

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** November 24, 2023

**CASE NO.:** OLT-22-003893

**PROCEEDING COMMENCED UNDER** subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

**Appellant:** 1602211 Ontario Limited,  
Branthaven 735 Oval Inc.  
1471681 Ontario Inc.,  
S &G Consulting Inc.,  
5135 Fairview Holding Inc., and  
Branthaven Development Corporation

**Subject:** Failure of Approval Authority to announce a decision  
respecting a Proposed Official Plan Amendment

**Description:** To permit a mixed- use development consisting of commercial  
retail uses, commercial office uses, a public library, residential  
apartments and daycare facilities

**Reference Number:** 505-03/21

**Property Address:** 720, 735, 740 Oval Court

**Municipality/UT:** Burlington/Halton

**OLT Case No.:** OLT-22-003893

**OLT Lead Case No.:** OLT-22-003893

**OLT Case Name:** 1602211 Ontario Limited et. al. v. Burlington (City)

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

**Appellant:** 1602211 Ontario Limited,  
Branthaven 735 Oval Inc.  
1471681 Ontario Inc.,  
S &G Consulting Inc.,  
5135 Fairview Holding Inc., and  
Branthaven Development Corporation

**Subject:** Application to amend the Zoning By-law – Refusal or neglect  
to make a decision

**Description:** To permit a mixed- use development consisting of commercial  
retail uses, commercial office uses, a public library, residential  
apartments and daycare facilities

**Reference Number:** 520-04/21

**Property Address:** 720, 735, 740 Oval Court

**Municipality/UT:** Burlington/Halton

**OLT Case No.:** OLT-22-003894

**OLT Lead Case No.** OLT-22-003893

BEFORE:

*“Sharyn Vincent”* ) Friday, the 24<sup>th</sup>  
 )  
SHARYN VINCENT )  
VICE-CHAIR ) day of November, 2023

**THIS MATTER** having come before the Tribunal for a written hearing on November 20, 2023;

**AND THE TRIBUNAL** having received opinion evidence in the area of land use planning in the form of an affidavit sworn by Ruth Victor, RPP on November 10, 2023, in support of a settlement between the parties;

**AND THE TRIBUNAL** being satisfied that the settlement has appropriate regard for matters of provincial interest, is consistent with the Provincial Policy Statement (2020), conforms with the Growth Plan for the Greater Golden Horseshoe (2019), as amended, conforms with the Region of Halton Official Plan, conforms with the City of Burlington Official Plan, represents good planning, and is in the public interest;

**AND THE TRIBUNAL** being advised that the settlement is on consent of all of the parties to this matter;

**THE TRIBUNAL ORDERS THAT:**

1. The above-noted appeal pursuant to subsection 17(40) and 34(11) of the Planning Act are allowed, in part;
2. That the amendment to the City of Burlington Oakville Official Plan is hereby approved as set out in Attachment “A” to this Order;
3. That the amendment to the City of Burlington Zoning By-law is hereby approved as set out in Attachment “B” to this Order.

## **ATTACHMENT “A”**

### **AMENDMENT NO.\*\*\* TO THE OFFICIAL PLAN OF THE CITY OF BURLINGTON PLANNING AREA**

#### **CONSTITUTIONAL STATEMENT**

The details of the Amendment, as contained in Part “B” of this text, constitute Amendment No.\*\*\* to the Official Plan of the City of Burlington Planning Area, as amended.

#### **PART A — PREAMBLE**

##### **1. PURPOSE OF THE AMENDMENT**

The purpose of this Amendment is to permit a mixed-use project including high density residential dwellings, daycare facilities, a library, seniors assisted living units, memory care units, commercial uses including retail uses and office uses on the lands at 720, 735, 740 Oval Court and 5135, 5155 Fairview Street.

##### **2. SITE AND LOCATION**

The subject lands are located on the north side of Fairview Street, east of Appleby Line, adjacent to Sherwood Forest Park and are approximately 4.24 hectares in size. The subject lands are currently occupied by employment uses, including office and industrial uses.

Surrounding land uses consist of Appleby GO Station to the west, industrial uses beyond and industrial and commercial uses to the north of the rail tracks and Sherwood Forest Park to the east and low-rise residential development on the south side of Fairview Street.

##### **3. BASIS FOR THE AMENDMENT**

- a) The application proposes intensification that is consistent with the Provincial Policy Statement (PPS), subject to the existing limits of flooding and erosion hazards being refined as a result of future upgrades to the Fairview Street creek crossing and alterations to Appleby creek and associated hazard lands to ensure development is outside of hazardous lands and to provide safe access, all of which is to be confirmed through the use of a holding provision per the amending Zoning by-law.
- b) The PPS promotes densities for new housing which efficiently use land, resources, infrastructure and public service facilities, supports the use of public transit, and requires that development be planned to avoid or minimize potential adverse impacts to ensure compatibility with surrounding employment uses;
- c) Intensification of land within built-up, serviced areas of the City makes more efficient use of underutilized lands and assists the City in achieving its intensification targets and meeting the intent of the Provincial “A Place to Grow” Growth Plan, subject to the existing limits of flooding and erosion hazards being refined as a result of future

upgrades to the Fairview Street creek crossing and alterations to Appleby creek and associated hazard lands to ensure development is outside of hazardous lands and to provide safe access, all of which is to be confirmed through the use of a holding provision per the amending Zoning by-law;

- d) The proposal conforms to the Halton Region Official Plan and the Official Plan for the Burlington Planning Area, upon finalization of this amendment;
- e) The proposed amendment would permit the redevelopment of lands adjacent to Appleby Creek which forms part of the Regional Natural Heritage System within the Region's Official Plan and is designated "Watercourse" within the City's Official Plan.
- f) The subject lands are located within the City's Major Transit Station Areas which play an important role in accommodating population and job growth;
- g) The proposal can be adequately serviced;
- h) The proposal is served by existing community infrastructure including public transit, parks, schools and recreation facilities and new community infrastructure may be identified as part of the area-specific planning for the Appleby Go Major Transit Station Area; and
- i) The applicant submitted technical studies that provide adequate and appropriate information to support the development.

## **PART B – THE AMENDMENT**

### **1. DETAILS OF THE AMENDMENT**

#### **Map Change:**

Schedule B – Comprehensive Land Use Plan – Urban Planning Area

The lands designated as 'A' on Schedule "A" attached hereto are hereby re-designated from Mixed-Use Corridor – Employment to Mixed-Use Corridor – General. A technical housekeeping amendment is also included to redesignate a portion of the lands from Major Parks and Open Space to Mixed-Use Corridor – General.

#### **Text Change:**

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

By adding the following site-specific policy at the end of Part III, Land Use Policies – Urban Planning Area, Section 5.3 Mixed Use Corridors, Subsection 5.3.2 within the Mixed-use Corridor – General Policies as follows:

<p>720, 735 &amp; 740 Oval Court and 5135 &amp; 5155 Fairview Street</p>	<p>Notwithstanding the policies of Part III, Subsection 3.7.2 d), 5.3.2 a) (i), 5.3.2 d) (i) and (ii), 5.3.2 j), and 5.3.4 k) of this Plan on the lands designated “Mixed Use Corridor – General” and identified as 720, 735 &amp; 740 Oval Court and 5135 &amp; 5155 Fairview Street, a mixed-use development <i>shall</i> be permitted with a maximum building height of 34 storeys, with a maximum floor area ratio of 6:1. Development on the subject lands <i>shall</i>:</p> <ul style="list-style-type: none"> <li>i) not exceed 19 storeys for buildings that front onto Fairview Street.</li> <li>ii) small scale motor vehicle dealerships are prohibited.</li> <li>iii) demonstrate how applicable City design guidelines and the Oval Court Urban Design Guidelines are being achieved and be subject to review in accordance with guidance contained therein.</li> <li>iv) contribute to a walkable, accessible and attractive pedestrian environment, by incorporating in the proposal appropriate internal links, such as sidewalks and promenades with connections to Sherwood Park and Appleby Go Station.</li> <li>v) facilitate the provision of affordable housing through engagement with the non-profit sectors in the provision of affordable housing units.</li> <li>vi) retain space for a similar number of employment jobs to be accommodated to assist in the achievement of the employment targets for this area.</li> <li>vii) be accordance with a Class 4 Area as defined by the Ontario Ministry of the Environment Environmental Noise Guideline Publication NPC-300.</li> <li>viii) incorporate measures to avoid or minimize and mitigate potential adverse effects to the development from noise and air emissions including odour.</li> <li>ix) incorporate measures to avoid or minimize and mitigate potential impacts on industrial, manufacturing or other uses, including reducing the risk of complaints, and to ensure the ability of major facilities to comply with environmental approvals, registrations, legislation, regulations and guidelines for both current and future operations.</li> <li>x) individual buildings on Schedule ‘B’ may exceed a floor area ratio of 6:1 provided the cumulative total maximum floor area ratio for all of the buildings on Schedule ‘B’ do not exceed 6:1.</li> <li>xi) <i>may</i> consider the following objectives:</li> </ul>
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	<ul style="list-style-type: none"> <li>I. To ensure particular attention will be given to the relationship between the public and private realms in the development of buildings, streets, and urban open spaces.</li> <li>II. To provide pedestrian access, appropriate building and underground setbacks, proposed uses adjacent to existing park facilities and the preservation of the large existing row of trees along the property line and the interface with Sherwood Park.</li> <li>III. To promote built form transitions for the existing residential development along Fairview Street and along Sherwood Park.</li> <li>IV. To provide podium setbacks and stepbacks within the built form along Fairview Street.</li> <li>V. To ensure appropriate tower setback from Fairview Street.</li> <li>VI. To establish appropriate streetscape design for Fairview Street, Oval Court and the proposed promenade.</li> <li>VII. To incorporate public/private spaces such as urban squares, parkettes, amenity space and café spaces as part of the design elements.</li> <li>VIII. To ensure connectivity between the Appleby GO Station and Sherwood Park through the proposed promenade.</li> </ul>
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By deleting and replacing the following policy vi. at the end of Part III, Land Use Policies – Urban Planning Area, Section 5.3 Mixed Use Corridors, Subsection 5.3.4 a) (vi) within the Mixed-use Corridor – Employment Policies as follows:

Part III Subsection 5.3.4 a) vi.	vi. north side of Fairview Street, between Walkers Line and Sherwood Forest Park, except the 0.7 hectare property at 4175 Fairview Street, the north-east corner of Fairview Street, and the north-east corner of Fairview Street and Walker’s Line, and except the 6.5 hectare property at 4415 Fairview Street, and except 5135 & 5155 Fairview Street and 720, 735 & 740 Oval Court;
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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.

# SCHEDULE "A"

## AMENDMENT No. 1xx TO THE OFFICIAL PLAN OF THE BURLINGTON PLANNING AREA

### MAP 1

File Nos. 505-03/21 & 520-04/21

#### Area 'A'

Area 'A' to be amended from 'Mixed Use Corridor - Employment' to 'Mixed Use Corridor - General'

#### Area 'B'

Area 'B' to be amended from 'Major Parks and Open Space' to 'Mixed Use Corridor - General'

#### Legend

 General Employment

 MUC - General

 MUC - Employment

 Major Parks and Open Space

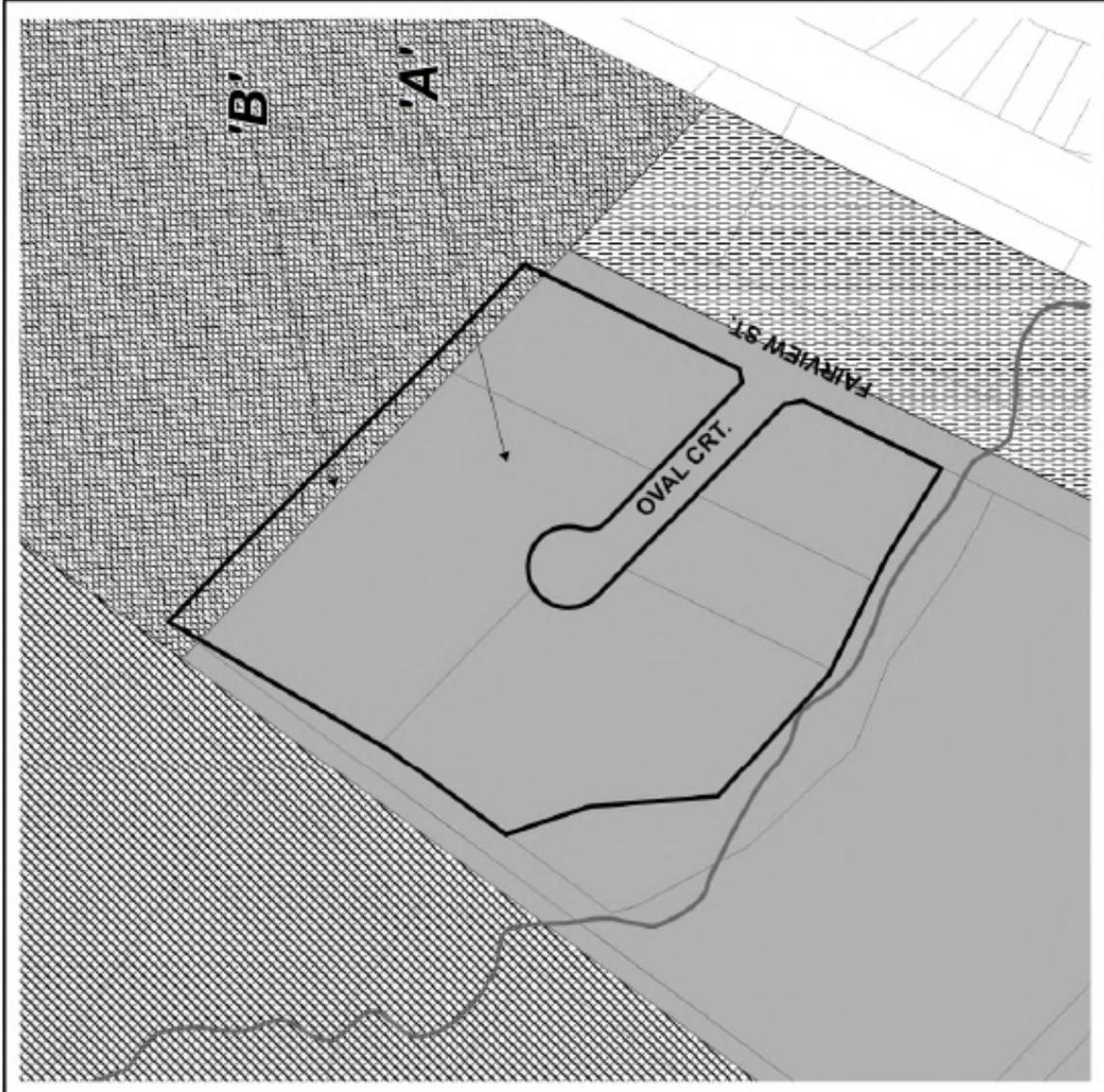
 Residential - Low Density

 Watercourse - Conceptual only, refer to Part III, Section 6.4.2 d



Date: October 13, 2023

Community Planning Department



**SCHEDULE "B"**

**AMENDMENT No. 1xx TO THE OFFICIAL PLAN  
OF THE BURLINGTON PLANNING AREA**

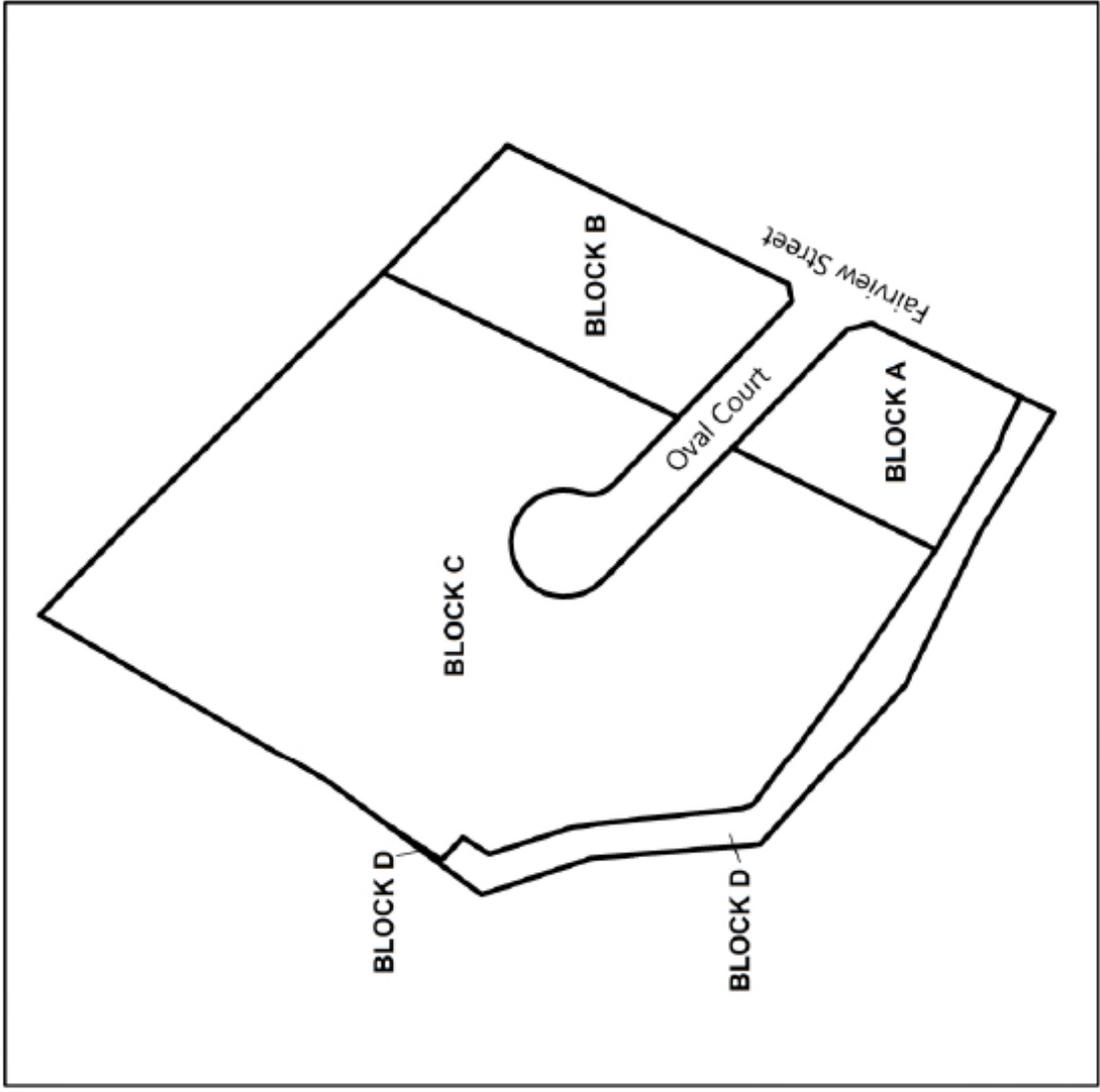
**MAP 2**

File Nos. 505-03/21 & 520-04/21

50 0 50 Meters



Date: November 10, 2023  
Community Planning Department



## ATTACHMENT “B”

### THE CORPORATION OF THE CITY OF BURLINGTON BY-

#### LAW NUMBER 2020.XXX

A By-law to amend By-law 2020, as amended; for 720, 735, 740 Oval Court & 5135 and 5155 Fairview Street,  
File No.:505-03/21 and 520-04/21

**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 Ontario Land Tribunal issued a decision on XXX, 2023, to amend the City’s existing Zoning By-law 2020, as amended, to permit a eight (8) mixed-use towers (ranging in height between 11 and 34 storeys) and a total of 1,988 residential units (including 190 assisted living units) and approximately 12,020 m<sup>2</sup> of retail, office, daycare and library uses for lands located at 720, 735, 740 Oval Court & 5135 and 5155 Fairview Street, Burlington.

#### THE ONTARIO LAND TRIBUNDAL AMENDS ZONING BY-LAW 2020 AS FOLLOWS:

1. Zoning Map Number **27-W** to By-law 2020, as amended, is hereby amended as shown on Schedule “A” attached to this By-law.
2. The lands designated as “A” on Schedule “A” attached hereto are hereby rezoned from “MXE” to “H-MXT-XXX”.
3. The lands designated as “B” on Schedule “A” attached hereto are hereby rezoned from “MXE” to “O2”.
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:

#XX	H-MXT-XXX	Map 27W	Resolution:
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The Holding symbol shall be removed from the zone designation by way of an amending zoning by-law when the following has been obtained/completed:

- a) Issuance of all necessary permits and completion of creek and hazard alterations and Fairview Street crossing upgrades such that the following is completed to the satisfaction of Conservation Halton and the City of Burlington:
  - i. all hazards and their associated regulatory allowances are contained within Block D Schedule “B” to this by-law, with the exception of the 7.5 m regulatory allowance from the floodplain that follows the drainage ditch along the northwest edge of the site, which extends into Block C; and

ii. safe access and egress to the subject lands is available under regulatory storm conditions.

b) The submission of a Ministry of the Environment, Conservation and Parks acknowledged Record of Site Condition (RSC). The RSC may be phased to apply to all or only a portion of the subject lands; or registration of the whole or the appropriate phase of the subdivision with appropriate conditions within the related subdivision agreement regarding the RSC, to the satisfaction of the City of Burlington and Region of Halton. The Holding provision may be lifted on a phased basis, over all or only a portion of the subject lands for which the RSC applies. In the event that the H is lifted on only a portion of the subject lands, the H otherwise continues to be in effect on the remaining lands to which it applies.

Notwithstanding subsections (a) or (b) above, this Holding Provision does not prevent the issuance of a building permit and/or municipal consent by-law permit and/or site alteration by-law permit necessary to authorize:

i. the demolition of an existing building, installation of servicing works along Oval Court, or activities, including the removal of soil, rock or fill, excavation and shoring, 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 adding Exception XXX as follows:

Exception XXX	Zone MXT	Map 27W	Amendment 2020.XXX	Enacted XXXXXXX
<p>1. <u>Permitted Uses</u> Only the following uses shall be permitted:</p> <ul style="list-style-type: none"> <li>(a) Apartment Buildings with Retail, Service Commercial, Recreational, Community Institution, Day Care Centre, Training Centre or other place of learning, Public Library and All Office Uses;</li> <li>(b) Long-Term Care Facilities;</li> <li>(c) Miscellaneous Uses, as per Part 1, Section 2.21(q)</li> <li>(d) Retirement Homes on Block 'C' only</li> </ul>				
<p>2. <u>Regulations apply to all permitted uses in Block 'A' , Block 'B' and Block 'C' on Diagram XXX:</u></p>				
<p>a) Doors:</p>				<p>Every building elevation located within 60 m of Fairview Street or Oval Court shall provide a</p>

	pedestrian accessible door on the elevation facing the street.
b) Visibility Triangles:	3 m x 3 m.
c) Footnote (m) of Table 5.2.1 shall not apply.	
d) Horizontal distance between building towers:	25 m
e) Maximum Floor Area Ratio for Block 'A':	6:1
f) Maximum Floor Area Ratio for Block 'B':	6:1
g) Maximum Cumulative Floor Area Ratio for all lots within Block 'C':	6:1
h) Notwithstanding part 5, Section 4.1-Table 5.4.1: maximum yards abutting any other street shall not apply.	
i) Long-Term Care Facility, Day Care Centre and Training Centre or Other Place of Learning are permitted on a Local Street	
<b>3. Regulations applying to buildings in Block 'A' on Diagram XXX:</b>	
a) Maximum height:	19 storeys and 65 m (exclusive of mechanical penthouse)
b) Floor area for all Retail, Service Commercial, Recreational, Community Institution, Day Care Centre, Training Centre or other place of learning, Public Library and All Office Uses on the ground floor of a building:	600 m <sup>2</sup>
c) Amenity Area:	15 m <sup>2</sup> per unit
d) Setback to below grade parking structures: i) From any lot line:	1 m
e) Landscape Area i) Abutting Fairview Street: ii) Abutting a O2 zone or a creek block:	not required 1 m
f) Maximum podium height:	6 storeys
g) Building setback above 3 storeys for podium walls facing Fairview Street:	3 m from building face of podium
h) Building setback for storeys 18 and 19 for tower walls facing Fairview Street:	3 m from building face of tower

i) Required parking for an Apartment Building: Occupant: Visitor:	0.9 spaces per unit 0.1 spaces per unit
4. <u>Regulations applying to buildings in Block 'B' on Diagram XXX:</u>	
a) Maximum height:	19 storeys and 65 m (exclusive of mechanical penthouse)
b) Floor area for all Retail, Service Commercial, Recreational, Community Institution, Day Care Centre, Training Centre or other place of learning, Public Library and All Office Uses:	1190 m <sup>2</sup>
c) Amenity Area:	15 m <sup>2</sup> per unit
d) Yard from any lot line:	1.0 m
e) Setback to below grade parking structure: i) from any lot line:	1.0 m
f) Landscape area i) abutting Fairview Street: ii) A below grade parking structure can encroach into a required landscape area abutting a PC or P zone	not required
g) Maximum podium height:	6 storeys
h) Building setback above 3 storeys for podium walls facing Fairview Street:	3 m from building face of podium
i) Building setback for storeys 18 and 19 for tower walls facing Fairview Street:	3 m from building face of tower
j) Required Parking for an Apartment Building: Occupant: Visitor:	0.9 spaces per unit 0.1 spaces per unit
5. <u>Regulations applying to buildings in Block 'C' on Diagram XXX:</u>	
a) The properties zoned MXT-XXX and located on Block 'C' shall be considered	

one lot for the purposes of applying zoning regulations.	
b) Floor area for all Retail, Service Commercial, Recreational, Community Institution, Day Care Centre, Training Centre or other place of learning, Public Library and All Office Uses:	3290 m <sup>2</sup>
c) Amenity Area:	15m <sup>2</sup> per unit
d) Setback to below grade parking structures:	
i) abutting the north lot line of Block 'C':	1 m
ii) abutting a PC or P zone:	3.1 m for a length of 145 m measured from the north property line towards Fairview Street.
iii) From a O2 zone or a creek block	1 m along the O2 zone to the west; 2 m along the O2 zone adjacent/abutting the north lot line of Block 'C'.
iv) From all other lot lines:	1 m
e) No development, save and except below-grade parking garage, berm and a crash wall are permitted within 7.5 m of the O2 zone adjacent/abutting the north lot line of Block C.	
f) Landscape area:	
a. Abutting Oval Court:	Not required
b. Abutting a O2 zone or a creek block:	1 m along the O2 zone to the west.
g) Yard abutting a PC zone:	17.5 m for apartment towers
h) Yard abutting the north lot line of Block 'C':	30 m for land uses sensitive to railway
i) Building Height:	
a. For the buildings at the intersection of the easterly portion of the pedestrian promenade and the easterly property line:	maximum building height of 65 m and 19 storeys exclusive of mechanical penthouse and at grade conditions
b. For all other buildings:	34 storeys and 114m (exclusive of mechanical penthouse)
j) Notwithstanding the maximum permitted building heights, no two buildings on Block 'C' shall be the same number of storeys.	

<p>k) Required Parking for an Apartment Building in Block 'C':  Occupant:  Visitor:</p>	<p>0.9 spaces per unit  0.1 spaces per unit</p>
<p>l) Required parking for a retirement home:  a. Notwithstanding Part 1, Section 2.25 – Table 1.2.6 maintenance vehicle parking is not required for a retirement home</p>	
<p>m) A 20 m wide separation between building podiums shall be required to allow for a pedestrian promenade, which may include vehicular access which extends from Sherwood Forest Park at the east to the O2 zone to the west.</p>	

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



to be rezoned from  
MXE to H-MXT-XXX

 AREA 'B'

to be rezoned from  
MXE to O2

Lands to remain  
MXE

'A'

'B'

**Schedule B**

