

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 03, 2021

CASE NO(S): PL190359

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

Appellant:	Harbour West Neighbours Inc.
Appellant:	Herman Turkstra
Subject:	Proposed Official Plan Amendment No. 242
Municipality:	City of Hamilton
LPAT Case No.:	PL190359
LPAT File No.:	PL190359
LPAT Case Name:	Turkstra v. Hamilton (City)

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

Appellant:	Harbour West Neighbours Inc.
Appellant:	Herman Turkstra
Subject:	By-law No. 19-151
Municipality:	City of Hamilton
LPAT Case No.:	PL190359
LPAT File No.:	PL190360

Heard: June 18, 2021 by video hearing and July 16, 2021 in writing

APPEARANCES:

Parties

Herman Turkstra

Harbour West Neighbours Inc.

Counsel*/Representative

Self-represented

Bryan Ritskes

City of Hamilton

Patrick MacDonald*

476 James Inc.

Aaron Platt* and Zachary Fleischer*

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
JUNE 18, 2021 AND ORDER OF THE TRIBUNAL**

[1] Herman Turkstra and Harbour West Neighbours Inc. ("Appellants") appealed both the passage of an Official Plan Amendment by the City of Hamilton ("City") and the City's approval of a Zoning By-law Amendment. These instruments facilitate a proposed development at 468-476 James Street North ("subject lands").

[2] The appeals were filed after the *Building Better Communities and Conserving Watersheds Act* ("Bill 139") was brought into effect, which set out procedural and substantive requirements for proceedings. In September 2019, the *More Homes, More Choice Act*, 2019 ("Bill 108") was passed. Bill 108 and its regulations resulted in the procedural requirements for these proceedings being governed by Bill 139 and the substantive aspects of the proceedings being governed by Bill 108. The applicable Bill 139 procedural requirements include the filing of records and case synopses and, if ordered by the Tribunal, final written or oral submissions. The applicable Bill 108 substantive aspects allowed appellants to expand their grounds for appeal and widens the policy and other considerations that the Tribunal applies.

[3] At a Case Management Conference, held on October 14, 2020, the Tribunal granted Party status to Parcel Developments Inc. ("Applicant"), which was the proponent behind the proposed amendments. The subject property was subsequently sold and the Applicant is now TINS Corporation Inc.

[4] On May 11, 2021, the Tribunal was informed by the Parties that they had reached a proposed settlement of the appeal and, on June 18, 2021, the Tribunal held a settlement hearing to address the proposed settlement.

ISSUES

[5] The Bill 108 version of the *Planning Act* applies to the substantive issues to be adjudicated. In making a decision on Official Plan and Zoning By-law Amendments under s. 17(24) and 34(19) of the Bill 108 version of the *Planning Act*, the Tribunal must determine whether the proposed instruments:

1. are consistent with the Provincial Policy Statement, 2020 (“PPS”);
2. conform with applicable provincial plans; and,
3. represent good planning.

The applicable provincial plan in this case is the *Places to Grow: A Growth Plan for the Greater Golden Horseshoe* (“Growth Plan”). In addition, for the proposed Zoning By-law Amendment appeal, the Tribunal must determine whether the proposed amendment conforms with applicable Official Plans. The Tribunal also must have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and it must have regard to the decision of the City and the information considered by it under s. 2.1(1) of the *Planning Act*.

EVIDENCE AND SUBMISSIONS

[6] Prior to the settlement hearing, the Applicant filed an affidavit affirmed by Edward Sajecki, dated June 17, 2021. Mr. Sajecki is a land use planner retained by the Applicant. At the settlement hearing, the Tribunal heard evidence from Mr. Sajecki. Subsequent to the settlement hearing, the Applicant filed a supplementary affidavit affirmed by Mr. Sajecki on July 16, 2021 regarding minor additional changes to the proposed Zoning By-law Amendment.

[7] The Tribunal qualified Mr. Sajecki to provide opinion evidence as an expert in land-use planning matters.

[8] Mr. Sajecki stated that the proposed development would consist of a seven-storey retirement home with a maximum of 120 units along with a pharmacy on the ground floor. The maximum height of the proposed building would be 20.5 metres ("m"). He stated that the proposed Official Plan Amendment would introduce a new Special Policy Area for the subject lands to permit the proposed building and include revisions to the mapping of the City's West Harbour (Setting Sail) Secondary Plan ("Secondary Plan"). Mr. Sajecki stated that the proposed Zoning By-law Amendment would permit a retirement home (with 120 units) and a minimum of 0.28 parking spaces per unit or 37 parking spaces (whichever is greater) with a minimum of two residential visitor parking spaces and one space exclusively for car-sharing vehicles. It would also require setbacks that implement a 15 m street wall and a 45-degree angular plane and set out the maximum seven storey height (excluding a mechanical penthouse and rooftop amenity area).

[9] Mr. Sajecki opined that the proposed Official Plan and Zoning By-law Amendments are consistent with the PPS. He stated that they would facilitate residential and employment uses in an existing settlement area. He stated that they would facilitate efficient and resilient development that provides appropriate density and a mix of uses in a transit accessible location, contribute to the range and mix of housing types and tenures in the area, make efficient use of existing infrastructure, and constitute compact built form.

[10] Mr. Sajecki stated that the proposed Official Plan and Zoning By-law Amendments conform with the Growth Plan. He stated that they would facilitate the intensification of development within a built-up area served by higher order transit. He stated that they would provide a mix of housing options and foster a complete community by providing a residence for seniors.

[11] Mr. Sajecki stated that the proposed Zoning By-law Amendment conforms with the Hamilton-Wentworth Official Plan, the City's Official Plan, and the Secondary Plan. He stated that it facilitates development in an established transit corridor within the Urban Area through intensification with compact form. He stated that it conforms with the Secondary Plan's objectives of having James Street evolve as a mixed-use corridor with an active pedestrian realm and provides a mixed-use building with strong connections between public and private spaces contributing to an active public realm. He said it respects the surrounding neighbourhood by providing appropriate transitions in massing and scale and maintains a pedestrian-scaled street wall with upper level step backs facilitating transition to adjacent areas. He opined that it facilitates a development that is compatible with nearby existing land uses.

[12] Mr. Sajecki stated that the proposed Official Plan and Zoning By-law Amendments have regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. He stated that they provide for a mix of housing types that are close to public transit and reflect the orderly development of a safe and healthy community.

[13] Subsequent to the settlement hearing, the Applicant filed a supplementary affidavit affirmed by Mr. Sajecki on July 16, 2021. It addresses changes to the proposed Zoning By-law Amendment requested by the City's zoning examiner. In his supplementary affidavit, Mr. Sajecki stated that the proposed revisions to the proposed Zoning By-law Amendment are minor and do not impact his previously provided evidence. He opined that the revised proposed Zoning By-law Amendment is consistent with the PPS and conforms with the Growth Plan, the Hamilton-Wentworth Official Plan, the City's Official Plan, and the Secondary Plan.

[14] In their submissions, the Appellants advised the Tribunal that the basis of their agreement to the proposed settlement is that the maximum building height of 20.5 m will be a minor compromise of the Appellants' position that the maximum height should be 20 m.

FINDINGS

[15] Based on Mr. Sajecki's uncontested opinion evidence, the Tribunal finds that the proposed Official Plan and Zoning By-law Amendments are consistent with the PPS and conform with the Growth Plan. It also finds that the proposed Zoning By-law Amendment conforms with the Hamilton-Wentworth Official Plan, the City's Official Plan, and the Secondary Plan. The Tribunal has had regard to the matters of provincial interest in s. 2 of the *Planning Act* and the decision made by City Council. The Tribunal finds that the proposed Official Plan and Zoning By-law Amendments represent good planning and are in the public interest.

ORDER

[16] The Tribunal allows the appeals in part and approves the Official Plan Amendment as set in Schedule 1 attached to this Order and Decision and the Zoning By-law Amendment as set in Schedule 2 attached to this Order and Decision.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

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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.

Amendment No. 242**to the****Official Plan of the City of Hamilton**

The following text, together with Appendix "A", attached hereto, constitutes Official Plan Amendment No. 242 to the City of Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to amend the West Harbour (Setting Sail) Secondary Plan by increasing the building height of the subject lands to permit the development of a mixed use building.

2.0 Location:

The lands affected by this Amendment are located at 468, 470, 474, and 476 James Street North in the City of Hamilton.

3.0 Basis:

The basis for permitting this Amendment is as follows:

- The proposed development efficiently utilizes the existing infrastructure, positively contributes to the streetscape and makes use of an underutilized lot;
- The proposed development implements the vision of the West Harbour (Setting Sail) Secondary Plan in maintaining James Street North as a mixed use area, while providing intensification at a form and scale that Council has determined is in keeping with the character of the surrounding neighbourhood and is in proximity to existing transit;
- The Amendment is consistent with the Provincial Policy Statement, 2014 and the Growth Plan for the Greater Golden Horseshoe, 2019.

4.0 Changes:

4.1 Text Changes:

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

“A.6.3.3.1.17.2 Notwithstanding Policy A.6.3.3.1.17 iv), for the lands known municipally as 468, 470, 474, and 476 James Street North, designated Mixed Use and identified as Special Policy Area 10 on Schedule “M -2”: General Land Use Map of West Harbour Secondary Plan, a seven-storey mixed use building shall be permitted in accordance with the implementing Zoning By-law Amendment.”

4.2 Mapping Changes:

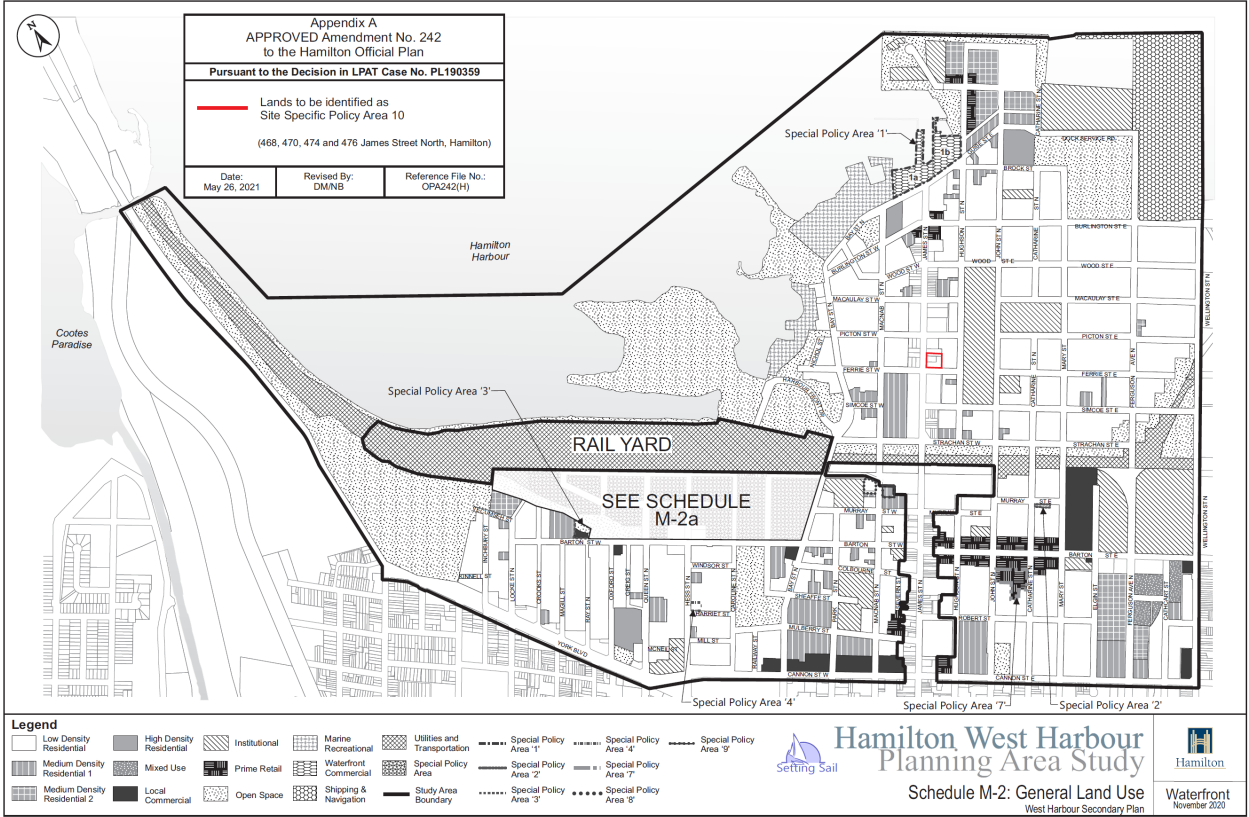
4.2.1 That Schedule “M-2”: General Land Use, of the West Harbour (Setting Sail) Secondary Plan is amended by identifying the lands as Special Policy Area 10, as shown on Appendix “A” to this Amendment.

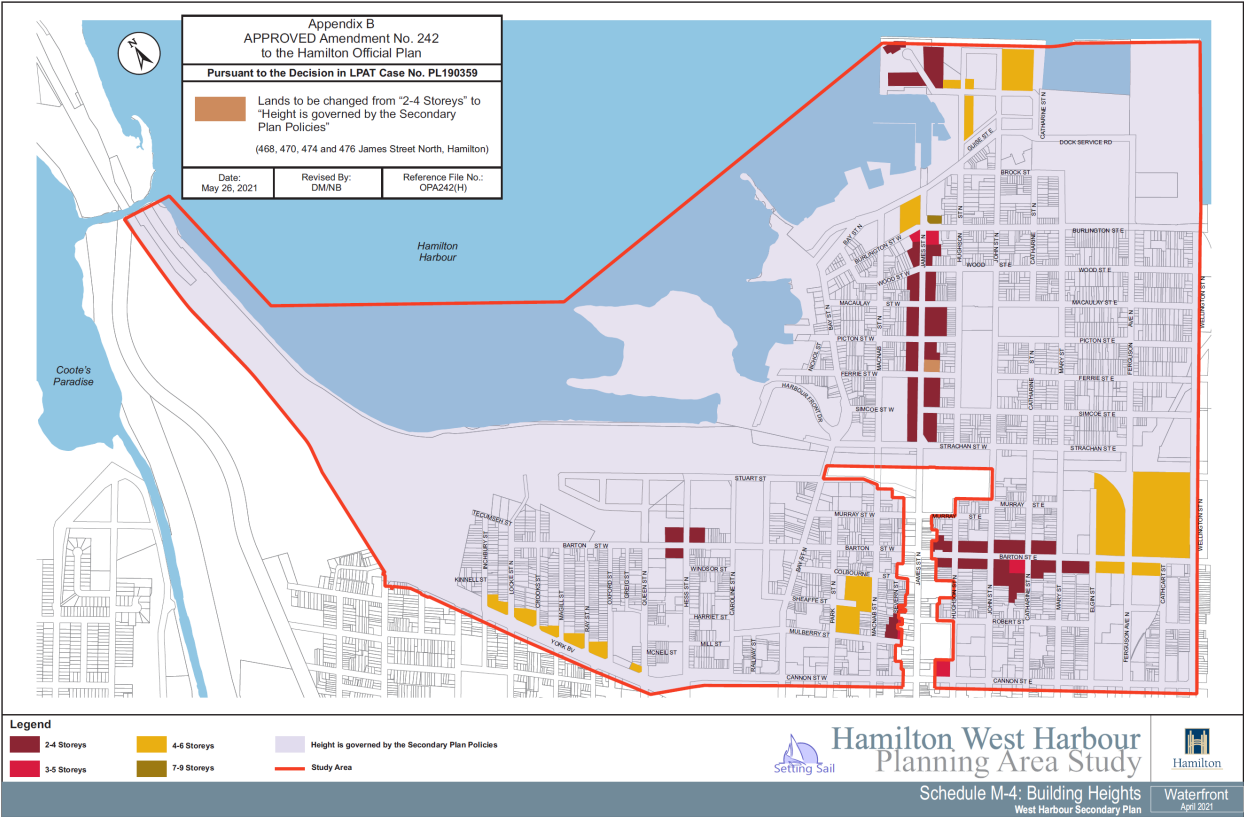
4.2.2 That Schedule M-4: General Land Use Map of the West Harbour (Setting Sail) Secondary Plan is amended by changing the building height category from “2-4 storeys” to “Height is governed by the Secondary Plan policies”, as shown on Appendix “B” of this Amendment.

5.0 Implementation:

An implementing Zoning By-law Amendment and Site Plan Control will give effect to the intended uses on the subject lands.

This Official Plan Amendment is Schedule “1” to By-law No. ___, pursuant to Decision / Order of the Local Planning Appeal Tribunal issued in Case No. PL190359.





SCHEDULE 2

Authority: Item
Report (PED)
CM:
Ward: 2

Bill No. 151

CITY OF HAMILTON

BY-LAW NO. 19-151

**To Amend Zoning By-law no. 6593 (Hamilton)
Respecting Lands Located at 468, 470, 474 and 476 James Street North, 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 1, 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 successor to the former Regional Municipality, namely, the regional Municipality of Hamilton-Wentworth;

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

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

AND WHEREAS the Council of the City of Hamilton, in adopting Item _ of Report ____ of the Planning Committee, at its meeting held on the_____, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this By-law conforms with the City of Hamilton Official Plan upon adoption of Official Plan Amendment No. 242;

NOW THEREFORE the Local Planning Appeal Tribunal, pursuant to the Order/Decision Issued on _____ under Tribunal File No. PL190359, enacts as follows:

CITY OF HAMILTON
BY-LAW NO.
To Amend Zoning By-law No. 6593
Respecting Lands Located at 468, 470, 474 and 476 James Street North, Hamilton

1. That Sheet No. E2 of the District Maps, appended to and forming part of Zoning By-law No. 6593 (Hamilton) is further modify the "H/S-978" (Community Shopping and Commercial, Etc.) District, Modified, to the "H/S-978a" (Community Shopping and Commercial, etc.) District, Holding, Modified, on lands the extent and boundaries of which are shown on plan hereto annexed as Schedule "A".
2. That Section 2 of By-law No. 87-117 (Hamilton) be deleted and replaced with "H/S978a", as follows:

"H/S-978a"

That the "H" (Community Shopping and Commercial, Etc.) District provisions as contained in Section 14 of Zoning By-law No. 6593, applicable to the subject lands, be modified to include the following requirements:

- a) Notwithstanding Section 14 (1) (iiid), a retirement home shall be permitted for the accommodation of not greater than 120 units.
- b) Notwithstanding Section 2(2)A(xiiaaa), for the lands identified in this exception, the definition of Retirement Home shall be amended as follows:
 - i. "Retirement Home" means a building or part thereof for the accommodation of seniors at least 60 years of age and older, in single or double rooms and have communal facilities such as kitchen/dining facilities, laundry facilities, lounges and where the residents are supervised in their daily living activities. Rooms may contain kitchenettes, including a sink, fridge, and cooking facilities limited to small appliances such as microwave ovens and toaster ovens, but shall not contain a kitchen that includes gas, propane, or electric ranges and stoves. A retirement home may be licensed by the municipality and shall not be considered a long term care facility, emergency shelter, lodging home, residential care facility or any other facility which is licensed, approved or regulated under any general or special Act.
- c) Notwithstanding Section 14 (1), a frosted food locker plant, a motion picture studio, automobile service station or other public garage, theatre and car wash, shall be prohibited.
- d) Notwithstanding Section 14(2)(i) and (ii), no building or structure shall exceed 20.5 metres in height.

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- e) Notwithstanding Section 2(2)H.(ia), the definition of Amenity Area shall be amended to permit amenity area to be provided on the rooftop.
- f) Notwithstanding Section 2(2)J.(ix), the definition of Height shall be amended to permit any wholly enclosed or partially enclosed amenity area, or any portion of a building designed to provide access to a rooftop amenity area including all associated features, in addition to the list features found in section 2(2)J(ix), to project above the uppermost point of the building, provided the wholly enclosed or partially enclosed structure belonging to an amenity area, or portion of a building designed to provide access to a rooftop amenity area is setback a minimum of 9.5 metres from the westerly lot line, 8.5 metres from the southerly lot line, 19.8 metres from the easterly lot line and 0.5 metres from the northerly lot line.
- g) Notwithstanding Section 2(2)J.(viii), the definition of Grade as it applies to the height of a building or structure on a corner lot, shall be amended to mean the mean elevation of all the ground adjoining the building or structure.
- h) Notwithstanding Section 2(2)J.(xb), the definition of Landscaped Area shall be amended to allow for raised planter beds, planter boxes and green roof area to be included in the minimum landscaped area calculation.
- i) Notwithstanding Section 14(3)(i), a front yard having a depth of not less than 0.495 metres.
- j) Notwithstanding Section 14(3)(ii), a side yard having a width of not less than 0 metres.
- k) Notwithstanding Section 14(3)(iii), a rear yard of not less than 7.5 metres.
- l) In addition to Section 14 (3), the following yards shall be provided and maintained:
 - i. Where the yard abuts the westerly lot line a yard having a depth of not less than 3.5 metres where the building or structure exceeds 15.0 metres in height but does not exceed 17.7 metres in height, 5.5 metres where the building or structure exceeds 17.7 metres in height, and 9.5 metres for the mechanical penthouse.
 - ii. Where the yard abuts the southerly lot line a yard having a depth of not less than 2.5 metres where the building or structure exceeds 15.0 metres but does not exceed 17.7 metres in height, 4.5 metres where the building or structure exceeds 17.7 metres in height, and 8.5 metres for the mechanical penthouse.

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- iii. Where the yard abuts the easterly lot line a yard having a width of not less than 10.5 metres where the building or structure exceeds 12.0 metres but does not exceed 15.0 metres in height, 13.2 metres where the building or structure exceeds 15.0 metres in height but does not exceed 17.7 metres in height, 16.0 metres where the building or structure exceeds 17.7 metres in height, and 19.8 metres for the mechanical penthouse.
- iv. Where the yard abuts the northerly lot line a yard having a width or depth of not less than 0.75 metres for the mechanical penthouse.
- m) Notwithstanding Section 14 (5), a gross floor area up to 8,234 square metres shall be permitted, with a minimum of 112 square metres of commercial space.
- n) Notwithstanding Section 14 (9) (i), a planting strip of not less than 0.5 metres in width shall be provided and maintained, which may include raised planter beds, along the rear lot line, and no planting strip shall be provided along the northerly side lot line.
- o) Notwithstanding Section 2(2)H(via), the definition of planting strip shall be amended to include raised planter beds, in addition to items listed in section 2(2)H(via).
- p) A minimum of 4 square metres of amenity space per unit shall be provided or 519 square metres of amenity space whichever is greater.
- q) A minimum landscaped area of not less than 4.25% of the area of the lot on which the building or structure is situate, which may include raised planter beds, planter boxes, and green roof area, shall be provided and maintained.
- r) Notwithstanding Section 18(3)(vi)(a), a chimney, sill, belt course, leader, pilaster, lintel or ornamental projection may project up to 0.5 metres into the required front (west) and rear (east) yards.
- s) Notwithstanding Section 18(3)(vi)(b)(i) and (iii), a canopy, cornice, eave or gutter may project to within 0 metres of a front or side lot line.
- t) Notwithstanding Section 18(3)(vi)(cc)(i), a balcony may project into a required front (west) yard up to the extent of the floor immediately below.
- u) Notwithstanding Section 18(3)(vi)(cc)(ii), a balcony may project into a required rear (east) yard up to the extent of the floor immediately below.

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- v) Notwithstanding Section 18(3)(vi)(cc)(iii), a balcony may project into a required side (north and south) yard up to the extent of the floor immediately below.
- w) Notwithstanding Section 18A (1) (a) and (b), a minimum of 0.30 parking spaces per Retirement Home unit shall be provided or 37 car parking spaces whichever is greater, of which a minimum of 2 are barrier free parking spaces, a minimum of 2 are for visitor parking spaces and 1 parking space shall be for the exclusive purpose of accommodating car sharing vehicles.
- x) A minimum of 0.05 short term and 0.41 secure long term bicycle parking spaces per unit shall be provided or 6 short term and 50 secure long term bicycle parking spaces whichever is greater.
- y) Notwithstanding Section 18(A)(1)(f) and Table 6, for 90° parking a minimum manoeuvring space of 6 metres is required, except for the following:
 - i. A minimum manoeuvring space of 5.28 metres shall be permitted for a maximum of four parking spaces.
- z) Notwithstanding Section 18(A)(7), every required parking space, other than a parallel parking space, shall have dimensions not less than 2.8 metres wide and 5.8 metres long; provided that:
 - i. 10% of required parking spaces may be not less than 2.6 metres wide 5.5 metres long, with such parking spaces clearly identified as being reserved for the parking of small cars only.
 - ii. One parking space, in addition to the aforementioned permitted small car parking spaces for small cars, may be 3.0metres wide and 4.5 metres long provided such parking space is identified as, and reserved for shared vehicle parking only.
- aa)Notwithstanding Section 18(A)(9), every parallel parking space shall have dimensions not less than 2.5 metres wide and 6.7 metres long.
- bb)Notwithstanding Section 18(A)(10), a wall, column or any other obstruction may project up to 0.15 metres into the width of the parking space.
- cc) Notwithstanding Section 18A (26), where a use other than a residential use is adjacent to a residential district, every access driveway providing access to or egress from or both access to and egress from the non-residential use shall be located not less than 0.5 metres from the common boundary with the

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residential district to the east and a minimum of 0.1 metres from the common boundary with the residential district to the north.

- dd) For any portion of the building that has a step-back of less than 10.5 metres from the easterly lot line, with the exception of the first floor, no windows shall be permitted facing the easterly lot line except where the bottom 1.1 metres of such windows are rendered translucent rather than clear; and
- ee) Any balcony railing for balconies facing the easterly lot line shall be non-transparent or translucent.
3. That By-law No. 6593 (City of Hamilton) is amended by adding this By-law to Section 19B as Schedule S-978a.
 4. That Sheet No. E2 of the District maps is amended by making the lands referred to in Section 1 of this By-law as Schedule S-978a.
 5. 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*.

Pursuant to the Order/Decision of the Local Planning Appeal Tribunal Issued on

_____.

CITY OF HAMILTON
BY-LAW NO.
To Amend Zoning By-law No. 6593
Respecting Lands Located at 468, 470, 474 and 476 James Street North, Hamilton



<p>This is Schedule "A" to By-law No. 21-</p> <p>Passed the day of, 2021</p>		<p>-----</p> <p style="text-align: center;">Mayor</p> <p>-----</p> <p style="text-align: center;">Clerk</p>	
<p style="text-align: center;">Schedule "A"</p> <p style="text-align: center;">Map forming Part of</p> <p style="text-align: center;">By-law No. 21-_____</p> <p style="text-align: center;">to Amend By-law No. 6593</p>		<p>Subject Property</p> <p>468, 470, 474 and 476 James Street North, Hamilton</p> <p> To further modify the "H/S-978" (Community Shopping and Commercial Etc.) District, Modified, to the "H/S-978a" (Community Shopping and Commercial, Etc.) District, Modified</p>	
<p>Scale: N.T.S.</p>	<p>File Name/Number: ZAC-18-020/UHOPA-18-007</p>	<p style="font-size: small;">Hamilton</p>	
<p>Date: May 26, 2021</p>	<p>Planner/Technician: JM/NB</p>		
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>			