

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



ISSUE DATE: July 12, 2018

CASE NO(S): PL171346

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

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

Applicant and Appellant:	Aldershot Properties Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment
Existing Designation:	"Mixed use corridor - Commercial Corridor
Proposed Designated:	Site specific – To be determined
Purpose:	To permit an eight (8) storey containing 72 residential dwelling units, commercial uses and parking
Property Address:	35 Plains Road East
Municipality:	City of Burlington
Approval Authority File No.:	505-03/16
OMB Case No.:	PL171346
OMB File No.:	PL171346
OMB Case Name:	Aldershot Properties Inc. v. Burlington (City)

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

Applicant and Appellant:	Aldershot Properties Inc.
Subject:	Application to amend Zoning By-law No. 2020 - Neglect of the City of Burlington to make a decision
Existing Zoning:	MXC-175
Proposed Zoning:	Site Specific - To be determined
Purpose:	To permit an eight (8) storey containing 72 residential dwelling units, commercial uses and

Property Address:	parking 35 Plains Road East
Municipality:	City of Burlington
Municipal File No.:	520-04/16
OMB Case No.:	PL171346
OMB File No.:	PL171347

Heard: April 25, 2018 in Burlington, Ontario

APPEARANCES:

Parties

Counsel

Aldershot Properties Inc.

Aaron Platt

City of Burlington

Blake Hurley

**MEMORANDUM OF ORAL DECISION DELIVERED BY ANNE MILCHBERG ON
APRIL 25, 2018 AND ORDER OF THE TRIBUNAL**

[1] Aldershot Properties Inc. (“Applicant”; “Appellant”) has appealed the inaction of the City of Burlington (“City”) respecting Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) applications for the lands at 35 Plains Road East (“the subject lands”; “the subject property”), located at the north-west corner of Plains Road East and Cooke Boulevard.

[2] On the subject property, which is currently vacant, an eight-storey residential building, containing 72 residential units, 278.75 square metres (“m²”) of commercial uses at grade, and two levels of underground parking is proposed. The proposed OPA and ZBA instruments specify a nine-storey maximum building height, due to the outdoor amenity area on the roof above the eighth residential storey.

[3] The subject property is 0.20 hectares in area, with a frontage of 27.7 metres (“m”) along Plains Road East, and a depth of 57.5 m along Cooke Boulevard. It is

primarily surrounded by employment and general mixed uses. Plains Road East is a high volume transit corridor, and, according to evidence provided, the City has a vision for higher density, mixed use development along it.

[4] The Tribunal was advised by the City and the Appellant that they have arrived at a settlement of the appeals. Thus, what was anticipated to be a pre-hearing conference on the matter turned into a settlement hearing. An Affidavit of Service was filed as Exhibit 1.

[5] Uncontroverted expert land use planning evidence on the proposed settlement was provided by Registered Professional Planner, Ruth Victor. Ms. Victor had been retained by the Appellant from the inception of the OPA and ZBA applications.

[6] The only members of the public to appear were neighbouring residential property owners Olena Vasylyeva and her spouse. The Vasylyevas live in a single detached dwelling on the south side of Plains Road at No. 56, diagonally opposite the subject property. On consent of the Parties, Ms. Vasylyeva was granted Participant status so that she could provide testimony to the Tribunal on her concern about the proposed development.

[7] Ms. Vasylyeva was worried that her property at 56 Plains Road East might be overshadowed by the proposed development, particularly in the afternoon. She did not provide a shadow study to back up her concerns, and wanted to know why a shadow study had not been requested by the City as part of the OPA and ZBA application process, while other matters like traffic and noise were studied to some degree.

[8] Ms. Victor explained that a shadow study was specifically not required by the City given the scale of the proposal.

[9] The Vasylyevas' home is in a row of six single detached dwellings on the south side of Plains Road East, a four-lane thoroughfare. Ms. Vasylyeva did not know how far away her property was from the subject property, or the quantum of her dwelling's setback from Plains Road East, or the road width, and could not provide precise details as to when shadows from the proposal would impact her property, and to what degree.

[10] The only evidence the Tribunal had at its disposal to consider Ms. Vasylyeva's concern was an unscaled aerial photograph [Exhibit 5, Tab 1] in the Appellant's document book. It had been submitted for general context information and not for shadow analysis purposes. The aerial photograph showed 56 Plains Road at a considerable distance from the subject property, across a four-lane road, with the dwelling on it set far back from the street. The Member had a hard time envisioning shadows stretching that far, but without any shadow study from Ms. Vasylyeva, the Member was unable to explore her claims any further.

[11] Thinking about impacts generally, the Tribunal asked Ms. Victor how the six single detached dwellings on the south side of Plains Road East should factor into the intensification corridor planning on Plains Road, of which the subject property and proposal formed part. Ms. Victor opined that the aim to promote redevelopment and intensification ought to have primacy, but that potential impacts on existing development (like single detached dwellings) cannot be ignored, nor should those properties become isolated.

Official Plan

[12] The subject lands are designated as "Urban Area" in the Halton Region Official Plan ("Regional OP") and "Mixed Use Corridor – Commercial Area" ("MUC-Commercial") in the City of Burlington OP ("City OP"). The current City OP designation allows for the development of medium and high density residential uses, to a maximum of six storeys.

[13] In the new OP currently being formulated by the City, all of Plains Road East has been identified as an intensification corridor and an area in transition. Further, the subject lands are located two blocks away from the existing Aldershot GO Transit Station, and the new OP envisions the neighbour as a mixed-use, concentrated, transit oriented "Mobility Hub". Ms. Victor testified that the proposed development fits well with the City's vision in its new, emerging OP.

[14] From an earlier development approval on the subject lands, there is a site-specific, City OP regulation (OP Part III, Section 5.3.3.2 k) that prohibits residential land uses and supermarket uses on the subject property and limits single retail uses to a maximum size of 3000 m². There is also a height limit of six storeys.

[15] Specifically, the OP amendment sought by the Appellant would permit a nine storey mixed commercial-residential development, with a Floor Area Ratio ("FAR") of 4:1, notwithstanding the current OP policies. The proposal includes retail uses at grade plus seven floors of residential units above the ground floor, topped by an outdoor amenity area on the rooftop that would count as the ninth storey. The prohibition against supermarket uses is not lifted in the proposed OPA.

[16] Ms. Victor gave her uncontroverted professional planning opinion that the proposed OPA:

- is consistent with the Provincial Policy Statement, 2014 ("PPS");
- conforms to the Growth Plan for the Greater Golden Horseshoe ("GPGH");
- conforms to the Regional OP and City OP;
- will fit the vision of the emerging new OP;
- will result in the addition of extra storeys (from 6 to 9) that are justifiable and appropriate from an urban design perspective;

- will result in an appropriate form and scale of intensification on vacant, underutilized lands; and
- makes for good planning.

[17] The evidence put forth by Ms. Victor was detailed, thorough and compelling to the Tribunal.

Zoning By-law Amendment

[18] The existing site-specific zoning designation for the subject lands, MXC-175 (Mixed Use Commercial – Site-Specific Exception No. 175), mirrors the existing site-specific OPA in its residential use prohibition, height limit and retail use size limit.

[19] The proposed site-specific zoning designation, MXC-470 (Mixed Use Commercial – Site-Specific Exception No. 470) deletes and replaces MXC-175, and allows for a maximum of 72 residential units on the site, with specific minimum area requirements for indoor and outdoor amenity areas. A minimum of 220 m² of retail or service commercial uses must be provided at grade. Eighty-six parking spaces are required for residential occupants, including four accessible spaces. Six shared parking spaces, including two accessible spaces, are to be provided for visitors and non-residential uses.

[20] A FAR of 4:1 would be permitted, rather than the current FAR of 1.5:1. There are detailed built form controls such as yard and balcony setbacks, and there is a nine-storey height limit, to a maximum height of 34 m. Counsel for the Appellant referred to the built form controls as “shrink wrapping”, i.e. providing certainty on the location, shape and dimensions of the building massing, which is desirable for site-specific approvals. Ms. Victor testified that the proposed massing was appropriate, given its setting on the Plains Road East transit corridor and the intensification vision for the Aldershot Mobility Hub.

[21] Further, the ZBA specifies community benefits under s. 37 of the *Planning Act* (“Act”); these shall be secured prior to the issuance of an above grade building permit for the project.

[22] Ms. Victor gave her uncontroverted professional planning opinion that the proposed ZBA:

- is consistent with the PPS and the GPGH;
- conforms to the Regional OP and City OP;
- will fit the vision of the emerging new OP;
- conforms to the proposed new site-specific OPA;
- will result in an appropriate built form and scale of intensification on vacant, underutilized lands;
- secures community benefits; and
- constitutes good planning.

[23] The Tribunal accepts Ms. Victor’s testimony as a solid foundation for allowing the OPA appeal.

ORDER

[24] In the matter of the Official Plan appeal under s. 22(7) of the Act, the Tribunal orders that the appeal is allowed, and the Official Plan for the City of Burlington is amended as set out in Attachment 1 [Exhibit 4 in the hearing, with corrections].

[25] In the matter of the Zoning By-law appeal under s. 34(11) of the Act, the Tribunal orders that the appeal is allowed, and the City of Burlington is directed to amend By-law No. 2020, as amended, as set out in Attachment 2 [Exhibit 3, Tab 75 in the hearing].

“Anne Milchberg”

ANNE MILCHBERG
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

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

**AMENDMENT NO. 105 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. 105 to the Official Plan of the Burlington Planning Area, as amended.

PART A – PREAMBLE

1. PURPOSE OF THE AMENDMENT

The purpose of the amendment is to amend the site specific policies for 35 Plains Road East. The redesignation of the property will facilitate the development of a 9 storey mixed use building consisting of at-grade retail and service commercial uses with 72 residential units above.

2. SITE AND LOCATION

The subject lands are located on the north side of Plains Road East, east of Waterdown Road and on the west side of Cooke Boulevard. The site has an area of 0.20 hectares (0.49 acres) and is currently vacant. The policies apply to 35 Plains Road East on a site-specific scale, as detailed in the respective policies.

Surrounding land uses include a range of office and industrial uses that front onto Cooke Boulevard. Northwest of the subject property is zoned MXE (Mixed Use Employment) Zone and is developed with single detached residential dwellings fronting onto Waterdown Road. The south side of Plains Road East is developed with a mix of residential and commercial uses with a six storey apartment currently under construction immediately to the south of the subject property.

3. BASIS FOR THE AMENDMENT

Mixed use corridors and future mixed use areas such as mobility hubs will have a role in accommodating job growth and population growth. Mixed use areas along main roads with access to transit will contribute to intensification and support the long term sustainability of the city.

a) The subject application proposes intensification that is consistent with the Provincial Policy Statement (PPS). The PPS promotes densities for new housing which efficiently use land, resources, infrastructure and public service facilities, and support the use of public transit.

b) Directing intensification to areas in proximity to transit and intensification corridors and providing policies that identify the appropriate type and scale of

development assist the City in achieving its intensification targets and meet the intent of the Provincial “Places to Grow” Growth Plan and the Region of Halton Official Plan.

c) The redesignation of the property to permit a higher density midrise building form supports the city’s residential objectives to broaden the range of housing forms to meet city needs and address compatibility with surrounding properties.

d) The applicant submitted technical studies and reports that provide adequate and appropriate information to support the development.

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

f) The development is designed with its principle access on a collector road that can accommodate the traffic.

g) The subject site is also part of the Council-endorsed Aldershot Mobility Hub. Mobility Hubs consist of major transit stations and the surrounding area. Detailed area-specific plans for each of the City’s four mobility hubs will comprehensively plan for the future redevelopment and intensification of these areas. Establishing a site-specific Official Plan amendment is a decision required by the development application process in advance of an area-specific plan for the Aldershot Mobility Hub.

h) The provision of residential uses is appropriate because the proposal is in keeping with the diverse land uses along the Mixed-use corridor. After a consideration of possible environmental impacts of adjacent uses, this site is considered appropriate for higher density residential infill and compatible with the Aldershot Mobility Hub.

PART B – THE AMENDMENT

1. DETAILS OF THE AMENDMENT

Map Change:

No map change is proposed.

Text Change:

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

- 1.) To amend the following policy j) in Part III, Land Use Policies – Urban Planning Area, Section 5.0, Mixed-Use Activity Area, 5.3.3, Mixed Use Corridor – Commercial Corridor, by removing the reference to (vii) such that subsection j) reads as follows:

Prohibitions j) Notwithstanding the uses permitted in Part III, Subsection 5.3.3.2 b) of this Plan, for properties identified in Part III, Subsection 5.3.3.2 a) (vi), (viii) and (ix), residential uses are prohibited, *supermarket/grocery store* uses are prohibited and individual retail uses are allowed to a maximum floor area of 3,000 sq. m.

- 2.) To add the following policy m) to Part III, Land Use Policies – Urban Planning Area, Section 5.0, Mixed-Use Activity Area, 5.3.3, Mixed Use Corridor – Commercial Corridor as follows:

35 Plains Road East m) Notwithstanding the use, height, *floor area ratio* and design policies contained in Part III, Subsections 5.3.2 a), d) and g), and Part III, Subsections 5.3.3.2 b) and e) of this Plan, for the property identified as 35 Plains Road East, the following policies *shall* apply:

- (i) a mixed use building consisting of residential and at-grade retail or service commercial *shall* be permitted;
- (ii) the maximum building height *shall* be 9 storeys.
- (iii) the maximum Floor Area Ratio *shall* be 4.4:1

2. INTERPRETATION

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

3. IMPLEMENTATION

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

BY-LAW NUMBER 2020.384, SCHEDULE 'A' AND EXPLANATORY NOTE

**THE CORPORATION OF THE CITY OF BURLINGTON
BY-LAW NUMBER 2020.384**

A By-law to amend By-law 2020, as amended; 35 Plains Road East,
File Nos.: 520-04/16 and 505-03/16

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 has approved an amendment to the City of Burlington Zoning By-law 2020, as amended, to permit a nine storey building with 72 residential units and commercial uses on the street level;

THE LOCAL PLANNING APPEAL TRIBUNAL AMENDS ZONING BY-LAW 2020 AS FOLLOWS:

1. Zoning Map Number 3-E 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 "A" on Schedule "A" attached hereto are hereby rezoned from Mixed-Use Corridor - Commercial (MXC-175) Zone to Mixed-Use Corridor - Commercial (MXC-470).
3. PART 14 of By-law 2020, as amended, Exceptions to Zone Classifications, is amended as follows:

Delete Exception 175

Replacing it with Exception 470 as follows:

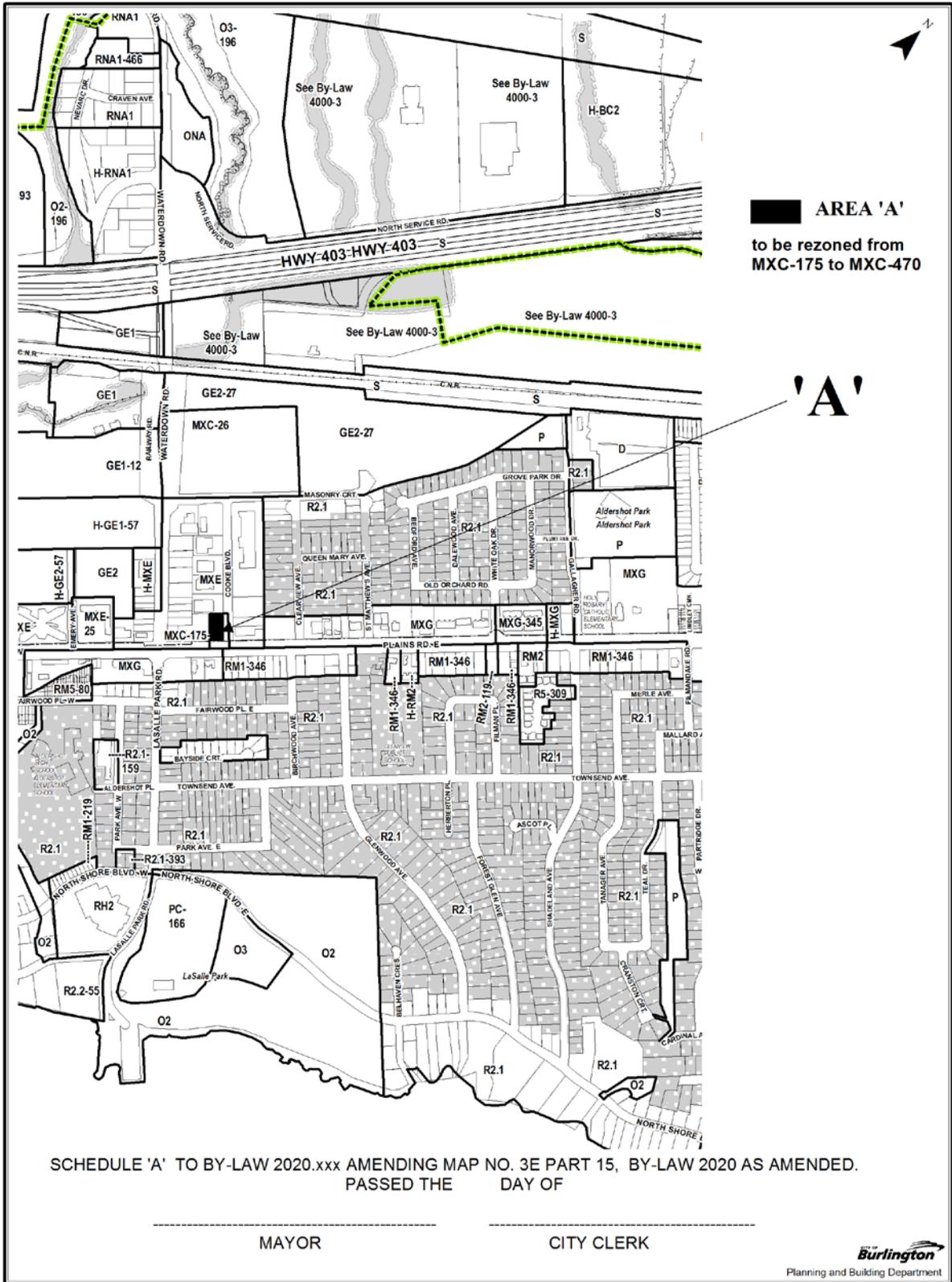
Exception 470	Zone MXC	Map 3	Amendment 2020.384	Enacted (date)
1. <u>Regulations for an Apartment Building:</u>				
(a) Yard abutting Plains Road East:	(i) 1 st storey: 3.5 m maximum			
	(ii) Other storeys: 1.8m			
	(iii) Balconies may not encroach into a yard abutting Plains Road East			
(b) Yard abutting Cooke Boulevard:	(i) 1 st storey: 3.5 m maximum			
	(ii) Other storeys: 1.3 m			
	(iii) Balconies are permitted within a yard abutting Cooke Boulevard			
(c) Balcony setbacks abutting Cooke Boulevard:	(i) 2 nd storey: 1.3m			
	(ii) 3 rd to 8 th storeys: 0.5m			
(d) Distance from the hypotenuse of a daylight triangle for a building or balcony:	0 m			
(e) Underground parking garage setbacks:	(i) Abutting Cooke Boulevard: 0 m			
	(ii) Abutting all other lot lines: 0.2 m			
(f) Number of units:	72 units maximum			
(g) Floor area ratio:	4.4:1 maximum			
(h) Commercial floor area:	A minimum of 220 m ² of retail or service commercial must be provided on the ground floor of an apartment building.			
(i) 9 th storey:	In addition to an outdoor amenity area, a maximum of 275 m ² of floor area may be used for an indoor amenity area, elevator lobby, stairs, mechanical and/or storage rooms.			
(j) Landscape area abutting a street:	0 m			
(k) Building height:	9 storeys to 34 m maximum			

(l) Building height first storey:	6 m
(m) Occupant parking spaces:	86 spaces including 4 accessible spaces.
(n) Visitor and Non-residential parking spaces:	6 shared spaces including 2 accessible spaces
(o) Amenity Area	1240 m ²

2. Community Benefits:

Prior to the issuance of an above grade building permit for the project contemplated by this amendment, the owner shall, at its sole cost and expense, make a cash payment by way of certified cheque to the City for the sum of TWO HUNDRED AND TWENTY FIVE THOUSAND DOLLARS (\$225,000.00) to be placed in a specific reserve fund for the provision of public art, street furnishings and landscaping on Plains Road East in proximity to the lands subject to this amendment.

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



EXPLANATION OF PURPOSE AND EFFECT OF BY-LAW 2020.384

By-law 2020.384 rezones lands on 35 Plains Road East to permit the development of a nine storey building with 72 residential units and commercial uses on the street level.

For further information regarding By-law 2020.384, please contact Thomas Douglas of the City of Burlington Department of City Building at (905) 335-7600, extension 7811.