection***

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

**2. PRIOR TO**  
**THE**  
**APPLICATION**  
**FOR ANY**  
**BUILDING**  
**PERMITS**  
***Erosion and***  
***Siltation***  
***Control***

**2. (a)** To show all erosion and siltation control features in detail on a Grading and Drainage Control Plan hereinafter described in Section 3(b); to the satisfaction of the Manager of Development Engineering Approvals; and to implement all such erosion and siltation control measures. The Owner further agrees to maintain all such measures to the satisfaction of the Manager of Development Engineering Approvals

until the site has been fully developed as determined by the Manager of Development Planning, Heritage and Design.

### ***Tree Management***

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

### ***Building Elevations***

**2. (d)** To submit six (6) copies of final building elevations and one (1) reduced 11" x 17" copy to the satisfaction of the Manager of Development Planning, Heritage and Design. Minor changes to the Building Elevations or condition(s) shall be permitted only upon written approval from the Manager of Development Planning, Heritage and Design.

### ***Interior Garbage Storage/Outdoor Garbage Containers***

**2. (f)** To show the following on the required Landscape Plan:

- i) The location of any vaults, central storage and collection areas, or other facilities for the storage of garbage and recyclable material, including those which may be internal to a proposed or existing building; or
- ii) The location of any outdoor garbage and recycling containers and details for a supporting concrete pad and, if required by the Manager of Development Planning, Heritage and Design, a roofed enclosure having a height sufficient to conceal the containers.

### ***Cost Estimate and Letter of Credit***

**2. (g)** i) To provide cost estimates for 100% of the total cost of all exterior on-site works to be done by the Owner. Such cost estimates shall be in a form satisfactory to the Manager of Development Planning, Heritage and Design; or be prepared in accordance with the Guides for estimating security requirements for landscaping and engineering.

- ii) Calculate the lump sum payment for exterior works using the City's Letter of Credit Policy to the satisfaction of the Manager of Development Planning, Heritage and Design.
- iii) To provide an irrevocable Letter of Credit to the Manager of Development Planning, Heritage and Design for 75% of the total cost of all on-site development works in a form satisfactory to Finance (Development Officer, Budget, Taxation and Policy) to be held by the City as security for the completion of the on-site development works required in this Agreement.

Alternatively, the owner may choose to provide a lump sum payment for on-site works in accordance with 2. (g) ii). above.

iv) The Letter of Credit shall be kept in force until the completion of the required site development works in conformity with the approved design and requirements, securities may be reduced in accordance with the City's Letter of Credit Policy. If the Letter of Credit is about to expire without renewal thereof and the works have not been completed in conformity with their

approved designs, the City may draw all of the funds so secured and hold them as security to guarantee completion unless the City Solicitor is provided with a renewal of the Letter of Credit forthwith.

v) In the event that the Owner fails to complete, to the satisfaction of the Manager of Development Planning, Heritage and Design, the required site development works in conformity with its approved design within the time required, then it is agreed by the Owner that the City, its employees, agents or contractors may, at the City's sole option and in addition to any other remedies that the City may have, enter on the lands and so complete the required site development works to the extent of monies received under the Letter of Credit. The cost of completion of such works shall be deducted from the monies obtained from the Letter of Credit. In the event that there is a surplus, the City shall pay it forthwith to the Owner. In the event that there are required site development works remaining to be completed, the City may exercise its authority under (Section 446 of the Municipal Act) to have such works completed and to recover the expense incurred in doing so in like manner as municipal taxes.

### **3. PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS**

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

#### ***Grading and Drainage Control***

**3. (b) i)** To prepare a detailed Grading and Drainage Control Plan showing drainage details for the subject property, abutting properties and public rights-of-way so as to ensure compatible drainage, and to show thereon all existing and proposed connections to the municipal storm sewer to provide for that drainage i.e. catch basins/leads etc. to the satisfaction of the Manager of Development Engineering Approvals.

ii) To pay a fee (current rate at time of payment +HST) for the final inspection all aboveground features, such as but not limited to, landscaping, drainage, roads, driveways, noise barriers/fencing, lighting, etc., to the satisfaction of the Manager of Development Engineering Approvals.

#### ***Storm Water Management Design***

**3. (c)** To submit to the satisfaction of the Manager of Development Engineering Approvals detailed engineering design for storm water management or to receive from the said Manager an exemption from this requirement.

#### ***Road Widenings***

**3. (d)** To convey to the City, without cost and free of encumbrance, the road widening and/or daylighting triangles as indicated on the Site Plan to the satisfaction of the Manager of Development Engineering Approvals.

### ***Landscape Plan***

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

### ***Fencing/Visual Barriers***

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

### ***Boulevard Sodding***

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

### ***Site Lighting-Design***

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

### ***Multiple Unit Identification Sign***

**3. (j)** To prepare a concept plan for a multiple unit identification sign for emergency access or for a multiple unit development that shows unit numbers and to obtain approval thereof from the Manager of Development Planning, Heritage and Design.

### ***Site Servicing Plan***

**3. (k) i)** To submit to the Manager of Development Engineering Approvals a satisfactory Site Servicing Plan and pay the applicable drawing review fee based on the approved User Fees Schedule for the year that the Servicing Plans are submitted for review.

ii) To pay for and obtain the required Site Servicing Permits, the cost of which will be calculated based on the approved servicing design

### ***Cash-in-Lieu of Parkland***

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

### ***Development Charges***

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

### ***Site Plan Drawing and Underground Parking Plan***

**3. (p)** To submit six (6) copies of the final site plan drawing and one (1) reduced 11" x 17" copy to the satisfaction of the Manager of Development Planning, Heritage and Design.



## ***Taxes***

**3. (q)** To submit proof from the Taxation Division that the Municipal Taxes are current on the subject lands to the satisfaction of the Manager of Development Planning, Heritage and Design.

## ***Tariff of Fees***

**3. (r)** To pay to the City of Hamilton the applicable additional charges as per the Tariff of Fees By-law for the proposed development type as follows:

- i) Residential - \$957.00/unit for the first 10 units and \$575.00/unit for units 11 to a maximum of 50 units to the satisfaction of the Manager of Development Planning, Heritage and Design.
- ii) Commercial - \$8.15/m<sup>2</sup> of new gross floor area to a maximum of 50,000m<sup>2</sup> to the satisfaction of the Manager of Development Planning, Heritage and Design.

## ***Wastewater Assessment***

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

## ***Water Service Assessment***

**3. (t)** To submit a water service assessment to the satisfaction of the City Public Works Department which tabularizes the expected occupancy and provides a water demand estimation and needed fire flow calculation based on the "Water Supply for Public Protection, Fire Underwriters Survey, 1999".

## ***Storm Drainage Area Plan***

**3. (u)** To submit a storm drainage area plan that clearly illustrates the extent of the property which will contribute surface water and ground water by direct connection to the existing systems. The plan must also illustrate where runoff from the remainder of the subject property if applicable, will be directed and/or collected. Appropriate runoff coefficients are to be assigned for the consideration and records of the Public Works Department.

## ***Construction Management Plan***

**3. (v)** To prepare a Construction Management Plan that provides details on any construction activity that will encroach into the municipal road allowance such as construction staging, scaffolding, cranes etc. The plan must identify any required sidewalk and/or lane closures and the estimated length of time for such closure(s). Details on heavy truck routing must also be included. The plan must be submitted to the satisfaction of the Director of Engineering Services, Public Works.

#### **4. PRIOR TO OCCUPANCY**

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

##### ***Driveway Closure***

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

### ***Driveway Installation***

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

### ***Relocation of Municipal and/or Public Utilities***

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

### ***Emergency/Fire Routes***

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

### ***Traffic Control Signs***

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

### ***Fire Hydrant***

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

### ***Site Servicing***

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

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

### ***Grading and Drainage Completion***

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

### ***Storm Water Management Implementation***

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

### ***Tree Management***

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

### ***Landscape Completion***

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

### ***Interior Garbage Storage/Outdoor Garbage Container Installation***

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

### ***Curb Installation***

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

### ***Site Lighting Installation***

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

### ***Paving***

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

### ***Certification of Site Development Works***

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

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

### **PRIOR TO THE APPLICATION FOR ANY BUILDING PERMITS**

1. That a Transportation Impact Study shall be submitted to the satisfaction and approval of the Manager of Transportation Planning.
2. That the Owner shall provide detailed turning paths, using site appropriate TAC

templates for garbage and large commercial vehicles, for ingress/egress to the loading space; and mitigation solutions to reversing of vehicles to/from the loading space to/from the municipal right-of-way; all to the satisfaction and approval of the Manager, Transportation Planning.

3. That the Owner submit a letter certifying the design of the parking garage ramps shall be required, to be provided and signed by a Licensed Architect or Engineer, to the satisfaction of the Manager, Transportation Planning.
4. That the Owner submits and receives approval of Shoring Plans prepared by a Licensed Professional Engineer showing the proposed shoring design and location of any existing municipal services and utilities within the municipal right-of-way as well as any existing adjacent privately-owned utilities, services and structures, all to the satisfaction of the Manager of Development Engineering Approvals.

5. That the Owner enters into with the City of Hamilton, a Shoring Agreement to address construction of the shoring system that will be required to build the underground parking facility, to the satisfaction of the Manager of Development Engineering Approvals.
6. That the Owner submit a Dust Management Plan to the satisfaction and approval of the Director of Health Protection.
7. That the owner / applicant shall submit and receive approval of a Pest Control Plan, focusing on rats and mice, for the construction / development phases of the project and continue until the project is complete. The Pest Control Plan should be submitted to the satisfaction of the Director of Health Protection.
8. That the Owner submit a payment of \$626.11 plus HST per tree for road allowance street trees, to the satisfaction of the Manager of Forestry and Horticulture.
9. That the Owner submits a list to the Growth Planning Section, indicating the mailing address unit number of each residential unit on each floor, to the satisfaction of the Senior Director of Growth Management. Upon receipt of the mailing address unit number list, an address will be assigned to the property, to the satisfaction of the Manager of Growth Planning.
10. That the Owner submit a clearance letter from the Ministry regarding the A Stage 1-2 archaeological report (P439-0039-2018) for 1029 West 5<sup>th</sup> Street shall be submitted when available.
11. That the Owner pay the outstanding Municipal Act Sewer amount of \$26,149.05 as at Aug. 31, 2021 (fee subject to change).
12. That the Owner submit a sufficient security deposit to the Growth Management Division to cover potential damage to any municipal infrastructure within the municipal right-of-way during construction (including but not limited to sidewalks, curbs, light poles, underground and aboveground utilities, etc.). If any significant reconstruction to the municipal right-of-way (as determined by the City) is proposed, the appellant will be required to enter into and register on title of the lands, an External Works Agreement with the City instead of submitting the abovementioned security deposit, all to the satisfaction of the City's Manager of Development Approvals.
13. That the owner submit a Watermain Hydraulic Analysis, identifying the modelled system pressures at pressure district (PD6) level under various boundary conditions

and demand scenarios if it cannot be demonstrated that there is adequate service for the proposed development within the existing municipal system based on hydrant tests, to the satisfaction of the City's Manager of Development Approvals.

14. That the owner submit a Vibration Study/Analysis by a Licensed Professional to assess the impacts of vibration on the surrounding lands and structures during construction of the shoring system as well as vibration monitoring and mitigation strategies, all to the satisfaction of the City's Manager of Development Approvals.



15. That the owner submit a Ground Settlement Study by a Licensed Professional to identify any potential ground/soil settlement and anticipated effects on the surrounding lands and structures which may arise as a result of any temporary groundwater dewatering during construction. Groundsettlement mitigation measures/strategies shall be discussed and identified in the study, to the satisfaction of the City's Manager of Development Approvals.
16. That the owner submits Geotechnical and Hydrogeological Brief conducted by a qualified professional (P.Eng, P.Geo) that discusses soil/groundwater conditions to properly characterize potential dewatering needs. This brief should discuss seasonal high groundwater levels, excavation depths, dewatering calculations (on a L/s and L/day basis), and if dewatering is required, groundwater quality sampling to compare against Sewer Use Bylaw criteria, all to the satisfaction of the City's Manager of Development Approvals.

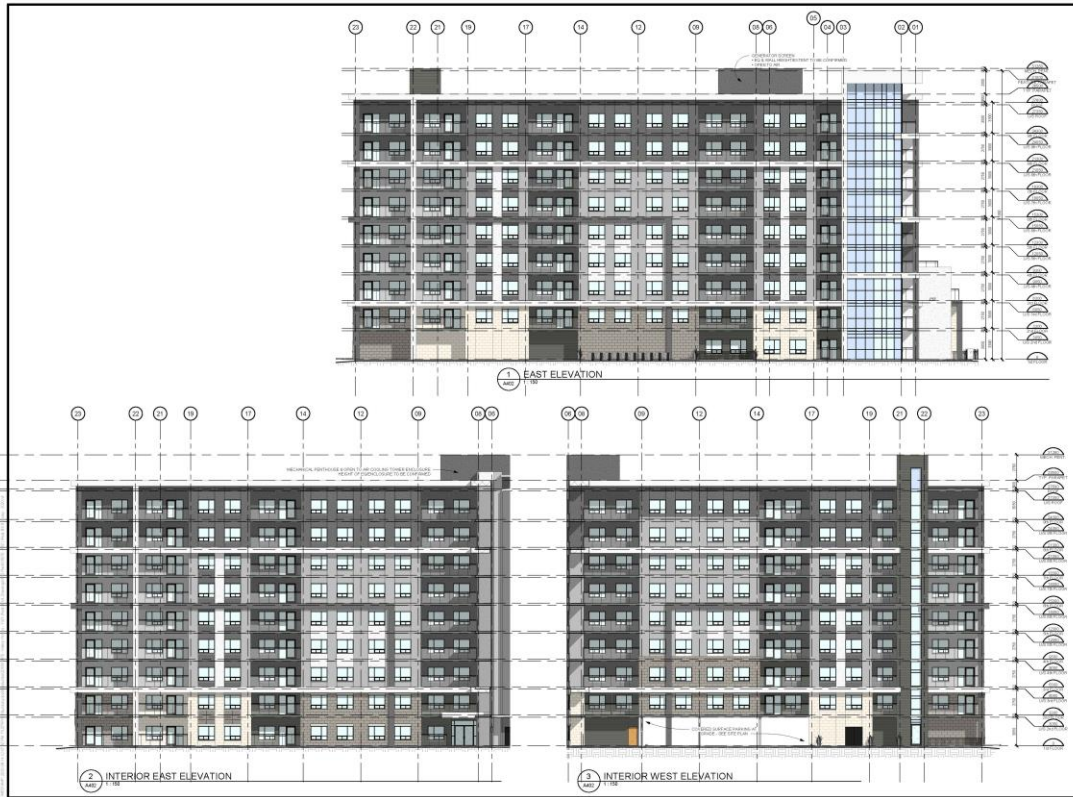
## **ADDENDUM**

As a special condition of site plan approval, **prior to Commencement of Any Grading on the Site**, the Owner:

- a. shall provide and receive approval of a preliminary design, fully at their expense, for a southbound left turn lane to the site access to West Fifth Street, to the satisfaction of the Manager, Transportation Planning;
- b. shall provide and receive approval of a final design, fully at their expense, for such southbound left turn lane, to the satisfaction of the Manager, Transportation Operations;
- c. shall receive approval of the engineering design submission to the satisfaction of the Director, Growth Management Division; and
- d. design and construct, fully at their expense, the southbound left turn lane to the site access to West Fifth Street, to the satisfaction of the Manager, Transportation Planning and the Director, Growth Management Division.

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