

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: May 07, 2021

CASE NO(S): PL190468

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	Spruce Partners Inc. & Amico Properties Inc.
Subject:	Request to amend the Official Plan - Failure of City of Burlington to adopt the requested amendment
Existing Designation:	Downtown Residential Medium and High Density
Proposed Designated:	Downtown Residential Medium and High Density – Site Specific Exception
Purpose:	To permit a seniors living campus
Property Address/Description:	1157 - 1171 North Shore Boulevard East
Municipality:	City of Burlington
Approval Authority File No.:	505-05/18
LPAT Case No.:	PL190468
LPAT File No.:	PL190468
LPAT Case Name:	Amico Properties Inc. v. Burlington (City)

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

Applicant and Appellant:	Spruce Partners Inc. & Amico Properties Inc.
Subject:	Application to amend Zoning By-law No. 2020 - Refusal or neglect of City of Burlington to make a decision
Existing Zoning:	Downtown High Density Residential
Proposed Zoning:	Downtown High Density Residential with site-specific exception
Purpose:	To permit a seniors living campus
Property Address/Description:	1157 - 1171 North Shore Boulevard East
Municipality:	City of Burlington
Municipality File No.:	520-07/18
LPAT Case No.:	PL190468

LPAT File No.: PL190469

Heard: February 22, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Spruce Partners Inc. and Amico
Properties Inc.

Denise Baker

City of Burlington

Blake Hurley

**MEMORANDUM OF ORAL DECISION DELIVERED BY JATINDER BHULLAR ON
FEBRUARY 22, 2021 AND ORDER OF THE TRIBUNAL**

[1] This was a previously scheduled five day hearing converted to one day settlement hearing in the matter of appeals by the Spruce Partners Inc. and Amico Properties Inc. (the “Appellants”) from the failure of the City of Burlington (the “City”) to adopt a requested Amendment to the Official Plan (“OPA”), and the refusal or neglect by the City to make a decision respecting an application to amend Zoning By-law No. 2020 (“ZBA”) for the lands known municipally as 1157 – 1171 North Shore Boulevard East (the “Site”).

[2] The purpose and effect of the original OPA and ZBA applications was to facilitate the development of a seniors’ living campus, consisting of a 17-storey tower fronting onto North Shore Boulevard, together with a 12-storey mid-rise element, and stepping down to a six-storey and a two-storey low-rise element at the north end of the Site adjacent to an existing low-rise residential neighbourhood.

SETTLEMENT PROPOSAL

[3] The parties agreed to changes in certain key aspects as follows;

- i. The height of the tower was reduced to 16 storeys versus the

original 17 to bring it within the 45° angular plane;

- ii. The number of units has been reduced to 379 versus the original 475; and
- iii. The access has been changed from “Left/Right in-out” to “Right/in and Right out”.

[4] The Tribunal was informed that there have been further adjustments made to the location and design of the build form to minimize outlook and possible shadow impacts on adjoining low-rise dwellings.

PLANNING EVIDENCE AND ANALYSIS

[5] Tyler Grinyer presented review of the proposal as an Expert Land Use Planner. Mr. Grinyer’s testimony was unopposed and uncontroverted. The Affidavit of Mr. Grinyer was marked as Exhibit 1.

[6] Mr. Grinyer described that the settlement provides for the redevelopment of the Subject Site for a seniors’ living campus, consisting of a single-building consisting of a 16-storey tower (58.5 metres including mechanical penthouse) near the south lot line, together with a 12-storey mid-rise element (40.5 metres) to its west, and stepping down to 6-, 5 and 2-storey podium elements at the north end of the Site (the “Settlement Proposal”).

[7] Mr. Grinyer citing s. 2 of the *Planning Act* (“Act”) opined that the proposal has regard for the provincial interest. He stated that specific aspects include (h) the orderly development of safe and healthy communities, (j) the adequate provision of a full range of housing, (p) the appropriate location of growth and development, (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians, and (r) the promotion of built form that is well-designed and encourages a sense of place.

[8] Mr. Grinyer stated that s. 3(5) of the Act requires that all planning decisions be consistent with Provincial Policy Statement which in this case is the updated 2020 version in force (“PPS 2020”). After a review of the various policies Mr. Grinyer surmised and opined that the OPA and ZBA are both consistent with the PPS by appropriately intensifying the Site with a compact built form that will contribute to the range and mix of housing in the Downtown, in a form that is transit-supportive.

[9] In reviewing conformity with the Growth Plan for the Greater Golden Horseshoe 2019 (the “Growth Plan”), Mr. Grinyer opined that the OPA and ZBA support policies which encourage growth and intensification in “strategic growth areas”, including “urban growth centres” and providing a diverse range and mix of housing options, in helping achieve complete communities.

[10] Mr. Grinyer reviewed the Region of Halton Official Plan (“ROP”) and opined providing various reference from Exhibit 1 that the OPA and ZBA conform with the ROP providing a compact built form which makes efficient use of a Site located in an area targeted for intensification and providing a land use with a mix and variety of housing that is compatible with its surrounding context and will assist in satisfying different housing needs within the Region. Mr. Grinyer emphasized the conformity with special reference to Policy 85(5) which states the necessity to meet housing needs through the provision of Assisted Living, Affordable Housing and Special Needs Housing in Halton.

[11] Mr. Grinyer reviewed the City’s Official Plan (“OP”) and opined that the proposed OPA and ZBA maintain the intent of the OP by supporting the intensification of the Site which is located within the Downtown Urban Growth Centre, and contributing to the City’s housing stock by providing for a compact built form that is compatible with the existing built form context as well as special needs housing.

[12] In reviewing the ZBA, Mr. Grinyer stated that the Site is zoned – Downtown High Density Residential Zone (DRH) which permits apartment building and retirement home uses with a maximum density of 185 units per hectare, maximum height of 22 metres, and minimum amenity requirement of 20 square metres per unit. Mr. Grinyer

opined that the ZBA is appropriate and desirable and implements the overarching policy direction applicable to the Site by intensifying an underutilized Site within an identified urban growth centre in a compact built form that will contribute to the range of housing options available in the downtown.

[13] Mr. Grinyer in reviewing all aspects of the policies and guidelines opined that the OPA and ZBA represent instruments that will facilitate a well planned and desirable planning outcome.

[14] Hugo Chan, a Professional Engineer with traffic specialization reviewed the aspects of traffic safety and resolution of citizens concerns. He opined that the revised ingress and egress from the site as developed in consultation with Ministry of Transport and the City will greatly alleviate any safety concerns and possible issues. He also opined that the special median design on North Shore Boulevard across the site will add to greater safety and better traffic flows.

[15] Having considered the expert uncontroverted opinions of Mr. Grinyer and Mr. Chan, and all other evidence before it, the Tribunal finds that the OPA and ZBA have regard for s. 2 of the Act; are consistent with PPS 2020; conform to the Growth Plan, the ROP and do not conflict with the OP and are otherwise consistent with its intent and purpose. The ZBA also does not conflict with and maintains the intent and purpose of the ZBL.

[16] The Tribunal notes that the Applicant/Appellant and the City tabled that that they have agreed to a community benefits settlement as well. The total amount was identified as \$250,000 directed towards transit shelter located nearest to the proposed development and Spencer Smith park improvements.

ORDER

[17] The Tribunal orders that the appeal is allowed in part, and the Official Plan for the (City of Burlington) is amended as set out in Attachment 1 to this Order.

[18] The Tribunal orders that the appeal is allowed in part and the City of Burlington is directed to amend By-law No. 2020 as set out in Attachment 2 to this Order.

[19] Should any difficulties arise in implementing the order, this Member may be contacted.

“Jatinder Bhullar”

JATINDER BHULLAR
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1
OFFICIAL PLAN AMENDMENT

AMENDMENT NO.122 TO THE OFFICIAL PLAN OF THE BURLINGTON PLANNING AREA

CONSTITUTIONAL STATEMENT

The details of the Amendment, as contained in Part B of this text, constitute Amendment No.122 to the Official Plan of the Burlington Planning Area, as amended.

PART A – PREAMBLE

1. PURPOSE OF THE AMENDMENT

The purpose of this Amendment is to amend the existing Downtown Residential – Medium and/or High Density Precinct designation of 1157-1171 North Shore Boulevard to facilitate the development of retirement home with 2 levels of underground parking and a maximum floor area ratio of 3.42:1.

2. SITE AND LOCATION

The subject lands are located on the north side of North Shore Boulevard, east of the Queen Elizabeth Way (QEW) on ramp, at the west end of Downtown Burlington. The Subject Site, municipally known as 1157 – 1171 North Shore Boulevard East has an overall area of approximately 1.21 hectares (3.01 acres), with frontage of approximately 74.18 metres along North Shore Boulevard and a depth of approximately 101.44 metres.

The Subject Site is currently developed with two 3½-storey slab-style co-op apartment buildings, known as Brant Park Co-op. The apartment buildings are set back approximately 52 metres from North Shore Boulevard with surface parking spaces and single-storey garages extending along the majority of the north property line. Access to the site is provided from North Shore Boulevard by way of a two-way access driveway along the eastern edge of the Site, which also provides access to the garages and parking spaces at the rear of the Site.

Surrounding land uses consist of single detached and semi-detached dwellings to the north; a police station, mid-rise long-term care home and hospital to the south; the QEW including highway onramp to the west; and a 12-storey apartment building to the east.

3. BASIS FOR THE AMENDMENT

- a) The proposed intensification on the subject site is supportive of numerous policy directions set out in the Provincial Policy Statement (2020), the Growth Plan for the Greater Golden Horseshoe (2019) and the Region of Halton Official Plan, all of which promote intensification on sites within built-up urban areas, with a particular focus on sites located within strategic growth areas, including urban growth centres, which will accommodate a significant share of the population and

employment growth. In this regard, the subject site is located at the west end of the Downtown Burlington Urban Growth Centre;

- b) Build towards the achievement of a complete community that is compact, transit-supportive and makes effective use of investments in infrastructure and public service facilities. Contribute towards a community that is well-designed, offers transportation choices, accommodates people at all stages of life and provides the right mix of housing, and good range of jobs and easy access to amenities and services to meet daily needs.
- c) The property is identified within the boundary for the Downtown Urban Growth Centre. Within the Urban Growth Centre boundary as delineated on Schedule B, Comprehensive Land Use Plan – Urban Planning Area, and Schedule E, Downtown Mixed Use Centre (1997 Official Plan, as amended), the target is established of a minimum gross density of 200 residents and jobs per hectare, in accordance with the Provincial Growth Plan for the Greater Golden Horseshoe, 2019. The proposed higher intensity development will contribute to reaching the minimum density target required for the Urban Growth Centre.
- d) Permitting a high density tall building form supports the City’s residential objectives to broaden the range of housing forms to meet the City’s need and address compatibility with surrounding properties;
- e) The subject development would continue to implement design excellence in the Downtown to maintain and enhance the Downtown’s image as an enjoyable, safe and pedestrian-oriented place designed to complement pedestrian activity and surrounding context;
- f) The City of Burlington Official Plan (1997, as amended) supports intensification of the subject site through its designation of the site as ‘Downtown Medium and/or High Density Precinct, which provides for future medium or high density residential development or redevelopment which is compatible with the existing development;
- g) The subject site is a contextually appropriate location for a tall building given its location within the Downtown Burlington Urban Growth Centre, its location along a minor arterial street, its proximity to a variety of transportation options, services and land uses, and its relationship to the surrounding built form context;
- h) The proposed development will provide for the intensification of an underutilized site located within the Downtown Burlington Urban Growth Centre and introduce new seniors housing providing a continuum of care for residents.
- i) The applicant submitted technical studies and reports that provide adequate and appropriate information to support the development;

- j) The proposed development is located on lands with adequate infrastructure and in close proximity to transit routes, commercial uses and community amenities so meets Official Plan policies to provide housing opportunities in locations that can reduce travel times and decrease dependence on the car;

PART B – THE AMENDMENT

1. DETAILS OF THE AMENDMENT

Map Change: None Proposed

Text Change:

The text of the Official Plan of the Burlington Planning Area, as amended, is hereby amended as follows:

By adding the following policy to Part III, Section 5.5 Downtown Mixed Use Centre, Subsection 5.5.5 Downtown Residential Medium and/or High Density Precinct:

North-east corner of North Shore Boulevard and the Q.E.W	m) Notwithstanding Part III, Subsection 5.5.5 b) of this Plan, for the lands described as 1157-1171 North Shore Boulevard, a maximum density of 280 units per net hectare is permitted for <i>special needs housing</i> including <i>seniors housing</i> in a retirement home.
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2. INTERPRETATION

This Official Plan Amendment shall be interpreted in accordance with the “Interpretation” policies of Part VI, Implementation, Section 3.0, Interpretation, of the Official Plan of the Burlington Planning Area.

3. IMPLEMENTATION

This Official Plan Amendment will be implemented in accordance with the appropriate “Implementation” policies of Part VI of the Official Plan of the Burlington Planning Area.

ATTACHMENT 2
ZONING BY-LAW AMENDMENT

ZONING BY-LAW NUMBER 2020.XXX.
SCHEDULE 'A' AND EXPLANATORY NOTE

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 2020.XXX

Being a By-law to amend By-law 2020, as amended; for 1157-1171 North Shore Boulevard, for the purpose of facilitating the development of a retirement home.

File Nos.: 505-05/18 & 520-07/18

WHEREAS Section 34(1) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, states that Zoning By-laws may be passed by the councils of local municipalities; and

WHEREAS the Local Planning Appeals Tribunal approved a Settlement on February 22, 2021, to amend the City's existing Zoning By-law 2020, as amended, to permit a 17-storey retirement home development;

THE COUNCIL OF THE CORPORATION OF THE CITY OF BURLINGTON HEREBY ENACTS AS FOLLOWS:

1. Zoning Map Number 9A of PART 15 to By-law 2020, as amended, is hereby amended as shown on Schedule "A" attached to this By-law.
2. The lands designated as "Part A" on Schedule "A" attached hereto are hereby rezoned from DRH to DRH-XXX.
3. PART 14 of By-law 2020, as amended, Exceptions to Zone Classifications, is amended by adding Exception XXX for the lands designated as "Part A" on Schedule "A" attached hereto with the following:

Exception XXX	Zone DRH-XXX	Map 9	Amendment 2020.XXX	Enacted
<ol style="list-style-type: none">1. <u>Permitted Uses</u><ol style="list-style-type: none">a) Notwithstanding, Part 6, Section 2, Table 6.2.2, the following additional uses are permitted on 'Part A'.<ol style="list-style-type: none">i. Seniors Apartment Unit – Defined as one or more habitable rooms in a retirement home, designed or intended for the lodging of not more than 2 persons, containing full private or shared bathrooms and full culinary facilities.ii. Memory Care Units – Defined as dwelling units serving the needs of residents with dementia, which do not include full culinary and sanitary facilities.2. <u>General Regulations for Retirement Homes</u>				

a) Density	280 units per hectare maximum
	For the purposes of calculating density, memory care units shall be exempt
b) Total Number of Units	Up to 379 units maximum
Seniors Apartment Unit	Up to 32 units maximum
Retirement Home Units	Up to 299 units maximum
Memory Care Units	Up to 48 units maximum
c) Building Height	17 storey maximum plus mechanical penthouse measured from fixed grade up to 59m including mechanical penthouse.
d) Below Grade Parking Structure Setbacks	
Abutting a street	14m
Abutting DRH zones	13m
Abutting all other lot lines	6m
e) Parking	
Employee / Occupant parking	173 parking spaces
Visitor parking spaces	44 parking spaces
Maintenance spaces	0 parking spaces
g) Bicycle Parking	Each bicycle parking space shall be 60cm x 1.8m in size
Long term bicycle parking spaces	44 spaces
Short term bicycle parking spaces	44 spaces
Long term bicycle parking	For use by occupants, employees or tenants of a building, and must be located in a building. Required long term bicycle parking spaces may not be in a dwelling unit, on a balcony, or in a storage locker.
Short term bicycle parking	For use by visitors to a building.
i) Parking spaces abutting a residential zone	2m
j) Front Yard	14m – canopy encroachment of 3.5m permitted
k) Rear Yard	
Yard Abutting R1, R2, R3 Zones	
Accessory Structure	4.5m
Floors 1 to 6	15m
Floor 7	19m
Floor 8	27m
Floor 9-17	46m
Yard Abutting other Residential Zones	
Floors 1 to 3	7.5m
Floors 4-6	13.5m
Floor 7	13.5m, 21.5m starting 17.92m from

	Floors 8-13	the westerly exterior wall for a width of 27m 30m
l)	East Side Yard	12m – canopy encroachment of 0.75m permitted
m)	West Side Yard	14m
n)	Landscape Buffer	
	Rear	
	Abutting R1, R2, R3, DRL Residential Zones	2m – excluding retaining wall
	Abutting other Residential Zones	2m – excluding retaining wall
	East	
	Abutting DRH Zones	3m – light standard and retaining wall encroachments permitted
o)	Minimum distance between exterior building walls above the 8 th floor	25m
p)	Amenity Area	For the purposes of this by-law, amenity area is defined as the area situated within the boundaries of a project and intended for recreational purposes, which may include open spaces, patios, balconies, communal play areas, lounges, sundecks, roofdecks and shared indoor dining areas but shall not include the area occupied at grade by the buildings, service areas, parking and driveways.
<p>Except as amended herein, all other provisions of this By-law, as amended, shall apply</p>		

- 6 a) When no notice of appeal is filed pursuant to the provisions of the Planning Act, R.S.O. 1990, c.P.13, as amended, this By-law shall be deemed to have come into force on the day it was passed;

- 6 b) If one or more appeals are filed pursuant to the provisions of the Planning Act, as amended, this By-law does not come into force until all appeals have been finally disposed of, and except for such parts as are repealed or amended in accordance with an order of the Local Planning Appeals Tribunal this By-law shall be deemed to have come into force on the day it was passed.

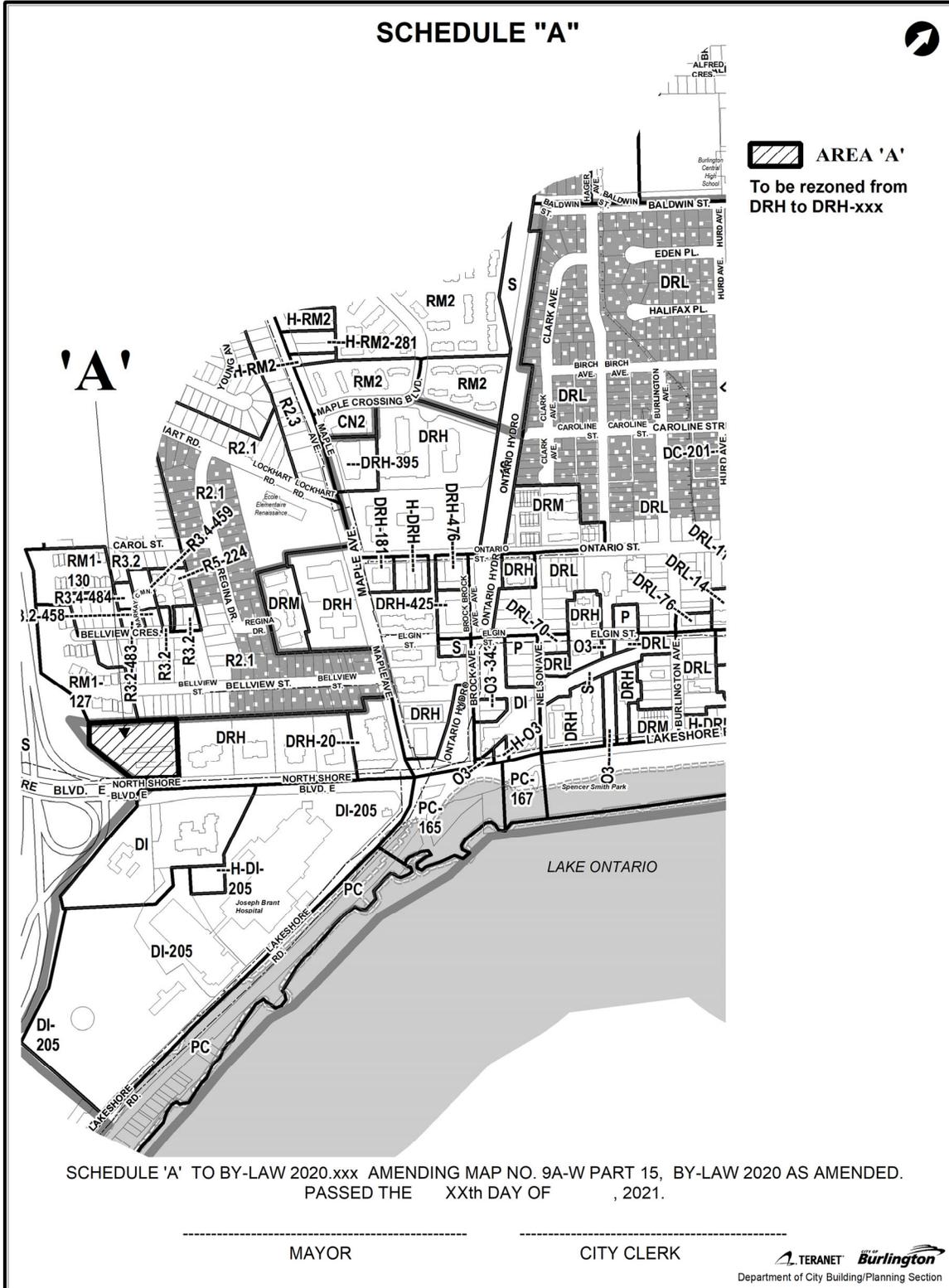
ENACTED AND PASSED this.....day of2021.

_____ MAYOR

_____ CITY CLERK

Schedule 'A' to By-law 2020.XXX

SCHEDULE "A"



 AREA 'A'
To be rezoned from DRH to DRH-xxx

SCHEDULE 'A' TO BY-LAW 2020.xxx AMENDING MAP NO. 9A-W PART 15, BY-LAW 2020 AS AMENDED.
PASSED THE XXth DAY OF , 2021.

MAYOR

CITY CLERK

EXPLANATION OF PURPOSE AND EFFECT OF BY-LAW 2020.XXX

By-law 2020.XXX rezones lands 1157-1171 North Shore Boulevard, to permit a retirement home complex with heights ranging between 3 and 17 storeys.

For further information regarding By-law 2020.XXX, please contact Kyle Plas of the City of Burlington Community Planning Department at (905) 335-7600, extension 7824.