

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November, 23, 2022

CASE NO. PL171234

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

Applicant and Appellant: First Capital (Appleby) Corporation
Subject: Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment

Existing Designation: Community Commercial
Proposed Designated: Site specific – *To be determined*
Purpose: To permit two 17-storey residential condominium (apartment) buildings to be integrated with existing commercial development

Property Address/Description: 5111 New Street
Municipality: City of Burlington
Approval Authority File No.: 505-01/14
OMB Case No.: PL171234
OMB File No.: PL171234
OMB Case Name: First Capital Corporation 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: First Capital (Appleby) Corporation
Subject: Application to amend Zoning By-law No. 2020 - Neglect of the City of Burlington to make a decision

Existing Zoning: CC1- 402
Proposed Zoning: CC1 - Modified
Purpose: To permit two 17-storey residential condominium (apartment) buildings to be integrated with existing commercial development

Property/Address/Description: 5111 New Street
Municipality: City of Burlington
Municipality File No.: 520-05/14
OMB Case No.: PL171234
OMB File No.: PL171235

BEFORE:

M.A. SILLS
VICE CHAIR

)Wednesday, the 23rd day
) of November, 2022

THESE MATTERS, having come before the Tribunal for a Settlement Hearing on November 2, 2020, and having considered the uncontroverted testimony of Mr. Glenn Wellings, MCIP RPP received with the consent of the City of Burlington (the “**City**”), and having reviewed the materials filed with the Tribunal, allowed the Appeals in part subject to the conditions as set out in the Decision dated November 13, 2020 (the “**LPAT Order**”);

AND THE TRIBUNAL having withheld its Final Order subject to the City providing to the Tribunal the draft instruments of the OPA and the ZBA in their final form, satisfactory to the Applicant, for approval by the Tribunal and subject to the matters referred to in paragraph 27 (the “**Conditions for the Issuance of the Final Order**”) of the LPAT Order have been satisfied;

AND THE TRIBUNAL having been advised by the Parties in writing that the Conditions for the Issuance of the Final Order have been satisfied;

THE TRIBUNAL ORDERS that:

- 1) The appeal filed by the Appellant in Case File No. PL171234 is allowed, in part;
- 2) The Tribunal hereby approves the Official Plan Amendment attached hereto as Attachment 1 to this Order;
- 3) The Tribunal hereby approves the Zoning By-law Amendment attached hereto as Attachment 2 to this Order;
- 4) The Tribunal authorizes the municipal clerk to assign a number to, and format as may be necessary, the Official Plan Amendment and Zoning By-law amendment for record keeping purposes.

“Euken Lui”

EUKEN LUI

ACTING REGISTRAR

Ontario Land Tribunal

Website: 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.

Attachment No. 1

PROPOSED OFFICIAL PLAN AMENDMENT NO. XX

AMENDMENT NO. XX 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. XX 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 modify Section 4.4.2 a), Community Commercial policies, to permit three (3) multi-unit residential buildings with a maximum height of 9, 12 and 12 storeys and a total maximum floor area of approximately 34,100 square metres at the southwest corner of Pinedale Avenue and Timber Lane.

2. SITE AND LOCATION

The subject property is approximately 6.6 hectares in size and is located at the northeast corner of Appleby Line and New Street. The property contains the Appleby Village commercial plaza which consists of seven (7) buildings with a variety of retail, service commercial and office uses, including a Fortinos, Home Hardware, Rexall, LCBO and the Beer Store. The existing Gross Floor Area (“GFA”) within Appleby Village is approximately 20,000 square metres. Adjacent land uses include:

- South side Commercial and townhouses
- East side Apartments and townhouses
- North side Townhouses
- West side Commercial and retirement home

3. BASIS

The basis for the Amendment is as follows:

- a) The Burlington Official Plan permits high density residential development on lands within the “Community Commercial” land use designation (Appleby Village) to a maximum height of 12 storeys. The proposal for three (3) multi-unit residential buildings with heights ranging between 9 storeys and 12 storeys conforms to the land use, built form and height policies of the Official Plan.
- b) Section 4.4.2 a) of the Official Plan requires that the floor area of a property designated Community Commercial that is devoted to freestanding residential shall not exceed half of the total floor area on the property. The proposed residential floor area is approximately 34,100 square metres which exceeds the existing commercial floor area.
- c) The 2020 Provincial Policy Statement (PPS) and A Place to Grow – A Growth Plan for the Greater Golden Horseshoe (2019) (Growth Plan) requires the prioritization and optimizing of intensification, transit-supportive development and the efficient use of land and services while accommodating an appropriate range and mix of residential to meet the current and future needs of residents.
- d) The PPS also states that municipalities shall identify appropriate locations and promote opportunities for intensification and redevelopment where it can be accommodated. In 2008, the City of Burlington identified Appleby Village as a site where residential intensification could occur. This has been reinforced through the recent City Official Plan Review.
- e) 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 stores and services to meet daily needs.
- f) The proposed development is consistent with the PPS and in conformity with the Growth Plan.
- g) The Regional Official Plan (ROP) designates the subject property *Urban Area*. The subject property is included within an Intensification Area. Intensification Areas are considered the highest priority areas for urban development. The proposed development conforms to the objectives and policies of the ROP pertaining to intensification and housing supply.
- h) The proposed development is appropriate and compatible and meets the definition of “compatible” in the City’s Official Plan which means the capability of a new development to co-exist with existing development without an undue physical or functional adverse impact and without an environmental or human health risk. The standards used to

measure undue physical or functional adverse impact include aesthetics, noise, vibration, dust, odours, traffic, safety and sun-shadowing. There are no adverse impacts or environmental or health risks arising from the proposed development.

- i) The proposed development is located on lands with adequate infrastructure and in close proximity to transit routes, commercial uses and community amenities, and 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 deleting the 2nd paragraph of Policy 4.4.2 a) in Part III, and replacing it with the following policy:

	Except for the lands designated Community Commercial on the south side of Plains Road, east of Daryl Drive, and at the northeast corner of New Street and Appleby Line, the floor area of a property designated Community Commercial that is devoted to freestanding residential, hospitality, <i>entertainment, recreation</i> and office uses, <i>shall</i> not exceed half of the total floor area on the property.
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2. INTERPRETATION

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

DRAFT 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 5111 New Street, for the purpose of facilitating the development of 3 residential buildings.

File Nos.: 505-01/14 & 520-05/14

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 Appeal Tribunal approved a Settlement on November 2, 2020, to amend the City's existing Zoning By-law 2020, as amended, to permit a residential development consisting of three (3) buildings;

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

1. Zoning Map Number 27 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 CC1-402 to H-CC1-515.
3. The lands designated as "Part B" on Schedule "A" attached hereto are hereby rezoned from CC1-402 to CC1-516.
4. PART 11 of By-law 2020, as amended, Holding Zone Provisions, is hereby amended by the addition of the following section to Appendix A:

71 H-CC1-515 Map 27 Resolution: XXXXXX

The owner submits a Letter of Reliance for the Phase 1 and Phase 2 Environmental Site Assessment, (as per O. Reg 153/04) and a Record of Site Condition or a Ministry of Environment, Conservation and Parks (MECP) approved Risk Assessment, to demonstrate the lands are suitable for the intended use, to the satisfaction of Halton Region and the City Director of Capital Works;

Notwithstanding the above, this Holding Provision does not prevent the issuance of a building and/or site alteration permit necessary to authorize:

- i) the removal of soil, rock or fill for the purpose of making an excavation; or
- ii) the erection of a retaining structure or other structure to support the sides of the excavation, that are erected to assist in the conduct of an investigation in relation to property, or for any other activity necessary to accommodate site remediation for the purpose of filing a record of site condition.

5. PART 14 of By-law 2020, as amended, Exceptions to Zone Designations, is amended by replacing Exception 402 for the lands designated as “Part A” on Schedule “A” attached hereto with the following:

Exception 515	Zone H-CC1	Map 27	Amendment 2020.XXX	Enacted XXXXXX
1. <u>Permitted Uses</u>				
a) Prior to the removal of the Holding ('H') Provision, only existing uses are permitted.				
b) Notwithstanding, footnote (f) of Part 4, Section 2, Table 4.2.1, following the removal of the Holding ('H') Provision, the following additional uses are permitted on 'Part A':				
<ul style="list-style-type: none"> i) Apartment Buildings ii) Retirement Homes 				
2. <u>General Regulations for Apartment Buildings and Retirement Homes</u>				
a) The property zoned H-CC1-515 and CC1-516 shall be considered one lot for the purposes of applying zoning regulations.				
b) Floor Area Ratio: 3.12:1 maximum				
c) Maximum number of units: 368 units				
d) Below Grade Parking Structure				
<ul style="list-style-type: none"> i) Abutting a street: 3m ii) Abutting all other lot lines: 3m iii) Entrance and exit ramps to below grade: 6m 				
parking structure from interior side yard (south zone boundary)				
e) Apartment Building Parking				
<ul style="list-style-type: none"> i) Occupant: 1 parking space per unit ii) Visitor: 0.25 parking spaces per unit iii) Maintenance: 1 space per 75 units 				
f) Bicycle Parking				
<ul style="list-style-type: none"> i) Long term bicycle parking: 0.05 spaces per unit ii) Short term bicycle parking: 0.5 spaces per unit 				
g) Long term bicycle parking is 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. Long-term bicycle parking is not required for Retirement Home				
h) Short term bicycle parking for use by visitors to a building.				
i) Visibility Triangle				

i) Pinedale Avenue and Timber Lane:	6m x 6m
j) Amenity Area:	20m ² per unit
k) Landscape Area abutting a street:	
i) Buildings A and B:	3m
ii) Building C:	0m

3. Regulations for 'Building A' as per Diagram 515

a) Yard Abutting Pinedale Avenue (street side yard)	
i) Floors 1 and 2:	6m
ii) Floor 3:	11.5m to building, 6m to terrace
iii) Floors 4 to 7:	11.5m
iv) Floors 8 and 9:	14.5m to building, 11.5m to terrace
v) Balconies:	Balconies not permitted to encroach into required yard
b) Yard Abutting Rear Yard (west zone boundary)	
i) Floors 1 and 2:	3m
ii) Floors 3 to 9:	4.5m
iii) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
iv) Balconies Floors 3 to 9:	Maximum encroachment of 2m
c) Yard Abutting Side Yard (south zone boundary)	
i) Floors 1 to 7:	20m
ii) Floors 8 and 9:	21.5m to building, 20m to terrace
iii) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
iv) Balconies Floors 3 to 9:	Maximum encroachment of 2m
d) Yard Abutting Timber Lane (front yard)	
i) Floors 1 and 2:	97m
ii) Floor 3:	104m to building, 97m to terrace
iii) Floors 4 to 9:	104m
iv) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
v) Balconies Floors 3 to 9:	Maximum encroachment of 2m
e) Balcony Length for Each Floor	The sum of the length of the balcony projections shall not exceed one third of the permitted length of the building wall.
f) Maximum Building Height:	9 storeys measured from grade up to 29m.

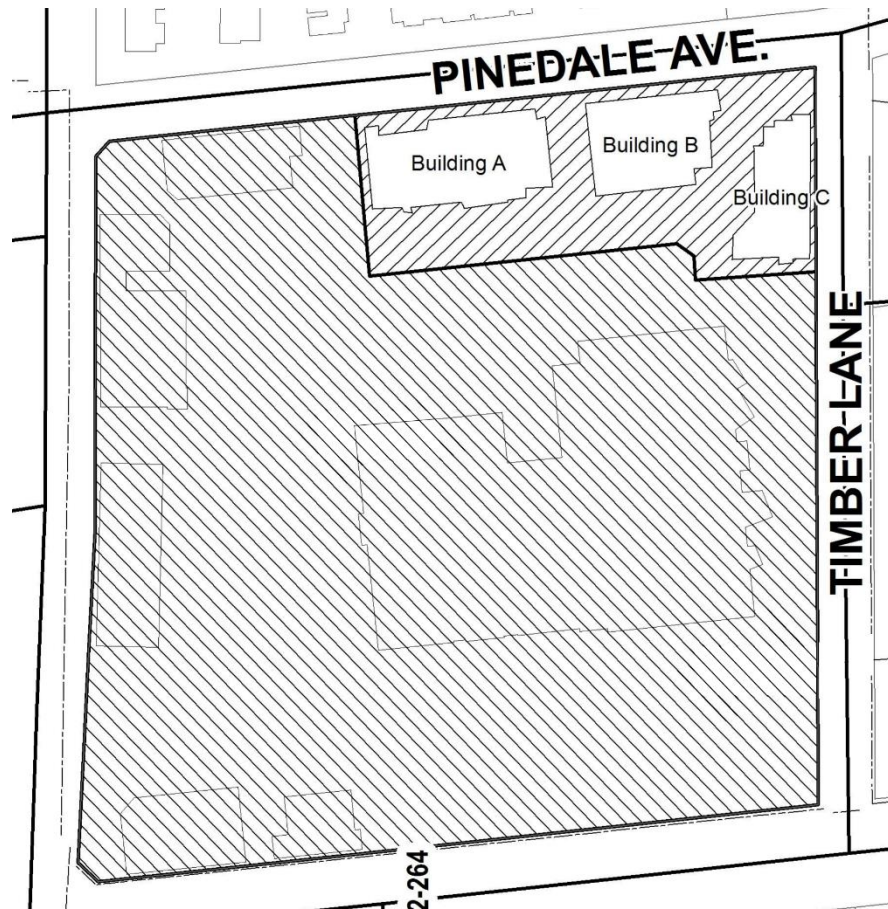
4. Regulations for 'Building B' as per Diagram 515

a) Yard Abutting Pinedale Avenue (street side yard)	
i) Floors 1 and 2:	6m
ii) Floors 3 to 8:	14.5m to building, 6m to terrace
iii) Floors 9 and 10:	15.5m to building, 14.5m to terrace
iv) Floors 11 and 12:	18.5m to building, 15.5m to terrace

v) Balconies all floors:	Not permitted to encroach into a required yard
b) Yard Abutting Rear Yard (west zone boundary)	
i) Floors 1 and 2:	84m
ii) Floors 3 to 12:	86m to building, 84m to terrace
iii) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
iv) Balconies Floors 3 to 12:	Maximum encroachment of 2m
c) Yard Abutting Side Yard (south zone boundary)	
i) Floors 1 to 8:	20m
ii) Floors 9 and 10:	21.5m to building, 20m to terrace
iii) Floors 11 and 12:	23m to building, 21.5m to terrace
iv) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
v) Balconies Floors 3 to 12:	Maximum encroachment of 2m
d) Yard Abutting Timber Lane (front yard)	
i) Floors 1 and 2:	39m
ii) Floors 3 to 12:	42m to building, 39m to terrace
e) Balcony Length for Each Floor	The sum of the length of the balcony projections shall not exceed one third of the permitted length of the building wall.
f) Maximum Building Height:	12 storeys measured from grade up to 39m.
<u>5. Regulations for 'Building C' as per Diagram 515</u>	
a) Yard Abutting Pinedale Avenue	
i) Floors 1 and 2:	17m
ii) Floors 3 and 9:	18.5m to building, 17m to terrace
iii) Floors 10 and 12:	20m
iv) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
v) Balconies Floors 3 to 12:	Maximum encroachment of 2m
b) Yard Abutting Rear Yard (west zone boundary)	
i) Floors 1 and 2:	133m
ii) Floor 3:	139m to building, 133m to terrace
iii) Floors 4 to 12:	139m
iv) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
v) Balconies Floors 3 to 12:	Maximum encroachment of 2m
c) Yard Abutting Side Yard (south zone boundary)	
i) Floors 1 to 12:	3m
ii) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
iii) Balconies Floors 3 to 12:	Maximum encroachment of 2m
d) Yard Abutting Timber Lane	

i) Floors 1 and 2:	3m
ii) Floor 3:	6m to building, 3m to terrace
iii) Floors 4 to 9:	6m
iv) Floor 10:	7.5m to building, 6m to terrace
v) Floors 11 and 12:	7.5m
vi) Balconies Floors 1 and 2:	Not permitted to encroach into a required yard
vii) Balconies Floors 3 to 12:	Maximum encroachment of 2m
e) Balcony Length for Each Floor	The sum of the length of the balcony projections shall not exceed one third of the permitted length of the building wall.
f) Maximum Building Height:	12 storeys measured from grade up to 39m.

Diagram 515



Except as amended herein, all other provisions of this By-law, as amended, shall apply

6. PART 14 of By-law 2020, as amended, Exceptions to Zone Designations, is amended by replacing Exception 402 for the lands designated as "Part B" on Schedule "A" attached hereto with the following:

Exception 516	Zone CC1	Map 27	Amendment 2020.XXX	Enacted XXXXXX
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1. Regulations

Notwithstanding Part 4, Subsection 6.10 (d), one parking area containing 225 spaces and one parking area containing 270 spaces shall be permitted to exceed the maximum of 190 spaces, and the average parking area size shall be 170 spaces.

Notwithstanding Part 4, Subsection 6.10 (a), the first 19,450m² of existing retail / commercial gross floor area shall have a parking rate of 2.8 parking spaces per 100m² of retail / commercial gross floor area. Additional retail / commercial gross floor area beyond the first 19,450m² shall have a parking rate of 3.5 parking spaces per 100m² of retail / commercial gross floor area.

All yards abutting Appleby Line, New Street, Pinedale Avenue and the zone boundary between the CC1-515 and CC1-516 are recognized.

The loading areas and landscape areas abutting Timber Lane are recognized.

Landscape Area between Appleby Line, Pinedale Avenue, or New Street and a parking lot or driveway: 3 metres

For Buildings 'A', 'B', 'C', 'D', 'E', or 'F' in Diagram 516 below the landscape area between a building elevation facing Appleby Line, Pinedale Avenue, or New Street: 0 metres

Every use in Buildings 'F', 'E', and 'C' in Diagram 516 below, shall provide a functional, pedestrian accessible door on the building elevation facing the street.

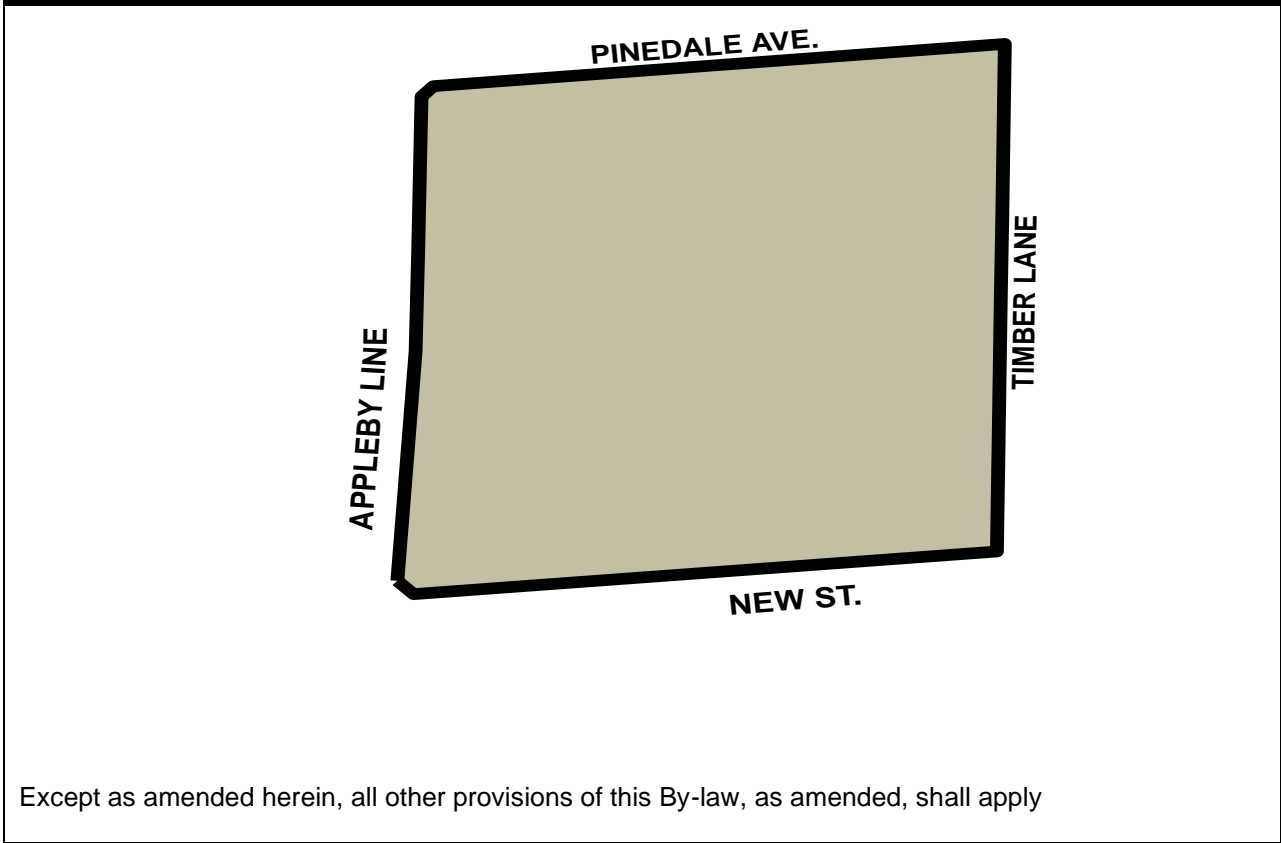
Standard, Convenience, and Fast-Food Restaurants are permitted within 10m of a residential zone on lands abutting Appleby Line and Pinedale Avenue within 100m of Appleby Line.

A maximum of one Outdoor Patio is permitted within 10m of a residential zone on the west elevation of Building 'F' in Diagram 516 below.

A maximum of one Outdoor Patio is permitted within 15m of a residential zone on the north elevation of Building 'E' in Diagram 516 below.

A maximum of one Outdoor Patio is permitted within 15m of a residential zone on the north elevation of Building 'C' in Diagram 516 below.

Diagram 516

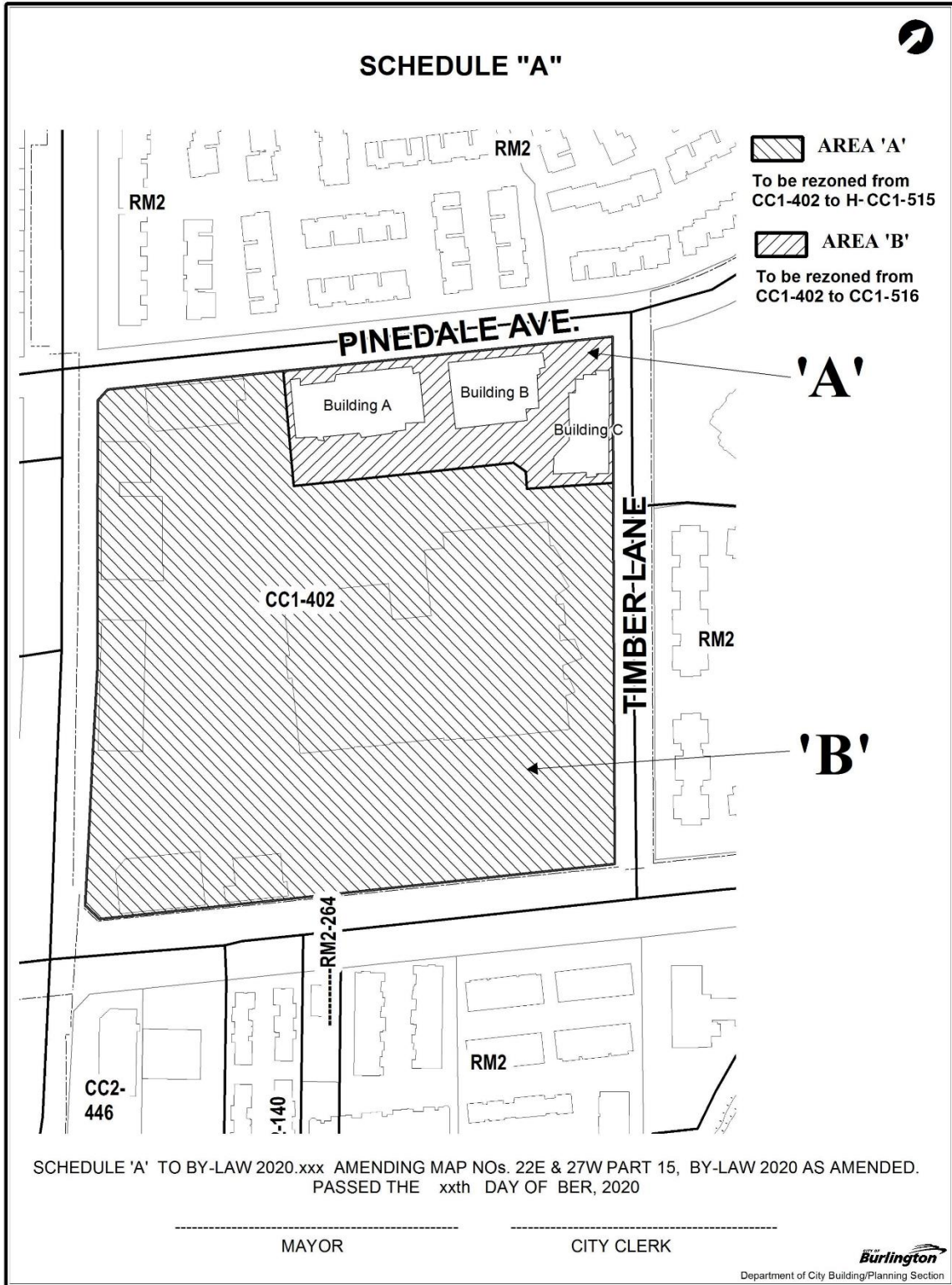


ENACTED AND PASSED this.....day of2022.

_____ MAYOR

_____ CITY CLERK

Schedule 'A' to By-law 2020.XXX



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

By-law 2020.XXX rezones lands 5111 New Street, to permit 3 buildings with heights ranging between 9 and 12 storeys in the north-east corner of the existing property.

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.