



SUBJECT: Section 37 Community Benefits for 490-492 Brock Avenue and 1298 Ontario Street

TO: Planning and Development Committee

FROM: Department of City Building - Planning Building and Culture

Report Number: PB-74-18

Wards Affected: 2

File Numbers: 505-02/17 and 520-08/17

Date to Committee: September 11, 2018

Date to Council: September 24, 2018

Recommendation:

Approve community benefits in relation to the development proposal at 490 and 492 Brock Avenue and 1298 Ontario Street submitted by The Molinaro Group consisting of direct and indirect benefits as outlined in department of city building report PB-74-18; and

Direct legal staff to prepare and execute an agreement pursuant to Section 37 of the *Planning Act* securing the benefits agreed to and 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 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 Planning and Development Committee the direct and indirect community benefits that staff propose to be secured related to the development of the subject properties by The Molinaro Group.

The recommendations contained within department of city building reports PB-74-18 and PB-16-18 align with the following objectives in Burlington's Strategic Plan 2015-2040:

A City that Grows

- Promoting Economic Growth
- Intensification
- Focused Population Growth

A City that Moves

- Increased Transportation Flows and Connectivity

A Healthy and Greener City

- Environmental and Energy Leadership

An Engaging City

- Good Governance

Background and Discussion:

On April 10, 2012, Council approved a Protocol for the Provision of Community Benefits in association with approvals for developments that seek to increase height and/or density as permitted by section 37 of the *Planning Act*. The Protocol contains the following policies, among others:

- The City will consider the provision of community benefits associated with increases in height and/or density pursuant to Section 37 in the urban area with special regard for areas that are deemed to be suitable candidates for intensification (1.1).
- The normal tests of good planning practice must be met in all applications approved by Council for Official Plan and Zoning By-law amendments, including those involving the provision of community benefits (2.1).
- The community benefits are to be secured in an agreement registered on title pursuant to Section 37 of the *Planning Act* (2.2).
- There is a location or functional connection between the development proposed and the facilities, services, or other benefit being required under the Section 37 Agreement (2.3).
- Under no circumstances will a community benefits provision be considered where an application or any particular elements of an application has not been determined to be acceptable in terms of good planning practice (2.4).
- In accordance with Section 37, eligible community benefits will be identified in the Official Plan (2.5).
- The increased value of the land resulting from the height and/or density increase will be determined through the appraisal of increased value, prepared by the City or on the City's behalf and to its satisfaction (4.3).

- Prior to the approval of the Official Plan and/or Zoning By-law amendment, the owner shall execute the Section 37 Agreement securing the community benefits in consultation with City staff. The Agreement shall be registered against the title of the subject lands (5.1).
- The Ward Councillor be consulted by staff prior to any negotiations with the applicant (5.9).

Staff can confirm that the aforementioned Protocol has been followed with respect to the contents of report PB-74-18.

On August 11, 2017, the Department of City Building received complete Official Plan amendment and Zoning By-law amendment applications for 490-492 Brock Avenue and 1298 Ontario Street. The applications proposed a 22 storey mixed-use building with 186 square metres of ground floor retail/commercial space fronting onto Ontario Street, 170 residential dwelling units, and 185 parking spaces. Following a neighbourhood meeting, statutory public meeting, and Planning and Development Committee meeting, Council approved the following recommendations on May 22, 2018:

Approve the revised application submitted by The Molinaro Group (490, 492 Brock Avenue and 1298 Ontario Street) to amend the City of Burlington Official Plan to modify the policies of “Downtown Mixed Use Centre – Downtown Residential Medium and/or High Density Precincts” on a site specific basis to permit a 22 storey building that includes 1 storey of rooftop amenity space and ground floor commercial/retail uses on the basis that it is consistent with the Provincial Policy Statement, conforms to all applicable Provincial Plans, The Region of Halton Official Plan and the City of Burlington Official Plan, has regard for matters of Provincial interest and represents good planning for the reasons set out in Department of City Building report PB-16-18; 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. 108, as contained in Appendix A of Department of City Building report PB-16-18; and

Approve the revised application submitted by The Molinaro Group to amend the City of Burlington Zoning By-law to site specifically rezone the lands at 490-492 Brock Avenue, 1298 Ontario Street to permit the construction of a mixed-use building with a height of up to 22 storeys including 1 storey of rooftop amenity space and ground floor commercial/retail uses on the basis that it is consistent with the Provincial Policy Page 2 of Report PB-16-18 Statement, conforms to all applicable Provincial Plans, The Region of Halton Official Plan and the City of Burlington Official Plan, has regard for matters of Provincial interest and represents good planning for the reasons set out in Department of City Building

report PB-16-18, subject to the conditions contained in Appendix B and 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 490-492 Brock Avenue, 1298 Ontario Street from “HDRH” to “DC-476” substantially in accordance with the draft regulations contained in Appendix C of Department of City Building report PB-16-18 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 B of Report PB-16-18; 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; and

Deem that the amending zoning by-law will conform to the Official Plan for the City of Burlington once Official Plan Amendment No. 108 is adopted; and

State that the amending zoning by-law will not come into effect until Official Plan Amendment No. 108 is adopted; and

Approve the proposal by The Molinaro Group to remove one (1) city-owned tree from the Ontario Street right-of-way in front of the properties at 490-492 Brock Avenue, 1298 Ontario and identified on Sketch No.2 in Appendix D of Department of City Building report PB-16/18, subject to the following:

- i) The Owner shall compensate the City of Burlington for the tree removal by providing compensation (replanting or cash-in-lieu, where opportunity for replanting is not available, in the amount of \$7,150); 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, 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, and

discussed below. Additionally, the Official Plan Amendment, Zoning By-law Amendment, and Residential Development Agreement are attached as Appendices.

In-Effect Official Plan

Section 2.3.2 of the in-effect existing Official Plan sets out that “community benefit provisions pursuant to Section 37 of the *Planning Act* may be used by the City in the Zoning By-law to allow increases in height and density of development beyond those permitted by the Zoning By-law in exchange for facilities, services, or matters of public benefit as are set out in the Community Benefits section of the implementing Zoning By-law. The City may encourage the use of community benefit 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;
- (ii) Provision of parkland dedication beyond the requirements of the Plan;
- (iii) Protection of natural features such as woodlots, beyond the parkland dedication requirements of the Plan;
- (iv) Improved access to public transit or implementation of a Travel Demand Management Plan;
- (v) Provision of public areas, crosswalks and walkways and connections to external public walkways/trail systems;
- (vi) Provision of public parking;
- (vii) Provision of community and open space facilities such as small parks, day care centres, schools, community centres and recreational facilities, cultural facilities, and other municipal facilities such as fire halls and libraries;
- (viii) Conservation of cultural heritage features;
- (ix) Protection or enhancement of significant views;
- (x) Provisions of affordable housing, beyond the basic Provincial requirements;
- (xi) Provision of public art;
- (xii) Provision of green technology and sustainable architecture, such as green roofs;
- (xiii) Provision of streetscape improvements in accordance with Council approved design guidelines; and
- (xiv) Other local improvements identified in community design plans; community improvement plans, capital budgets or other implementing plans or studies.”

The proposed community benefits discussed in the section below support many of these objectives. Staff can confirm that the proposed community benefits comply with the Official Plan.

Adopted Grow Bold Official Plan

In April 2018, Council adopted the new Grow Bold Official Plan which is currently with the Region of Halton awaiting review and final approval. In the new adopted Official Plan, the subject lands are identified as being within the Downtown Tall Residential Precinct. This precinct acknowledges that a retail and service commercial and office uses at grade are permitted with residential uses above.

Section 12.1.8 of the adopted Grow Bold Official Plan provides that “community benefits are an integral part of community and city building in an intensifying city. Section 37 of the *Planning Act* provides the City with the opportunity to secure facilities, services, or matters that are either new features or represent an enhanced level of service. These support quality of life of new and existing residents and provide services and facilities that the City would otherwise be unable to provide.”

Specifically, section 12.1.8(2)(b) of the Grow Bold Official Plan sets out that “the City may require the use of community benefit provisions with regard to the following matters:

- (i) Provision of special needs, assisted and affordable housing, in the form of land, residential units, and/or cash contributions, to be transferred to the appropriate housing provider as determined by the City;
- (ii) Provision of parks, trails and open space;
- (iii) Protection, restoration, enhancement and/or dedication of the Natural Heritage System and/or other natural heritage features such as woodlots;
- (iv) Provision of improved pedestrian and cycling access to public transit and enhanced public transit infrastructure, facilities and services;
- (v) Provision of public areas, crosswalks and walkways and connections to external public walkways/trail systems;
- (vi) Provision of new and/or enhancements to existing public service facilities and open space facilities such as parks and community, cultural and recreational facilities;
- (vii) Conservation of cultural heritage resources or contributions to community heritage initiatives;
- (viii) Provision of public art and/or contribution to the City’s public art reserve fund;
- (ix) Provision of sustainable building and development measures;
- (x) Provision of public streetscape improvements including the enhanced ability to accommodate active transportation, to support more trees and tree viability and bury utilities;
- (xi) Provision of land, or contribution to a strategic land reserve fund; and/or
- (xii) Other community benefits that may be identified in area-specific plans, community improvement plans, or other community improvements that may be identified through the development approval process.”

The proposed community benefits discussed in the section below support many of these objectives. Staff can confirm that the proposed community benefits comply with the adopted Grow Bold Official Plan.

Strategy/process

Section 37 of the *Planning Act* is a planning tool which allows municipalities to accept tangible community benefits when granting increased density and/or height through a change in zoning or Official Plan policy. A fundamental requirement of the use of Section 37 is that the application being considered must first and foremost be considered “good planning” irrespective of the potential for the community benefit. City Building staff must be able to recommend approval of the application with or without a community benefit being received. Generally speaking, there should also be a locational or functional connection between the proposed development and the facilities, services, or other benefits being required under the Section 37 Agreement.

The benefits obtained through Section 37 Agreements may be in the form of a financial contribution (direct benefit) or indirect benefits (facilities, services, or installations built or provided by the developer, at their expense, which are accessible by and/or beneficial to the general community). Community benefits are typically secured for items over and above those funded through development charges or other legislation.

Proposed Community Benefits

In accordance with the Section 37 Protocol discussed above, the following community benefits are proposed to be secured for the modified development proposal at the subject properties:

Proposed Community Benefit	In-Effect Official Plan Section	Adopted Grow Bold Official Plan Section
<p>To assist in the pursuit of long-term affordable housing, the Developer agree to provide a direct community benefit of a discount of \$600,000 to be used against the purchase price of up to 6 dwelling units within the subject development by the Region of Halton, OR, in the event that a purchase(s) is/are not to occur within the subject development by the time set out in the section 37 agreement, OR in the event that the tenure of the project does not lead to individual unit ownership but rather a corporate ownership by the time set out in the section 37 agreement, the Developer agrees to gift the Region</p>	<p>Part VI, Section 2.3.2 (i)</p> <p>Part VI, Section 2.3.2 (x)</p>	<p>Section 12.1.8(2)b)(i)</p>

<p>of Halton with \$600,000 to be used for the provision of long term affordable dwelling unit(s) in Burlington's Urban Growth Centre, to the satisfaction of the Director of City Building.</p>		
<p>The Developer agrees to provide a direct community benefit of a \$10,000 donation to the Friends of the Freeman Station, to the satisfaction of the Executive Director of Capital Works.</p>	<p>Part VI, Section 2.3.2 (vii) Part VI, Section 2.3.2 (viii)</p>	<p>Section 12.1.8(2)b)(vi) Section 12.1.8(2)b)(vii)</p>
<p>The Developer agrees to provide a direct community benefit of a \$25,000 contribution towards the future improvement of the downtown transit terminal; to the satisfaction of the Director of Transit.</p>	<p>Part VI, Section 2.3.2 (iv)</p>	<p>Section 12.1.8(2)b)(iv)</p>
<p>The Developer agrees to provide a direct community benefit of a \$20,000 contribution towards improvements to walking, cycling, and/or active transportation connections in the vicinity of the Elgin Street Promenade and/or the future bicycle walking path along the hydro corridor; to the satisfaction of the Director of Transportation.</p>	<p>Part VI, Section 2.3.2 (iv) Part VI, Section 2.3.2 (v)</p>	<p>Section 12.1.8(2)b)(v) Section 12.1.8(2)b)(vi)</p>
<p>The Developer agrees to provide a direct community benefit of a \$50,000 contribution towards improvements to park facility improvements, including but not limited to fitness stations, pedestrian furniture, etc. for the future bicycle walking path along the hydro corridor, to the satisfaction of the Executive Director of Capital Works.</p>	<p>Part VI, Section 2.3.2 (vii)</p>	<p>Section 12.1.8(2)b)(vi)</p>
<p>The Developer agrees to provide a direct community benefit of a \$45,000 contribution towards improvements to park facilities at Brock Park and/or Spencer Smith Park, to the satisfaction of the Executive Director of Capital Works.</p>	<p>Part VI, Section 2.3.2 (vii) Part VI, Section 2.3.2 (xiv)</p>	<p>Section 12.1.8(2)b)(vi)</p>
<p>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, for an indirect community benefit to the amount of \$300,000, to the satisfaction of the Director of City Building.</p>	<p>Part VI, Section 2.3.2 (xii)</p>	<p>Section 12.1.8(2)b)(ix)</p>

The combined total of the proposed community benefits as outlined above is \$1,050,000.00, categorized as follows:

- \$600,000: financial contribution to the Region of Halton for use against purchasing up to 6 dwelling units in the subject building. Alternatively, should the Region opt not to purchase units in the subject building, or should the building tenure change to a corporate ownership (i.e. for rental purposes) the applicant would provide the Region with a \$600,000 financial contribution to be held in trust until such time the Region attributes it towards an affordable, assisted, and/or supportive housing opportunities within the Urban Growth Centre.
- \$140,000: financial contribution to be held in reserve funds and allocated as per the discussion above (downtown Transit Terminal improvements, active transportation, cycling and pedestrian improvements in the vicinity, park facility improvements in the vicinity).
- \$10,000: financial contribution to be gifted to the Friends of the Freeman Station;
- \$300,000: indirect community benefits in which the developer agrees to implement green technology and sustainable architecture elements in accordance with either LEED certification standards and/or compliance with the City's Sustainable Building and Development Guidelines.

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 captured in the amending zoning by-law, attached as Appendix B to department of city building report PB-74-18.

Planning Instruments

Further to Council's direction from May 22, 2018, the Official Plan Amendment, Zoning By-law Amendment, and Residential Development Agreement are enclosed for Council's approval.

Financial Matters:

Not applicable.

Total Financial Impact

The City will receive a total of up to \$750,000 in financial contributions to be placed into specific reserve funds for their defined purposes, as outlined above.

Source of Funding

Not applicable.

Other Resource Impacts

Not applicable.

Connections:

Department of City Building staff met with the Ward 2 Councillor to discuss this matter.

Members of the Section 37 Protocol 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 August 2017. A neighbourhood meeting was held on September 27, 2017 and the statutory public meeting was held on November 6, 2017. The staff recommendation report was considered at the Planning and Development Committee meeting of May 14, 2018 and Council made a decision on the matter on May 22, 2018.

Conclusion:

On May 22, 2018, Council approved the development applications to permit a mixed-use building with a maximum height of 22 stories on the subject lands known municipally as 490-492 Brock Avenue and 1298 Ontario 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 outlined above 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, in addition to supporting affordable housing opportunities in the Urban Growth Centre.

Staff recommend that the proposed community benefits as outlined in this report be approved by Council and that staff be circulated 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,

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Appendices:

- A. Official Plan Amendment No. 108
- 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.