



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 11, 2022
SUBJECT/REPORT NO:	Application for Removal of a Holding Provision by Fengate Hamilton Lands GP Inc. et al. for Lands Located at 75 James Street South, 44 Hughson Street South and 9 Jackson Street East, Hamilton (PED22024) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Shannon McKie (905) 546-2424 Ext. 1288
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That in accordance with Council’s decision not to appeal the Minor Variance Application, the proposal is therefore deemed to comply with the Official Plan in accordance with Section 63 of the *Planning Act*;
 - (i) That the By-law, attached as Appendix “B” to Report PED22024, to remove the ‘H’ Holding Provision from the subject lands, which has been prepared in a form satisfactory to Corporate Counsel, be forwarded to Council for enactment;
 - (ii) That Schedule “A”, Map No. 952 of Zoning By-law No. 05-200 be amended by changing the zoning from the Downtown Mixed Use – Pedestrian Focus (D2, H17, H19, H20) Zone and the Downtown Central Business District (D1, H17, H19, H20) Zone, to the Downtown Mixed Use – Pedestrian Focus (D2) Zone and the Downtown Central Business District (D1) Zone;

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- (b) That staff be directed and authorized to include the necessary revisions in a future housekeeping amendment to the Downtown Hamilton Secondary Plan and Zoning By-law to reflect the Minor Variance Application (HM/A-21:221) approval by the Committee of Adjustment.

EXECUTIVE SUMMARY

The Applicant submitted a Zoning By-law Amendment Application (ZAD-21-035) to remove Holding Provisions H17, H19, and H20 on the subject lands. The Holding Provisions are required to be lifted prior to the submission of a complete Building Permit Application for the development of a 34 storey (108.0 metre) mixed use building containing 635 units and 1,290.0 square metres of commercial space. A Holding Provision may be removed if the provisions of the Urban Hamilton Official Plan (UHOP) can be met.

The Applicant submitted a Minor Variance Application (HM/A-21:221) and received approval on August 12, 2021 from the Committee of Adjustment for an increase in the maximum building height from 92.5 metres to 108.0 metres. The 92.5 metre building height reflects the maximum permission that aligns with the height of the Niagara Escarpment between James Street South and John Street South, as indicated on Appendix "D" attached to Report PED22024 – Niagara Escarpment Height, of the Downtown Hamilton Secondary Plan. Holding Provision H17 requires, amongst other requirements, that the Owner demonstrate that the proposed development does not exceed the height of the Niagara Escarpment. The Applicant omitted a variance to Schedule "D" – Holding Provisions to amend Holding Provision H17 as part of the Minor Variance Application.

Planning staff appealed the decision of the Committee of Adjustment to approve a maximum building height that exceeds the height of the Niagara Escarpment contrary to the policies of the Downtown Hamilton Secondary Plan. The appeal was withdrawn as a result of Council direction and the variances were deemed final and binding.

In accordance with Section 63 of the *Planning Act*, Council has the authority to deem the proposal to comply with the Official Plan in order to allow for the removal of the Holding Provision to facilitate the submission of a Building Permit Application for the development.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

Downtown Zones under City of Hamilton Zoning By-law No. 05-200

On May 9, 2019, City Council passed By-law No. 18-114 respecting Downtown Zones in Zoning By-law No. 05-200. The By-law applied 'H' Holding Provisions H17, H19 and H20 to the subject lands.

The 'H' Holding Provisions shall be removed upon the fulfilment of the below noted conditions:

- “H17. The Holding Provision shall, upon Application by the landowner, be removed by way of an amending Zoning By-law, from all or part of the lands subject to this provision when the following conditions have been satisfied:
- i) That the landowner demonstrates to the satisfaction of the Director of Planning and Chief Planner, City of Hamilton, that sufficient land assembly has occurred to achieve the minimum lot area requirement and lot frontage requirement in accordance with Section 6.0 of this By-law;
 - ii) That the landowner demonstrate that the proposal conforms to the policies of the Downtown Hamilton Secondary Plan by submitting the following studies to the satisfaction of the Director of Planning, and Chief Planner, City of Hamilton:
 - 1. Shadow Impact Study;
 - 2. Pedestrian Level Wind Study;
 - 3. Visual Impact Assessment;
 - 4. Traffic Impact Study; and,
 - 5. Functional Servicing Report.
 - iii) That the landowner demonstrate that the proposed development does not exceed the height of the Niagara Escarpment to the satisfaction of the Director of Planning and Chief Planner, City of Hamilton;

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- iv) That conditional site plan approval be received, which shall address matters including but not limited to Design Review Panel advice, to the satisfaction of the Director of Planning and Chief Planner, City of Hamilton.
- H19. The Holding Provision shall, upon Application by the landowner, be removed by way of an amending Zoning By-law, from all or part of the lands subject to this provision when the following conditions have been satisfied:
- i) That the landowner shall be required to enter into a Section 37 Agreement to secure provision of Community Benefits to the satisfaction of the Director of Planning and Chief Planner, City of Hamilton.
- H20. The Holding Provision shall, upon Application by the landowner, be removed by way of an amending Zoning By-law, from all or part of the lands subject to this provision when the following conditions have been satisfied:
- i) That the landowner demonstrates that any development having the effect of removing all or part of rental housing comprised of three or more units will be replaced to the satisfaction of the Director of Planning and Chief Planner, City of Hamilton; and,
- ii) That the landowner enters into an Agreement with the City of Hamilton.”

Site Plan Control Application DA-19-174

Site Plan Control Application DA-19-174 was conditionally approved on April 16, 2020 for the construction of a 30 storey mixed use building with 403 residential units, 1,032 square metres of retail space, 258 square metres of office space with parking provided on the ground floor and within an underground parking structure. The site plan has since been revised and a Minor Variance Application (HM/A-21:221) was approved on August 12, 2021 to permit the proposed 34 storey mixed use building with 635 dwelling units, 390 square metres of office space and 335 parking spaces.

Owner/Applicant:

- Fengate Hamilton Lands GP Inc. et al.

Agent

- UrbanSolutions Planning & Land Development Consultants Inc. c/o Matthew Johnston.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Urban Hamilton Official Plan

The subject lands are designated “Downtown Mixed Use - Pedestrian Focus” and “Downtown Mixed Use” on Map B.6.1-1. The eastern portion of the subject site is further identified as “High-rise 1” while the western portion of the subject site is identified as “High-rise 2” on Map B.6.1-2 of the Downtown Hamilton Secondary Plan. The site is identified as a location where there may be impact to views on Appendix C – Viewshed Analysis of the Downtown Hamilton Secondary Plan.

Holding Provision H17 and the Terms of Reference for the required studies implement the Downtown Hamilton Tall Building Guidelines and the policies of the Downtown Hamilton Secondary Plan (Policy B.6.1.4.23 e)). As per recommendation (a) of Report PED22024, in accordance with Council’s decision not to proceed with the appeal to the Minor Variance Application, the proposal will be deemed to comply with the UHOP.

Holding Provision H19 implements the Section 37 Bonusing policies (Policy B.6.1.4.8) of the Downtown Hamilton Secondary Plan. Section 37 as it relates to the bonusing provisions referenced in Holding Provision H19 was repealed by the Province and is therefore not applicable.

Holding Provision H20 implements Policies B.6.1.4.10 and B.6.1.4.11 of the Downtown Hamilton Secondary Plan and Section B.3.2 – Housing Policies of Volume 1 of the UHOP related to rental housing replacement. The subject lands do not contain any rental housing units. Therefore, the requirements of H20 do not apply to the proposal.

City of Hamilton Zoning By-law No. 05-200

The subject property is zoned Downtown Mixed Use – Pedestrian Focus (D2, H17, H19, H20) Zone and Downtown Central Business District (D1, H17, H19, H20) Zone which permits the proposed mixed use building. Minor Variance Application HM/A-21:221 was approved on August 12, 2021 to permit increased setbacks from Jackson Street East and James Street South as well as the daylight triangle, increased lot coverage, increased maximum building height, reduction in ground floor, second and third floor glazing, modification to the required materials, increased small car parking spaces, and reduced parking stall width abutting a wall or column.

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ANALYSIS:

The following studies were submitted to address the requirements of the Holding Provisions:

- Sun and Shadow Study dated August 5, 2021 prepared by Graziani + Corazza Architects Inc. and an updated study dated August 31, 2021 prepared by R. Bouwmeester & Associates;
- Pedestrian Level Wind Study dated July 28, 2021 prepared by RWDI dated September 16, 2021;
- Visual Impact Assessment prepared by MBTW dated June 2021;
- Transportation Impact Study and TDM Option Study update prepared by Nextrans Consulting Engineers dated April 2021; and,
- Water Usage Assessment and Wastewater Generation Assessment dated April 26, 2021 and a Stormwater Management Report dated April 2021 prepared by S. Llewellyn & Associates Ltd.

The plans and studies submitted with the Site Plan Control Application are satisfactory to staff.

H19

Section 37 of the *Planning Act* as it relates to Section 37 Agreements was repealed by the Province. Therefore, Holding Provision H19 is not applicable and can be cleared.

H20

The subject lands are occupied by a surface parking lot and do not contain any rental housing units. Therefore, Holding Provision H20 is not applicable and can be cleared.

ALTERNATIVES FOR CONSIDERATION

Should Council not approve the recommendations of this report, the Holding Provisions would remain on the property.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Location Map

Appendix “B” – Holding Removal By-law

SM:sd