



Community Planning Department

SUBJECT: Planning Analysis for 1600 Kerns Road - Zoning By-law Amendment Applications

DATE: September 11, 2023

TO: Blake Hurley, Executive Director of Legal Services & Corporate Counsel, City of Burlington

FROM: Jaclyn Schneider, Planner, City of Burlington

1.0 Background

1.1 Purpose

This analysis concerns a proposed settlement in relation to the appeal of a site-specific application for a Zoning By-law Amendment by Wellings Planning Consultants Inc. on behalf of FGL Kerns Inc. for the lands known as 1600 Kerns Road (file numbers 520-02/21).

Application Details	APPLICANT:	Wellings Planning Consultants Inc.
	OWNER:	FGL Kerns Inc.
	FILE NUMBERS:	520-02/21
	TYPE OF APPLICATION:	Zoning By-law Amendment
	ORIGINAL PROPOSAL:	4-storey retirement home with 123 dwelling units and 278m ² ground floor commercial.
	REVISED PROPOSAL:	4-storey retirement home with 115 dwelling units and 450 m ² ground floor commercial.

Property Details	<p>PROPERTY LOCATION: Southwest corner of Kerns Road and Four Seasons Drive</p> <p>MUNICIPAL ADDRESS: 1600 Kerns Road</p> <p>WARD: Ward 1</p> <p>PROPERTY AREA: 0.8 hectares (0.55 hectares excluding stable top of bank setback area)</p> <p>EXISTING USE: Commercial Plaza</p>
Requested Amendments	<p>1997 OFFICIAL PLAN Existing: Neighbourhood Commercial</p> <p>1997 OFFICIAL PLAN Proposed: Neighbourhood Commercial</p> <p>2020 OFFICIAL PLAN Existing: Local Centre</p> <p>2020 OFFICIAL PLAN Proposed: Local Centre</p> <p>ZONING Existing: Neighbourhood Commercial (CN2)</p> <p>ZONING Proposed: Neighbourhood Commercial with site-specific exception (CN2-XXX)</p>

1.2 Site Description and Surrounding Context

The subject lands are located at the southwest corner of Kerns Road and Four Seasons Drive and are approximately 0.8 hectares in size. The lands currently support a commercial plaza. Surrounding land uses include the following:

- North: Low-density residential development
- East: Low-density residential development
- South: Medium-density residential development
- West: Ravine associated with the Upper Hager Creek, low-density residential beyond.

The ravine associated with Upper Hager Creek has been identified as an erosion hazard by Conservation Halton. The proposed development is required to be developed an appropriate distance from the erosion hazard to ensure public safety and protection of private property.

Kerns Park is approximately 400-metre walking distance from the subject property to the north along Kerns Road. Forestvale Park is approximately 650-metre walking distance from the subject property to the west along Four Seasons Drive, Crofton Way, and Forestvale Drive.

Northbound bus stops are located approximately 130-metres south of the property and 400-metres north of the property, served by Burlington Transit route 87, which provides connections to the Burlington GO Station and Aldershot GO Station.

1.3 Application History

On April 29, 2021, the City of Burlington deemed the application complete from Wellings Planning Consultants Inc. on behalf of FGL Kerns Inc. requesting a Zoning By-law Amendment to permit a mixed-use development comprising a 4-storey retirement home with retail at-grade. The proposed retirement home use is not permitted in the Neighbourhood Commercial (CN2) zone, and the Zoning By-law Amendment was requested for the proposed retirement use, dwelling units on the first floor, landscape buffer, amenity area, as well as other site-specific permissions.

Application materials are posted on the City's Development Project webpage at burlington.ca/1600Kerns.

A statutory public meeting was held for the subject applications on October 5, 2021.

On October 11, 2022, the appellant appealed the applications to the Ontario Land Tribunal (OLT) on the basis that the City had not made a decision within the prescribed time limit. The OLT held a Case Management Conference on February 21, 2023. At the Case Management Conference, the OLT granted party status to seven parties in this matter: FGL Kerns Inc. (the appellant), the City of Burlington, the Region of Halton, Conservation Halton, Kirstin Silvera, Joanna Wice, and Doug Stewart. The OLT also granted participant status to Cathy Lovetty. Following the Case Management Conference, the OLT issued a procedural order and scheduled a hearing to consider the appeal beginning on October 2, 2023.

Following the Case Management Conference, City staff engaged in without-prejudice discussions with the appellant, which led to the appellant providing the City with a settlement offer on September 5, 2023.

1.4 Revised Proposal

The settlement offer revises the proposed development as follows:

1. Increase in commercial area abutting Kerns Road and Four Seasons Drive from 278 m² to 450 m².
2. Increase in landscape buffer abutting a residential zone to a minimum of 2.5-metres along the loading space area and 3-metres along the outdoor amenity area.
3. Increase in amenity area 14.4 m² per dwelling unit to 15.4 m² per dwelling unit.
4. Decrease in retirement dwelling units from 123 units to 115 units.
5. Decrease in front yard setback (Kerns Road) from 6-metres to 4.5-metres to provide a greater setback from the erosion hazard.

Staff's review of the revised development proposal, presented through the settlement offer by the appellant, forms the basis of the policy analysis described in this report.

2.0 Discussion

2.1 Policy Framework

The application is subject to the following policy framework: Provincial Policy Statement (2020); A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020); Halton Region Official Plan; City of Burlington Official Plan (1997, as amended); Burlington New Official Plan (2020); and Zoning By-law 2020.

Subject to the need for a determination on the setback from the erosion hazard as discussed throughout this report, planning staff is of the opinion that the Zoning By-law Amendment requested by the appellant to permit the revised proposal is consistent with the Provincial Policy Statement, conform to the Growth Plan for the Greater Golden Horseshoe and Halton Region Official Plan (ROP), maintain the intent of the City of Burlington Official Plans and Zoning By-law, and represent good planning for the reasons set out in this report.

2.2 Provincial Policy Statement (PPS) 2020

The Provincial Policy Statement (PPS) came into force and effect on May 1, 2020, and applies to decisions concerning planning matters occurring after this date. The PPS provides broad policy direction on matters of provincial interest related to land use planning and development and supports improved land use planning and management, which contributes to a more effective and efficient land use planning system.

The PPS recognizes that Official Plans are the most important vehicle for implementation of the PPS; however, all Council decisions affecting planning matters are required to be consistent with the PPS. Official Plans identify provincial interest and set out appropriate land use designation policies and determine the significance of natural heritage features (4.6).

The PPS promotes efficient development and land use patterns that sustain financial well-being of municipalities over the long term, accommodate an appropriate affordable and market-based range and mix of multi-unit housing and other uses to meet long-term needs, avoid development and land use patterns that may cause environmental or public health and safety concerns, and prepare for the impacts of a changing climate.

The PPS requires planning authorities to identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated, taking into account the availability of suitable existing or planned infrastructure and public service facilities required to accommodate the projected needs (1.1.3.3). Appropriate development standards should be promoted which facilitate intensification, redevelopment, and compact form, while avoiding or mitigating risks to public health and safety (1.1.3.4).

The PPS directs development away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage and identifies that the Province, planning authorities, and conservation authorities shall work together to mitigate any potential risks (3.0). Development shall generally be directed to areas outside of erosion hazards (3.1.1).

The PPS encourages that a coordinated, integrated, and comprehensive approach should be used when dealing with planning matters within municipalities across lower

and upper-tier municipalities and with other orders of government, agencies, and boards. The subject applications were circulated to Halton Region and Conservation Halton, among other relevant levels of government, agencies, and utility providers, for review and comment.

The proposed development as revised by the Offer to settle is consistent with the PPS, as it:

- Contributes to the range and mix of housing options in the City;
- Supports active transportation and provides transit supportive development;
- Provides for a mix of uses on the site through the mix of commercial and retirement uses; and
- Makes efficient use of existing and planned infrastructure and public facilities;

The proposed development is located adjacent to a ravine that is associated with Upper Hager Creek. The ravine contains an erosion hazard. Conservation Halton and the appellant have engineers that have conflicting opinions for the proposed location of the building setback from the erosion hazard. If the evidence provided by the appellants engineers is preferred by the Tribunal, then the proposal meets Section 2.1 of the PPS by protecting natural heritage as well as Section 3.1 by locating development outside of the erosion hazard. However, if the evidence provided by Conservation Halton's engineers is preferred by the Tribunal, then the proposal is not consistent with Section 2.1 or Section 3.1.

Opinion: staff are of the opinion that the proposed development as revised by the Offer to settle is consistent with the PPS if the OLT prefers the evidence presented by the appellant's engineers.

[2.3 A Place to Grow: Growth Plan for the Greater Golden Horseshoe \(The Growth Plan\) 2020](#)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (the Growth Plan) came into effect on May 16, 2019, with Amendment 1 to the Growth Plan taking effect on August 28, 2020. The Growth Plan provides a growth management policy direction for the defined growth plan area. The policies in the Growth Plan intend to build on the progress that has been made towards the achievement of complete communities that are compact, transit-supportive, and make effective use of investments in infrastructure and public service facilities. All planning decisions in Burlington must conform to the Growth Plan.

The guiding principles of the plan include prioritizing intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability; supporting a range and mix of housing options to serve all sizes, incomes, and ages of households; and protecting and enhancing natural heritage, hydrologic and landform systems, features and functions.

The Growth Plan contains population and employment forecasts to plan for and manage growth to the horizon of the Growth Plan (2051). The policies direct the vast majority of growth to settlement areas and more specifically within delineated built-up areas and

strategic growth areas. Development will also generally be directed away from hazardous lands.

The Growth Plan requires municipalities to develop and implement policies and other supporting tools to encourage intensification throughout the delineated built-up areas; identify the appropriate type and scale of development in strategic growth areas and transition of built form to adjacent areas; encourage intensification generally throughout the delineated built-up area; and ensure lands are zoned and development is designed in a manner that supports the achievement of complete communities.

The proposed development as revised by the Offer to settle conforms to the Growth Plan as it:

- Supports the achievement of complete communities through the provision of a mix of uses within a compact built form;
- Represents intensification at higher densities to make efficient use of land and infrastructure and support transit viability;
- Contributes to providing a range and mix of housing options in an existing low to medium density area; and
- Provides for a more vibrant public realm.

The Growth Plan also focuses on protecting Natural Heritage Systems. Municipalities are directed to apply appropriate policies to maintain, restore, or enhance the diversity and connectivity of the system and the long-term ecological or hydrologic functions of the features and areas. The subject property is adjacent to Upper Hager Creek which is part of the City's Natural Heritage System. There is an erosion hazard associated with Upper Hager Creek that must have an appropriate setback from the development. If the OLT does not prefer the evidence presented by the appellant and prefers of the evidence presented by Conservation Halton, then the proposal does not conform with Section 4.2 of the Growth Plan.

Opinion: the proposed development as revised by the Offer to settle conforms to the Growth Plan if the OLT prefers the evidence presented by the appellant's engineers.

[2.4 Halton Region Official Plan \(ROP\)](#)

Halton Region staff reviewed the subject applications and provided comments requesting additional information related to the Regional Natural Heritage System and site contamination. Halton Region is represented as a party in the appeal of the Zoning By-law Amendment and will have the opportunity to ensure that their detailed concerns are addressed.

The subject lands are designated as "Urban Area" as shown on Map 1, Regional Structure, of the ROP. The Urban Area objectives promote growth that is compact and transit-supportive, and the development of vibrant and healthy mixed-use communities that afford choices for residence, work, or leisure.

Within the Urban Area, the Regional Urban Structure implements Halton's planning vision and growth management strategy.

The subject lands are also within the Region's Natural Heritage System. The goal of the Natural Heritage System is to increase the certainty that the biological diversity and ecological functions within Halton will be preserved and enhanced for future generations (114). As such, development shall be directed to locations outside erosion hazard lands. If the OLT does not prefer the evidence presented by the appellant and prefers the evidence presented by Conservation Halton, then the proposal does not conform with Natural Heritage System policies of the Regional Official Plan.

Opinion: the proposed development as revised by the Offer to settle conforms with the ROP if the OLT prefers the evidence presented by the appellant's engineers.

[2.5 City of Burlington Official Plan \(OP\) \(1997, as amended\)](#)

The City's Official Plan (1997, as amended) outlines a long-term vision of the community and quality of life for Burlington residents and provides policy direction to the public and private sectors on land use, development and resource management matters to guide the future planning and development of the City towards the desired community vision.

As shown on Schedule B of the OP, the subject property is located within the 'Neighbourhood Commercial' designation. The objective of this designation is to provide opportunities for limited neighbourhood commercial centres within and at the periphery of residential neighbourhoods in locations that meet residents' day-to-day and weekly goods and service needs (Part III, Subsection 4.6.1 a)). This designation permits mixed-use development with residential uses located on the second and third storey of a retail/commercial building (Part III, Subsection 4.6.2 b)). The maximum building height of 3-storeys is permitted (Part III, Subsection 4.6.2 b)).

The property is within the Residential Areas as shown in Schedule A – Settlement Pattern. Part III, Section 2.2.2 a) of the Official Plan (1997, as amended) states that within residential areas a broad range of residential dwelling types shall be permitted including retirement homes. In the Official Plan (1997, as amended) there is no maximum height requirement for retirement homes as this is regulated by the Zoning By-law. Therefore, staff are of the position that the proposed Zoning By-law Amendment does not require an Official Plan Amendment for the proposed height.

Opinion: The proposal as presented would require an Official Plan Amendment to the Official Plan (1997, as amended) at this time as the residential use is not permitted at-grade. Additionally, new Official Plan (2020) contains policy not currently fully in force and effect that contemplates a 4-storey building on this site and that permits Assisted and Special Needs Housing on any property where residential use is permitted. The proposal does not conform with the applicable in force Official Plan (1997, as amended) until the relevant section of the new Official

Plan (2020) comes into force and effect, as contemplated by the proposed settlement.

2.5.1 Guiding Principles and Functional Policies

Part I, section 3.0 of the Official Plan (1997, as amended) outlines guiding principles for development in Burlington. This includes:

- a) Provide a community plan and growth strategy aimed at creating an attractive, liveable community that offers a wide range of housing, employment, transportation, and leisure opportunities for all its citizens.

Opinion: the proposed development as revised by the Offer to settle conforms with the guiding principles of the Official Plan (1997, as amended), as it contributes seniors housing options to the community as well as commercial use that is supported by active transportation, represents sustainable development and efficient use of infrastructure, and is consistent with the intensification envisioned for this property through the new Official Plan (2020).

Part II of the Official Plan (1997, as amended) contains functional policies that apply City-wide.

Part II section 2 addresses Sustainability and the Environment. The City will identify and protect Natural Heritage Systems and maintain ecological integrity and function for the future area of a Natural Heritage System (2.2.a). Further, the City will consider all options for the securement of the natural heritage features which include, but is not limited to land dedication (2.4.2 b).

Opinion: the proposed development as revised by the Offer to settle conforms to these policies of the Official Plan (1997, as amended) as the appellant has agreed to dedicate the land to be rezoned 'Open Space' to the appropriate public body which will protect the natural heritage feature and protect the development from the erosion hazard provided that the OLT determines that the erosion hazard evidence presented by the appellant's engineer is preferred.

2.5.2 Residential Development Policies and Intensification Criteria

All residential intensification in the City, including in mixed-use areas, is subject to the Intensification Criteria found in Part III, section 2.5.2 of the Official Plan (1997, as amended). The proposed development as revised by the Offer to settle has been evaluated in accordance with these criteria as discussed below.

- i. Adequate municipal services to accommodate the increased demands are provided, including such services as water, wastewater and storm sewers, school accommodation, and parkland;

Halton Region have jurisdiction for municipal services and provided comments June 10, 2022. The comments provided determined the Functional Servicing and Stormwater

Management Report prepared by KWA Site Development Consulting Inc., revised dated February 25, 2022 is satisfactory for the purposes of the Zoning By-law Amendment.

The City's Development Engineering staff also reviewed the subject applications and provided comments on stormwater management. Technical matters will be addressed through a future Site Plan application if the subject application is approved.

Halton District School Board (HDSB) and Halton Catholic District School Board (HCDSB) reviewed the subject applications and had no objections to the application.

The subject property is located in proximity to existing parks and open space. Kerns Park is an approximately 400-metre walking distance from the subject property and Forestvale Park is approximately 650-metre walking distance from the subject property.

Opinion: this criterion is met.

- ii. Off-street parking is adequate

The subject application proposes a parking rate of 0.5 parking spaces per retirement home dwelling unit and 4 parking spaces per 100 m² of commercial floor area. This is a total of 76 parking spaces. Transportation Planning staff did not identify any concerns with the proposed parking rate.

Opinion: this criterion is met.

- iii. The capacity of the municipal transportation system can accommodate any increased traffic flows, and the orientation of ingress and egress and potential increased traffic volumes to multi-purpose, minor and major arterial roads and collector streets rather than local residential streets;

Transportation Planning staff did not identify any concerns with the proposed development.

Opinion: this criterion is met,

- iv. The proposal is in proximity to existing or future transit facilities;

Existing northbound bus stops are located approximately 130-metres south of the property and 400-metres north of the property, served by Burlington Transit route 87, which provides connections to the Burlington GO Station and Aldershot GO Station.

The property is also located on a Collector Road as shown in Schedule J – Classification of Transportation Facilities of the Official Plan (1997, as amended).

Opinion: this criterion is met.

- v. Compatibility is achieved with the existing neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, parking, and amenity area so that a transition between existing and proposed buildings is provided;

The subject application proposes the development of 4-storey mixed-use building comprising a retirement home and commercial uses. The proposal is considered to be compatible with the low-rise buildings surrounding the property. The 4-storey height requires a Zoning By-law Amendment as the maximum height in the Zoning By-law is 3-storeys. However, the new Official Plan (2020) contemplates a 4-storey building on this site. The building is located on a slope and the appellant has utilized the slope to

provide for underground parking as well as indoor and outdoor amenity space. Due to the underground parking garage/amenity area level being partially located above grade, the Zoning By-law Amendment indicates a 5-storey building. However, the proposed development as revised by the Offer to settle appears and functions as a 4-storey building from Kerns Road and Four Seasons Drive. Additionally, the rear of the building that is located above grade providing the appearance of the 5-storey building is buffered to the residential use through the 7.5-metre setback to the townhouses as well as a dense landscape buffer that ranges between 2.5-metres and 3-metres in depth.

The siting of the building allows for acceptable shadow conditions.

The setbacks of the proposed development as revised by the Offer to settle also allow for an appropriate distance from the property lines at Kerns Road and Four Seasons Drive to allow for a landscape area between the proposed development and the sidewalks.

The lot coverage of the proposed development as revised by the Offer to settle is appropriate for urban intensification within a neighbourhood commercial designation.

The parking supply of the proposed development as revised by the Offer to settle is acceptable, as discussed under criterion (ii) above.

The proposed amenity area of 15.4 m² per retirement dwelling unit is acceptable in the context of the surrounding area which includes Kerns Park and Forestvale Park.

Opinion: The proposed development as revised by the Offer to settle is compatible with the existing neighbourhood character and aligns with the Official Plan (1997, as amended) vision for the 'Neighbourhood Commercial' designation.

- vi. Effects on existing vegetation are minimized, and appropriate compensation is provided for significant loss of vegetation, if necessary to assist in maintaining neighbourhood character;

A revised Landscape Concept Plan was provided to the City for review. Planning staff reviewed the revised plan with Urban Forestry and Landscaping staff who have indicated no concerns provided that the landscape buffer along the property line adjacent to the townhouses is dense.

Opinion: the criterion is met.

- vii. Significant sun-shadowing for extended periods on adjacent properties, particularly outdoor amenity areas, is at an acceptable level;

The proposed development as revised by the Offer to settle complies with the City's Shadow Study Guidelines and Terms of Reference.

Opinion: this criterion is met.

- viii. Accessibility exists to community services and other neighbourhood conveniences such as community centres, neighbourhood shopping centres, and health care;

The subject property is replacing an existing commercial plaza in the community that primarily consists of residential properties. The applicant has provided increased

commercial use from 278 m² to 450 m² in the revised development proposal as part of the Offer to settle. Although this is a decrease from the existing commercial building on site, staff are satisfied that the proposal continues to reflect the 'Neighbourhood Commercial' designation. The appellant has provided commercial space that is visible from Kerns Road and Four Seasons Drive allowing for the ground floor of the property to appear as commercial from the street.

Opinion: this criterion is met.

- ix. Capability exists to provide adequate buffering and other measures to minimize any identified impacts;

The proposed development as revised by the Offer to settle provides a 5-metre setback from Four Seasons Drive which is the front lot line as it will become the shorter lot line abutting the street after the dedication of 'Open Space' lands associated with the erosion hazard. This represents a reduction of 1-metre as the CN2 zone requires a 6-metre setback. The street side yard setback is proposed to be a 4.5-metre setback, whereas a 6-metre setback is required. No negative impacts are anticipated through these reductions provided that adequate landscaping is provided within the minimum 3-metre landscape area abutting a street. The appellant has provided a 7.5-metre top of bank setback that is included in the 'Open Space' lands to be dedicated. A 0-metre setback is proposed from the 'Open Space' zone, however, the buffering provided within the 'Open Space' lands is considered appropriate. The yard abutting a residential zone is proposed to be a 7.5-metre setback whereas 9-metres is required. The appellant is proposing a dense landscape buffer ranging between a depth of 2.5-metres and 3-metres. Considering the existing site includes a reduced landscape buffer due to the loading space being located in the same location as what is proposed, staff are satisfied that the proposal will provide an increased buffer than what currently exists on site. Overall, the landscape area and buffering are considered to provide for adequate buffer for the proposed development as revised by the Offer to settle.

Opinion: this criterion is met.

- x. Where intensification potential exists on more than one adjacent property, any redevelopment proposals on an individual property shall demonstrate that future redevelopment on adjacent properties will not be compromised, and this may require the submission of a tertiary plan, where appropriate;

The immediate surrounding area is designated low density residential. This is an established neighbourhood and intensification is not anticipated in this area on surrounding site as it is not located within a strategic growth area.

Opinion: this criterion is met.

- xi. Natural and cultural heritage features and areas of natural hazard are protected;

The property is adjacent to Upper Hager Creek which has an associated erosion hazard located on the subject property. If the OLT determines that the appellant's engineering evidence is preferred, then this criterion is met. However, if the OLT prefers the evidence provided by Conservation Halton's engineer, then this criterion is not met.

Opinion: this criterion is met if the appellant's engineering evidence is preferred by the OLT.

- xii. Where applicable, there is consideration of the policies of Part II, subsection 2.11.3(g) and (m);

Policy 2.11.3(g) requires that areas of natural hazard be dedicated to the City or appropriate public authority through the review of development applications. The appellant has agreed to dedicate lands to the City or appropriate public body and these lands are proposed to be rezoned 'Open Space'.

Policy 2.11.3(m) relates to development in the Aldershot community and does not affect the subject property.

Opinion: this criterion is met.

- xiii. Proposals for non-ground oriented housing intensification shall be permitted only at the periphery of existing residential neighbourhoods on properties abutting, and having direct vehicular access to, major arterial, minor arterial, or multi-purpose arterial roads and only provided that the built form, scale, and profile of development is well integrated with the existing neighbourhood so that a transition between existing and proposed residential buildings is provided.

The subject application proposes non-ground oriented housing intensification. The subject property is located on a Collector Road as per Schedule J – Classification of Transportation Facilities. As discussed above, the proposed development as revised by the Offer to settle is compatible with its surroundings as its built form, scale, and profile are well integrated with the existing neighbourhood and surrounding area.

Opinion: this criterion is met.

INTENSIFICATION CRITERIA OPINION: As discussed in the foregoing, staff are of the opinion that the proposed development as revised by the Offer to settle conforms with the Intensification Criteria of the Official Plan (1997, as amended).

2.5.3 Neighbourhood Commercial Designation policies

Part III, section 4.6 of the Official Plan (1997, as amended) contains objectives and policies for the City's 'Neighbourhood Commercial' Designation within which the subject property is located. 'Neighbourhood Commercial' designated properties provide opportunities for limited neighbourhood commercial centres within and at the periphery of residential neighbourhoods in locations that meet residents' day-to-day and weekly goods and service needs (4.6.1 a).

Small-scale neighbourhood commercial areas are intended to provide a limited range of retail and service commercial uses and community facilities that serve the daily and weekly needs of the immediate neighbourhood. These shopping areas will have a site area of approximately 1.0 ha and maximum building area of approximately 2,500 m² (4.6.2 a) i). The ground floor area of the building is 2,045 m² on a lot that is 0.8 ha which has a total commercial area of 450 m². Therefore, the site is fitting with the limited commercial use of the site.

The retirement use proposed provides seniors housing through 115 retirement dwelling units. In the 'Neighbourhood Commercial' designation, residential uses may be permitted in the second and/or third storey of retail/commercial buildings. The proposed use is for retirement dwelling units. The retirement use does not have a maximum height requirement and is permitted in residential areas in the municipality (Part III, Subsection 2.2.2 a). The 'Neighbourhood Commercial' designation only permits retail/commercial use at-grade. However, in policy 3.1.4(2)(a) of the new Official Plan (2020) identifies that special needs housing including retirement homes shall be permitted throughout the City. Through the implementation of the new Official Plan (2020), the proposal would be in conformity with this new policy. As the new Official Plan (2020) is Council approved, it represents the vision for the future of this site which the proposal conforms with. At this time, parts of the new Official Plan (2020) are now in force and effect. However, policy 3.1.4.(2)(a) is currently under appeal and not in force and effect. As part of the proposed settlement, the appellant has procured the agreement of the three appellants to policy 3.1.4(2)(a) to withdraw their appeal of the policy, allowing for the policy to be brought into force and effect in the OLT proceeding dealing with appeals to the new Official Plan (2020). The appellant has agreed to having the OLT withhold its order on its appeal until the parties confirm that policy 3.1.4(2)(a) is in force and effect.

Opinion: Staff are able to support the proposed Zoning By-law Amendment if the relevant sections of the new Official Plan (2020) come into force and effect for the subject property. If not, staff are of the opinion that an Official Plan Amendment is required.

OVERALL OPINION: As discussed above, staff are of the opinion that the requested Zoning By-law Amendment is supportable, as the proposed development as revised by the Offer to settle satisfies the intensification criteria and other applicable policies and conforms to the overall policy intent of the new Official Plan (2020), provided that the OLT determines that the erosion hazard evidence presented by the appellant's engineer is preferred and the new Official Plan (2020) policy for assisted and special needs housing comes into force and effect.

[2.6 City of Burlington New Official Plan \(New OP\) \(2020, subject to appeals\)](#)

On November 30, 2020, the Region of Halton issued a Notice of Decision approving the new Official Plan (2020), which has been developed to reflect the opportunities and challenges facing the City as it continues to evolve. While sections of the new Official Plan (2020) are under appeal, the new Official Plan (2020) reflects Council's vision and as such has been considered in staff's evaluation of the subject applications. At this time, parts of the new Official Plan (2020) are now in force and effect.

[2.6.1 A Healthy and Greener City](#)

The new Official Plan (2020) has been prepared in alignment with the vision expressed in the 2016 Council Strategic Plan (1.4). This includes a healthy and greener city where the City of Burlington is a leader in the stewardship of the environment while

encouraging healthy lifestyles. This includes promoting development measures and patterns to achieve a low carbon, energy secure and climate resilient community, protect life and property from natural hazards, and achieve sustainable community and building design (1.4.4 f). The property is adjacent to Upper Hager Creek which has an associated erosion hazard. To protect life and property from natural hazards, the preferred evidence from the OLT will establish the erosion hazard limit and be dedicated and rezoned 'Open Space' lands.

Opinion: the proposed development as revised by the Offer to settle conforms with A Healthy and Greener City policies of the new OP provided the OLT determines the appellant's engineering evidence is preferred.

2.6.2 Natural Heritage System

Chapter 4 of the new Official Plan (2020) contains policies for Natural Heritage Systems. The objectives of the Natural Heritage Systems include directing development to locations outside hazardous lands and hazardous sites (4.2.1 i) and avoiding increased erosion (4.2.1 k). The proposed development is adjacent to Upper Hager Creek and the OLT will consider the evidence presented by the appellant and Conservation Halton to determine the extent of the erosion hazard lands to meet the Natural Heritage System policies of the new Official Plan (2020).

Opinion: the proposed development as revised by the Offer to settle meets the Natural Heritage Systems policies provided the OLT favours the appellant's evidence. If the OLT prefers Conservation Halton's evidence, then the proposal would not comply with these policies.

2.6.3 Local Centre Designation

The lands are identified as Mixed Use Nodes and Intensification Corridors shown in Schedule C – Land Use – Urban Areas. These areas provide for locations where mixed commercial, residential, and employment uses will be developed and integrated in a compact built form and at greater development intensities, encouraging the efficient use of physical resources and municipal infrastructure (8.1.3). The Local Centres are small plazas found throughout the city and support the immediate area. The policies recognize the role in supporting residents and identify limited opportunities for redevelopment including new residential uses while maintaining the commercial function (8.1.3).

The general objectives of Mixed use Nodes and Intensification Corridors include providing a mix of uses that are the appropriate range of uses, scale of development and levels of intensity, appropriate amenity areas, and encourage the use of public transit, pedestrian and bicycle travel (8.1.3.1). The Local Centre Designation permits a maximum height of 4-storeys (8.1.3(5.2) c). The scale of development is considered to be appropriate as the building appears and functions as a 4-storey building from Kerns

Road and Four Seasons Drive. The proposal also introduces a new use in the community through the retirement home, while maintaining a limited level of commercial use at-grade through 450 m² of commercial floor area. The property also provides sufficient amenity area as the CN2 zone requires 20 m² per unit of amenity area and the applicant is providing 15.4 m² per unit of amenity area. Planning staff have also considered the minimum amenity area in the Residential High Density zones for retirement homes in Part 2 of the Zoning By-law that generally require 25 m² per one bedroom unit and 15 m² per efficiency bedroom unit. The reduction is considered to be minor when considering the access to Kerns Park and Forestvale Park. In regard to transportation, the property is in close proximity to two northbound bus stops that are serviced by route 87 that connect to Aldershot GO Station and Burlington GO Station.

The Local Centres requires that residential dwelling units be located in the upper storeys of retail/commercial buildings (8.1.3(5.2) b) ii). The dwelling units being provided are for seniors housing through retirement units. Through the Assisted and Special Needs Housing policies, assisted and special needs housing shall be permitted throughout the city, but are encouraged to locate within the Urban Area, where residential uses are permitted and where public transit, retail, and public service facilities are readily accessible (3.1.4(2) a).

Special Needs Housing is defined as any housing, including dedicated facilities, in whole or in part, that is used by people who have specific needs beyond economic needs, and includes, but is not limited to, needs such as mobility requirements or support functions required for daily living. Examples may include, but are not limited to, housing for persons with disabilities such as physical, sensory or mental health disabilities, seniors' housing, group homes, emergency shelters, housing for the homeless, and independent permanent living arrangements, where support services such as meal preparation, grocery shopping, laundry, housekeeping, respite care and attendant services are provided. It does not include households that receive community-based support services in their own home (Chapter 13).

As seniors housing is included in the definition for special needs housing, the proposed retirement use for seniors housing would be permitted on the property. However, this policy of the new Official Plan (2020) is not in force and effect. Until this policy comes into force and effect or the appeals are withdrawn, an Official Plan Amendment would be required.

The maximum floor area ratio of 1.0:1 is permitted in the Local Centres designation. The proposed development as revised by the Offer to settle will have a floor area ratio of approximately 1.85:1 which exceeds the maximum. Section 8.1.3 (5.2) d) states that an Official Plan Amendment would not be required for an increase in floor area ratio.

Additionally, as previously mentioned, an Official Plan Amendment would not be required for height as the new Official Plan (2020) permits a maximum 4-storey height. Although the building may be described as a 5-storey building within the proposed draft Zoning By-law Amendment, the maximum building height represents a 4-storey building due to the slope of the property and the bottom level being partially below grade. From Kerns Road and Four Seasons Drive, the property would appear as a 4-storey building.

The commercial use would continue to be considered at-grade as it would be accessed from the street.

The Local Centres also requires that the site retains the planned commercial function of the site. Although the commercial use will be reduced from the existing commercial plaza, staff are satisfied with the increase of proposed commercial use from 278 m² to 450 m² and is considered adequate to support the commercial function of the site. Additionally, all the commercial units front onto Kerns Road and Four Seasons Drive which provide the appearance of a commercial street front.

Opinion: the proposed development as revised by the Offer to settle meets the Local Centres designation policies of the new Official Plan (2020), and the Official Plan Amendment would not be required if policy 3.1.4(2)(a) of the new Official Plan (2020) was in force and effect.

OVERALL OPINION: Staff are of the opinion that the proposed Zoning By-law Amendment conforms with applicable new Official Plan (2020) policy and is supported by the policies of the new Official Plan (2020) that are not yet in force if the OLT prefers the erosion hazard limit evidence supported by the appellant's engineer. If the OLT prefers the erosion hazard limit evidence supported by the Conservation Halton engineer, then staff are of the opinion that the proposed Zoning By-law Amendment does not conform with applicable new Official Plan (2020) policy.

2.7 Zoning By-law

The City's Zoning By-law zones the subject property as CN2 (Neighbourhood Commercial). The CN2 zone permits limited retail and service commercial uses and residential use on the second and third floors. However, retirement use is not permitted on the subject property. Therefore, retirement use would need to be added through the site-specific Zoning By-law. Staff do not have any concerns as the retirement use provides dwelling units that do not contain kitchen facilities and is considered a less intensive residential use of the site. Table 1 below summarizes the site-specific zoning amendments that are required to permit the revised proposed development.

Table 1: Summary of site-specific zoning amendments required to permit revised proposal

	CN2 zone requirements	Site-specific zoning amendments required to permit revised proposal
Lot Area	0.05 ha	0.5 ha
Front Yard	6 m	5 m
Street Side Yard	6 m	4.5 m

Yard abutting a residential zone	9 m	7.5 m 12 m to a 3-storey portion of the building; 16 m to a 4-storey portion of the building including indoor/outdoor amenity; 24 m to roof-top mechanical.
Building setback abutting a creek block	7.5 m, 4.5 m if block includes a 3 m buffer	0 m
Building Height	3 storeys up to 12 m maximum	5-storeys including storey partially below grade plus mechanical penthouse to 14 m maximum excluding rooftop mechanical penthouse.
Floor Area	300 m ² maximum/retail use, 1200 m ² maximum/use for all other uses	450 m ² maximum/retail use, 9,779 m ² maximum/retirement use
Loading and Unloading	Loading/unloading shall not take place within 7.5 m of a residential zone. Loading/unloading docks shall be screened from view from adjoining residential zone.	Loading/unloading permitted within 7.5 m of a residential zone. Loading/unloading area shall have a 2.5 m setback from the residential zone.
Landscape Area and Buffer	Landscape area abutting a Street: 3 m Landscape area abutting an O2 zone: 3 m Landscape Buffer abutting a residential zone: 6 m	Landscape area abutting a Street: 3 m Landscape area abutting an O2 zone: 0 m Landscape Buffer abutting a residential zone: 2.5 m
Parking	Dwelling Units on the 2 nd and 3 rd floor of a 2 or 3 storey commercial building: 1.25 spaces per unit	0.5 parking spaces per retirement unit 4 parking spaces per 100 m ² of gross floor area

	Retail store: 3.5 spaces per 100 m ² of gross floor area	
Amenity Area	Where dwelling units are located on the second or third floors a minimum amenity area of 20 m ² per unit shall be provided	15.4 m ² per dwelling unit

If Council accepts the Offer to Settle, Zoning staff will develop a detailed draft Zoning By-law Amendment to bring forward to the OLT for approval. Zoning staff may identify the need for additional minor, more technical site-specific amendments in addition to the amendments reflected in Table 1 above, in order to permit the proposed development as presented in the settlement offer and as discussed in this analysis.

3.0 Technical Review

The original applications were circulated to internal departments and external agencies for review. Written responses to the technical circulation were received from Halton Region, Enbridge Pipelines, Halton Catholic District School Board (HCDSB), Halton District School Board (HDSB), Halton Regional Police Service (HRPS), Burlington Hydro, Canada Post, Conservation Halton, and the following City departments: Transportation, Development Engineering, Finance, Urban Forestry and Landscaping, and Parks. Concerns related to the Zoning By-law Amendment application have been addressed through the Offer to Settle excluding the determination for the location of the top of bank for the erosion hazard. The OLT will need to review the evidence provided by the appellant’s engineer and Conservation Halton’s engineer to determine the extent of the erosion hazard. All other concerns can be addressed at Site Plan.

4.0 Conclusion

The subject application has been reviewed in accordance with applicable Provincial, Regional, and City planning policies and guidelines. The revisions made to the proposal have resulted in an improved development concept from a functional and design perspective.

The revised proposal slightly reduces the intensity of the retirement use of the site by lowering the unit count from 123 units to 115 units. This allowed for an increase in commercial area at-grade from 278 m² to 450 m² to maintain greater commercial function on site. The commercial use is also provided along the street walls of the building facing Kerns Road and Four Seasons Drive to provide the appearance of a commercial building at-grade.

The revised proposal increases the buffering towards the residential use by providing a dense landscape buffer of 2.5-metres along the loading space and 3-metres along the

outdoor amenity area. Although the required 6-metre landscape buffer along the lot line towards the residential zone is not provided, staff are satisfied with the landscape buffer proposed as the proposal will provide an improved landscape buffer than what is currently located on site. The landscape area along Kerns Road and Four Seasons Drive will be implemented as the setbacks from the street allow for the 3-metre minimum landscape area to be implemented. Staff are of the opinion that the buffering allows for greater compatibility with the surrounding area.

Furthermore, although the retirement use is not contemplated in the CN2 zone, staff are of the opinion that the proposal allows for a greater mix of housing options in this area. The surrounding residential uses consist of low and medium density residential development in the form of single detached dwellings and townhouses. Providing an option for seniors housing in the area provides a greater mix of housing types and can provide an option for residents to age in place. Additionally, the new Official Plan (2020) envisions greater flexibility to locate assisted and special needs housing in areas where residential use is permitted. Staff are satisfied with the implementation of the retirement use on the property.

Overall, staff are supportive of the proposed Zoning By-law Amendment and development concept reflected in the Offer to settle the City's issues with the proposed development provided that policy 3.1.4(2)(a) of new Official Plan (2020) comes into force and effect, and the Tribunal prefers the evidence of the Appellant's engineers with respect to erosion hazards. In the event that the Tribunal prefers the evidence of Conservation Halton's engineers with respect to erosion hazards, then Staff are not supportive of the proposed Zoning By-law Amendment as it will not conform with applicable provincial, regional and local policy.

Respectfully submitted,

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Community Planning Department

City of Burlington

Appendix 1: Proposed Zoning By-law Amendment

