

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 20, 2022

CASE NO(S): PL171389

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

Applicant and Appellant:	Medallion Developments
Subject:	Application to amend Zoning By-law No. 6593 - Refusal or neglect of the City of Hamilton to make a decision
Existing Zoning:	E District (Multiple Dwellings, Lodges, Clubs, Etc.)
Proposed Zoning:	E-3 District, Modified (High Density Dwellings)
Purpose:	To permit the development of 20-storey rental apartment residential apartment addition
Property Address/Description:	195 Wellington Street South
Municipality:	City of Hamilton
Municipality File No.:	ZAC-14-003
OLT Case No.:	PL171389
OLT File No.:	PL171389
OLT Case Name:	Medallion Developments v. Hamilton (City)

Heard: December 8, 2021 by video hearing

APPEARANCES:

Parties

Medallion Developments
("Appellant")

City of Hamilton ("City")

Niagara Escarpment Commission
("NEC")

Counsel

Quinto Annibale
Brendan Ruddick

John R. Hart

Ken Hare

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. RUSSO ON
DECEMBER 8, 2021 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Ontario Land Tribunal (the “Tribunal”) is with respect to the appeals filed under s. 34(11) of the *Planning Act* (the “Act”) as a result of the City of Hamilton (“City”) and their Council’s failure to make a decision on an application within the statutory timeframe specified by the Act. The lands subject to the appeal are municipally known as 195 Wellington Street South (the “Subject Site”).

[2] The Parties have settled and worked through previously contested issues and thus a settlement hearing has been scheduled before the Tribunal.

Description of Subject Site and Surrounding Context

[3] The Subject Site is located at the northeast corner of Wellington Street South and Charlton Avenue East and falls within an area in the City referred to as the Stinson Neighbourhood. The Subject Site has a total area of approximately 0.82 hectares (8,232 square metres (“m²”)) and frontages of 70 metres (“m”) on Wellington Street South, and 78 m on Charlton Avenue East.

[4] The Subject Site is currently occupied by a 3-storey U-shaped rental apartment building (the “Existing Building”), with a large surface parking lot located within a central courtyard extending to the north property line, and accessed by a driveway located at the northwest corner of the Subject Site. The Existing Building, which was built in 1939, currently contains 142 residential rental units (31 bachelor units, 73 one-bedroom units and 38 two-bedroom units).

[5] Directly north of the Subject Site is the Escarpment Rail Trail, which extends from Ferguson Avenue South, through Corktown Park, and east throughout the Niagara Escarpment to Albion Falls. To the immediate north of the Escarpment Rail Trail is the CNR rail tracks.

Proposal Background

[6] On February 3, 2014 an application (the "Initial Proposal") filed with the City contemplated the infill development of 216 residential units within a new 20-storey tower and the retention of the majority of the Existing Building on the Subject Site. The proposed tower was located at the northeast quadrant of the Subject Site, and would have necessitated the demolition of 32 rental units within a portion of the Existing Building (including 5 studio units, 18 one-bedroom units and 2 two-bedroom units) resulting in a total of 326 new and existing units on the Subject Site.

[7] The 20-storey building (59 m in height, 64 m including the mechanical penthouse) contemplated in the Initial Proposal was to be comprised of an 18-storey tower atop a 2-storey podium. The tower had a floorplate of 892 m² excluding balconies, and the new building had a proposed Gross Floor Area ("GFA") of 16,734 m². The GFA of the retained portion of the Existing Building was 7,349 m², resulting in a combined GFA of 24,083 m² and an overall site density of 2.93 Floor Space Index ("FSI").

[8] In the Initial Proposal, vehicle parking for the Subject Site was comprised of 154 indoor parking spaces provided in a single level of underground parking, as well as on the ground floor and second level of the new building, and 69 surface parking spaces. Overall a total of 223 parking spaces were proposed, resulting in a parking rate of 0.68 parking spaces per residential unit.

[9] The Initial Proposal was reviewed by City staff, as well as staff at the NEC and other external commenting agencies. As a result, a number of changes were incorporated into the Initial Proposal, particularly with respect to building height. These changes were made in response to the public agency concerns related to the visual impact of the proposed tower on views of the Niagara Escarpment. Re-submissions of materials in support of moderately revised versions of the development proposal were filed in November 2015 (height reduced to 19-storeys), September 2016 (height further reduced to 17-storeys) and February 2017 (height remained at 17-storeys but with further façade design revisions).

[10] On November 27, 2017, the Appellant appealed the Rezoning Application to the Tribunal. Numerous pre-hearing and case management conferences were held and a 10-Day in-person hearing of the merits was scheduled for June 15, 2020. As a result of the state of emergency declared by the Province of Ontario and cancellation of in-person hearing events by the Tribunal in response to the COVID-19 pandemic, the June 15, 2020 hearing was adjourned.

[11] Since that time, the Parties have held a number of meetings and have worked collaboratively in an effort to resolve the Appeal. As a result of these efforts, a settlement has been reached between the City, the NEC and the Appellant on the basis of a settlement proposal for a 9-storey mid-rise building addition to the Existing Building and additional Urban Design and technical matters the Parties have agreed to (the "Settlement Proposal").

Applicable Legislation and Policies

[12] Land use planning in Ontario is a policy-led system implemented in hierarchical fashion. This system is deliberately crafted to recognize that there cannot be a one-size fits all approach to implementing policy framework, given the diversity of Ontario's local communities. As such, the broader Provincial policies and objectives are to be

implemented by each municipality through their Official Plan (“OP”), Zoning By-laws, issue-specific guidelines, etc.

[13] Although the Parties have settled their issues, the Tribunal must still determine if the proposal meets provincial interests and municipal policy framework. In adjudicating the appeal, the Tribunal must have regard to matters of provincial interest enumerated in s. 2 of the Act. The Tribunal must be satisfied that the proposal is consistent with the Provincial Policy Statement, 2020 (the “PPS”) and pursuant to s. 3(5) of the Act. Further, the Tribunal must also find that the proposal conforms with policies of the provincial plan: A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (the “Growth Plan”). The Subject Site falls within the jurisdiction and is subject to the Niagara Escarpment Plan (the “NEP”) and therefore the proposal must conform with its policies. Lastly the Tribunal must be satisfied with the proposal’s conformity with the City OP, and that it represents good land-use planning in the public interest.

THE HEARING

[14] The Tribunal affirmed Lindsay Dale-Harris. Provided in Exhibit 1 was her Acknowledgement of Expert’s Duty form and *Curriculum Vitae*. Having reviewed both and having heard *viva voce* her credentials with no objection, the Tribunal qualified Ms. Dale-Harris to provide opinion evidence in the field of land-use planning.

[15] Ms. Dale-Harris provided her *viva voce* testimony to the Tribunal but relied mainly on her written evidence found in:

- Exhibit 1 – Affidavit of L. Dale-Harris;

The witness also relied on and the Parties provided for the Tribunal’s consideration:

- Exhibit 2 – Niagara Escarpment Commission Letter; and

- Exhibit 3 – Proposed Zoning By-Law Amendment.

[16] Ms. Dale-Harris provided a brief history of the application and advised the Tribunal her firm had been retained by the Appellant in 2011. She highlighted as has been reviewed in the introduction/background of this decision, this proposal has a long history. She also advised the Tribunal that she was the author and prepared a Planning and Urban Design Rationale report (February 2014) provided in Exhibit 1.

[17] Ms. Dale-Harris advised the Tribunal that in advance of the hearing and as part of her retainer, she reviewed plans and statistics prepared in support of the Rezoning Application and Appeal, as well as supporting technical reports and drawings submitted over the course of the application review process. She has visited the Subject Site and the surrounding area, liaised with the Owner and the Appellant team, and met with City staff throughout the application review process. All these factors have led to her opinion on the matter.

The Planning Act

[18] Section 2 of the Act sets out matters of provincial interest for which planning authorities shall have regard to, among other matters, in carrying out their responsibilities to the legislation. Ms. Dale-Harris opined that the Settlement Proposal before the Tribunal has regard for these matters of provincial interest, in particular:

- the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems (f)
- the orderly development of safe and healthy communities (h);
- the adequate provision of a full range of housing, including affordable housing (j);
- the appropriate location of growth and development (p);
- the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians (q);
and
- the promotion of built form that is well designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant (r).

Provincial Policy Statement

[19] One of the key policy directions of the PPS is to build strong communities through the promotion of efficient land use and development patterns that support strong, liveable and healthy communities, protect the environment, and facilitate economic growth.

[20] Ms. Dale-Harris opined that the Proposal is consistent with s. 1.1.1 by:

- promoting efficient development and land use patterns which sustain the financial well-being of the Province and City over the long term;
- proposes an appropriate affordable and market-based range and mix of unit types in proximity to recreation, parks and open space, and other uses to meet long-term needs;
- promotes the integration of land use planning, growth management, transit supportive development, intensification and infrastructure planning to achieve cost effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs;
- has ensured that necessary infrastructure and public service facilities are or will be available to meet current and projected needs.

[21] The Proposal, in Ms. Dale-Harris' opinion demonstrates and incorporates the above listed items within the development on the Subject Site, and thus is also consistent with s. 1.1.3.2, s. 1.1.3.4, s. 1.4.3 and 1.6.7.4.

[22] Ms. Dale-Harris referenced the Appellant's extensive experience and high standard of construction practices and well designed compact built form building. This combined and augmented by both transit supportive and active transportation options on the Subject Site and in the surrounding area, led Ms. Dale-Harris to opine that consideration for the environment is evident and woven into the development, highlighting consistency with s. 1.8.1.

[23] In concluding her evidence pertaining to the PPS, Ms. Dale-Harris provided her overall opinion that Settlement Proposal is consistent with the policies of the PPS.

The Growth Plan

[24] Similar to the PPS, the Growth Plan supports intensification within built-up urban areas, particularly in proximity to transit. In this respect, s. 2.2.1(2)(c), it directs that, within settlement areas, growth will be focused in delineated built-up areas, strategic growth areas and locations with existing or planned transit, with a priority on higher order transit where it exists or is planned.

[25] Ms. Dale-Harris opined the Proposal conforms with Policy 2.2.1(4), which provides policies that support the achievement of complete communities, which include and:

- Provide a diverse range and mix of housing options, including additional residential units and affordable housing, to accommodate people at all stages of life, and to accommodate the needs of all household sizes and incomes (c);
- Expand convenient access to: a range of transportation options, including options for the safe, comfortable and convenient use of active transportation; an appropriate supply of safe, publicly-accessible open spaces, parks, trails, and other recreational facilities; and healthy, local, and affordable food options, including through urban agriculture (d);
- Provide for a more compact built form and a vibrant public realm, including public open spaces (e); and
- Mitigate and adapt to the impacts of a changing climate, improve resilience and reduce greenhouse gas emissions, and contribute to environment sustainability (f).

[26] Ms. Dale-Harris opined that the Proposal provides an appropriate intensification strategy conforming with s. 2.2.2(3), and the Subject Site falling just outside of the Downtown Hamilton Urban Growth Centre, as identified on Schedule 4 of the Growth

Plan (approximately 320 metres away) provides further justification for the density sought on the Subject Site. Policy 2.2.3(1) provides direction that, urban growth centres will be planned to, among other matters, to accommodate a significant share of population and employment growth by 2031, or earlier. Policy 2.2.3(2) indicates that the Downtown Hamilton Urban Growth Centre will be planned to achieve a minimum gross density target of 200 residents and jobs combined per hectare.

[27] The Tribunal was advised by Ms. Dale-Harris that the Subject Site is located approximately 700 m from the Hamilton GO Station and is therefore considered to be within a Major Transit Station Area. The Subject Site is also located approximately 650 m away from the Wellington stop of the planned and funded Hamilton Light Rail Transit (“LRT”) and is therefore within a second Major Transit Station Area. The Hamilton LRT line is identified as a Priority Transit Corridor on Schedule 5 of the Growth Plan.

[28] The above paragraph in Ms. Dale-Harris’ opinion demonstrates the Proposal’s conformity to s. 2.2.4(1), s. 2.2.4(3), s. 2.2.4(6), and s. 2.2.4(9), all transit related policies that reinforce the appropriateness of the development proposed on the Subject Site.

[29] With respect to housing, s. 2.2.6(1) requires municipalities to support housing choice through, the achievement of the minimum intensification and density targets by identifying a diverse range and mix of housing options and densities to meet projected and current needs. These are to be implemented through OP designations and zoning by-laws. Section 2.2.6(2) requires municipalities to support the achievement of complete communities by planning to achieve the minimum intensification targets and planning to diversify their overall housing stock across the municipality. In Ms. Dale-Harris’ opinion, the Proposal conforms the above policies.

[30] Climate Change policies are set out in s. 4.2.10 of the Growth Plan. Ms. Dale-Harris opined that similarly to the discussion had when reviewing this matter with the PPS, the Proposal addresses policy by proposing a compact built form development that supports the achievement of complete communities, as well as the minimum intensification and density targets of the Growth Plan, and reducing dependence on the automobile and supporting existing and planned transit and active transportation.

[31] Ms. Dale-Harris concluded discussion of the section with her opinion that the Settlement Proposal provides for a development which conforms with the Growth Plan.

Niagara Escarpment Plan

[32] The NEP covers 725 kilometres of land from Queenston on the Niagara River to the islands off Tobermory on the Bruce Peninsula.

[33] The Subject Site is subject to the NEP and its Urban Area provisions. As set out in s. 1.7 of the plan, the objective of the Urban Areas designation is to minimize the impact and further encroachment of urban growth on the Escarpment environment. Section 1.7.4 provides that “Changes to permitted uses, expansions and alterations of existing uses or the creation of new lots within the Urban Area designation will not require an amendment to the Niagara Escarpment Plan.”

[34] Ms. Dale-Harris opined that the Proposal conforms to all relevant policies of the NEP and highlighted for the Tribunal s. 1.7.4 of the plan, in which she opined the Proposal demonstrates the following:

- All development shall be of an urban design compatible with the scenic resources of the Escarpment. Where appropriate, provision for maximum heights, adequate setbacks, and screening are required to minimize the visual impact of urban development (1);
- Development within Urban Areas should encourage reduced energy consumption, improved air quality, reduced greenhouse

gas emissions (consistent with provincial reduction targets to 2030 and 2050) and work towards the long-term goal of low carbon communities, including net-zero communities and increased resilience to climate change, including through maximizing opportunities for the use of green infrastructure and appropriate low impact development (2);

- Development within Urban Areas shall not encroach into the Escarpment Natural, Escarpment Protection, Escarpment Rural or Mineral Resource Extraction Areas (4);
- Growth and development in Urban Areas shall be compatible with and provide for:
 - the protection of natural heritage features and functions;
 - the protection of hydrologic features and functions;
 - the protection of agricultural lands, including prime agricultural areas;
 - the conservation of cultural heritage resources, including features of interest to First Nation and Métis communities;
 - considerations for reductions in greenhouse gas emissions and improved resilience to the impacts of a changing climate;
 - sustainable use of water resources for ecological and servicing needs; and
 - compliance with the targets, criteria and recommendations of applicable water, wastewater and stormwater master plans, approved watershed planning and/or subwatershed plan in land use planning (9).

[35] Ms. Dale-Harris brought attention and emphasized that policy 4 in s. 2.3 reads:

[a]n expansion or enlargement of a building, structure or facility associated with an existing use shall be minor in proportion to the size and scale of the use, building or structure, including its related buildings and structures at the time it became an existing use as defined by this Plan. An expansion or enlargement of a building, structure or facility associated with an existing use will be considered minor where the expansion or enlargement is no more than 25 per cent of the original development footprint, **unless it can be demonstrated that a greater expansion or enlargement is compatible with the site and the surrounding landscape.** [emphasis added]

[36] Ms. Dale-Harris opined the Proposal has demonstrated compatibility with its surrounding area and her overall conclusion is that the Settlement Proposal conforms with relevant policies of the NEP.

[37] The NEC, an agency of the Provincial Government, entrusted to oversee the NEP and the protection of lands subject to the NEP provided a letter of opinion to the Tribunal on the matter (Exhibit 2).

[38] The NEC opinion letter and its author concurred with the opinions shared by Ms. Dale-Harris that the Settlement Proposal and revisions provided and before the Tribunal are consistent and conform with the NEP.

Urban Hamilton Official Plan

[39] The Urban Hamilton Official Plan 2009 (the “UHOP”) sets out a long-term vision for the physical development of the City for a 30-year period and replaces the former City UHOP (1982). As set out in s. A.1.2 of the UHOP, over the term of the UHOP, the City is expected to grow to over 660,000 residents and 300,000 jobs.

[40] The introductory text to s. B.2.4 of the UHOP, highlights that residential intensification is a key component of the City’s growth strategy and is essential to meet its population growth and employment targets. Policy B.2.4.1.1 provides that residential intensification shall be encouraged throughout the entire built-up area, in accordance with the policies of Chapter E – Urban Systems and Designations and Chapter F – Implementation.

[41] Policy B.2.4.1.4 sets out a series of criteria by which residential intensification developments shall be evaluated, including:

- a balanced evaluation of the criteria;
- 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;
- the development’s contribution to maintaining and achieving a range of dwelling types and tenures;
- the compatible integration of the development with the surrounding area in terms of use, scale, form and character. In this regard, the City encourages the use of innovative and creative urban design techniques;

- the development's contribution to achieving the planned urban structure as described in Section E2.0 – Urban Structure;
- infrastructure and transportation capacity; and,
- the ability of the development to comply with all applicable policies.

[42] When considering an application for a residential intensification development within the Neighbourhoods area, s. B.2.4.2.2 directs that the following matters be evaluated:

- the matters listed in Policy B.2.4.1.4;
- 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;
- the considerations of transitions in height and density to adjacent residential buildings;
- the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;
- the provision of amenity space and the relationship to existing patterns of private and public amenity space;
- the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations;
- the ability to complement the existing functions of the neighbourhood;
- the conservation of cultural heritage resources; and,
- infrastructure and transportation capacity and impacts.

[43] Ms. Dale-Harris opined the Proposal has considered and implemented the above criteria in the Settlement Proposal before the Tribunal and in doing so conforms with these policies.

[44] Section B.3.2 of the UHOP sets out housing policies and goals to provide a range of housing types and establish complete communities (s. B.3.2.1.2). All while increasing the mix and range of housing types, forms, tenures, densities, affordability levels, and housing with supports throughout the urban area of the City (s. B.3.2.1.6).

[45] Sections B.3.2.5 deals with rental housing protection policies, and s. 3.2.5.6 as well as s.3.2.5.7 deal with demolition and redevelopment. Ms. Dale-Harris opined the Proposal has taken careful consideration of these policies and the Settlement Proposal seeks to increase, not decrease the total number of rental apartment units on the Subject Site and to improve the existing apartment complex which is over 80 years old. The 35 rental units which are proposed to be demolished to permit this redevelopment, will be replaced by new units on Subject Site, which will be built to current standards, and result in a net gain of 188 rental apartment units. Therefore, in Ms. Dale-Harris' opinion, s. 3.2.5.6 criteria does not apply to the Proposal.

[46] Further, and quite significant in Ms. Dale-Harris' opinion, is that the Appellant has agreed to address any issues related to the rehousing of tenants who are displaced due to the proposed demolition of the 35 rental units through a Tenant Relocation Plan that is to be prepared and implemented to the satisfaction of the City. This requirement is proposed to be implemented as a condition for lifting the Holding symbol on the zoning, ensuring compliance and in consideration of public interest.

[47] Providing her summary opinion on the Settlement Proposal's conformity with the UHOP, Ms. Dale-Harris opined that all relevant sections have been considered and the Proposal conforms overall with the UHOP. While again noting, the inclusion of the Holding symbol on the zoning is a mechanism that ensures conformity and protects the public interest.

Stinson Neighbourhood Plan

[48] Starting in the early 1970s, the City undertook neighbourhood planning exercises throughout the City in order to provide for future development of small areas or neighbourhoods. These neighbourhood plans exist for over 70 of the 137 neighbourhoods in the City and are intended to provide detailed information about land uses and policies relevant to that specific area. The Subject Site falls within the area referred to as the Stinson Neighbourhood. The original Stinson Neighbourhood Plan

(the “SNP”) was endorsed by Council on June 24, 1975. In 1998, it was replaced by a revised version that was endorsed by Council on June 30, 1998.

[49] The SNP was prepared by the Planning and Development Department in conjunction with the Stinson Neighbourhood Plan Advisory Committee. It provides a guide for future development and redevelopment in Stinson for the next 20-25 years. The executive summary points out that this plan is intended to be flexible, and can be modified to accommodate unanticipated changes, should they be considered appropriate.

[50] Ms. Dale-Harris opined that the Settlement Proposal conforms to the SNP and is inline and reflective of the neighbourhood character sought by the plan.

City of Hamilton Zoning By-law No. 6593

[51] The Subject Site is zoned “E” (Multiple Dwellings, Lodges, Clubs, etc.) District under City Zoning By-law No. 6593 (the “ZBL”). Permitted uses in the E District include a variety of residential, institutional, public and commercial uses, including a multiple dwelling.

[52] The Proposal seeks relief from provision 11(2)(ii) that limits the heights of buildings to 8 storeys or 26.0 m (85.3 feet), provision 11(3) which sets out a series of yard requirements, provision 11(5) which limits the Floor Area Ratio and from additional provisions (as noted in Exhibit 1, Affidavit of L. Dale-Harris). The Subject Site requires relief from these (some in part) limitations and thus the Zoning By-law Amendment (the “ZBLA”) was sought. In the opinion of Ms. Dale Harris, the Settlement Proposal and ZBLA before the Tribunal maintains the intent of the ZBL, and with its numerous revisions the Proposal has provided a balance of public interest and updated Provincial interest seen in the Act, PPS, Growth Plan and NEP.

[53] The City is in the process of developing a new comprehensive ZBL, ZBL No. 05-200, and is introducing this new by-law on a zone-by-zone basis. The new ZBL is not yet in effect as it relates to the Subject Site; however, Ms. Dale-Harris opined it nevertheless provides an indication of the direction that the City is moving towards in terms of zoning standards. Thus in her opinion is quite evident in numerous provisions that have been updated; however, she highlighted for the Tribunal the parking rate requirements and reductions that are aimed to decrease vehicular dependency and encourage public transit as well as active transportation options, are more inline with that being proposed in the Settlement Proposal than what currently exists.

Lindsay Dale-Harris' Concluding Opinions

[54] Ms. Dale-Harris concluded and summarized her opinions of the Settlement Proposal for the Tribunal and opined the Proposal represents good planning and urban design and that the proposed ZBLA is consistent with the PPS and conforms with the policies of the Growth Plan and the UHOP.

[55] She opined the proposed development of the Subject Site will result in residential intensification in a developed urban area that is well served by existing and planned municipal infrastructure, an objective supported by both provincial and municipal policy. The height, massing and siting of the proposed mid-rise building have been carefully considered to ensure the building will fit harmoniously into the surrounding built form context, while safeguarding views of the Escarpment, and providing additional rental housing opportunities.

[56] In closing, Ms. Dale-Harris recommended that the Rezoning as reflected in the Settlement Proposal and draft ZBLA be approved. She highlighted once again for the Tribunal, that the draft ZBLA includes an "H" Holding Symbol limiting the redevelopment of the Subject Site until specific removal conditions have been satisfied. The four conditions proposed to lift the Holding Symbol were provided for the Tribunal's

consideration and Ms. Dale-Harris recommended that they be included and are in her opinion appropriate to be imposed.

Decision and Disposition

[57] The Tribunal, having reviewed all evidence provided in Exhibits 1 – 3, and having heard the opinions of Ms. Dale-Harris, accepts the uncontroverted expert land-use planning evidence provided by the witness. The Tribunal finds that the proposed planning instruments, as it will permit the development have appropriate regard for matters of Provincial interest and s. 2 of the Act. The Tribunal also finds that the ZBLA is consistent with the PPS, conform to the GP, NEP, and the UHOP, as well as represent good land-use planning, and is in the public interest.

[58] The Tribunal, having been provided evidence and having heard from Ms. Dale-Harris her recommendation that the imposition of a Holding provision be included and removed pending the fulfilment of four conditions, concurs and finds its use to be appropriate and the conditions provided acceptable.

ORDER

[59] **THE TRIBUNAL ORDERS** that the appeal filed by Medallion Developments (the “Owner”) for the property known as 195 Wellington Street South, Hamilton, (the “Subject Property”) is hereby allowed in part.

[60] **THE TRIBUNAL FURTHER ORDERS** that the application for zoning by-law amendment filed in respect of the Subject Property is approved and City of Hamilton Zoning By-law No. 6593 is hereby amended in accordance with the Zoning By-law Amendment attached as Schedule “A”.

[61] **AND THE TRIBUNAL FURTHER ORDERS** that no costs shall be sought or paid by or to any party in respect of this matter. For further certainty, each party will bear its own legal and consulting costs in relation to this matter.

[62] The Member may be spoken to, at a time that is convenient to the Tribunal and the Parties, should any difficulties arise in finalizing the items set out in Schedule "A".

"M. Russo"

M. RUSSO
MEMBER

Ontario Land Tribunal

Website: www.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.

PL171389 – Schedule A**CITY OF HAMILTON
BY- LAW NO. 21-XX-OLT****To Amend Zoning By-law No. 6593
Respecting Lands Located at 195 Wellington Street South, Hamilton**

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

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

AND WHEREAS the *City of Hamilton Act, 1999* provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in 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 Ontario Land Tribunal, in its Decision/Order No. PL171389, dated the • day of •, 2021, approved the amendment to Zoning By-law No. 6593 (Hamilton), as herein provided.

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan of the City of Hamilton;

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

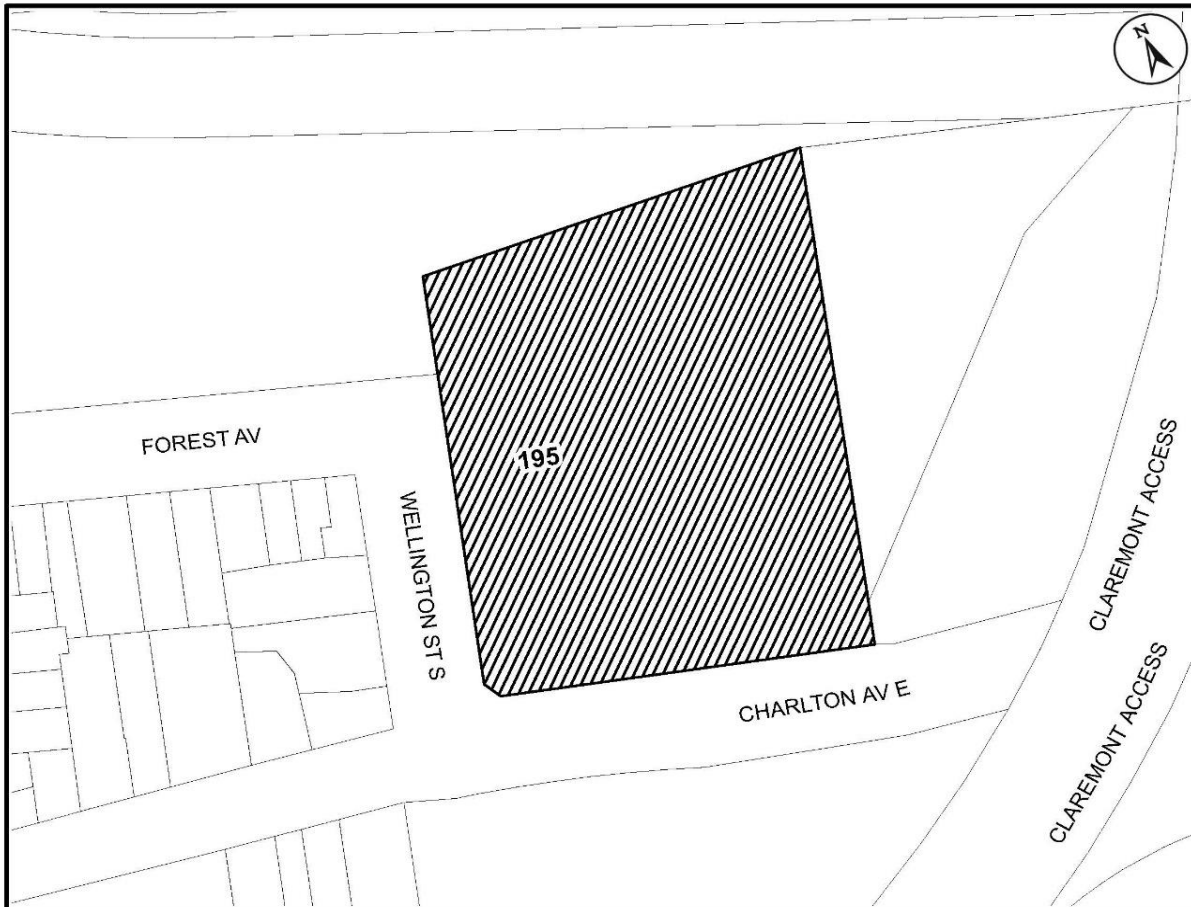
1. That Sheet No. E-6 of the District maps, appended to and forming part of Zoning By-law No. 6593 (Hamilton), as amended, is further amended by changing the zoning from the “E” (Multiple Dwellings, Lodges, Clubs, Etc.) District to the “E/S - 1815 - H” (Multiple Dwellings, Lodges, Clubs, Etc.) District, Modified, Holding, on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”;
2. That the “E” (Multiple Dwellings, Lodges, Clubs, Etc.) District provisions, as contained in Section 11 of Zoning By-law No. 6593 (Hamilton) be modified to include the following special requirements:

- a) Notwithstanding Section 2.(2)J.(ix), "Height" shall mean the vertical distance from sea level to the uppermost point of the building but not including any mechanical penthouse or any portion of a building designed, adapted or used for such features as a chimney, smokestack, fire wall, stair tower, fire tower, water tower, tank, elevator bulkhead, ventilator, skylight, cooling tower, derrick, conveyor, antenna, or any such requisite appurtenance, or a flagpole, display sign, ornamental figure, parapet, bell tower or other similar structure;
- b) Notwithstanding Section 2.(2)J.(xiii), "Lot-Line Front" shall mean the boundary line along Charlton Avenue East;
- c) Notwithstanding Section 11.(2) and 18.(2)(iii), the height of a building or structure shall not exceed nine storeys or 126.7 metres above sea level in height;
- d) Notwithstanding Section 11.(3), the following yards shall be provided and maintained:
 - i) Minimum Front Yard Depth: 3.0 metres;
 - ii) Minimum Side Yard Depth: 2.6 metres; and,
 - iii) Minimum Rear Yard Depth: 4.3 metres;
- e) In addition to 2) d) above, no minimum yard depth shall apply to a daylight triangle;
- f) Notwithstanding Section 11.(5), the permitted gross floor area shall be no greater than the area of the lot multiplied by the floor area ratio factor of 2.85;
- g) Notwithstanding Section 18.(3)(vi)(e), a terrace, uncovered porch, platform or ornamental feature which does not extend more than 1.0 metre above the floor level of the first storey, may project into a required yard up to 0 metres from a street line;
- h) Section 18.(8)(c)1. shall not apply;
- i) Notwithstanding Section 18A.(1)(a) and Table 1, a minimum of 0.56 parking spaces per Class A dwelling unit shall be provided;
- j) Section 18A.(1)(b) shall not apply;
- k) Notwithstanding Section 18A.(1)(c) and Table 3, one loading space shall be provided with a minimum size of:

- i) Length: 13.0 metres;
 - ii) Width: 4.0 metres; and,
 - iii) Height: 6.1 metres;
 - l) Notwithstanding Section 18A.(7), every required parking space located below ground shall have dimensions of not less than 2.8 metres wide and 5.8 metres long and every required parking space located above ground shall have dimensions of not less than 2.6 metres wide and 5.5 metres long;
3. That the 'H' symbol applicable to the lands referred to in Section 1 of this By-law, shall be removed conditional upon:
- a) The Holding Provision "E/S-1815-H" (Multiple Dwelling, Lodges, Clubs, etc.) District Modified, Holding be removed conditional upon:
 - i) The Owner submit, receive approval and implement a Functional Servicing Report to the satisfaction of the Manager of Development Engineering Approvals;
 - ii) The Owner submit, receive approval and implement a Storm Water Management Plan to the satisfaction of the Manager of Development Engineering Approvals; and,
 - iii) The Owner submit, receive approval and implement a Traffic Impact Study to the satisfaction of the Manager of Transportation Planning;
 - iv) That the Owner submit and implement a Tenant Relocation Plan once it has been approved by the City Solicitor, Ward Councillor and Director of Planning and Chief Planner.
4. That no building or structure shall be erected, altered, extended, or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "E" (Multiple Dwellings, Lodges, Clubs, Etc.) District provisions, subject to the special requirements referred to in Section 2 of this By-law;
5. That Sheet No. E-6 of the District Maps is amended by marking the lands referred to in Section 1 of this By-law as "E/S-1815-H";
6. That By-law No. 6593 (Hamilton) is amended by adding this By-law to Section 19B as Schedule S-1815; and,

7. That this By-law No. 21-XX-OLT shall come into force and be deemed to come into force in accordance with Sub-section 34(21) of the *Planning Act*, either upon the date of passage of this By-law or as otherwise provided by the said Sub-section.

APPROVED this • day of •, 2021.



<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>
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<h2>Schedule "A"</h2> <p>Map forming Part of By-law No. 21-_____</p> <p>to Amend By-law No. 6593</p>	<p>Subject Property</p> <p>195 Wellington Street South</p> <p> Change in zoning from the "E" (Multiple Dwellings, Lodges and Clubs, etc.) District, to the "E/S-1815-H" (Multiple Dwellings, Lodges and Clubs, etc.) District, Modified, Holding</p>
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<p>Scale: N.T.S</p>	<p>File Name/Number: ZAC-14-003</p>
<p>Date: September 20, 2021</p>	<p>Planner/Technician: SM/AL</p>
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>	

