Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: March 24, 2022 **CASE NO(S).:** OLT-22-001942
(Formerly) PL200648

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

Applicant and Appellant:	Pine Street Burlington Corp.
Subject:	Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment
Existing Designation:	Downtown Residential Medium and/or High Density Precinct
Purpose:	To permit an 11-storey mid-rise residential building
Property Address/Description:	2085 Pine Street
Municipality:	City of Burlington
Approval Authority File No.:	505/03/19
OLT Case No.:	OLT-22-001942
Legacy Case No.:	PL200648
OLT Lead Case No.:	OLT-22-001942
Legacy Lead Case No.:	PL200648
OLT Case Name:	Pine Street Burlington Corp. vs. Burlington (City)

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

Applicant and Appellant:	Pine Street Burlington Corp.
Subject:	Application to amend Zoning By-law No. 2020 - Refusal or neglect of the City of Burlington to make a decision
Existing Zoning:	Downtown Medium Density Residential
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit an 11-storey mid-rise residential building

Property Address/Description:	2085 Pine Street
Municipality:	City of Burlington
Municipality File No.:	520/06/19
OLT Case No.:	OLT-22-001943
Legacy Case No.:	PL200649
OLT Lead Case No.:	OLT-22-001942
Legacy Lead Case No.:	PL200648

Heard: January 24, 2022 by video hearing

APPEARANCES:

Parties	**Counsel**
Pine Street Burlington Corp. ("Applicant/Appellant")	Denise Baker
City of Burlington ("City")	Blake Hurley

DECISION DELIVERED BY D. CHIPMAN AND ORDER OF THE TRIBUNAL

[1] This Decision and Order results from the hearing on the Appeals by Pine Street Burlington Corp. pursuant to s. 22(7) of the *Planning Act* (the "Act") from the failure of the City to adopt the requested site-specific amendment to the Official Plan ("OPA") within the legislated timeframe, and pursuant to s. 34(11) of the Act from the failure of the City to make a decision on the requested site-specific amendment to the Zoning By-law No. 2020 ("ZBA") with respect to the lands known municipally as 2085 Pine Street and legally described as: PT LT 9 BLK L, COMPILED PLAN PL92, PT LT 10 BLK L, COMPILED PLAN PL92, AS IN 569355, EXCEPT PT 1, 20R6031; BURLINGTON (the "Subject Property").

[2] The purpose of the requested OPA for the Subject Property, which is designated "Downtown Residential/Medium and/or High Density Precinct" in the City's Official Plan (2008), is to facilitate a site-specific policy to permit a maximum density of 360 units per net hectare, and to allow "non-ground oriented housing" to have access to a local road.

[3] The purpose of the ZBA is to rezone the Subject Property from “Downtown Medium Density Residential (DRM-472)” to a site-specific “Downtown Medium Density Residential (DRM-XX)” zone to permit a maximum height of 9 storeys (37 metres (“m”)) and to recognize the proposed built form, such as density, amenity area, parking, front and side yard setbacks.

EXPERT WITNESSES

[4] For the ease of the reader, the Tribunal qualified, without objections, the following individuals to provide expert opinion evidence in their respective field of expertise.

[5] For the Appellant, land use planner – Karen Bennett and heritage architecture and urban design – Alexander Temporale.

[6] For the City, land use planner – Melissa Morgan and urban design – Matt Reid.

ISSUES

[7] At its core, this matter is about building height, and specifically whether three more storeys should be allowed above the as-of-right zoning height limit. The dispute is also about urban design and street presence regarding massing, stepbacks and open space. All of these matters hinge on the notion of the development’s “fit” with its existing and planned context.

The Subject Property and Area Context

[8] The Subject Property is located on the north side of Pine Street just west of Martha Street in Downtown. The lot has a frontage of approximately 25 m on Pine Street and a depth of approximately 42 m. To the north of the Subject Property is a

municipal surface parking lot, which also contains a one storey Burlington Hydro utility building. To the east are five 3-storey townhouses fronting onto Martha Street. On the south side of Pine Street (across Pine Street) are 3-storey mixed-use townhouses and to the west is a 2-storey brick building, that is a part of 419 Pearl Street that includes a 2-storey place of Worship known as the Holy Protection of BVM Ukrainian Catholic Church and its related surface parking lot.

[9] More generally, the Subject Property is located within Downtown Burlington. Downtown Burlington is a mixed-use area that accommodates the City's core office development, specialty commercial, cultural, personal service, entertainment, parks, community services and facilities, and hospital destinations.

[10] It is well serviced by existing public transit related to the John Street Downtown Bus Terminal that connects to higher order transit networks. Multiple bus routes operate near the Subject Property including a bus stop at Lakeshore Road, approximately 230 metres south, which provides a connection to the Burlington GO Station, which is a Major Transit node.

[11] The Subject Property is located between two Minor Arterial Roads to the north and south (James Street and Lakeshore Road, respectively) and between two Collector Roads to the west and east (Pearl Street and Martha Street, respectively). Pine Street is an east-west two-lane local roadway that operates under the jurisdiction of the City.

[12] The Subject Property is currently occupied by an existing 1.5-storey dwelling known as the Nelson Ogg – Jabez Clark house which is listed on the City of Burlington's Heritage Registry. This house is believed to have originally been built in 1847 by Nelson Ogg as a residence. The property has significant importance to the community as the house was used to hold the first Roman Catholic services in the City.

Proposed Development

[13] The original Applications filed in 2019 proposed to develop the Subject Property with an 11-storey (40 m) mid-rise residential building with a total of 39 residential units and to incorporate the listed heritage building on site for a proposed office or commercial use.

[14] A revised Proposal, which reflects the following revisions is before the Tribunal for determination:

- Reduction in number of storeys from 11 storeys to 9 storeys;
- Reduction in overall height of the building from 40.0 m to 30.7 m;
- Reduction in total number of units from 39 to 38;
- Introduction of 4 more one-bedroom units into the unit mix (current Proposal for 5 one-bedroom and 33 two-bedroom units);
- Reduction in density from 374.6 units per hectare (“uph”) to 365 uph;
- Reduction in gross floor area from 5,560.1 square metres (“sq. m”) to 4,503 sq. m;
- Reduction in floor space index (“FSI”) from 5.34 to 4.33;
- Change in adaptive re-use of the heritage building from original Proposal of office or commercial adaptive re-use to the current Proposal consisting of amenity space in conjunction with the proposed residential mid-rise building;
- The addition of glazed balconies on the south façade of the building above the heritage building; and
- The mechanical width was increased by 2.75 m, reducing the setback to the east property line from 13.25 m to 10.5 m (similar to the 6-storey penthouse setback).

[15] The Proposal has a density of 365 uph and FSI of 4.33 and provides a total amenity area of 800 sq. m for residents.

[16] The development is to be serviced by utilizing existing municipal services. Access to the Subject Property will be provided by way of a driveway off Pine Street which connects to the parking garage. There is a loading space with a second access driveway with smaller width of 3.1 m located along the eastern limit of the proposed development, for use during move-in/move-out periods.

[17] The Proposal includes three levels of underground parking, providing a total of 48 spaces for residents, including 2 accessible spaces, which equates to a provided parking rate of 1.26 spaces per unit. There are no visitor parking spaces provided, however, there is on-street parking in the area to accommodate visitor parking.

PROPOSED PLANNING INSTRUMENTS

[18] The appeals before the Tribunal seek approvals consisting of amendments to the Official Plan and Zoning By-law to allow for the development of the Subject Property for the 9-storey mid-rise residential building consisting of 38 units.

Official Plan Amendment

[19] In order to implement the proposed development, an amendment to the Official Plan is required.

[20] The Subject Property is currently designated “Downtown Residential Medium and/or High-Density Precincts” in the current City of Burlington Official Plan, 2008. This designation currently provides permission for ground or non-ground-oriented housing units ranging from between 26 and 185 units per net hectare.

[21] General policies for housing intensification currently require that proposals for non-ground-oriented housing intensification shall have direct vehicular access to major arterial, minor arterial or multi-purpose arterial roads.

[22] The proposed OPA seeks to assign a special site policy to the Subject Property to allow for a maximum of 365 units per net hectare (maximum 38 units) and to allow for vehicular access to a local road (Pine Street).

Zoning By-Law Amendment

[23] In order to implement the revised Proposal, an amendment to the Zoning By-Law is required.

[24] The Subject Property is currently zoned “Downtown Medium Density Residential-472” (DRM-472) in the City of Burlington Zoning By-Law No. 2020.

[25] The existing zoning permits a maximum building height of 6-storeys (23 m), a maximum number of 15 units and a maximum density of 150 units per hectare.

[26] The proposed ZBA seeks to amend the zoning category from the existing “DRM-472” to “DRM-Special Section” to facilitate the proposed 9-storey mid-rise residential building with certain proposed site-specific relief.

[27] Many of the zoning provisions being sought through this Application are consistent with provisions that are in effect today pursuant to the existing “DRM-472” zone, which relate to the as of right permission for a 6-storey (23.0 m) mid-rise building with the existing heritage house on the Subject Property.

[28] The proposed new exception to the ‘DRM’ zone seeks to add site specific zoning provisions applicable to the Subject Property to facilitate the revised Proposal as designed. The site-specific zoning provisions address matters related to:

- lot area and frontage;
- building height;

- number of units and density;
- amenity area;
- resident and visitor parking spaces;
- Qualification of ‘car lift’ as parking space and minimum size for same;
- setback for a loading space;
- Number of driveways permitted to the site;
- front yard setback/east side yard setback/west side yard setback/rear yard setback; and landscape buffer to a street.

PLANNING EVIDENCE

[29] The Issues List forming part of the Procedural Order governed the presentation of the evidence and the Hearing of this Appeal. The issues before the Tribunal can be broadly identified as the determination of whether the OPA and the amendments to the ZBA that will permit the Revised Development: have sufficient regard to the Provincial interests listed in s. 2 of the Act; are consistent with the Provincial Policy Statement, 2020 (“PPS”); conform to the applicable Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) as amended; conform to the Region of Halton’s Official Plan (“ROP”) and the in effect City’s Official Plan (“OP”) and any related and applicable Urban Design Guidelines (“UDG”), as addressed in the evidence; properly adhere to all relevant design guidelines; and represent good planning in the public interest.

Planning Act

[30] Based on the expert evidence both in written submissions and oral testimony during the course of this Hearing, the Tribunal notes that a majority of planning matters related to provincial policies are uncontested between the two planning experts. The Tribunal also notes that both experts agree that the Subject Lands are under-utilized and are suitable for additional density.

[31] At the outset of her oral testimony, Ms. Bennett provided the Tribunal with a thorough review of the requirements under s. 2 of the Act, with her professional opinion and commentary on subsections (d), (f), (h), (j), (p) (q) and (r), and concluded by providing her opinion that the Proposal had appropriate regard for matters of provincial interest.

Provincial Policy Statement (2020)

[32] Ms. Bennett stated that the Subject Property is located within a Settlement Area, as defined by the PPS. Furthermore, the Proposal will facilitate a compact form and density which makes efficient use of under-utilized lands on full municipal services and is accessible to multiple forms of transportation as a result of the property's proximity to multiple bus stops, including the John Street Downtown Bus Terminal, the multi-use trail system, and the cycling network. This creates opportunities for a reduction in private vehicular use. The Subject Property is also in close proximity to a wide range of mixed uses, community services and infrastructure.

[33] Ms. Bennett opined that the Proposal represents a compatible form of intensification, which fulfills these objectives and considers public health and safety through landscape design, architectural design, shadow studies, engineering and servicing.

[34] It was Ms. Bennett's testimony that the Proposal achieves section 1.4.3 policy objectives by facilitating residential intensification and by introducing a new mid-rise residential building with 38 units of varying sizes that will facilitate greater housing choice for current and future residents of the community. It also provides for a compact, transit-supportive built form in proximity to transit services.

[35] Ms. Morgan stated that section 4.6 of the PPS states that Official Plans shall identify Provincial interests and set out appropriate land use designations and policies. She stated that while the increase in residential density is beyond what is existing on

the Subject Lands, it is generally consistent with the PPS matters related to the proposed building but the site design was of concern.

Growth Plan for the Greater Golden Horseshoe

[36] The Growth Plan seeks to guide decisions on a number of matters, including growth management, transportation, infrastructure planning, land use planning, urban form, housing, and natural heritage and resource protection.

[37] It was agreed by both Planners that the proposal satisfies section 2.2.1.1 since it utilizes population forecasts which are to be used for planning and managing growth in the City and that the proposal satisfies section 2.2.1.2 (a) since it represents growth in a Settlement Area which has a delineated built boundary, has existing services, and can support the achievement of complete communities.

[38] Ms. Bennett stated that Downtown Burlington continues to be designated an Urban Growth Centre (“UGC”) in the 2020 Growth Plan. The Burlington UGC was first established in the 2006 Growth Plan and has been reconfirmed in subsequent Growth Plans (2017, 2019, 2020). Downtown Burlington also remains a Strategic Growth Area (“SGA”) in the 2020 Growth Plan.

[39] The Growth Plan reinforces the priority of intensification in SGAs to facilitate the efficient use of land and infrastructure and to support transit viability.

[40] It was her opinion that the Applications do this by directing compact, transit-supportive development to an appropriate location that will support the achievement of complete communities; supports contextually appropriate intensification within the delineated built-up area (s. 2.2.2) by providing for 38 new apartment units in Downtown Burlington that will contribute to housing choice for current and future residents of the community and households of varying sizes, incomes, life stages and lifestyle preferences (s. 2.2.6).

[41] Ms. Bennett stated that the Growth Plan notes that all municipalities are to develop a strategy to achieve the minimum intensification target and intensification throughout delineated built up areas (s. 2.2.2(3)). The Proposal achieves these policy objectives in her view, by supporting contextually appropriate intensification within the delineated built-up area, the achievement of complete communities and the prioritization of infrastructure that supports intensification.

[42] Ms. Morgan concurred that the Subject Property is an appropriate location for development. She referred to the City's OP which contains policies for housing intensification with approved Design Guidelines for Mixed-Use and Residential Mid-Rise Buildings, which apply to the proposed development of a mid-rise building on the Subject Lands and of which need to be adhered to.

City's New Official Plan

[43] The Tribunal was asked to decide whether the OPA and ZBA are appropriately informed by the policies of the City's New OP, as approved by the Region on November 30, 2020. The Tribunal heard that the New OP contains many brand new policies which have been incorporated from OPA 119, which is under appeal, policies that were developed in early 2020 through the "Taking a Closer Look at the Downtown" project as well as Council driven modifications.

[44] The result of these modifications change the development permissions from "Downtown Residential Medium and/or High Density Precinct" with a maximum density of 185 units per net hectare and no limit as to the height defined in the current OP, to a new site specific policy which prescribes a maximum building height of 23 m (approximately 5 storeys) and has additional requirements relating to prescriptive built form/design guidelines.

[45] As the New OP contains policies related to the Subject Property and is currently under appeal, providing any weight to the evidence submitted would be to predetermine the outcome of another appeal process.

City of Burlington Official Plan ("BOP")

[46] The Subject Property is designated "Mixed Use Activity Areas (Schedule A)"; "Mixed Use Centre" and "Downtown Urban Growth Centre (Schedule B)"; "Downtown Residential – Medium and/or High Density Precincts (Schedule E)" and Pine Street is identified as a local road (Schedule K).

[47] Ms. Bennett's opinion is that the Proposal respects and aligns with the Guiding Principles found in Part I section 3.0 by fostering a unique, vibrant and strong community identity and an efficient use of an under-utilized site through a form of intensification, which consists of a compact built form that supports a higher density.

[48] Part II (Functional Policies) section 3.0 provides transportation policies. Policy 3.2.1 (d) encourages alternative travel by creating an urban environment that encourages walking, cycling and transit use and increases opportunities to live close to work and satisfy day-to-day needs locally without relying on the automobile. Policy 3.2.2 (j) states that reduced parking ratios and/or standards may be permitted subject to evaluation by the City of the appropriateness and implemented through development applications or other City initiatives. Ms. Bennett opined that the Proposal achieves these policy directives through the proposed compact built form, which is designed to be efficient, compact and seeks a parking ratio reduction.

[49] Part III outlines land use policies within the Urban Planning Area of the City. Sections 2.2.1 and 2.2.2 outline objectives and policies related to encouraging residential intensification in accordance with Provincial policies while ensuring that the amount and form of the intensification must be balanced with other planning considerations.

[50] It was agreed by the Planners that reference to the “City’s Intensification Strategy” in this issue relates specifically to Part III, section 2.5.2 (Housing Intensification) in the in-effect City OP.

[51] When examining the context of these lands being in the Urban Growth Centre, the Tribunal notes these policies were established for the Residential Area but are considered here through a cross-reference from the Mixed-Use Centre policies. In that context, they were considered, not as Residential Area policies but as Mixed-Use Centre policies.

[52] Ms. Bennett provided an overview as to how each of the sub-sections relate to the proposed development and opined that the Proposal appropriately balances considerations related to infrastructure capacity, compatibility and integration with existing residential neighbourhoods.

[53] Ms. Bennett defined “compatible” as meaning the development or redevelopment of uses which may not necessarily be the same as, or similar to, the existing development, but can coexist with the surrounding area without unacceptable adverse impact.

[54] Of specific concern to the City was the restrictive development opportunity to the adjacent properties should this development be approved. When reviewing the criteria in subsection (x), Ms. Bennett advanced that there is low redevelopment potential on the immediately adjacent properties to the east (townhouse built in 2004), to the north (hydro utility building) and to the west (existing church).

[55] The adjacent property to the west (419 Pearl Street) is occupied by a church which likely has low redevelopment opportunity; however, immediately west of the Subject Property, the lands are also occupied by a 2-storey dance studio with a large surface parking lot. This built form and surface parking represents an under-utilization of

lands in the Downtown and represents an opportunity for intensification and re-development.

[56] Ms. Bennett informed the Tribunal that: 419 Pearl Street is designated "Downtown Core Precinct" in the City's OP (2008) which permits a 8-storey (29 m) building with a minimum density of 51 units per a net hectare. Number 419 Pearl Street has an area of approximately 0.75 acres (0.3 hectares), which provides some flexibility in terms of optimizing redevelopment opportunities on site.

[57] She opined that the proposed development will not compromise any redevelopment opportunities on the westerly adjacent lands. Rather, the proposed development may compliment any new development on lands to the west. She further noted that the as-of-right west lot line remained 0.4 m as was established in 2017.

[58] Ms. Morgan, during cross-examination, conceded that of the 13 criteria in section 2.5.2, 12 of the 13 criteria had been met or did not apply, with the exception of subsection (v) which she stated the Proposal fails to meet.

[59] Ms. Morgan suggested that Policy 2.5.2 (v) was directed not so much at compatibility but at the concept of "transition" between existing and proposed buildings:

> (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.

[60] To this end, Mr. Temporale through his evidence stated, that to ensure an appropriate transition is provided to the townhouses, it is proposed that an eastern side yard setback ranging from 3.19 m (front portion of the site) to 1.85 m (rear portion of site related to planter proposed over the parking garage) is included. A planter is proposed with a height of approximately 1.8 m, which is consistent with the height of the rear yard boundary fences for the eastern townhouses. Accordingly, the base of the planter will be largely hidden from view from the townhouses. The planter's depth is approximately

1.8 m and will accommodate landscaping including some trees, which will mitigate any visual impact of the proposed building from the townhouses.

[61] As well, a 2-storey podium as designed will limit windows which are further limited by the wood style panel screens. Balconies along the eastern elevation, will contain planters along the outer perimeter, which will further prevent visual overlook opportunities. Mr. Temporale stated the current in-effect site-specific Zoning By-Law permits a mid-rise building to be setback 3 m from the eastern lot line. This revised Proposal is a 2 m improvement in setback distance along the eastern side of the lot for Floors 2-4. The building face for Floors 5-9 will also step back 7.0 m from the east side lot line.

[62] It was his testimony that the lower section of the proposed residential mid-rise was specifically designed to respond to both the heritage house and the adjacent townhouses to the East. The second and third floor of the building is banded to visually create a podium relating to the heritage house and the height of the adjacent townhouses.

[63] Accordingly, based upon the clause by clause assessment expressed in *viva voce* evidence of Ms. Bennett, the Tribunal finds that the Applicant has given consideration to the specific criteria as set out in the OP under section 2.5.2, required to warrant the proposed development. Bearing in mind the objective declared at the outset of the examination of section 2.5.2, as it relates to a Mix-Use Centre policy, the Tribunal is satisfied that the Proposal will be in keeping with, and maintain the existing neighbourhood character providing for a transition between the existing townhouses and the new 9-storey structure.

[64] Part VI, sections 5.5.1 and 5.5.2 (Downtown Mixed-Use Centre) provide objectives and policies for lands within the Downtown Mixed-Use Centre, which is depicted on Schedule E to the BOP. Section 5.5.3 b) specifically states that,

> …within the Urban Growth Centre Boundary as delineated on Schedule B, Comprehensive Land Use Plan – Urban Planning Area, and Schedule E, Downtown Mixed Use Centre, the target is established of a minimum gross density of 200 residents and jobs per hectare, in accordance with the "Places to Grow: Growth Plan for the Greater Golden Horseshoe, 2006".

[65] It was the opinion of Ms. Bennett that the proposal conforms with section 5.5 through proposing the intensification of a site within an area intended to accommodate a share of the population growth in the City.

[66] The Tribunal finds that the OPA and ZBA are in keeping with the overall policy directions set out in the OP, and in particular: Policy 3.0 of Part I; Policies 3.0, 6.5, and 6.0 of Part II; Policies 2.2.1, 2.2.2, 2.5.1, 2.5.2 and 5.5 of Part III; and Policy 2.3 of Part VI.

Density and Intensification

[67] Ms. Bennett testified that the Proposal conforms with sections 5.4.1 and 5.4.2 (Mixed Use Centre) of BOP through proposing a higher density in an area encouraged for intensification and transit supportive uses, while incorporating design features to ensure the building is compatible with nearby land uses.

[68] Sections 5.5.1 and 5.5.2 (Downtown Mixed-Use Centre) provide objectives and policies for lands within the Downtown Mixed-Use Centre, which is depicted on Schedule E to the BOP. Section 5.5.3 (b) specifically states that,

> …within the Urban Growth Centre Boundary as delineated on Schedule B, Comprehensive Land Use Plan – Urban Planning Area, and Schedule E, Downtown Mixed Use Centre, the target is established of a minimum gross density of 200 residents and jobs per hectare, in accordance with the "Places to Grow: Growth Plan for the Greater Golden Horseshoe, 2006".

[69] She opined that the proposal conforms with section 5.5 through proposing the intensification of a site within an area intended to accommodate a share of the population growth in the City.

[70] Lands in the “Downtown Residential – Medium and/or High-Density Precincts” are intended to recognize existing medium and high-density residential uses and to provide for future medium or high-density residential development which is compatible with existing development. Section 5.5.5 (b) states “*permits ground or non-ground-oriented housing units ranging between 26 and 185 units per net hectare in the “Downtown Residential – Medium and/or High Density Precincts”.*

[71] It was Ms. Bennett’s opinion that the proposed OPA which seeks to increase the permitted density on the Subject Property to a maximum of 365 units per hectare will optimize the use of the property that is currently under-utilized while maintaining a significant heritage building.

[72] The Tribunal is satisfied that the density and intensification of the site is appropriate and that mitigation measures suggested by the Applicant through balcony planters, glazed glass and concrete based balcony floors will reduce any overlook concerns.

Official Plan Amendment 119

[73] The Tribunal was informed that the Applicant appealed OPA 119 in February 2020, and that providing any weight to the evidence submitted would be to predetermine the outcome of another appeal process. The Tribunal looked to the evidence provided by the City on OPA119 as informative but not determinative.

URBAN DESIGN

[74] The City UDG's are intended to supplement the Official Plan and Zoning By-law by providing property owners, developers, and City staff with additional detail on what constitutes desirable built form in the Downtown. As the UDG are not themselves part of the Official Plan or the Zoning By-law, they must be understood as a guiding document only, without the force of policy.

[75] It was agreed by the Planners that the Proposal complies with the general intent and purpose of the applicable Council approved design guidelines, as related to the conservation of cultural heritage resources. This includes the Design Guidelines for Mixed-Use and Residential Mid-Rise Buildings (section 2.5) regarding Site Design & Streetscaping; Cultural Heritage and Public Art (section 3.2.1) regarding Heritage Buildings and Built Form Guidelines (section 5.0) and in keeping with the Heritage-Based Urban Design Guidelines for Downtown Burlington (2006).

[76] The guidelines define a mid-rise building as any building between 5 and 11 storeys in height. The proposed development is 9 storeys. It was agreed in the Statement of Facts that the City's UDG for the current 9-storey proposal would apply. It was also agreed that the Subject Property is located in the Downtown Residential-Medium and/or High-Density Precincts.

[77] The Tribunal prefers and relies on the testimony of Mr. Temporale to the extent of any conflicts with the evidence of Mr. Reid. Having heard City evidence as presented by Mr. Reid, it was evident that his lack of familiarity became evident, particularly during cross-examination.

[78] The area of disagreement between the experts related to built form and massing of the proposed 9-storey structure and its resultant shadow and overlook/privacy impacts.

[79] On the question of overlook, it was noted to the Tribunal by Mr. Temporale that this is a common condition in any Urban Growth Centre environment. In this case, Mr. Temporale opined the townhouses themselves overlook each other's amenity space, the amenity space is visible from the public realm and the as-of-right building. It was his opinion that the additional height neither creates a problem nor exacerbates a problem.

[80] Mr. Reid on contrast stated that it would mean more people are looking down on the townhouses below. The addition of three extra storeys with the same setbacks as the as-of-right zoning, exacerbates the burden of overlook as the recommendations for building separation become more onerous as the height of a building increases.

[81] Mr. Temporale stated the building is largely based on the massing and siting of the approved as-of-right 6-storey building on which the existing site-specific DRM-472 was based.

[82] He stated that a key aspect of the urban design approach was the retention of the Nelson Ogg – Jabez Clark house due to its significant historical value. The Subject Property is an important and special site because it contains the Nelson Ogg – Jabez Clark House, a heritage house, historically important and worthy of retention. Later additions that do not have historic value are proposed to be removed and the heritage building is to be restored on the exterior with the interior being rehabilitated for use as amenity space.

[83] It was Mr. Temporale' s overall opinion that the Proposal meets the intent of the Guidelines as it:

(a) retains the heritage house in its original location which aligns with the neighbouring buildings;
(b) there are no "back of house" activities at the rear of the building;

(c) the proposal meets the requirements of the Zoning By-Law as the proposed east side yard setback of the proposed building is 3.0 m from the property line and meets the current DRM-472 minimum setback;
(d) the proposed development is not located in a continuous streetwall or streetscape of mid-rise development;
(e) the face of the proposed podium is 11 m from the adjacent townhouses to the east and the upper storeys are 13 m from the townhouses;
(f) windows have been minimized in the podium and partially screened by louvres;
(g) the design of the site and the massing of the building has taken account of the characteristics of the site by setting the building back from the street and as far to the west property line as possible to minimize and impacts on the public area, the heritage house and the adjacent townhouses to the east;
(h) wind and shadow considerations confirm minimal impacts on adjacent properties; and
(i) building massing has been shifted to the west and maximizes the space separation between the proposed development and the townhouses to the east.

[84] Mr. Temporale opined the architectural design breaks down the building mass both horizontally and vertically with a podium base that employs different materials from the main body of the building. The building was designed to step around the heritage structure. The balconies above the heritage house were made visually lighter and transparent as they are fully glazed. The long linear balconies particularly on the west side of the proposed building are intended to layer and divide the building horizontally thereby reducing the apparent height of the structure to the townhouses on the adjacent site. The upper floors are stepped in by 1.5 m from the face of the podium. The penthouse is stepped to the west at the roof level. In lieu of additional stepping, the width of the building was minimized and “pushed” westward as far as possible from the adjacent townhouses.

[85] Mr. Reid opined the Subject Proposal is 1.2 m from the western property line and 0.4 m from the north property line. This is meant to reflect the existing site-specific zoning; the existing zoning is for a 6-storey building and that the revised Proposal carries this through an additional three storeys. Thus, in his opinion, adds to the mass and height of the building as viewed by the adjacent townhouses to the east.

[86] The building's podium is set back 5.0 m from the property line, and an additional 2.0 m stepback is provided above the 4th storey, to generally align with the current site-specific zoning (DRM-472) which permits a building height of 6 storeys. However, he stated the Proposal's provision of an additional three storeys, applying the same setbacks, blocks the access to sky views for adjacent neighbours.

[87] Having no issue before the Tribunal on reduced "sky views" as they relate to transition, the Tribunal is satisfied that the Proposal complies with the general intent and purpose of the Design Guidelines for Mixed-Use and Residential Mid-Rise Buildings and the City's UDG. The Proposal adds to the urban fabric by providing a design which respects the adjacent townhouse dwellings by leveling the podium on par with the height of the townhouses, limiting windows on the east side, the addition of wood screening and treed planters to mitigate the effect of a blank rise podium wall and the application of a flat roof with a stepback roof mechanical servicing area.

[88] The Tribunal therefore accepts the opinions and findings of Mr. Temporale that there are no negative design impacts stemming from the Proposal. The overall design accomplishes this without generating unacceptable shadow or overlook impacts on open spaces, streets, or adjacent properties.

[89] It is the finding of the Tribunal the Proposal conforms to urban design, built form and pedestrian level comfort policies together with the general intent of the UDG, which acknowledges mid-rise building development at this site reinforces an opportunity to optimize this infill site.

Shadow Impacts

[90] The Tribunal accepts the uncontroverted evidence on shadows impacts by Mr. Temporale whose has provided testimony regarding sun/shadow position modeling in numerous proceedings before the Tribunal. The outcomes of a shadows were based on Shadow Study Guidelines and Terms of Reference dated June 2020 by the City.

[91] The study area was defined as per section 6.2 of the Guidelines and all the shadows casted by the proposed development for the dates and times required in section 1.1 were taken from within that Study Area.

[92] Mr. Temporale conducted a detailed evaluation of the shadow impacts on these private elevated decks. It was his opinion that net shadows from the proposed development on the surroundings are limited and do not result in unacceptable shadows within the context of an urban environment.

[93] He opined the resultant new net shadow is limited and therefore the floorplate size of the proposed 9-storey residential tower is appropriate from a shadowing perspective providing very little difference in the shadow impact of 6 storeys versus 9 storeys on the townhouse development adjacent to the proposed development.

[94] While his analysis does demonstrate that these elevated decks fail to receive the minimum SAF on March 21st, this does not mean that these decks never receive sun at other times of the year. In fact, Mr. Temporale demonstrated that the townhouse decks received considerable amounts of sun during the summer months. Moreover, he concluded that it meets the purpose and intent of the shadow impact criteria of the City's Shadow Guidelines.

[95] The Tribunal accepts Mr. Temporale' s opinion evidence on this matter, which was not successfully challenged during cross-examination.

Amenity Areas

[96] The Proposal provides 800 sq. m amenity space. This equates to 21 sq. m per unit, and a setback along the eastern lot line ranging from 1.85 m to the planter/above grade portion of underground garage, to 3.19 m to the podium, ground floor and heritage building, and 5.0 m to the building wall of Floors 2-4.

[97] It was agreed by the Planners that preserving the heritage building with its proposed amenity use within the heritage building is an appropriate use. Adding to the use of the front area adjacent to the sidewalk, will be tables and chairs for owners to enjoy the streetscape.

[98] Mr. Temporale informed the Tribunal that the roof of the link between the mid-rise residential building and the heritage house provides an outdoor terrace to be utilized as a common and private outdoor amenity area for the residents of the proposed development (section 2.5.20 of the Guidelines).

[99] It was his opinion that section 3.2.4 has been met through implementation of private balconies provided within each unit. Mr. Temporale stated that projection of the balconies falls within the minimum depth of 1.5 m to provide functional space. Planters prevent visual encroachment at the balcony edge.

[100] The Tribunal is satisfied the Proposal has regard for sufficient amenity space.

Section 37

[101] It was agreed that the intensity of the development should be determined prior to Section 37 discussions taking place. The Tribunal will leave this matter to the City and the Applicant to determine within 60 days following the issuance of this decision the expectations of a Section 37 agreement.

Representative of Good Land Use Planning

[102] Both Ms. Bennett and Mr. Temporale opined, the proposed development as presented by the current plans represents good land use planning and is in the public interest by providing for intensification of an under-utilized site in Downtown Burlington's Urban Growth Centre in a form that is desirable.

[103] By preserving and maintain the heritage house on-site and in doing so, it will improve the streetscape condition along Pine Street by providing a more active public realm and improved landscaped condition. The building will be compatible with the adjacent lands and will integrate into the existing urban fabric. The Proposal will add to the provision of additional ridership for transit in the Downtown area.

[104] The City maintains this Proposal as an overuse of the site, maximizing the boundaries on which the development will set back from adjacent properties. Both Mr. Reid and Ms. Morgan maintained that the height and massing are not compatible with the adjacent townhouses to the east in so much as shadowing and overlook concerns apply.

ANALYSIS AND FINDINGS

[105] The Tribunal finds that the proposal is consistent with the policy direction established by the PPS and conforms to the relevant directives established by the Growth Plan.

[106] The Tribunal is satisfied that the Proposal has due regard for matters of Provincial interest, is consistent with the principles of good land use planning and in the greater public interest. More significantly, the Proposal furthers the goals and objectives of the Provincial planning regime to increase housing opportunities.

[107] Moreover, the Proposal promotes efficient development of land and prioritizes intensification, compact built form, transit-supportive development and contributes to the range of housing options for residents of all ages.

[108] The OPA is appropriate in the context of the BOP, and the ZBA conforms with the BOP as amended herein. The Subject Property is situated within the Urban Growth Centre of Downtown Burlington. The Downtown area has been described as a unique, vibrant space that contains higher density development, is pedestrian oriented and has an abundance of green space. The Tribunal finds that the proposed intensification is appropriate as the proposed development is within walking distance to commercial establishments and transit.

[109] The Proposal is compatible with the existing and planned built form context and will enhance the area by intensifying an under-utilized site with an appropriately scaled mid-rise development that will contribute to vibrancy of the City's Downtown Core.

[110] The proposed form, setbacks and height of the development are appropriate and compatible from an urban design perspective with the physical context of the surrounding area. Parking, loading and other service functions of the development will be located away from the public realm to minimize any potential visual impact.

[111] This Proposal adaptively reuses an existing listed heritage building on the Subject Property in a positive manner and in a way that is consistent with the City’s and Province’s heritage objectives.

[112] The Proposal meets the general intent of the UDG by providing a public realm with ample sidewalk and amenity space that are well animated and create a built form that responds well with respect to its immediate context of the City's Core.

[113] The Tribunal is satisfied that the conceptual design conforms to these urban designs, built form and pedestrian level comfort policies together with the general thrust

of the UDG, which acknowledges mid-rise building development at this site to reinforce an opportunity to optimize this infill site.

[114] The OPA and ZBA are appropriate and desirable and would permit a contextually appropriate building design that responds both to the existing and planned built form context and the overarching policy directions promoting intensification on the Subject Site.

[115] In making this Decision, the Tribunal has had regard for the decisions of City Council and the materials it considered.

[116] The proposed development, as represented by the current plans, represents good land use planning and is in the public interest.

DISPOSITION

[117] Based on the evidence, discussions, findings and reasons summarized above and after due consideration for all of the arguments set forth in the opening statements and final written and oral submissions of counsel for the City and Applicant/Appellant, the Tribunal allows the appeals of the Applicant/Appellant in respect of the OPA and the ZBA applications and Orders as follows.

INTERIM ORDER

[118] The Tribunal Orders that the appeals are allowed, and that,

1. The Application by the Pine Street Burlington Corp. for an amendment of the City of Burlington Official Plan in accordance with the form and content set out in Attachment “1” hereto is hereby approved; and
2. The Application by the Pine Street Burlington Corp. for an amendment of the City of Burlington Zoning By-law No. 2020 in accordance with the

provisions set out in Attachment “2” hereto is hereby approved.

[119] The Clerk of the City of Burlington is authorized to assign numbers to these amendments for record keeping purposes.

[120] The Final Order of the Tribunal is withheld pending confirmation from the Parties on the final form of the Section 37 Agreement, in a form, acceptable to the City of Burlington and Pine Street Burlington Corp., within 60 days from the date this Order is issued.

“D. Chipman”

D. CHIPMAN
MEMBER

OLT-22-001942 – Attachment 1

AMENDMENT NUMBER ____

TO THE OFFICIAL PLAN OF

THE

CITY OF BURLINGTON PLANNING AREA

1.0 Purpose:

The purpose of this Amendment is to amend the City of Burlington Official Plan's current land use designation of 'Downtown Residential Medium and/or High Density Precincts' for 2085 Pine Street to facilitate the development of a 9 storey (30.7 m) mid-rise residential building with underground parking, to provide access to Pine Street, and to have a maximum number of 38 units.

2.0 Location:

The subject lands are located on the north side of Pine Street, west of Martha Street, municipally addressed as 2085 Pine Street and are legally described as PT LT 9 BLK L , COMPILED PLAN PL92 , PT LT 10 BLK L , COMPILED PLAN PL92 , AS IN 569355, EXCEPT PT 1, 20R6031; BURLINGTON. Schedule 'A' illustrates the subject property location.

3.0 Amendments and Policies Relevant Thereto:

3.1 The document known as the Official Plan of the City of Burlington Planning Area is hereby amended:

a. by adding a policy in Part III, Section 5.5 Downtown Mixed Use Centre, Subsection 5.5.5 Downtown Residential and Medium and/or High Density Precincts, as follows:

"**2085 Pine Street**: (f) Notwithstanding Part III, Subsection 5.5.5 (b) of this Plan, for the lands described as 2085 Pine Street, a 9 storey (30.7 m) (exclusive of rooftop mechanical units) residential building having a maximum density of 365 uph and accessing Pine Street shall be permitted."

Approved as to Content:

_____
Heather MacDonald, MCIP, RPP
Director, Planning and Building

X:\Drawings\1014-002\2019 04 April\OPA_Apr 30 19.dwg

SCHEDULE 'A'



Subject Property

Scale: NTS
April 30, 2019

GLEN SCHNARR & ASSOCIATES INC.
URBAN & REGIONAL PLANNING AND DEVELOPMENT CONSULTANTS

OLT-22-001942 – Attachment 2

Draft Zoning By-law Amendment

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW

***Number*_____**

A by-law to amend By-law 2020, as amended; 2085 Pine Street

WHEREAS authority is given to the Ontario Land Tribunal by Section 34 and 26 of the Planning Act, R.S.O. 1990,c. P. 13, as amended, to pass a By-Law to permit the use of land; and

WHEREAS the Ontario Land Tribunal (OLT), pursuant to an Order issued on _____ in connection with Case No. PL200648, amended the City's existing Zoning By-Law No. 2020, as amended, to permit lands known as 2085 Pine Street to be developed for a 9 storey (30.7 m) mid-rise residential building with underground parking and a maximum of 38 units.

THEREFORE, the Ontario Land Tribunal orders as follows:

1.0 By-law 2020, as amended, is hereby further amended:

a) Zoning Map Number 9A to By-law 2020, as amended, is hereby amended as shown on Schedule "A" attached to this By-law

b) The lands designated "A" on Schedule "A" attached hereto are hereby rezoned from

From the Existing Zoning of:	To Proposed New Zoning of:
DOWNTOWN MEDIUM DENSITY RESIDENTIAL EXCEPTION 472 **(DRM-472**)	DOWNTOWN MEDIUM DENSITY RESIDENTIAL EXCEPTION XXX – HOLDING PROVISION (**DRM-XXX-H)**

Part 14 of By-law 2020, as amended, Exceptions to Zone Classifications, is amended by altering the existing zoning for these lands to DRM-XXX-H with the following:

Notwithstanding the DRM Zone of this by-law, the lands designated DRM-XXX-H on Schedule A to this by-law shall be subject to the following requirements and restrictions:

1.0 Regulations for Apartment Buildings and Accessory (Heritage) Building:

a)	Min Lot Area:	0.1041 ha
b)	Min lot frontage:	25.0 m
c)	Max Density & Units:	365 units/ ha and 38 units
d)	Max Building Height:	9-storeys (30.7 m) (from fixed grade)
e)	Min Amenity Area:	800 m^2 (21.0 m^2 /unit)
f)	Min Occupant Parking Space:	1.23 sp/unit including 11 'car lift' spaces to be provided in underground parking structure which shall be counted towards the required amount of resident parking spaces for the site
g)	Min Parking Space Size:	min 2.75 m x 5.6 m for 'car lift' spaces
h)	Min Visitor Parking Spaces:	0.0 spaces /unit
i)	Min Loading Space Setback (to East Lot Line):	0.0 m
j)	Max Number of Driveways to Site:	2 (second driveway with width of 3.1 m related to Loading Space only)
k)	Min Front Yard Setback:	

to Parking Ramp:	6.0 m
to Transformer:	1.5 m
to Heritage Building:	2.9 m
to Underground Parking Structure (below grade):	0.4 m
to Floors 2-9 Balconies:	5.75 m
to Floors 2-9:	7.25 m

l) Min Side Yard (East) Setback:

to Underground Parking Structure (below grade):	0.4 m
to Underground Parking Structure/Planter (above grade):	1.85 m
to Ground Floor:	3.0 m
to Floors 2-4:	5.0 m
to Floors 5-9 Balconies:	5.0 m
to Floors 5-9:	7.0 m
to Rooftop Mechanical Structure:	10.5 m

m) Min Side Yard (West) Setback:

to Underground Parking Structure (below grade):	0.4 m
to Underground Parking Structure (above grade):	0.4 m
to Transformer:	1.0 m

n) Min Rear Yard Setback:

to Underground Parking Structure (below grade):	0.4 m
to Building Above:	0.4 m

o) Min Landscape Buffer (adjacent to street) 2.9 m plus encroachments

2.0 **HOLDING SYMBOL:**

The Holding Symbol (H) shall only be removed from all or a portion of the lands once:

An Environmental Noise Impact Study stamped by a professional engineer is prepared, that:

(1) analyses the impacts of neighbouring roof top mechanical and/or ventilation (stationary noise sources) on any proposed mid-rise or high-rise development on site; and

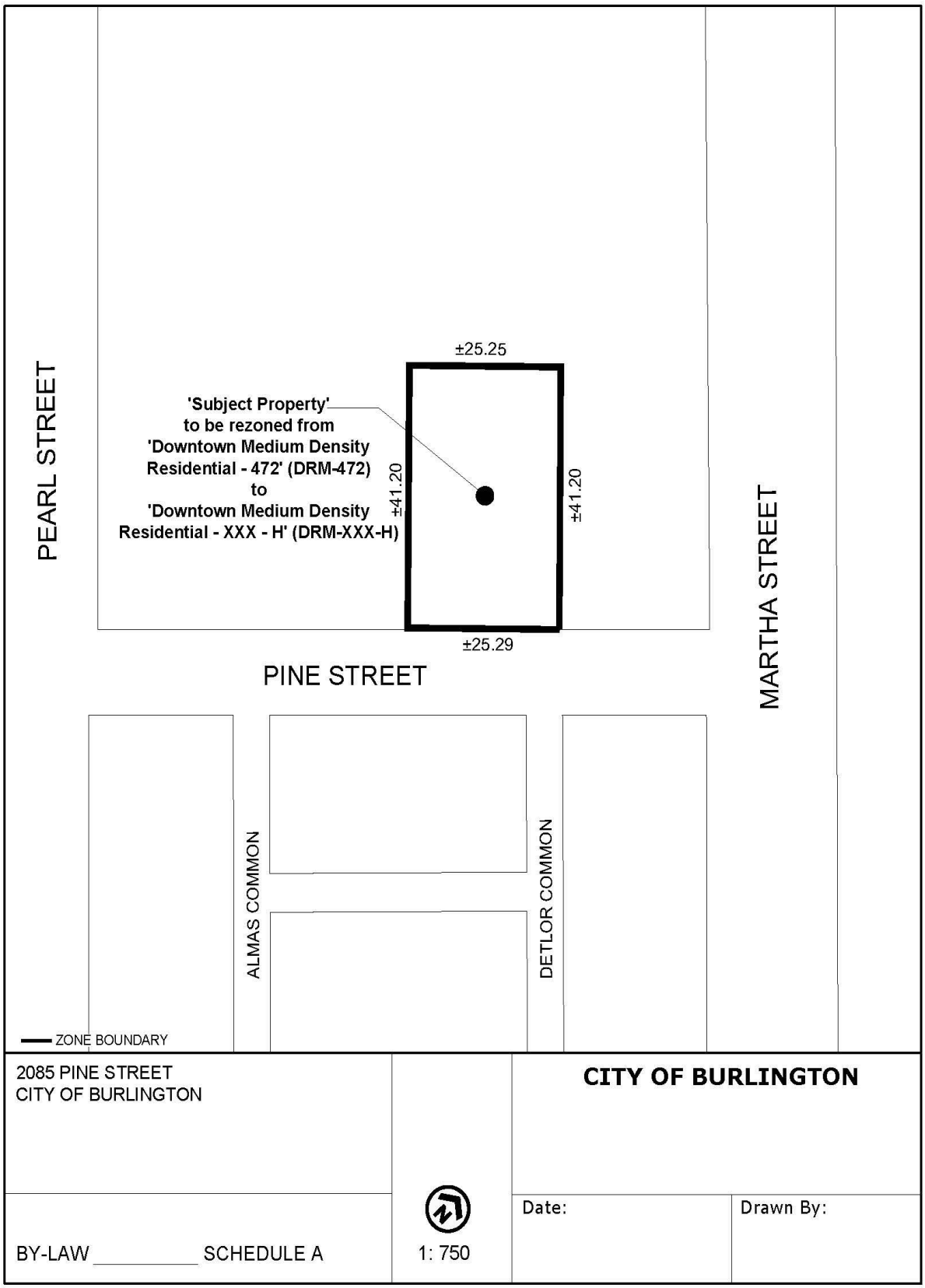
(2) analyses the impacts of any proposed mid-rise or high-rise development on existing nearby residential uses; and

(3) identifies any mitigation measures required to be implemented in accordance with Environmental Noise Guideline NPC-300

to the satisfaction of the City's Executive Director of Environment, Infrastructure and Community Services, or his designate.

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

PASSED by the Ontario Land Tribunal pursuant to an Order issued on _____ in connection with PL200648.


PEARL STREET
'Subject Property'
to be rezoned from
'Downtown Medium Density
Residential - 472' (DRM-472)
to
'Downtown Medium Density
Residential - XXX - H' (DRM-XXX-H)
±25.25
±41.20
±41.20
±25.29
PINE STREET
MARTHA STREET
ALMAS COMMON
DETLOR COMMON
ZONE BOUNDARY
2085 PINE STREET
CITY OF BURLINGTON
CITY OF BURLINGTON
BY-LAW _____ SCHEDULE A
1: 750
Date:
Drawn By: