



SUBJECT: Interim Control By-law Exemptions

TO: Mayor and Members of Council

FROM: Department of City Building - Planning Building and Culture

Report Number: PB-40-19

Wards Affected: 2

File Numbers: n/a

Date to Committee: April 2, 2019

Date to Council: April 23, 2019

Recommendation:

Receive and file Department of City Building report PB-40-19 regarding exemptions to Interim Control By-law 10-2019; and

Approve an amendment to Interim Control By-law 10-2019, as recommended by staff in Department of City Building report PB-40-19 and attached as Appendix A, to exempt certain types of development.

Purpose:

The purpose of this report is to recommend an amendment to Interim Control By-law 10-2019 that will provide further clarity on the exemption of certain development applications from the prohibitions of the by-law while the associated land use study is underway.

Clarity on exemptions from the interim control by-law will assist land owners and the development industry in better understanding the land use and development limitations within the study area during the period of the interim control by-law.

The recommended amendment to Interim Control By-law 10-2019 will ensure the City continues to realize the following objective set out in the City's 2015-2040 Strategic Plan:

- An Engaging City
 - Good Governance

Background and Discussion:

An interim control by-law (ICBL) puts a temporary prohibition or limitation on the development of certain lands while a municipality is studying or reviewing its land use policies. This “freeze” can be imposed for only a year, with a maximum extension of a second year.

ICBLs are an important planning instrument as they allow a municipality to reconsider its land use policies by suspending development that may conflict with any new policy. ICBLs can also be exercised in situations where unforeseen issues arise, as a means of providing breathing space during which time the municipality may study the issues and determine the appropriate planning policy and controls for addressing the issues under study.

On March 5, 2019, council approved Interim Control By-law 10-2019 due to staff concerns with the cumulative growth pressures quickly emerging in the Urban Growth Center and on lands in proximity to the Burlington GO Station that are requesting intensities significantly higher than anticipated by the Official Plan.

In simple terms, the ICBL land use study (the Study) is intended to assess the role and function of the downtown bus terminal and the Burlington GO Station as Major Transit Station Areas (MTSA), the connections between them, and examine the planning structure, land use mix, and intensity for the lands within the study area.

Rationale for Additional Exemptions to Interim Control By-law 10-2019

An exemption from the ICBL should not have an impact on the size and function of the study area or compromise the intent of the Study. Interim Control By-law 10-2019 included exemptions for specific site plan applications that were currently in process at the time of the passing of the Interim Control By-law. The additional exemptions to the ICBL outlined in this report should be considered as technical adjustments or refinements that will not prejudice the outcome of the Study and will facilitate a reasonable transition strategy while the Study is underway.

Additional Exemptions to Interim Control By-law 10-2019

Building Permits and Zoning Clearance Certificates

Building Permits are regulated through the *Building Code Act* and Ontario Building Code. Nearly all building permits are required to comply with the provisions of the Zoning By-law. This is completed through the issuance of a Zoning Clearance

Certificate prior to the application for a Building Permit. The ICBL currently prohibits the construction of minor structures such as decks, pools, patios, porches, fences, accessory buildings and structures, and temporary buildings and structures. Similarly, the ICBL currently prohibits renovations to the interior of an existing building. These types of development are considered as minor and/or accessory to the primary use; they are not a driver for intensity or land use change in the study area. As such, they should be exempt from the ICBL.

Minor Variances

Minor Variances are regulated by the *Planning Act*. Section 45 (1) of the *Planning Act* authorizes a Committee of Adjustment to approve an application for Minor Variance. The purpose of a minor variance is to permit small deviations from the regulations found in the Zoning By-law. These deviations are typically for performance standards such as a building setback, lot coverage, parking space allocation, and landscape area requirements. Minor variances must meet the four tests of the *Planning Act* (meet the purpose and intent of the Official Plan and Zoning By-law, be desirable, and be minor), they are evaluated on a case by case basis and do not establish a precedent.

Minor variances, under Section 45 (1) of the *Planning Act*, for a development only requiring a zoning clearance certificate and/or building permit that is exempt from the ICBL and that can be supported under the 4 tests of the *Planning Act*, shall be exempt from the ICBL as they would not compromise the intent of the Study.

It is noted that Section 45 (2) of the *Planning Act* authorizes a Committee of Adjustment to make decisions of land use, subject to certain criteria. For clarity, applications under Section 45 (2) of the *Planning Act* should not be exempt from the ICBL.

Site Plans

Site plan applications are regulated under the *Planning Act*. Not all development requires site plan approval; the City of Burlington Site Plan Control Area By-law provides clarity on this matter. When applicable, site plan approval is the final planning process prior to an application for a building permit. Despite being regulated by separate provincial acts, site plan approval and building permits are closely related. Site plan applications implement the land use policies of council and in some cases, from the OMB/LPAT. Site plan applications do not determine land use permissions or the intensity of a development; that is the role of the Official Plan and Zoning By-law.

Site plan applications for 374 Martha Street, 490-492 Brock Avenue, 421 Brant Street, and 442 Pearl Street were identified in the original ICBL by-law as exempt from its

prohibitions. Upon further review and to provide clarity, there are other site plan applications that should be identified as exempt from the ICBL. They are as follows.

- 471 Pearl Street (The Rock). This site plan application was not identified in the original ICBL. Site plan approval and minor variances were issued for this development in 2012. Due to gaps in funding, these approvals lapsed before construction could begin. Prior to the date of passing of the ICBL, the proposed development received an updated CofA approval to re-establish the required minor variances. This recent CofA approval allows staff to reactivate the previous site plan approval allowing building permits to be applied for. The proposed development at 471 Pearl Street should be exempt from the ICBL.
- 2030 Caroline Street, 510 Elizabeth Street & 2025 Maria Street (The Berkley). This development was not identified in the original ICBL. The development potential for this property was created via council approval of an Official Plan Amendment and Rezoning to allow a residential condominium tower, above grade parking structure, and an office building. The Zoning By-law from the Rezoning was enacted on January 27, 2014. Final site plan approval for this development was issued in October 2017. To date, the applicant has only obtained building permits for the residential condominium tower. The site plan will continue to remain valid and for clarity, an amendment to Interim Control By-law 10-2019 will include a reference to site plan applications in process or approved prior to the passage of the ICBL.
- 2092 Old Lakeshore Road (Temporary parking lot). This site plan application was not identified in the original ICBL. Draft site plan approval and minor variances were issued for this development in 2015. The minor variance approval from 2015 recently lapsed and the applicant has not yet received issuance of final site plan approval. Prior to the date of passing of the ICBL, the proposed development received an updated CofA approval to re-establish the required minor variances. This recent CofA approval allows staff to keep the draft site plan approval active. The proposed development at 2092 Old Lakeshore Road should be exempt from the ICBL.

Options considered

The alternative option is to not exempt all or some of the above noted development types from the Interim Control By-law, but staff do not recommend this option.

Financial Matters:

Report PB-36-19 indicated potential financial matters as an outcome of an ICBL such as: reduced planning development application fees and revenues, reduced building

permit and construction activity with reduced associated fees and revenues, reduced parkland dedication fees received, reduced development charges received, and deferral of Capital Works projects within the study areas.

The exemptions to the ICBL outlined in this report will offset some of these financial impacts.

Connections:

After discussing the impacts of the ICBL on various service deliveries such as CofA, Zoning, and Building Permits, staff have given further consideration to exemptions from the prohibitions of the ICBL.

Public Engagement Matters:

No notice is required prior to the passing of a by-law for an interim control by-law however, notice was provided for Interim Control By-law 10-2019. Notice of passing of Interim Control By-law 10-2019 and the proposed amendment outlined in this report shall be provided pursuant to the provisions of the *Planning Act*.

Conclusion:

The exemptions outlined in this report will not negatively influence the outcome of the Study and are intended to provide a reasonable transition strategy while the ICBL is in effect.

Respectfully submitted,

Heather MacDonald
Director of City Building
905-335-7600 ext. 7630

Appendices:

- A. Amendment to Interim Control By-law 10-2019

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.

Appendix A

The Corporation of the City of Burlington

BY-LAW NUMBER 21-2019

An amendment to Interim Control By-law 10-2019 for The Corporation of the City of Burlington under Section 38 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended

WHEREAS Section 38 of the Planning Act, R.S.O. 1990, c. P. 13, as amended, authorizes the council of a municipality to pass an interim control by-law where the council has directed that a review or study be undertaken in respect of land use planning policies in the municipality, or in any defined area or areas thereof;

WHEREAS on March 5, 2019, the Council of the Corporation of the City of Burlington passed the following resolution:

- 1 That report PB-36-19 from the Department of City Building dated March 5, 2019 be received.
- 2 That Interim Control By-law Number 10-2019 as attached to report PB-36-19 be passed to restrict the use of lands within the Study Area as shown on Appendix A and Schedule A thereto, to the existing uses for a period of one year pending the completion of the Study to:
 1. Assess the role and function of the downtown bus terminal and the Burlington GO Station as Major Transit Station Areas, including assessing the existing and long range planned transit service for the Study Area and the connections between the two respective MTSAs;
 2. Examine the planning structure, land use mix, and intensity for the lands identified on Schedule 'A' of Appendix A; and
 3. Update the Official Plan and Zoning By-law regulations, as needed, for the lands identified on Schedule 'A' of Appendix A.

WHEREAS staff have given further consideration to section 4 b) of Interim Control By-law 10-2019 restricting the construction, alteration or expansion any building or structure within the study area;

NOW THEREFORE the Council of the Corporation of the City of Burlington hereby enacts as follows:

1. THAT Interim Control By-law 10-2019 be amended by deleting section 4 b) in its entirety and replaced with the following:
 - “4 b) be permitted to construct, alter or expand any building or structure, save and except where such construction, alteration or expansion is an outcome of:
 1. A zoning clearance certificate and/or building permit for a deck, pool, patio, fence, porch, accessory building or structure, temporary building or structure, or interior renovation to an existing building.
 2. A site plan application currently in process or approved on the date of the passage of this By-law that is fully in accordance with the approved zoning bylaw. Site plan applications in process or approved for lands within the study areas include: 374-380 Martha Street; 490-492 Brock Avenue/1298 Ontario Street; 421 Brant Street; 442 Pearl Street; 471 Pearl Street; 2030 Caroline Street/510 Elizabeth Street/2025 Maria Street; and 2092 Old Lakeshore Road.
 3. A Committee of Adjustment application under Section 45(1) of the *Planning Act* for a development that is exempt from the Interim Control By-Law 10-2019 as identified in item 1 above.”
2. The Municipal Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the *Planning Act*, R.S.O., 1990, c.P.13, as amended.

ENACTED AND PASSED this.....day of2019.

MAYOR

CITY CLERK