Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

23-195-OLT Schedule A

ISSUE DATE: September 19, 2023 **CASE NO(S).:** OLT-22-003888

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

Applicant and Appellant:	Wilson St. Ancaster Inc.
Subject:	Request to amend the Official Plan – Refusal of request by the City of Hamilton
Existing Designation:	Low Density Residential 1
Proposed Designation:	Mixed Use - Medium Density designation with a Pedestrian Focus
Purpose:	To permit an eight-storey mixed use development
Property Address/Description:	392-412 Wilson Street East & 15 Lorne Avenue
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-22-004
OLT Lead Case No.:	OLT-22-003888
OLT Case No.:	OLT-22-003888
OLT Case Name:	Wilson St. Ancaster Inc. v. Hamilton (City)

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

Applicant and Appellant:	Wilson St. Ancaster Inc.
Subject:	Application to amend Zoning By-law No. 05-200 – Refusal of application by City of Hamilton
Existing Zoning:	"ER" Zone, the Mixed Use Medium Density - Pedestrian Focus (C5a, 570) Zone, and the Mixed-Use Medium Density - Pedestrian Focus (C5a, 570, 651) Zone

Proposed Zoning:	Modified Mixed Use Medium Density - Pedestrian Focus (C5a) Zone
Purpose:	To permit an eight-storey mixed use development
Property Address/Description:	392-412 Wilson Street East & 15 Lorne Avenue
Municipality:	City of Hamilton
Municipal File No.:	ZAC-22-011
OLT Lead Case No.:	OLT-22-003888
OLT Case No.:	OLT-22-003889

Heard: August 1 and 22, 2023 in writing

APPEARANCES:

Parties	**Counsel**
Wilson St. Ancaster Inc.	Patrick J. Harrington Matthew Helfand
City of Hamilton	Patrick MacDonald

DECISION DELIVERED BY BITA M. RAJAEE AND ORDER OF THE TRIBUNAL

Link to Final Order

INTRODUCTION

[1] Wilson St. Ancaster Inc. (“Applicant”) appealed the refusal by the Council of the City of Hamilton (“City”) of an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) sought for lands known municipally as 392-412 Wilson Street East and 15 Lorne Avenue in the City (“Subject Site”).

[2] The purpose of the OPA and ZBA is to allow for the development of an eight-storey mixed-use development (“Proposal”), containing 118 residential units and

1,475 square metres (m^2) of commercial Gross Floor Area ("GFA"). Indoor amenity space of 611 m^2 is proposed, as well as 270 parking spaces and 190 bicycle parking spaces.

[3] A Case Management Conference ("CMC") took place on October 14, 2022, wherein it was confirmed that adequate Notice had been provided and no further Notice would be required. Moreover, Participant status was granted to Ancaster Village Heritage Community ("AVHC") and Lilian Druiven.

[4] The Applicant and the City reached a settlement with respect to this matter. As such, this Hearing in writing took place to allow the Tribunal to consider and approve the settlement if warranted. The Parties jointly requested that the Tribunal dismiss the OPA appeal and approve the ZBA as revised by the settlement agreement.

[5] In support of the settlement, the Tribunal received the following materials:

a. A Settlement Motion Record, submitted by the Applicant, containing a Notice of Settlement Motion, the Affidavit of Tom Kasprzak with attached Exhibits, the Affidavit of Matt Johnston with attached Exhibits, and the Minutes of Settlement;

b. A Participant Statement from Jim MacLeod, in his role as the Vice President of the AVHC commenting on the settlement;

c. A letter from the Applicant's Counsel in response to the AVHC's comments on the settlement;

d. A draft Order and draft ZBA; and

e. Additional information from the Parties on August 22, 2023, regarding the in-force Zoning By-law ("ZBL").

HEARING

[6] In support of the settlement, the Parties relied on an Affidavit by Tom Kasprzak, sworn on July 21, 2023. The *Curriculum Vitae* and signed Acknowledgement of Expert Duty form for Mr. Kasprzak were provided, and confirm his expertise in the area of urban design. Additionally, the Parties relied on an Affidavit by Matt Johnston, sworn on July 26, 2023. The *Curriculum Vitae* and signed Acknowledgement of Expert Duty form for Mr. Johnston were provided, and confirm his expertise in the area of land use planning. Mr. Kasprzak and Mr. Johnston are relied upon by the Tribunal and, without objection, their opinions are qualified as expert opinion evidence in their respective fields of Urban Design and Land Use Planning.

[7] The planning documents affecting this matter include: s. 2 of the *Planning Act*; the Provincial Policy Statement, 2020 (“PPS”); A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020, as amended (“Growth Plan”); and the Urban Hamilton Official Plan (“UHOP”), including UHOP Amendment No. 167 and the Ancaster Wilson Street Secondary Plan (“AWSSP”).

[8] With respect to the OPA, it was indicated that the Applicant’s OPA appeal can be dismissed by the Tribunal in light of UHOP Amendment No. 167, which was approved by the Minister of Municipal Affairs and Housing as of November 4, 2022. Both Messrs. Kasprzak and Johnston attested to the Proposal’s satisfaction of the City’s new policies governing heights and density within the Community Node designation, and both confirmed that no amendment to the UHOP was required to facilitate this Proposal. Specifically, in accordance with UHOPA No. 167, no site-specific OPA is required if the Proposal meets the urban design criteria for developments exceeding six storeys, which, according to the witnesses, this Proposal does.

[9] With respect to the ZBA, the Affidavits of Messrs. Kasprzak and Johnston provide the necessary evidence for the Tribunal to conclude that the ZBA constitutes good planning in accordance with the requirements of the *Planning Act*, Provincial policy (including the PPS and the Growth Plan) and the UHOP. As opined by both professionals, the proposed ZBA constitutes good planning for the Subject Site and ought to be approved. This was confirmed from both a planning (by Mr. Johnston) and an urban design (by Mr. Kasprzak) perspective.

[10] Mr. Kasprzak opined that the proposed ZBA, as amended by the settlement, is appropriate, and he specified that:

a. The ZBA is compatible with the existing and planned built form context.

b. The Proposal facilitated by the ZBA effectively transitions to adjacent sensitive uses and its proposed setbacks and step backs appropriately mitigate shadow impacts and provide access to sunlight for the surrounding public realm and adjacent *Neighbourhoods*.

c. The proposed architectural design of the Proposal facilitated by the ZBA appropriately responds to the character of the surrounding area, including the use of stone cladding and the use of step backs to create an appropriate interface with the surrounding building scale while intensifying the Subject Site in accordance with the policies of the UHOP.

d. The proposed loading, vehicle access, and parking design is appropriate and desirable from an urban design perspective, being appropriately shielded from the public realm and adjacent sensitive uses, accessed by dedicated pedestrian sidewalks and appropriately buffered and landscaped through the use of landscaped islands.

e. The revised Proposal will appropriately intensify a site located within a *Community Node* as identified in the UHOP while fittingly responding to its context and creating a high-quality public realm. The Proposal is also responsive to the UHOP's policies respecting intensification and increased heights adjacent to traditionally ground-oriented residential development. The Proposal achieves needed intensification with an appropriate built form transition that is tailored to suit the context of the Subject Site.

f. The revised Proposal and implementing ZBA propose a development that exhibits good urban design and should be approved.

[11] Mr. Johnston agreed and provided a detailed and thorough analysis regarding the ZBA and how it met the legislative test which would warrant its approval.

[12] Both planners stated that the approval of the ZBA, as revised by the settlement, would constitute a fair, just, and expeditious resolution of the merits of these proceedings in accordance with subsection 12(2) of the *Ontario Land Tribunal Act*.

ZONING BY-LAW AMENDMENT

[13] If approved, the ZBA would amend the City of Hamilton Zoning By-law 05-200 ("Hamilton ZBL").

[14] As indicated in the Affidavit of Mr. Johnston, the Subject Site is currently zoned as follows:

a. The portion of the site known municipally as 15 Lorne Avenue is currently located in the Existing Residential "ER" Zone within the Town of Ancaster Zoning By-law No. 87-57 ("Ancaster ZBL").

b. The remainder of the Subject Site, with the exception of 15 Lorne Avenue, is currently located in a site specific Mixed Use Medium Density – Pedestrian Focus (C5a, 570) Zone, and a site-specific Mixed Use Medium Density – Pedestrian Focus (C5a, 570, 651) Zone within the Hamilton ZBL.

[15] The draft ZBA that the Tribunal is asked to approve amends only the Hamilton ZBL and not the Ancaster ZBL.

[16] The Applicant's Counsel referred the Tribunal to section 1.7 to the Hamilton ZBL, which is the City's in-force city-wide ZBL, which states:

> **1.7 REPEAL OF EXISTING BY-LAWS**
>
> All the provisions of By-law No. 6593 of the former City of Hamilton, and all of the provisions of By-law No. 87-57 of the former Town of Ancaster, and all of the provisions of By-law No. 3581-86 of the former Town of Dundas, and all of the provisions of By-law No. 90-145-Z of the former Town of Flamborough, and all of the provisions of By-law No. 3692-92 of the former City of Stoney Creek, and all of the provisions of By-law No. 464 of the former Township of Glanbrook, and all subsequent amendments to any of said By-laws referenced hereto, insofar as they affect those lands within the limits of the zone boundaries so indicated in Schedule "A" of this By-law, shall be and the same are hereby repealed.
>
> [emphasis added by the Tribunal]

[17] The Applicant's Counsel further explained that one effect of the ZBA before the Tribunal, as modified by the settlement and presented through Mr. Johnston's Affidavit, is to include the lands at 15 Lorne Avenue into the Hamilton ZBL, including

within Schedule “A” of that By-law. By operation of section 1.7, noted above, the Tribunal’s approval of the ZBA will effect the repeal of the Ancaster ZBL, as it affects 15 Lorne Avenue. The Applicant’s Counsel confirmed that this is consistent with the intention of the Parties, as well as with the City’s general intentions in migrating lands within its various former Municipal zoning by-laws into the newer City-wide zoning by-law. Accordingly, only an amendment to Hamilton’s ZBL is required.

PARTICIPANT STATEMENTS

[18] Mr. Johnston addressed the Participant statements in his Affidavit. He specifically addressed Lilian Druiven’s statement and indicated how those concerns were either addressed by the Proposal or had mischaracterized planning issues.

[19] Mr. Johnston also addressed the Participant statement submitted by AVHC and confirmed that those concerns were addressed by the revised Proposal. However, on August 1, 2023, subsequent to receipt of the Motion Record, the Tribunal received an updated statement from Mr. MacLeod. This process was agreed to by the Parties, and the request that this statement be submitted after the Motion Record had been received was granted by the Tribunal. AVHC indicated that it “generally supports the proposal negotiated” between the Parties, stating, however, that AVHC remained concerned regarding the preservation of Marr-Phillipo House at 398 Wilson Street despite the Parties having dealt with this in the settlement agreement. Additionally, a number of other requests were made, such as the neighbourhood being consulted on any developments on traffic issues and that traffic be directed away from the Maywood neighbourhood and entirely directed to Wilson Street East.

[20] The Applicant’s Counsel responded to AVHC’s statement by way of letter dated August 2, 2023 and stated:

> Wilson St. Ancaster Inc. appreciates AVHC's expression of general support for the settlement which is before the Tribunal in this matter. Although there is no *Ontario Heritage Act* appeal currently before the Tribunal, Wilson St. Ancaster Inc. confirms that it will continue to work with the City of Hamilton to satisfy all conditions of its heritage permit.

[21] With respect to the other matters raised by AVHC, namely traffic, the Tribunal notes that traffic concerns were addressed in the two Affidavits received in support of this settlement.

FINDINGS

[22] The Tribunal accepts the uncontested evidence of Messrs. Kasprzak and Johnston, and finds that the requested ZBA: has due regard for matters of Provincial interest in s. 2 of the *Planning Act*, is consistent with the PPS, conforms with the Growth Plan, conforms with the UHOP and the AWSSP, is a suitable amendment within the policies and provisions of the ZBL, and thus, represents good planning in the public interest.

ORDER

[23] THE **TRIBUNAL ORDERS** that:

a. The Applicant's Official Plan Amendment appeal, pursuant to subsection 22(7) of the *Planning Act*, is dismissed.

b. The Applicant's Zoning By-law Amendment appeal, pursuant to subsection 34(11) of the *Planning Act*, is allowed in part and the City of Hamilton's Zoning By-law No. 05-200 is hereby amended as set out in Schedule "A" to this Order. The Tribunal authorizes the Municipal Clerk of the City of Hamilton to assign a number to this By-law for record keeping purposes.

[24] The Tribunal may be spoken to concerning issues arising from the implementation of this Order.

"Bita M. Rajaee"

BITA M. RAJAEE
MEMBER

SCHEDULE A

Confidential Appendix "C" to Confidential Report LS23024/PED22070(a)
Page 1 of 5

CITY OF HAMILTON

BY-LAW NO. 23-195-OLT

To Amend Zoning By-law No. 05-200, Respecting Lands Located at 392, 398, 400, 402, 406 and 412 Wilson Street East and 15 Lorne Avenue, Ancaster

WHEREAS Zoning By-law No. 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS the Ontario Land Tribunal, in its Decision/Order No. OLT-22-003888, dated the19th day of September, 2023, approved the amendment to Zoning By-law No. 05-200 (Hamilton), as herein provided;

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan;

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

1. That Map No. 1175 of Schedule "A" – Zoning Maps is hereby amended as follows:

   (a) By adding the Mixed Use Medium Density – Pedestrian Focus (C5a, 860, H154) Zone the lands and boundaries of which are shown on Block No. 1 on Schedule "A" of this By-law.

   (b) By changing the zoning from the Mixed Use Medium Density – Pedestrian Focus (C5a, 570) Zone to the Mixed Use Medium Density - Pedestrian Focus (C5a, 860, H154) Zone the lands and boundaries of which are shown as Block No. 2 on Schedule "A" of this By-law.

   (c) By changing the zoning from the Mixed Use Medium Density – Pedestrian Focus (C5a, 570, 651) Zone to the Mixed Use Medium Density – Pedestrian Focus (C5a, 860, H154) Zone the lands and boundaries of which are shown as Block No. 3 on Schedule "A" of this By-law.

2. That Schedule "C" – Special Exceptions is amended by adding the following new Special Exception:

   "860. Within the lands zoned Mixed Use Medium Density – Pedestrian Focus (C5a) Zone identified on Map No. 1175 of Schedule "A" – Zoning Maps and described as 392, 398, 400, 402, 406 and 412 Wilson Street East and 15 Lorne Avenue, Ancaster, the following special provisions shall apply:

      a) Notwithstanding Section 3: Definitions, as it relates to the definition of Front Lot Line, for the purpose of this By-law, the front lot line is deemed to be Wilson Street East.

      b) Notwithstanding Sections 4.8 f) and g) and 4.8.3 the following regulations shall apply:

         i) An Accessory Building may be erected prior to the erection of the principal building or structure on the lot.

ii) The maximum height of an accessory building shall be 8.0 metres.

iii) The minimum setback of an accessory building to a lot line shall be 1.25 metres.

iv) The maximum gross floor area of an accessory building shall be 115.0 square metres.

c) Notwithstanding Sections 5.1 a) v) b), 5.2 a) and b) ii), 5.5 a) and 5.6 c) as it relates to Multiple Dwelling and Commercial Uses the following regulations shall apply:

i) The minimum required number of designated barrier free parking spaces shall be 1.5% of the total number of required parking spaces.

ii) The maximum parking ratio for residential uses within a mixed use building shall be 1.88 spaces per dwelling unit.

iii) The minimum parking ratio for commercial uses within a mixed use building shall be 1 space per 30 square metres of gross commercial floor area.

d) Notwithstanding Sections 10.5a.3 a), b), c), d), h) vi, xi) and x), and i), the following regulations shall apply:

i)	Minimum Front Yard	a) 2.5 metres for a structure 16.7 metres in height. b) 6.0 metres for a structure 32 metres in height.
ii)	Minimum Rear Yard	56.0 metres.
iii)	Minimum Side Yard Setback	a) 2.0 metres for an exterior side yard. b) 2.5 metre interior side yard, for a structure four storeys in height. c) 5.0 metre interior side yard, for a structure eight storeys in height.
iv)	Maximum Building Height	32.0 metres

v)	Built Form for New Development	a) A minimum of 45% of the area of the ground floor façade facing the street shall be composed of doors and windows. b) The first storey of any building shall have a maximum height of 5.1 metres. c) A minimum of one principal entrance shall be provided within the ground floor façade fronting any street.
vi)	Planting Strip	A planting strip with a minimum width of 0.5 metre shall be provided and maintained along property lines which abut Residential Zones."

3. That Schedule "D" – Holding Provisions is amended by adding the following Holding Provision:

"H154. Notwithstanding Section 10.5a.1 of this By-law, within lands zoned Mixed Use Medium Density (C5a, 860) Zone on Map No. 1175 on Schedule "A" – Zoning Maps, and described as 392 – 412 Wilson Street East and 15 Lorne Avenue, Ancaster, no development shall be permitted until such time as:

i) The Owner submits a revised Functional Servicing Report (FSR) demonstrating that the sanitary flow and water supply (Water Hydraulic Analysis report (WHAR)) resulting from this development has adequate capacity in the municipal infrastructure system and that a conceptual outline of the proposed onsite Stormwater Management measures are provided, in accordance with City standards to accommodate the proposed development, to the satisfaction of City's Director of Development Engineering; and,

ii) Should it be determined that upgrades are required to the infrastructure to support this development, according to the revised FSR and WHAR accepted by the City's Director of Development Engineering, the Owner shall make satisfactory arrangements with the City's Growth Management Division and enter into and register on title of the lands, an external works agreement with the City for the design and construction of any required improvements to the municipal infrastructure, at the Owner's cost. If it is determined by the City that the required upgrades are eligible for any City share, any costs attributable to such works by the Owner shall be in accordance with development charges legislation as well as the City's local servicing and financial polices, including the City's capital budgets.

iii) Holding Provisions i) and ii) above shall not apply to the relocation of the existing dwelling at 398 Wilson Street designated under the Ontario Heritage Act, being the Phillip Marr House, that may occur upon

clearance of the conditions of approval for Heritage Permit Application No. PH2021-033 to the satisfaction of the Chief Planner and Director of Planning."

4. That this By-law No. 23-195-OLT shall come into force and be deemed to come into force in accordance with Sub-section 34(21) of the *Planning Act*, either upon the date of passage of this By-law or as otherwise provided by the said Sub-section.

APPROVED this 19th day of September, 2023.

ZAC-22-011

This is Schedule "A" to By-law No. 23-

Passed the ..... day of ....., 2023

Mayor

Clerk

Schedule "A"

Map forming Part of
By-law No. 23-_____

to Amend By-law No. 05-200
Map 1175

Scale: N.T.S	File Name/Number: ZAC-22-011 & UHOPA-22-004
Date: June 6, 2023	Planner/Technician: TV/VS

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

Hamilton

Subject Property

392, 398, 400, 402, 406 and 412 Wilson Street East &
15 Lorne Avenue, Ancaster

Block 1 - Lands to be added to the Mixed Use Medium Density – Pedestrian Focus (C5a, 860, H154) Zone

Block 2 - Change in zoning from the Mixed Use Medium Density – Pedestrian Focus (C5a, 570) Zone to the Mixed Use Medium Density – Pedestrian Focus (C5a, 860, H154) Zone

Block 3 - Change in zoning from the Mixed Use Medium Density – Pedestrian Focus (C5a, 570, 651) Zone to the Mixed Use Medium Density – Pedestrian Focus (C5a, 860, H154) Zone