



Planning & Regulations  
 905.336.1158  
 2596 Britannia Road West  
 Burlington, Ontario L7P 0G3  
[conservationhalton.ca](http://conservationhalton.ca)

September 20, 2024

Jaclyn Schneider, Planner II - Development  
 Community Planning, City of Burlington  
 426 Brant St.  
 Burlington, ON L7R 3Z6

**BY E-MAIL ONLY ([jaclyn.schneider@burlington.ca](mailto:jaclyn.schneider@burlington.ca))**

To Jaclyn Schneider:

**Re: Official Plan Amendment and Zoning By-law Amendment**  
**File Number(s): 505-03/24 and 520-08/24 – Submission 1**  
**CH File Number(s): POPG-369 and PZBA-435**  
**2030 Caroline Street, Burlington**  
**Applicant: Carriage Gate Homes**  
**Owner: Inaria Burlington Inc.**

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Conservation Halton (CH) staff has reviewed the above-noted application as per our regulatory responsibilities under the *Conservation Authorities Act* (CA Act) and Ontario Regulation 41/24, and provincially delegated responsibilities under Ontario Regulation 686/21 (e.g., acting on behalf of the province to ensure decisions under the *Planning Act* are consistent with the natural hazards policies of the Provincial Policy Statement [PPS, Sections 3.1.1-3.1.7] and/or provincial plans).

Documents reviewed as part of this submission are listed in **Appendix A**. Comments are separated into Key Comments, which identify fundamental issues with the applications, and Detailed Comments in **Appendix B**, which identify other technical issues in the applications.

### **Proposal**

The above-listed applications propose an Official Plan Amendment and Zoning By-law Amendment to develop the subject property into a 28-storey mixed use building and a 6-storey above grade parking structure. The proposed development includes 302 residential units and 382 square metres of non-residential area at-grade. There is also 5,752 square metres of amenity space proposed including balcony and terraces.

A total of 277 parking spaces are proposed through 2 levels of underground parking containing 62 parking spaces and 5 levels of above-grade parking containing 215 parking spaces. Vehicular access to the underground parking is proposed via John Street and the above-grade parking is proposed via Elizabeth Street.

The applicant is proposing to amend the Official Plan to permit a maximum height of 28 storeys and a maximum floor area ratio of 10.0:1 and to amend the Zoning By-law to rezone the property to create a new site-specific exception that permits a 28-storey mixed use building.

### **Background and Overview**

CH staff attended a formal pre-consultation meeting that was held by the City for the above-listed applications on August 23, 2023, and provided written comments to the City, which staff understands were shared with the applicant.

In these comments, CH staff identified that the subject property is located entirely within the flood plain associated with Rambo Creek and that the proposal was not consistent with the natural hazard policies of the PPS and did not meet CH regulatory policies.

After the formal pre-consultation meeting, CH staff met with members of the applicant team (both owners' representatives and consulting engineers) to discuss the flood plain hazard affecting the subject property and relevant PPS and CH policies on May 7, 2024. The above-noted applications were submitted on July 10, 2024 and deemed complete by the City on July 17, 2024.

The balance of this letter is divided between CH's regulatory comments and its comments on consistency with the natural hazard policies of the PPS. The application presents fundamental issues from both a regulatory compliance and consistency with natural hazard policies of the PPS perspective. While detailed technical comments on the submission are also provided in Appendix B, addressing these comments will not resolve the fundamental matters described below.

### **Regulatory Comments (Conservation Authorities Act and Ontario Regulation 41/24)**

#### *Regulatory Requirements*

Effective April 1, 2024, CH's previous regulation, Ontario Regulation 162/06 ("Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses") under Section 28 of the CA Act was repealed and replaced by Ontario Regulation 41/24 ("Prohibited Activities, Exemptions and Permits"). Complementary provisions under Part VI ("Regulation of Areas Over Which Authorities Have Jurisdiction") and Part VII ("Enforcement and Offences") of the CA Act were proclaimed on the same date.

Under Part VI of the CA Act and Ontario Regulation 41/24, CH regulates all watercourses, valleylands, wetlands, Lake Ontario Shoreline and hazardous lands as well as lands adjacent to these features. The subject property is regulated by CH as it is within the flood plain hazard associated with Lower Rambo Creek. CH regulates 15 metres from the greater of the flooding and erosion hazards associated with Lower Rambo Creek, which in this area is the limit of the flood plain.

Permits are required from CH prior to undertaking *development activities* within CH's regulated area and applications are reviewed under the CA Act, Ontario Regulation 41/24, and CH's Board-approved policies and requirements (<https://conservationhalton.ca/policies-and-guidelines>). The definition of "development activities" is the same within both the CA Act and CH policy as it pertains to the CA Act:

- a) the construction, reconstruction, erection or placing of a building or structure of any kind,
- b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,
- c) site grading, or
- d) the temporary or permanent placing, dumping, or removal of any kind of material, originating on the site or elsewhere.

### *Flood Hazard Studies and Flood Hazard Mapping*

In October 2020, the City of Burlington completed a Phase 1 Flood Hazard and Scoped Stormwater Management Assessment as part of its Downtown Re-examination Study. Prior to the Phase 1 Study, the creeks south of the diversion channel in the Lower Rambo Creek watershed were considered part of the municipal storm drainage system. However, the Phase 1 study revealed that the extent of the flood hazard in the Lower Rambo watershed was greater than previously understood and confirmed to be regulated by CH. CH provided notification to the public of the change in regulatory status in the Burlington Post and on CH's website on November 18, 2021.

In 2021, the City retained WSP to undertake the Phase 2 Study to refine and confirm the flood vulnerable areas within the Lower Rambo and Lower Hager watersheds. CH and City staff, as well as the City's consultant, worked collaboratively to complete the Phase 2 Study and associated modelling. The Phase 2 Study modelling and mapping is the best available information for understanding the extent of the hazard, assessing potential risk to life and property, identifying areas requiring further analysis, making decisions when development is contemplated in hazardous or regulated areas, and administering CH's regulation. Burlington Council received the final Phase 2 Study in July 2023.

In August 2023, a notice was published on CH's website and in the Burlington Post to inform the public of the forthcoming changes to CH's Approximate Regulation Limit (ARL) mapping to reflect the results of the City's Phase 2 study, subject to CH Board approval. In Fall 2023, the mapping was approved by the CH Board.

Based on the Phase 1 and Phase 2 study findings, any areas within the Lower Rambo watershed that meet the definition of flooding and erosion hazards in the CA Act and Ontario Regulation 41/24, were mapped as regulated by CH.

### *Flood Hazard Review*

The "Technical Memorandum Re: Floodplain Spill Hazard Analysis for 2030 Caroline Street" (S. Llewellyn & Associates Ltd., June 2024), submitted as part of the above-noted applications identifies the subject property as being within a spill area, not a flood plain. This is not correct.

Based on the Phase 1 and Phase 2 study findings, the subject property is within a flood plain, and not a spill area. The flood hazards mapped for this area have been identified as a flood plain due to a number of factors, including that the overland flows: 1) maintain their connectivity with the watercourse system; 2) follow the path of the watercourse which is conveyed through a

series of enclosed pipes and open channels before reaching Lake Ontario; and 3) represent a significant proportion of the system's overall flow in terms of flood magnitude and duration.

Based on the modelling submitted with the above-noted applications, under existing conditions, the maximum depth of flooding on the subject property averages approximately 0.48 metres. The streets immediately surrounding the subject property (John, Caroline, and Elizabeth Streets) have maximum flood depths between 0.41 metres and 1.16 metres. The maximum flood velocity across the subject property averages 0.27 metres per second.

As such, based on Provincial standards for safe vehicular and pedestrian movement during times of flooding hazards, there is no safe access for vehicles and, in some areas, no safe access for pedestrians. Regardless of whether the flood hazard was identified a flood plain or spill, the Provincial safe access standard would not be met.

### *CH Regulatory Policy Review*

As the subject property is within a flood plain, CH's Board-approved regulatory policies regarding new development within flood plains apply. CH's policies do not support new development activities of this scale and scope (i.e., a new multi-storey residential building) within a flood plain. Alterations to flood plains may be permitted, subject to meeting specific criteria, to refine hazard limits; however, it is unlikely that any such alteration on the subject property could materially refine the flood hazard limits sufficient to allow the proposed development to be permitted.

CH staff is of the opinion that the proposed development activity is unlikely to meet the CA Act tests. In particular, based on the information provided, the proposed development would:

1. Be susceptible to flooding and would not have safe access. This is likely to create conditions or circumstances that, in the event of a flood hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; and
2. Affect the control of flooding by increasing flood depths by up to 0.02 metres in areas adjacent to the subject property (particularly on Caroline Street and in the municipal parking lot to the north) and by causing flooding to affect these areas earlier during storm events as a result of the reduced flood storage.

Regardless of whether the flood hazard on the site is identified as a flood plain or spill, the proposed development does not meet CH's policies and criteria for development activities in flood hazards<sup>1</sup> and the CA Act tests are unlikely to be met.

### **Provincial Policy Statement Natural Hazard Comments (Sections 3.1.1-3.1.7)**

In addition to CH's regulatory responsibilities, CH also has provincially delegated responsibilities under Ontario Regulation 686/21: Mandatory Programs and Services, including acting on behalf of the province to ensure that decisions under the *Planning Act* are consistent with the Natural Hazards Sections (3.1.1-3.1.7) of the Provincial Policy Statement (PPS). The following

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<sup>1</sup> CH has in interim regulatory policy and criteria that must be met for development in spills. Draft spill flood hazard policies were recently released for public consultation and final CH Board approval is anticipated in Q1 2025.

comments are also applicable once the new Provincial Planning Statement, 2024 comes into effect on October 20, 2024.

Based on CH staff's review, the applications are not consistent with the natural hazards policies of the PPS, as they would permit:

- a) the development of a new 28-storey mixed use building within *hazardous lands* adjacent to a watercourse impacted by *flooding hazards*, whereas the PPS (Sec. 3.1.1.b) requires development to generally be directed outside of such areas;
- b) new development within a *floodway* for which flooding can be expected to occur during both the Regional storm and the 1:100-year design storm flood events (PPS Sec. 3.1.2.d), which the PPS does not permit; and.
- c) development within an area which would be rendered inaccessible to people and vehicles during times of flooding (PPS Sec. 3.1.2 c) as the flood hazards surrounding the site do not meet the criteria outlined within the provincial Technical Guide (MNR 2002) for safe access, which the PPS does not permit.

For these reasons, CH staff disagrees with the Planning Justification Report (Bousfields Inc., June 2024) submitted with the applications that states that the OPA and ZBA are "consistent with the Provincial Policy Statement", given the natural hazard matters described above.

Regardless of whether the flood hazard is identified as a flood plain or spill, the proposed development is not consistent with the current or forthcoming natural hazard policies of the PPS.

### **Summary of Key Comments**

The proposed OPA and ZBA are seeking amendments to the Official Plan and Zoning By-law including increases to the maximum height and maximum floor area ratio to permit a proposed 28-storey mixed use building, 2 levels of underground parking, and a six-storey above-ground parking garage. Based on the conditions of the flood plain affecting the subject property, as well as the nature of development currently proposed, staff offers the following key comments:

- 1) It is unlikely that that the CA tests and CH's regulatory policies for development activities within a flood plain can be met. The proposed development is likely to negatively affect the flood hazard and create conditions which could jeopardize the health or safety of persons or result in property damage or destruction.
- 2) The applications are inconsistent with the natural hazards policies of the PPS. The proposed development is within a floodway and lacks safe access per Provincial standards.

CH staff is not in a position to support the approval of the applications based on the challenges outlined in the Key Comments above and the detailed comments in Appendix B.

CH staff is available to meet with City and/or applicant staff to discuss the comments herein upon request.

**Please note that CH has not circulated these comments to the applicant, and we trust that you will provide them as part of your report.**

We trust the above is of assistance. Please contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Schreiner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Laura Schreiner  
Environmental Planner  
905-336-1158 ext. 2230  
[lschreiner@hrca.on.ca](mailto:lschreiner@hrca.on.ca)

Encl: **Appendix A: Materials/Technical Reports Reviewed**  
**Appendix B: Detailed Comments**

### **Appendix A: Materials/Technical Reports Reviewed**

CH reviewed the following first submission materials, received on July 18, 2024:

- Topographic and Boundary Survey, prepared by A.T. McLaren Ltd., dated 2023
- Grading and Servicing Plan, prepared by S. Llewellyn & Associates, revised June 21, 2024
- Functional Servicing and Stormwater Management Report, prepared by S. Llewellyn & Associates, dated June 2024
- Technical Memorandum Re: Floodplain Spill Hazard Analysis for 2030 Caroline Street, prepared by S. Llewellyn & Associates, dated June 24, 2024
- Area of subject land, prepared by A.T. McLaren
- Architectural Plans and Statistics, prepared by Chamberlain Architect Services Ltd., rev. June 21, 2024.
- Cover letter, prepared by Carriage Gate (Mark Bales), dated July 3, 2024
- Draft OPA, no date
- Draft ZBA, no date
- Planning Justification Report, prepared by Bousfields Inc., dated June 2024
- Conceptual Landscape and Streetscaping Plans, prepared by the mbtw group, rev. June 21, 2024

**Appendix B: Detailed Comments**

CH provides the following detailed comments regarding technical issues in the submission of OPA 505-03/24 and ZBA 520-08/24 pertaining to 2030 Caroline Street; however, addressing these comments will not resolve the fundamental matters described above.

#	Topic/Section/ Plan	CH – First Submission Comments (September 20, 2024)
1.	<b>Section 1: Introduction (Page 1)</b>	The third paragraph needs to be revised to clarify that the 1% statistical probability is in reference to a storm of equal or greater magnitude occurring any given year.
2.	<b>Section 1: Introduction (Page 1)</b>	The third paragraph needs to be revised or removed as infrastructure sizing and design generally does have consideration for the Regional Storm event; at least within this region and at this point in time. Further, within Conservation Halton’s jurisdiction many SWM Controls have been designed to operate under, and/or control the Regional Storm; and the vast majority of <b>new</b> crossing structures are sized to convey the Regional Storm.
3.	<b>Section 3: Methodology (Page 2)</b>	<p>The first paragraph, as well as elsewhere within the document, needs to be revised to clarify that the subject area is located within a <b>flood plain</b> associated with Lower Rambo Creek as identified through the City’s “Major Transit Station Area (MTSA) Phase 2 Flood Hazard Assessment” (WSP, March 2023) and as described in the CA Act and Ontario Regulation 41/24. Refer to the <i>Flood Hazard Review</i> section in CH’s cover letter for further detail.</p> <p>CH staff is available to discuss the flood hazard classification process with the study team if desired.</p>
4.	<b>Section 3: Methodology (Page 2)</b>	The second sentence, beginning “Proposed redevelopment within this area must demonstrate that...”, appears to reflect CH’s Board-approved Interim Spill Policy and Spill Parameters, which are used to evaluate proposed development activities within spill hazards. As the hazard affecting the subject property is flood plain (not spill), this policy and parameters do not apply to these applications. The text needs to be updated to reflect CH’s policies for new development within flood plain (e.g. sections 2.1 and 2.19 of CH’s Board-approved policies and guidelines).
5.	<b>Section 4.3: Geometry and Existing Conditions</b>	CH generally applies the same thresholds for emergency vehicles as applied for private vehicles. Text within reporting would need to be revised, or formal support from municipal emergency service providers and planning and engineering staff at both the City and CH be confirmed for an alternate emergency access criteria or practice and included within reporting.

	<b>Analysis... (Page 5)</b>	
6.	<b>Section 5: Discussion (Page 6)</b>	CH staff does not support the use of active floodproofing measures to facilitate new flood plain development. As outlined in Appendix 6 'Floodproofing' of the Technical Guide (MNR, 2002) seals (e.g. watertight doors) are fraught with problems and effectiveness is generally uncertain; further, there may not be sufficient time to implement such measures prior to the onset of flooding. Passive floodproofing measures would need to be used.
7.	<b>Section 5: Discussion (Page 6)</b>	Staff appreciates that the applicant has incorporated a conceptual analysis which explored incorporation of additional flood storage within the municipal parking area (533 John Street N); however, support from all stakeholders (e.g., City) would be required for these measures to be considered. Regardless, the conceptual analysis does not result in refinements to the flood plain hazard limit that would affect the subject property, does not improve access during times of flooding hazards, and does not reduce on-site and off-site flooding impacts to an acceptable level. Text needs to be revised within reporting to clarify the intent for considering/evaluating such mitigation works, as well as feedback received from stakeholders for the proposed works.
8.	<b>Appendix B</b>	Legends need to be clarified on Figures B2, B4, B6, and B8: in each case there appear to be four categories listed but only three colours shown.
9.	<b>Appendix B</b>	Figure B1: Clearer colour gradient is recommended (it is difficult to distinguish between the pink/red tones above and below 84.8 m).
10.	<b>Manning's n Municipal Parking Area to the North</b>	It is understood that the municipal parking area to the north of the subject property was recently completed, including demolition of a building to accommodate the parking. Staff appreciates that the applicant has generally adjusted the terrain data in this area to reflect this, however, the Manning's n layer needs to be adjusted (currently the modelling assigns a very high Manning's n in the area of the removed structure).
11.	<b>General</b>	It must be demonstrated that the proposed development does not increase flood risks off-site and that the existing stage-storage-discharge relationship of the watercourse has been maintained or improved. These requirements are typical within CH's jurisdiction for development/alteration of flood plain hazards. Staff understands that the proposed development generally reduces existing flood plain storage by approximately 1100 m <sup>3</sup> and can be expected to increase maximum water surface elevations on Caroline Street and upstream by as much as 0.02 m in select areas including on private property. Further, it is understood that earlier onset flooding can also be expected to occur which is also considered to be an increase in flood risk.

12.	<b>General Comment</b>	The proposed stormwater management strategy needs to be verified using the hydrologic modelling developed for the watershed, as recommended by the City's 'Phase 2' Study. If regulatory stormwater management controls are determined necessary, the proposed strategy may need to be altered to be consistent with CH's current guidelines for Regulatory SWM controls.
13.	<b>General Comment</b>	Grading and Servicing plans needs to be revised to show flood hazard limits and maximum water surface elevations and to confirm that all openings will be set above the maximum water surface elevation with at least 0.3 metres of freeboard unless otherwise agreed.
14.	<b>PPS Conformity</b>	The Planning Justification Report does not include discussion of the application's consistency with the natural hazards policies of the PPS (Sections 3.1.1 – 3.1.7). CH disagrees with this report's conclusion, stated several times throughout, that the requested OPA and ZBA are "consistent with the Provincial Policy Statement", given the natural hazard issues discussed above. Regardless of the flood hazard being deemed a flood plain or spill, the proposed development is not consistent with the PPS natural hazard policies.