



SUBJECT: Section 37 Community Benefits for 421-431 Brant Street

TO: Planning and Development Committee

FROM: Department of City Building - Planning Building and Culture

Report Number: PB-33-18

Wards Affected: 2

File Numbers: 505-01/17 & 505-02/17

Date to Committee: April 10, 2018

Date to Council: April 23, 2018

Recommendation:

Approve community benefits in relation to the development of up to 169 dwelling units at 421-431 Brant Street consisting of direct and indirect benefits as outlined in this report; and

Direct the Director of City Building to prepare and execute an agreement pursuant to Section 37 of the *Planning Act* securing the benefits agreed to, to the satisfaction of the City Solicitor, and that such agreement be registered on title to the lands in a manner satisfactory to the City Solicitor to secure said community benefits; and

Direct the Clerk and the Mayor to execute the amending by-law once the owner enters into the Section 37 Agreement.

Purpose:

The purpose of this report is to outline to Committee the direct and indirect community benefits that staff propose to be secured related to the development of up to 169 apartment dwelling units by 421 Brant Street Inc. at 421-431 Brant Street.

The development proposal and the recommendations contained within this report align with the following objectives in Burlington's Strategic Plan 2015-2040:

A City that Grows

- Promoting Economic Growth
- Intensification
- Focused Population Growth

An Engaging City

- Good Governance
- Community Building through Arts and Culture via Community Activities

Background and Discussion:

Background – Development Application

At their meeting of November 13, 2017, Council approved the following recommendations:

Approve the application submitted by 421 Brant Street Inc., to amend the Official Plan and Zoning By-law, as modified by staff in Report PB-62-17, to permit a mixed use development with a height up to 23 storeys; and

Approve Amendment No. 106 to the City of Burlington Official Plan, as contained in Appendix B of Report PB-62-17, to modify the “Downtown Core Precinct” policies affecting 421-431 Brant Street, to permit a mixed-use development consisting of a 23 storey building with a maximum of 169 residential apartment units, a minimum of 365 square metres of office space and 900 square metres of commercial retail space at 421-431 Brant Street; and

Deem that Section 17(21) of the *Planning Act* has been met; and

Instruct the City Clerk to prepare the necessary by-law adopting Official Plan Amendment No. 106 as contained in Appendix B of Report PB-62-17 (File 505-01/17); and

Approve in principle the application by 421 Brant Street Inc., to amend the Zoning By-law, as modified by staff in Report PB-62/17, to permit a mixed use building with a height of up to 23 storeys at 421-431 Brant Street, subject to Section 37 negotiations; and

Direct staff to hold discussions with the applicant to secure community benefits in accordance with Section 37 of the Planning Act and to return to Council with a report outlining the recommended community benefits; and

Instruct planning staff to prepare the by-law to amend Zoning By-law 2020, as amended, rezoning the lands at 421-431 Brant Street from “DC” and “DC-434” to “DC-473” substantially in accordance with the draft regulations contained in Appendix C of Report PB-62-17 and direct that the amending zoning by-law will not be enacted until completion by the applicant of the following:

- i) Execution of a Residential Development Agreement including the conditions listed in Appendix D of Report PB-62-17; and

- ii) Execution of a Section 37 Agreement, in accordance with Section 37 of the Planning Act and Part VI, Section 2.3 of the City's Official Plan, as they relate to the request for increased density on the subject properties.

Deem that the amending zoning by-law will conform to the Official Plan for the City of Burlington once Official Plan Amendment No. 106 is adopted; and

State that the amending zoning by-law will not come into effect until Official Plan Amendment No. 106 is adopted (File 520-10/17); and

Approve the proposal by 421 Brant Street Inc., to remove three (3) city-owned trees from the Brant Street and John Street rights-of-way in front of the properties at 421-431 Brant Street identified on Sketch No. 2 in Appendix A of Report PB-62/17, subject to the following:

- i) The Owner shall compensate the City of Burlington for the tree removals by providing compensation (replanting or cash-in-lieu, where opportunity for replanting is not available, in the amount of \$3,750); and
- ii) All associated costs with respect to the removal of the trees will be the responsibility of the Owner and the contractor hired to remove the trees will be approved to the satisfaction of the Executive Director of Capital Works.

Further to Council's directions as reproduced above, staff have undertaken the Section 37 Community Benefit protocol and have held discussions with the Ward Councillor, the internal Section 37 Committee, and the applicant to secure community benefits in accordance with Section 37 of the *Planning Act* and the City's Official Plan, as discussed in the section below.

Background – Section 37

Section 37 of the *Planning Act* is a tool which allows municipalities to accept tangible community benefits when granting increased density and/or height through an amendment to a City's Official Plan and/or Zoning By-law. An application must be considered "good planning" irrespective of the potential for the community benefit. City Building staff must be in a position to recommend the approval of an application with or without a community benefit being received. Efforts are made for a proximate or functional connection between the proposed development and the facilities, services, or other benefits being required under the Section 37 Agreement.

The acceptance of the community benefits discussed in this report conforms to the existing City of Burlington Official Plan, Part VI Implementation, Section 2.3.2.

Specifically, the City “may encourage the use of community benefits provisions with regard to the following matters:”

- (i) “Provision of a wide range of housing types including special needs, assisted, or other low-income housing.”
 - To assist in the pursuit of long-term affordable housing, the Developer agree to a discount of \$300,000 to be used against the purchase price of up to 10 dwelling units within the subject development, or in the event that a purchase(s) is/are not to occur within the subject development, the Developer agrees to provide the City with a cash contribution of \$300,000 prior to condominium registration, to the satisfaction of the Director of City Building; and
- (iv) “improved access to public transit or implementation of a Travel Demand Management Plan.”
 - The Developer agrees to provide one (1) publicly accessible car share parking space (indirect community benefit assessed at \$50,000) and contribute to the City’s emerging car-share network by accommodating a car-share vehicle for a minimum of two years starting from the first occupancy (indirect community benefit assessed at \$50,000), or equivalent, to the satisfaction of the Director of Transportation; and
- (v) “provision of public areas, crosswalks, and walkways, and connections to external walkways/trail systems.”
 - The Developer agrees to provide a direct community benefit of a \$50,000 contribution towards the future expansion of Civic Square, to the satisfaction of the Executive Director of Capital Works; and
 - The Developer agrees to provide public access by way of an easement to be registered on title for lands located at the northeast corner of Brant Street and James Streets, the minimum dimensions of which are in the form of a triangle measured at 16m by 16m (128m²)(an indirect community benefit assessed at \$75,000), to the satisfaction of the Executive Director of Capital Works; and
- (vi) “provision of public parking.”
 - The Developer agrees to provide eight (8) visitor parking spaces (indirect community benefit assessed at \$400,000), to the satisfaction of the Director of Transportation; and
- (ix) “protection or enhancement of significant views”
 - The Developer agrees, and it is enshrined within the amending zoning by-law, that increased building setbacks, including widened sidewalks on Brant Street, James Street, and John Street, and view corridors on Brant Street and

- James Street to City Hall and the Cenotaph (indirect community benefit accessed at \$250,000), to the satisfaction of the Director of City Building; and
- (x) “provision of affordable housing, beyond the basic Provincial requirements;”
 - See (i) above.
 - (xi) “provision of public art”
 - The Developer agrees to provide a direct community benefit of \$150,000 towards the public art reserve fund to be used within the publicly accessibly privately owned easement area referred to in subsection (v) and/or in the future Civic Square expansion area, to the satisfaction of the Director of City Building; and
 - (xii) “provision of green technology and sustainable architecture”
 - The Developer agrees to implement green technology and sustainable architecture elements into the subject property in accordance with either LEED certification standards and/or compliance with the City’s Sustainable Building and Development guidelines (indirect community benefit accessed at \$300,000), to the satisfaction of the Director of City Building; and
 - (xiii) “provision of streetscape improvements in accordance with Council approved design guidelines”
 - The Developer agrees to implement City of Burlington Streetscape Guidelines Standards within the Brant Street, James Street, and John Street public realm areas, including the expanded building setback areas at-grade and the publicly accessible open space easement area outlined in (v) above (an indirect community benefit accessed at \$150,000), to the satisfaction of the Director of City Building.

Before enacting the amending zoning by-law, the applicant will be required to execute an Agreement pursuant to Section 37 of the *Planning Act* to the satisfaction of the Director of City Building and the City Solicitor, and that such agreement be registered on title to the lands in a manner satisfactory to the City Solicitor, to secure said benefits. The provisions for community benefits are also included in the zoning by-law.

Planning Instruments

Further to Council’s direction from November 13, 2017, reproduced below, the Official Plan Amendment, Zoning By-law Amendment, and Residential Development Agreement are enclosed for Council’s consideration:

Instruct planning staff to prepare the by-law to amend Zoning By-law 2020, as amended, rezoning the lands at 421-431 Brant Street from “DC” and “DC-434” to

“DC-473” *substantially in accordance with* the draft regulations contained in Appendix C of Report PB-62-17 and direct that the amending zoning by-law will not be enacted until completion by the applicant of the following:

- i) Execution of a Residential Development Agreement including the conditions listed in Appendix D of Report PB-62-17; and
- ii) Execution of a Section 37 Agreement, in accordance with Section 37 of the Planning Act and Part VI, Section 2.3 of the City’s Official Plan, as they relate to the request for increased density on the subject properties.

Official Plan Amendment No. 106, the amending Zoning By-law, and the Residential Development Agreement are attached to this report for Council’s approval. The amending Zoning By-law contains the following minor deviations from Report PB-62-17:

- In response to feedback received from the public, the minimum commercial ground floor area contained in the attached amending Zoning By-law has increased to 935m² from 900m²;
- In response to feedback received from the public, the developer has agreed to add a third elevator shaft to the residential building. As a result, and to comply with Building Code and Fire Code requirements, the mechanical penthouse has been expanded to include three elevator shafts, two fire access stair wells, enclosed hvac and mechanical systems, and a lobby providing access to the rooftop amenity area. Accordingly, the setback for the Brant Street side has been changed to 15.2m from 19m, the setback for the James Street side has changed to 14m from 15.2m, the setback for the John Street side has been changed to 13.5m from 9.1m, and the setback for the north property line has changed to 13m from 14.5m. City Building staff have confirmed that the expanded mechanical penthouse will not be visually perceivable from the sidewalk on the opposite sides of Brant Street, John Street, or James Street.
- A 10cm construction tolerance has been provided for all setbacks including and above floor 5.

Financial Matters:

Not applicable.

Total Financial Impact

The City will receive a total of up to \$500,000 in financial contributions to be placed into the Public Benefits reserve fund for their defined purposes, as outlined above.

Source of Funding

Not applicable.

Connections:

Members of the Section 37 Community Benefit Committee have met to discuss this matter and concur with the appropriateness of the types of community benefits sought and recommended in this report.

Public Engagement Matters:

The development applications were subject to the standard notification requirements to residents within 120 metres of the subject properties following the submission of a complete application in February 2017. A neighbourhood meeting was held on March 28, 2017, and the statutory public meeting was held on May 2, 2017. Furthermore, interested parties were notified of the November 1, 2017 Planning and Development Committee meeting.

Conclusion:

As per department of city building report PB-62-17, Council has approved the development applications to permit a mixed-use building with a maximum height of 23 storeys at the subject lands known municipally as 421-431 Brant Street provided that staff bring forward a finalized Official Plan Amendment, Zoning By-law Amendment, Residential Development Agreement, and a Section 37 community benefit proposal. Staff are of the opinion that the proposed community benefits are appropriate based on the increased density recommended for the site and are to be used on public realm improvements located on, adjacent, or in proximity to the subject lands.

Staff recommend that the proposed community benefits as outlined in this report be approved by Council and that staff be directed and the applicant be required to execute an Agreement pursuant to Section 37 of the *Planning Act* to the satisfaction of the Director of City Building and the City Solicitor, and that such agreement be registered on title to the lands in a manner satisfactory to the City Solicitor, to secure these community benefits.

Respectfully submitted,

Tami Kitay

Manager of Development Planning

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Appendices:

- A. Official Plan Amendment No. 106
- B. Zoning By-law Amendment
- C. Residential Development Agreement

Notifications:

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Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.