



**SUBJECT: Minor variance consideration within 2 Years of Zoning By-law amendment for 1157-1171 North Shore Blvd.**

**TO: Community Planning, Regulation & Mobility Cttee.**

**FROM: Community Planning Department**

Report Number: PL-40-22

Wards Affected: 1

File Numbers: n/a

Date to Committee: April 5, 2022

Date to Council: April 19, 2022

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### **Recommendation:**

Declare by resolution that in accordance with subsection 45(1.4) of the *Planning Act, R.S.O. 1990, c.P.13*, as amended, the owners of 1157-1171 North Shore Boulevard be permitted to apply to the Committee of Adjustment for variances from the provisions of Zoning By-law 2020.433, before the second anniversary of the day on which the by-law was approved by the Local Planning Appeal Tribunal.

### **PURPOSE:**

The purpose of this report is to evaluate the merits of proceeding with a minor variance application to vary the provisions of Zoning By-law 2020.433, for the redevelopment of 1157-1171 North Shore Boulevard, before the second anniversary of the day on which the by-law was approved by the Local Planning Appeal Tribunal.

### **Vision to Focus Alignment:**

This report relates to the following areas of the 2018-2022 Burlington's Plan: From Vision to Focus:

- Increase economic prosperity and community responsive city growth
  - Support sustainable infrastructure and a resilient environment
  - Building more citizen engagement, community health and culture
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## **Background and Discussion:**

On November 13, 2018, the City Building Department acknowledged that a complete application had been received for an Official Plan and Zoning By-law Amendment for 1157-1171 North Shore Blvd to facilitate the development of a senior's care campus which consisted of two towers (17-storeys and 11-storeys), transitioning down to 2 storeys at the north end of the site. The development proposed to contain 475 suites of varying levels of care and proposed to provide approximately 180 staff on site at any time. The unit breakdown consisted of 71 Memory care, 95 assisted living and 309 independent living suites. Access to the site was proposed to be obtained from a two-way driveway along the eastern boundary of the site. A total of 220 parking spaces (145 staff and visitor spaces and 75 resident parking spaces) were proposed to be provided underground.

In September 23 2019, the applicants appealed the subject applications to the Local Planning Appeals Tribunal (LPAT) based upon non-decision of the City within the required time period set out by the *Planning Act*.

On November 30, 2020, the applicants submitted a Settlement Offer to the City for consideration. The settlement offer includes the revisions:

- Reduction in the overall tower height from 17-storeys and 56.0 metres (61.5 metres including mechanical penthouse) to 16-storeys and 53 metres (58.5 metres including mechanical penthouse);
- Increased step back of 3.36 metres at the 6th floor of the east podium on the north side of the building;
- A "carving out" of a portion of the 6th floor of the west podium (north side) resulting in a notch of 8.22 metres deep by 27.17 metres wide;
- Subsequent reduction in the overall gross floor area from 41,614 square metres to 40,525 square metres;
- Subsequent reduction of 10 suites including 2 assisted living and 8 independent living suites for a total of 379 units;
- Measurement of the 45-degree angular plane from average grade along the north lot line given the grade difference between the Subject Site and the abutting low-rise residential lots to the immediate north, as well as a difference in grade along the north lot line from west to east.

At its meeting of January 19, 2021 Burlington City Council considered Confidential Legal Report L-37-20 and accepted an offer to settle the issues in dispute between the appellants and the City with respect to the appeal before the Local Planning Appeal Tribunal ("LPAT"). As part of this, Council directed that the planning analysis included as Appendix 'B' to L-37-20 be released publicly and posted on the City's webpage

under Planning and Development Applications for Ward 1, while retaining solicitor/client privilege over the balance of this matter in its entirety.

The settlement between the City and appellants resolved the issues in dispute on the basis that the appellants and the City would seek LPAT approval of the revised development proposal and related Official Plan and Zoning By-law amendments for the site at the Tribunal.

On February 2, 2021, the LPAT held a one-day settlement hearing to hear evidence submitted in support of the settlement and the revised development proposal.

On May 7, 2021, the LPAT released its decision, approving the revised development proposal and settlement for the site. The Tribunal's decision ordered that the City's Official Plan be amended and that the City's Zoning By-law also be amended, as set out as attachments to the Tribunal's order. As such, Zoning By-law 2020.433, which includes the zoning provisions to enable the approved development, was enacted on May 7, 2021.

### **Proposed Revisions**

In August, 2021, the owners of 1157-1171 North Shore Blvd approach planning staff with a proposal to make some minor revisions to their previous approval. Following the May 2021 LPAT decision, the ownership group moved to a more detailed design of the development, and compiled additional market demand information which resulted in some changes to the development concept that was previously advanced as part of the LPAT process. Specifically, the applicants proposed to increase the number of memory care and assisted living units in the project and decrease the number of independent living units, which was proposed to be achieved in conjunction with a reduction in the overall height and massing of the building. The following is an outline of some of the proposed changes:

Unit Count – The below table identifies the proposed changes in unit count:

<b>Unit Typology</b>	<b>Zoning By-law</b>	<b>Revised Count</b>	<b>Difference (+/-)</b>
Memory Care	48	90	+42
Assisted Living	136	142	+6
Independent Living	160	141	-19
Independent Living (Premium)	29	26	-3
TOTAL	373	399	+26

### Number of Storeys

The owners are proposing to reduce the number of storeys in the building by 2 storeys, including the removal of the mezzanine floor and the 16<sup>th</sup> storey in its

entirety. In addition, the owners are proposing to remove the 7<sup>th</sup> floor 'sky lounge', which was a glass feature to be located above the 6<sup>th</sup> floor and between the east and west towers.

### Gross Floor Area and Massing

The proposed changes include a reduction in overall gross floor area of 3,716 square metres (40,000 square feet), down from 40,505 square metres (436,000 square feet) to 36,790 square metres (396,000 square feet).

The reduction in overall gross floor area has also resulted in proposed modifications to the massing, which include increased separation between the towers and reduced massing bulk in the north and south courtyards and along the North Shore frontage.

### Parking

The proposed changes would include a slight increase to the proposed parking, which would conform to the required parking rates for the City.

### Density

The proposed density would be 261 units per hectare, which falls below the 280 units per hectare that was approved by the LPAT.

As such, the proposed changes to the development proposal would result in the need for variances to Zoning By-law 2020.433. Specifically, the proposed changes require relief of the following zone provisions:

- Increase in total number of units and increase of memory care units and assisted living units;
- An increase in total linear height of 0.5 metres (1.7 feet);

All other changes would comply with the regulations of Zoning By-law 2020.433 (to be confirmed through detailed zoning review at Implementation stage).

## **Regulatory Context for Considering Changes to Approved Zoning By-laws**

On December 3, 2015, the Province of Ontario enacted Bill 73 "Smart Growth for Our Communities Act, 2015", which amended the *Planning Act* and the *Development Charges Act, 1997*. Several changes to the *Planning Act* came into force on July 1, 2016. One of the changes to the *Planning Act* was the introduction of a two-year moratorium (or "freeze") on three types of amendments, subject to Council's discretion to provide relief from the prohibition:

1. Amendments of a new Official Plan;

2. Amendments of a new comprehensive Zoning By-law; and
3. Minor variances of a Zoning By-Law that has already been amended for the land, building or structure.

The focus of this report is the *Planning Act* change that prohibits applying for a minor variance of a Zoning By-law for two years following the passing of an owner-initiated Zoning By-law amendment (item 3 above), unless permitted by Council resolution, as detailed below:

Section 45 (1.3)

*Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended. 2015, c. 26, s. 29 (2).*

The only exception to this rule is where Council has declared by resolution, pursuant to Section 45 (1.4) of the Planning Act that an application can proceed. Section 45 (1.4) of the *Planning Act* allows Council to exempt by resolution a specific application, class of applications, or applications generally from the two-year moratorium:

Section 45 (1.4)

*Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. 2015, c. 26, s. 29 (2).*

## **Discussion**

Since the enactment of Bill 73 and the subsequent amendments to the Planning Act, the Community Planning Department have implemented an approach that assumes no minor variance applications are permitted before the second anniversary of the day on which the by-law was amended, unless Council has declared by resolution that such an application is permitted.

The intent of Sections 45(1.3) & (1.4) of the *Planning Act* is to give greater control to municipalities and provides stability by preventing a Council and/or the Tribunal decision and associated zoning provisions from being revised within 2 years of that decision. This ensures that the minor variance process is not being used to circumvent a Council and/or Tribunal decision and provides a certain level of consistency and dependability in planning decisions. However, this moratorium can also create undue hardship on property owners that are working towards achieving the best planning outcome. As such, staff is of the opinion that these objectives need to be weighed against each other, on a case-by-case basis.

Without a Council resolution that a minor variance application can proceed, the owners are currently not able to submit a minor variance application to seek zoning relief to facilitate the proposed development until May 7, 2023.

Planning staff have reviewed the proposed changes to the development proposal and are of the opinion that it would be appropriate to waive the 2-year minor variance moratorium to consider the proposed changes through the minor variance application process at this point. The proposed changes represent refinements to the previous approvals to accommodate specific housing needs within the community by increasing the supply of memory care and assisted living units. Furthermore, as outlined above, the proponents are proposing a number of built form design changes that are considered to be positive changes from a design perspective (i.e. reduced massing, increased setbacks, etc.). From a cursory review, it appears that the proposed changes are positive changes that are supportable; however, it is noted that the full analysis and planning recommendation on the appropriateness of these changes would be provided as part of the formal minor variance application process and consideration by the Committee of Adjustment.

As a result, staff is of the opinion that the existing 2-year moratorium on minor variances for this site would add unnecessary length to the planning process and would represent an unnecessary burden to the owner who is attempting to meet a housing need in the community. To that end, maintaining the existing 2-year moratorium on minor variances for this site would not be in the public interest. As such, Staff recommend that Council authorize the owners of 1157-1171 North Shore Blvd. to apply to the Committee of Adjustment for variances from the provisions of Zoning By-law 2020.433, before the second anniversary of the day on which the by-law was approved by LPAT. Any minor variance application submitted for the subject lands will go through the standard review process, which involves an evaluation by Staff of the minor variance application, through the lens of the four tests set out by Section 45(1) of the *Planning Act*, and a decision by the Committee of Adjustment.

### **Options Considered**

While not recommended, the other option would be to maintain the existing 2-year moratorium on minor variances for the site to ensure the integrity of the agreed upon settlement and Ontario Land Tribunal decision. If the moratorium was upheld, given the LPAT decision date of May 7, 2021, the owners would either have to wait until May 7, 2023 to apply for the requested zoning relief or they would need to proceed with the existing approvals. In staff's opinion, delaying this proposal would not be beneficial and would delay the construction of needed seniors housing within the community. Further, proceeding with existing approvals would not meet the current housing demands in the community and would therefore not be considered beneficial. As such, planning staff

does not recommend maintaining the existing 2-year moratorium on minor variances for this site.

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**Financial Matters:**

Not applicable.

**Total Financial Impact**

Not applicable.

**Source of Funding**

Not applicable.

**Other Resource Impacts**

Not applicable.

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**Climate Implications**

In February 2020, City Council approved the City of Burlington Climate Action Plan to support the City's path towards a low-carbon future, focusing on mitigating greenhouse gases and reducing energy consumption. The Plan identifies seven implementation programs, including, programs to enhance energy performance for new and existing buildings; increase transit and active transportation mode shares; electrify City, personal and commercial vehicles and other currently gas-powered equipment; and, support waste reduction and diversion.

Staff are reviewing the climate implications of the proposed development as part of a site plan application that is currently in process.

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**Engagement Matters:**

The public was engaged in the Official Plan amendment and Zoning By-law amendment application process for the proposed development, which included a neighbourhood meeting, a statutory public meeting and participation options as part of the LPAT appeal process.

The recommended minor variance application process is also a public process, in which the public is able to participate in.

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**Conclusion:**

Staff recommend that Council authorize the owners of 1157-1171 North Shore Blvd. to apply to the Committee of Adjustment for variances from the provisions of Zoning By-law 2020.433, before the second anniversary of the day on which the by-law was approved by LPAT.

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Respectfully submitted,

Kyle Plas, MCIP, RPP  
Coordinator of Development Review  
905-335-7600 ext. 7824

**Notifications:**

Paul Demczak – Amico Properties  
[Paul.Demczak@amico.build](mailto:Paul.Demczak@amico.build)

**Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.