Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: December 16, 2021 **CASE NO(S).:** PL200579

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

Applicant and Appellant:	418 Waldemar Inc.
Subject:	Request to amend the Official Plan - Refusal of request by City of Burlington
Existing Designation:	Neighbourhood Commercial
Proposed Designated:	Residential – High Density
Purpose:	To permit a 13-storey residential apartment building
Property Address/Description:	418-422 Guelph Line
Municipality:	City of Burlington
Approval Authority File No.:	505-01/20
OLT Case No.:	PL200579
OLT File No.:	PL200579
OLT Case Name:	418 Waldemar 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:	418 Waldemar Inc.
Subject:	Application amend Zoning By-law No. 2020 - Refusal of Application by City of Burlington
Existing Zoning:	Neighbourhood Commercial (CN1)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 13-storey residential apartment building
Property Address/Description:	418-422 Guelph Line
Municipality:	City of Burlington
Municipality File No.:	520-02/20
OLT Case No.:	PL200579
OLT File No.:	PL200580

Heard: December 7, 2021 via video hearing

APPEARANCES:

Parties	**Counsel/Representative***
418 Waldemar Inc.	Scott Snider, Anna Tourmanians
City of Burlington	Blake Hurley
Regional Municipality of Halton	Kelly Yerxa
Paris Road Plaza Inc	Mira Piro*

DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE TRIBUNAL

[1] 418 Waldemar Inc. appealed the refusal by Council of the City of Burlington (the "City") of applications to amend the Official Plan and Zoning By-law to permit lands known as 418-422 Guelph line to be redeveloped for High Density Residential use in the form of a 13 storey building, 170 unit building. The lands are currently designated and zoned to permit Neighbourhood Commercial uses, permitting a mix of commercial and residential uses.

[2] The Tribunal was advised by the Parties that settlement had been reached for a revised proposal of 11 stories including grade related and second floor commercial uses, and have requested the Tribunal to consider the settlement. The Tribunal is in receipt of the written Participant Statement filed, on behalf of the St. Clair Avenue Residents Association, filed in accordance with the procedural order and which outlines the concerns regarding building height, density, transition, traffic and ground water disruption, which in the opinions of the authors, remain unresolved with the revised proposal.

[3] Three sworn affidavits were filed with the Tribunal from the land use planner for the City and Appellant respectively, and from the transportation engineer for the Appellant. All three affiants gave testimony in support of the settlement: Martin

Quarcoopome, who was qualified to assist the Tribunal in its deliberations through opinion evidence in areas of land use planning; and Jill Juhlke, who was qualified to give opinion evidence with respect to transportation planning, parking adequacy and, most particularly, responding to the traffic related concerns of the participants, appearing on behalf of 418 Waldemar Inc. Melissa Morgan, who was qualified to give opinion evidence in areas of land use planning, and who had carriage of the original and revised applications, spoke on behalf of the City to the revisions which addressed the concerns of the City with the original proposal. All of the affiants addressed the matters within their areas of expertise, raised in the Participant Statement.

CONTEXT

[4] The combined property is located just south and west of the intersection of Guelph Line and New Street and is currently occupied by two detached two storey commercial buildings and associated surface parking. Abutting to the south is the Centennial Trail portion of the Waterfront Trail system, and the associated municipally owned surface parking lot.

[5] To the north is an existing single storey commercial plaza and surface parking in keeping with the same Neighbourhood Commercial designation which is shared by the subject site and the properties fronting both Guelph Line and New Street. To the west, south and south west of the Neighbourhood Commercial node, are lands designated High Density Residential which are developed as designated, with residential buildings ranging from 4 to 11 storeys.

[6] The Tribunal was advised that Council had recently approved a two-building infill development, each having heights of 11 storeys within the northwest quadrant of the Guelph Line and New Street intersection. Those lands were also designated Neighbourhood Commercial.

[7] The most proximate low density residential neighbourhood is located in the interior of the south east quadrant of the intersection and is traversed by St. Clair Avenue, the street of the Participants, which runs generally east from Guelph line, south of the Waterfront Trail.

THE EVIDENCE

[8] The original proposal was not supported by planning staff who recommended refusal given the following shortcomings:

- Contrary to the official plan designation, the original proposal contained no commercial floor area;
- the original proposal provided very little opportunity for amenity space or green space at grade;
- two large overhead doors overpowered the front façade and negatively impacted the public realm;
- unenclosed parking was proposed at grade; and
- the overall height and massing of the building which was proposed with minimal setbacks.

[9] The revised proposal subject of the settlement incorporates the following changes:

- height has been reduced from 13 to 11 storeys;
- 324 square metres of commercial space, and 122 square metres of office and business centre space has been incorporated into the ground and second floors respectively;

- the commercial area is oriented to Guelph Line to enhance the public realm and ease of pedestrian access;

- the overhead doors have been removed from the street façade

- the parking at grade is fully enclosed, and all access to parking is internal to the site, with turning movements contained on the property;

- the north setback has been significantly increased to ensure that future development potential of the abutting plaza is not restricted due to insufficient building separation distance;

- the massing of the building has been significantly mitigated through step backs and terracing in combination with the increased setbacks;

- a common amenity open space was created at grade in the south west corner of the site; and

- the south east corner of the building has been pulled back to accommodate additional pedestrian connectivity and more green open, visible from Guelph Line.

[10] The Tribunal was advised by Ms. Morgan that all of these revisions bring the proposal into alignment with the Mixed-Use and Residential Mid-Rise Building Guidelines (2019) which are Council approved.

[11] The witness also demonstrated how the official plan criteria to be considered when reviewing applications for intensification have been addressed by the revised proposal. Most specifically, it was the uncontradicted evidence of the planner that the revised proposal satisfies the following criteria:

s. 2.5.2.a) xiii)

> proposals for non-ground oriented housing intensification shall be permitted only at the periphery of existing residential neighbourhoods on properties abutting and having direst vehicular access to major arterial, minor arterial or multi-purpose arterial roads and only provided that the build 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;
>
> and s. 2.5.2.a) x)
>
> where intensification potential exists on more than one adjacent property, any re-development proposals on an individual property shall demonstrate that future re-development on adjacent properties will not be compromised.

The location of the site and the revised massing and setbacks incorporated into the revised proposal meet these official plan intensification criteria.

[12] It was the shared opinion of both planning witnesses that the intensification at the site was appropriate and consistent with and in conformity with the matters of provincial interest, Provincial Policy Statement, Growth Plan, Regional Official Plan and Official Plan policies to promote complete communities, a range and mix of housing options in well designed developments which are transit supported. It was also their shared opinion that the revised massing and increased setbacks addressed the concerns of the Participants with respect to appropriate transition, height and the amenity of the public realm.

[13] The Planning witnesses also brought to the attention of the Tribunal Council's most recent vision for intensification in this Neighbourhood Commercial designation. In November of 2020, the Region approved a new official plan for the City, which designates the former Neighbourhood Commercial as Neighbourhood Centre, a secondary growth area for intensification in the realization of the regional growth targets.

[14] The new designation, while not yet in force and effect, contemplates mixed use development with heights of up to 11 storeys and therefore provides guidance in this consideration.

[15] The appeals of the new Official Plan are with the Tribunal for consideration and it is anticipated that the scoping of the appeals will proceed in the new year. Counsel advised that there are no site-specific appeals affecting the subject site.

[16] With respect to the concerns of the Participants about traffic infiltration and potential turning movements creating safety issues, it is the evidence before the Tribunal that the concerns were not borne out by the Traffic Impact Statement undertaken to support the proposed development, or the review by City transportation engineering staff.

[17] The Tribunal heard the uncontradicted evidence of Jill Juhkle, which demonstrated that the proposed mixed use development would generate 60 and 69 vehicles in the morning and evening peak road hours respectively, which represents approximately 10% of the current background volumes on the two minor arterials. The additional trips would have but minimal impact on road capacity and will not create the need for any new turning lanes or other traffic management modifications.

[18] Given that no capacity or level of service issues are projected, it was the opinion of Ms. Juhkle that there would be no attraction for motorists to use St. Clair Avenue as a short cut, particularly as that travel time was estimated to be longer than using the arterials.

[19] With respect to motorist and pedestrian safety, it was the evidence of Ms. Juhkle that the proposed southerly driveway serving the site was located 18 m from the crosswalk with unobstructed sight lines over flat terrain. Vehicles exiting the driveway would be accelerating from a stopped position, therefore moving more slowly than vehicles in the flow of traffic, and as such, represent no undue safety issue.

[20] All other movements to and from the site have been designed in accordance with City of Burlington traffic engineering design specifications.

[21] Other parking related issues are either existing, and therefore enforcement matters, or where construction related, will be addressed through a Construction Management Plan required through site plan approval.

[22] Similarly, it was the evidence of Mr. Quarcoopome that the issue related to groundwater flow will be addressed through the hydrological work required as part of site plan approval and the necessary Record of Site Condition (“RSC”) which the Region requires as a pre-condition to the commencement of any construction on the site, and is which secured through a Holding provision in the draft zoning instrument before the Tribunal for approval.

CONCLUSIONS

[23] Having reviewed the sworn evidence, the Participant statement, and heard the oral evidence, the Tribunal is satisfied that the revised proposal addresses the concerns of the neighbours and aligns with the provincial, regional and local planning policy regimes which guide intensification and orderly development of this site.

[24] The significant re-massing and improved setbacks mitigate the undesirable impacts of the original proposal.

[25] All apprehensions about potential traffic impacts have been thoughtfully and conservatively analyzed and demonstrated to be technically unfounded.

[26] The Tribunal accepts the opinions of the witnesses and finds that the revised proposal, and the implementing instruments will result in good planning, and are in the public interest as the development will contribute towards meeting regional housing targets by utilizing existing infrastructure on an underutilized site.

ORDER

[27] **The Tribunal Orders** that the appeal is allowed in part, and Orders that the Official Plan of the City of Burlington is modified in accordance with Attachment 1 hereto and forming part of this Order. The Tribunal Orders that the Official Plan, as modified, is approved; and

[28] **The Tribunal further Orders** that the appeal against Zoning By-law No. 2020 as amended, of the City of Burlington is allowed in part, and Zoning By-law No. 2020 is further amended as set out in Attachment 2 to this Order. In all other respects, the appeal is dismissed.

"Sharyn Vincent"

SHARYN VINCENT
MEMBER

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 ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

OFFICIAL PLAN AMENDMENT

AMENDMENT NO. 124 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. 124 to the Official Plan of the Burlington Planning Area, as amended.

PART A – PREAMBLE

1. PURPOSE OF THE AMENDMENT

The purpose of this Amendment is to amend the existing Neighbourhood Commercial designation of 420 Guelph Line to facilitate the development of a mixed-use building consisting of 170 residential units, 445 square metres of non-residential area and a net Floor Area Ratio of 4.2:1.

2. SITE AND LOCATION

The subject lands are located on the west side of Guelph Line, south of New Street. The subject lands are rectangular in shape and have a combined area of approximately 0.38 hectares with approximately 46.4 metres of frontage along Guelph Line.

3. BASIS FOR THE AMENDMENT

a) The subject application proposes intensification that is consistent with the Provincial Policy Statement (PPS) and the Growth Plan for the Greater Golden Horseshoe (Growth Plan).

b) The proposal conforms to the Halton Region Official Plan and the Official Plan for the Burlington Planning Area, upon finalization of this Amendment;

c) The proposal generally conforms to the City of Burlington's Residential Mid-Rise Urban Design Guidelines;

d) The proposal can be adequately serviced;

e) The proposal is well-served by existing community infrastructure including public transit, parks, schools and recreation facilities;

f) The proposal is compatible with the surrounding area and impacts from the development are minimized;

g) The proposal protects the planned commercial function of the subject lands; and,

h) The applicant submitted technical studies with the application that provide adequate and appropriate information to support the development.

PART B – THE AMENDMENT

1. DETAILS OF THE AMENDMENT

Text Change:

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

By adding the following policy k) in Part III Section 4.0 Major Retail Areas, Subsection 4.6.2, Policies, as follows:

420 Guelph Line	k) Notwithstanding Part III, Subsection 4.6.2 a)i) and b) of this Plan, for the lands identified as 420 Guelph Line, the following policies *shall* apply: i) a mixed-use building with 170 residential units *shall* be permitted; ii) the minimum non-residential gross floor area *shall* be 445 square metres; iii) the maximum building height *shall* be 11 storeys, plus a mechanical penthouse; and, iv) the maximum building area *shall* be in accordance with the Zoning By-law.

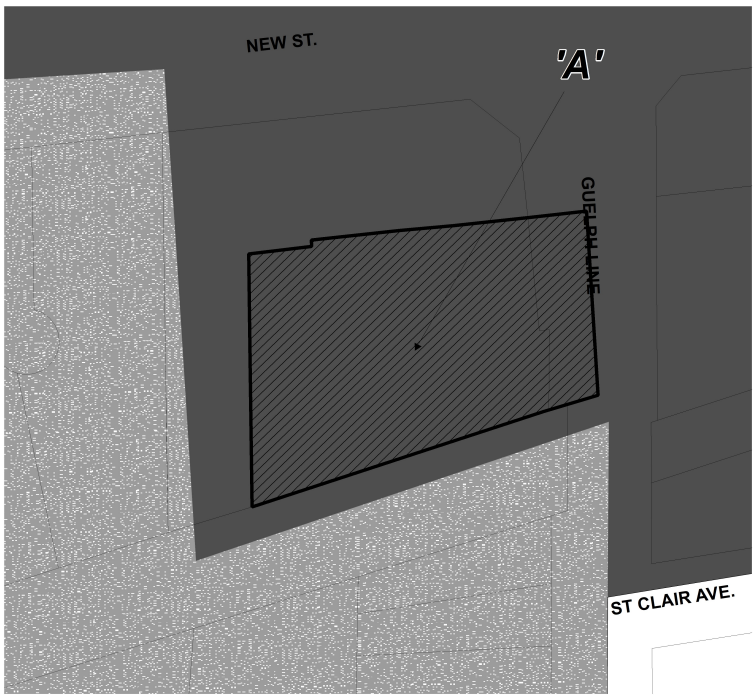
2. INTERPRETATION

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



Area A to be redesignated from "Neighbourhood Commercial" to "Neighbourhood Commercial with a site specific policy"

AMENDMENT No. 124 TO THE OFFICIAL PLAN OF THE BURLINGTON PLANNING AREA

MAP 1

File No. 505-01/20

Legend

- Neighbourhood Commercial
- Residential - High Density
- Residential - Low Density

Date: November 30, 2021
Community Planning Department

City of Burlington

ATTACHMENT 2

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 2020.435

A By-law to amend By-law 2020, as amended; 420 Guelph Line
File No.: 520-02/20

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 (OLT) approved, on December 7, 2021, to amend the City's existing Zoning By-law 2020, as amended, to permit a mixed-use building with commercial and retail uses and 170 residential units;

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

1. Zoning Map Number 13 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 CN1 to H-CN1-510.

3. PART 11 of By-law 2020, as amended, Holding Zone Provisions, is hereby amended by the addition of the following section to Appendix A:

   # H-CN1-510 Map 13 Resolution:

   Prior to the removal of the 'H' Holding Symbol, the following must be completed to the satisfaction of the Region of Halton and the City of Burlington:

   1. A Record of Site Condition has been filed with and acknowledged by the Ministry of the Environment; and,
   2. All environmental site condition requirements related to the Record of Site Condition have been met.

4. PART 14 of By-law 2020, as amended, Exceptions to Zone Classifications, is amended by adding Exception 510 as follows:

Exception 510	Zone CN1	Map 13	Amendment 2020.435	Enacted December 7, 2021

1. Permitted Uses

Only the following uses shall be permitted:

a) Apartment building with office, retail and service commercial uses on the ground and second floor.

2. Lot Area

b) Minimum Lot Area: 0.3 hectares

3. Regulations for Buildings

c) Maximum Number of Units: 170

d) Front Yard:

Floors 1 – 7:	8.5 m
Floors 8 – 11:	12 m
Floor 12:	12 m to mechanical penthouse
Below-Grade Parking Structure:	0.2 m

e) Rear Yard:

Floors 1 – 3:	2 m, 5 m to balcony
Floors 4 – 11:	5 m including balcony
Floor 12:	35 m to mechanical penthouse, 5 m to terrace
Below-Grade Parking Structure:	2 m

f) Side Yard:

i) North Side:

Floors 1 – 2:	0.8 m
Floors 3 – 11:	7.5 m including balcony
Floor 12:	9 m to mechanical penthouse, 7 m to terrace
Below-Grade Parking Structure:	0.8 m

ii) South Side abutting P Zone and Pipeline Easement:

Floors 1 – 2:	1.5 m
Floors 3 – 7:	5 m, 3.9 m to balcony, 1.5 m to 3rd floor terrace
Floors 8 – 11:	10 m, 5 m to 8th floor terrace
Floor 12:	19 m to mechanical penthouse, 10 m to terrace
Below-Grade Parking Structure:	1.6 m

g) Maximum Height: 11 storeys plus Mechanical Penthouse, 43 m to top of mechanical penthouse

h) Maximum Building Area: 2600 m²

i)	Encroachment into Yards:	Balconies are permitted to encroach 1.5 m into the required front yard and south side yard
j)	Landscape Area:	
	Abutting a Street:	Shall not apply
	Abutting a P Zone:	Shall not apply
k)	Non-Residential Parking:	3.5 spaces/100m² of Gross Floor Area at grade only (can be shared with visitor parking including designated accessible spaces)
l)	Minimum Combined Floor Area for all Non-Residential Uses:	445 m²
m)	Minimum Amenity Area:	20 m² per unit

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

ENACTED AND PASSED this 7th day of December, 2021

_____MAYOR

_____CITY CLERK

EXPLANATION OF PURPOSE AND EFFECT OF BY-LAW 2020.435

By-law 2020.435 rezones lands on 420 Guelph Line, to permit an 11-storey mixed-use building.

For further information regarding By-law 2020.435, please contact Melissa Morgan of the Burlington Community Planning Department at (905) 335-7600, extension 7788.

SCHEDULE "A"



AREA'A'

To be rezoned from CN1 to CN1-510

'A'

SCHEDULE 'A' TO BY-LAW 2020.xxx AMENDING MAP NOs. 13E & 14E PART 15, BY-LAW 2020 AS AMENDED.
PASSED THE 29th DAY OF NOVEMBER, 2021.

MAYOR CITY CLERK

Community Planning Department