

ONTARIO LAND TRIBUNAL
Tribunal de l'aménagement du territoire Ontario

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant and Appellant:	Burgess Heritage Group Inc.
Subject:	Request to amend the Official Plan – Failure of the Town of Grimsby to adopt the requested amendment
Existing Designation:	Neighbourhood Commercial Areas
Proposed Designated:	Site specific (To be determined)
Purpose:	To permit a five storey mixed use building
Property Address/Description:	133-137 Main St. E.
Municipality:	Town of Grimsby
Approval Authority File No.:	260-16-1901
OLT Case No.:	OLT-21-001631
OLT File No.:	PL200201
OLT Case Name:	Burgess Heritage Group Inc. v. Grimsby (Town)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant and Appellant:	Burgess Heritage Group Inc.
Subject:	Application to amend Zoning By-law No. 14-45 – Refusal or neglect of the Town of Grimsby to make a decision
Existing Zoning:	Neighbourhood Commercial
Proposed Zoning:	site specific exceptions (to be determined)
Purpose:	To permit a five storey mixed use building
Property Address/Description:	133-137 Main St. E.
Municipality:	Town of Grimsby
Municipality File No.:	26Z-16-1904
OLT Case No.:	OLT-21-001631
OLT File No.:	PL200201

**REPLY WITNESS STATEMENT of
ALLAN RAMSAY**

Allan Ramsay Planning Associates Inc.
11058 First Line, Moffat, ON, L0P 1J0

1. This Reply Witness Statement is supplementary to my original Witness Statement dated September 20, 2022.
2. I have reviewed the Witness Statements submitted on behalf of Burgess Heritage Group (“Burgess”).
3. This Reply Witness Statement responds to statements and information outlined in the Witness Statements of John Ariens (the “Ariens Statement”) and Tom O’Brien (the “O’Brien Statement”).

Updated Draft Official Plan Amendment

4. In my Witness Statement I reviewed the draft Official Plan Amendment (the “Draft OPA”) submitted by Burgess in September 2021. I understood the Draft OPA was the latest version and that Burgess intended to seek approval of the Draft OPA.
5. Tab 3 of the Ariens Statement contains an updated Draft Official Plan Amendment (the “Updated DOPA”). The following provisions of the Updated DOPA are similar, or identical, to the provisions of the Draft OPA:

<u>Draft OPA (September, 2021)</u>	<u>Updated DOPA (September, 2022)</u>
<ul style="list-style-type: none"> • Grocery stores, retail stores servicing the local neighbourhood, studios, personal services, pharmacies, banks, restaurants, and coffee shops as well as institutions, recreation, medical clinics, offices, places of worship, and dwelling units in conjunction with commercial uses are permitted; 	<ul style="list-style-type: none"> • In addition to the uses permitted, dwelling units in conjunction with commercial uses are permitted at or above the first storey;
<ul style="list-style-type: none"> • The lot area for the Neighbourhood Commercial designation shall be a minimum of 0.6 hectares; 	<ul style="list-style-type: none"> • The lot area for the Neighbourhood Commercial designation shall be a minimum of 0.6 hectares;
<ul style="list-style-type: none"> • A maximum building height of 5 storeys may be permitted; 	<ul style="list-style-type: none"> • A maximum building height of 5 storeys may be permitted;
<ul style="list-style-type: none"> • New residential development shall not be greater than 235 units per net residential hectare; and, 	<ul style="list-style-type: none"> • New residential development shall not be greater than 235 units per net residential hectare; and,

6. However, the Updated DOPA contains the following significant revision:

<u>Draft OPA (September, 2021)</u>	<u>Updated DOPA (September, 2022)</u>
<ul style="list-style-type: none"> • New development shall conform to the urban design criteria set out in Section 3.4.7.7. <p>Note Section 3.4.7.7 includes the following criteria:</p>	<ul style="list-style-type: none"> • New development shall conform with the following urban design criteria: <ol style="list-style-type: none"> a) Underground parking access/service facilities shall not dominate the view of the streetscape; b) The implementing Zoning By-law shall include details regarding

<u>Draft OPA (September, 2021)</u>	<u>Updated DOPA (September, 2022)</u>
<p>a) Development shall meet the criteria set out in Section 3.4.7.6 in addition to the criteria within this Section</p> <p>b) Garage access/service facilities shall not dominate the view of the streetscape.</p> <p>c) The implementing Zoning By-law shall include details with respect to Build-Within Zones for front and exterior side yards, for the various anticipated development types and forms.</p> <p>d) Parking lots shall not be located on any front yard within the Residential/Mixed Use designation.</p> <p>e) Where a rear or exterior lot line or the rear or side building façade abuts a public road, public open space, and/or a residential lot, special landscaping/building treatments shall be required to ensure that building façades and servicing areas are attractive and/or appropriately screened from view.</p>	<p>minimum interior side yards, minimum exterior side yards, minimum rear yards, and building heights;</p> <p>c) The implementing Zoning By-law shall include details regarding the location of parking; and</p> <p>d) Where a building facade abuts a public road, public open space, and/or a residential lot, landscaping/building treatments shall be required to ensure that building facades and servicing areas area [sic] attractive and/or adequately screened from view.</p>

7. There is no explanation in the Ariens Statement indicating why the above-noted revision to the Official Plan policy is proposed nor is there any commentary of the proposed urban design criteria that is now included in the proposed Official Plan policy.
8. In my opinion, Item b) and c) of the Updated DOPA are not “urban design criteria” but simply direction to include regulations in the zoning by-law to address: minimum interior side yards, minimum exterior side yards, minimum rear yards, building heights, and the location of parking. Items b) and c) offer no indication of what represents appropriate and desirable built form or what consideration should be taken into account when preparing zoning by-law regulations regarding setbacks, building heights or the location of parking. I do not agree with their inclusion in the proposed policy as “urban design criteria”.
9. I rely on and adopt the evidence of Ms. Jay in terms of what would be appropriate urban design criteria for inclusion in the DOPA.

Regional Land Needs Assessment

10. In several paragraphs in the Ariens Statement there is reference to the Regional Land Needs Assessment (the “2051 Land Assessment”) that was completed in June, 2022 as part of the Region of Niagara comprehensive municipal official plan review. At paragraph 68 Mr. Ariens cites Table 1, 2051 Municipal Population, Housing and Employment Forecasts that identifies the Town of Grimsby forecast for 2051 of 37,000 population and 16,070 households. At paragraph 69 there is reference to Table 6, Housing Unit Growth by Type and Municipality, 2021 to 2051 that allocates 3,120 apartment units to the Town of Grimsby during the 2021-2051 forecast period.

11. Although the above-note population forecasts are not yet within an approved official plan it is my opinion that these forecasts are informative and should be relied upon in considering the Burgess applications.
12. It is noteworthy that the current Town of Grimsby Official Plan has a planning horizon to 2031 and is based on accommodating a population of 33,000. The extension of the planning horizon to 2051 requires the Town to accommodate additional people over a 20 year period.
13. It is also important to consider the Town's Development Charges Study (the "DC Study") completed in December, 2021. According to the DC Study the Town's 2020 population was estimated to be 30,800 and the number of households was estimated to be 11,670 including 1,679 apartment units. For 2030, the DC Study forecasted a population of 34,000 people and 13,195 households including 2601 apartment units. In my opinion the 2030 forecasts are in line with the Grimsby Official Plan forecasts.
14. Based on my review of the 2051 Land Assessment Study and the Town's Development Charges Study, in order to accommodate growth to the extended forecast period 2051 the Town will need to accommodate an additional 6,200 people and approximately 4,400 households including 3,120 apartments from 2020 to 2051. On average 100 apartment units per year are required to achieve the 2051 forecast in the 2051 Lands Assessment. The Burgess proposal contains 148 apartment units and represents nearly a one and a half year supply of apartment units. When combined with the proposed 211 apartment units on the adjacent site at 141 Main Street East there is more than a three and a half year supply of apartment units in a concentrated area and outside of a Major Intensification area.
15. In my opinion, large scale developments of the size of the Burgess proposal should be located within a major intensification area and not within areas of the town where small infill development is proposed.

Adopted Niagara Region Official Plan

16. In June, 2022 Niagara Region adopted a new comprehensive Official Plan (the "Adopted Niagara OP"). The adopted Niagara OP has been submitted to the Ministry of Municipal Affairs and Housing for approval. The Ministry has not yet issued its decision concerning the approval request. In my opinion the policies in the Adopted Niagara OP are not determinative to the matters before the Tribunal.
17. Throughout the Ariens Statement there are several references to the Adopted Niagara OP. At paragraphs 73, 75 and 95 Mr. Ariens indicates Grimsby needs to complete its conformity exercise and will likely do so once the new Regional plan is approved. I agree that the Town will need to bring its Official Plan into conformity with the Adopted Niagara OP once it is approved. In my opinion the conformity exercise should be done in a comprehensive way through a dedicated public process, rather than site-by-site, as implied by Mr. Ariens relying on it in support of the proposed development.
18. The Adopted Niagara OP extends the planning horizon to 2051, updates the population and employment forecasts, amends the local municipal intensification targets and introduces and/or amends several policies including policies dealing with intensification.

For Grimsby the updated population forecast at 2051 is 37,000 people and the updated intensification is 98%.

19. The Subject Lands are shown as Settlement Area on Schedule A, Local Municipalities, and Delineated Built-Up Areas on Structure B, Regional Structure.
20. The Adopted Niagara OP continues to require Local Area Municipalities to:
 - (i) accommodate intensification primarily through intensification in built-up areas with particular focus on the following locations: strategic growth areas, areas with existing or planned public service facilities; other locations with existing or planned transit service, with a priority on areas with existing or planned frequent transit; and local growth centres and corridors, as identified by Local Area Municipalities (2.2.2.1).
 - (ii) prepare intensification strategies to set out where and how the minimum intensification targets in Table 2-2 will be accommodated (2.2.2.7).
 - (iii) identify strategic growth areas, as shown on Schedule B, and local growth centres as a focus for intensification, as well as other areas appropriate for intensification (2.2.2.8).
 - (iv) apply different intensification targets throughout their built-up area, provided the overall minimum intensification target in Table 2-2 for their municipality is planned to be achieved (2.2.2.9)
 - (v) identify the location and boundaries of local growth centres and corridors, that:
 - i. are considered priority areas for development;
 - ii. achieve higher densities than what currently exist;
 - iii. identify an appropriate design and scale of development and the transition of built forms to adjacent areas pursuant to Section 6.2;
 - iv. provide a diverse mix of land uses at densities that support existing or planned public transit and active transportation infrastructure;
 - v. support the provision of affordable housing; and
 - vi. revitalize and, where appropriate, preserve cultural heritage resources within areas that reflect local heritage, character, and streetscapes pursuant to Section 6.5; (2.2.2.10)
21. In my opinion the approach to intensification in the Adopted Niagara OP is generally similar to the overall directions set out in the existing Niagara Official Plan. The proposed development is not located with an identified local growth centre or corridor and does not conform with the Adopted Niagara OP.

Small Town Character

22. In several paragraphs Mr. Ariens opines that the Burgess Proposal will protect and not undermine Grimsby's "small town character" and indicates:

- (i) The Town of Grimsby will rank as the fifth smallest municipality in Niagara Region and will not become a large urban center like St. Catharines, Welland or Niagara Falls and further notes that Grimsby will remain similar to other “smaller” municipalities like West Lincoln, Thorold, Niagara on the Lake, Pelham and Port Colborne. Mr. Ariens concludes by stating: “A mid rise 3/4/5 storey mixed use building proposed along Main St. and located within a cluster of Neighbourhood Commercial uses also does not undermine that “small town character” objective.” (paragraph 106)
 - (ii) The new building has been appropriately massed, sculpted, and designed to be sensitive not only to the heritage home, but the surrounding residential uses and streetscape. As such, it protects the small town character and feel of Grimsby as well as its culture and heritage. (paragraph 157)
23. In my opinion the proposed development does not protect the small town character of the area. I agree with Mr. Ariens that Grimsby is intended to remain a smaller municipality in the Region of Niagara. Grimsby is not intended as a large urban center. Within this context the Town has established an intensification strategy that accommodates small scale infill and not larger scale, more dense buildings such as what is proposed by Burgess throughout the Town. Large scale developments of the size of the Burgess proposal should be located within a major intensification area and not within areas such as the Subject Lands.

Relationship Between the Zoning By-law Regulations and the Concept Plan

24. The Agreed Statement of Facts – Planning states that the Preliminary Site Plan dated August 3, 2002 is illustrative of the proposed development. In keeping with this statement Mr. Ariens indicates at paragraph 41:
- “In order to implement the proposed development concept, an amendment to the Zoning By-law is required. This amendment will maintain the NC Zone but introduce special regulations (setbacks, height, parking, etc.) to implement the development concept. A copy of the proposed Zoning By-law amendment is found at TAB 4 together with a copy of the site plan upon which the locations of the specific modifications/regulations are identified”.
25. In response to Issue 9 Mr. Ariens reviews the proposed coverage, height, massing and urban design features of the building and concludes the Applications are appropriate.
26. In my opinion the proposed zoning by-law amendment contains standards and regulations that do not implement the proposed development concept and create as-of-right zoning permissions well beyond the extent of development shown on the concept plan. Some examples with respect to lot coverage, building height and massing include:
- (i) the proposed zoning by-law amendment increases the maximum lot coverage from 30% to 50% yet the concept plan indicates a proposed lot coverage of 40.8%;
 - (ii) the proposed building transitions in height from 3 floors to 4 floors along the Nelles Road and Main Street frontages yet there is no requirement for these stepbacks in the proposed zoning by-law amendment;

- (iii) the proposed zoning by-law regulations for building height establish a maximum height of 13.5 m for a 4 storey building and a maximum of 17 m for a 5 storey building, however, there is no indication which portions of the building will be subject to the 4 storey or 5 storey requirements;
- (iv) The proposed zoning by-law amendment does not require articulation along the sides facing Main Street west elevation along Nelles Road, the north elevation along Main Street East and the east elevation abutting 141-149 Main Street East.

Hospital Corridor Secondary Plan And Urban Design Guidelines

- 27. In paragraphs 7, 8 and 10 through 17 Mr. Ariens reviews the Hospital Corridor Secondary Plan and Urban Design Guidelines Project process. More specifically it is noted in paragraph 16 that in February, 2019 Town Council defeated a motion directing the Project consultants to finish the study, and therefore the Hospital Corridor Secondary Plan and Urban Design Guideline project was terminated.
- 28. It is noteworthy that in February, 2019 neither the expansion plans for the West Lincoln Memorial Hospital nor the Town's commitment to contribute its local share of the financing for the Project were in place. As noted in paragraph 18 of the Ariens Statement it was April 2022 when the West Lincoln Memorial Hospital rebuild project was approved by infrastructure Ontario.
- 29. In my opinion it would be premature to complete the Hospital Corridor Secondary Plan and Urban Design Guidelines Project while there was uncertainty about the approval and financing of the Hospital expansion.

Other Items

- 30. At paragraph 117 Mr. Ariens indicates the redevelopment will "...add 148 new apartment units containing different floor areas and number of bedrooms and will thereby contribute to the variety of dwellings available to the Town. As noted earlier, Burgess has significant knowledge and experience with this local housing market and needs of the community." Burgess has not submitted any floor plans or information confirming the sizes of the different apartment units.
- 31. Mr. Ariens asserts the proposed development with a mix 1 bedroom, 1 bedroom with a den and 2 bedroom units will "...provide both downsizing opportunities for the nearby low-density neighbourhoods and starter homes for first time home buyers" (paragraphs 52, 65 74). In my opinion and as enunciated in provincial, regional and local policies there is a wider housing need than a downsizing demographic and first time purchasers. Apartment units suitable for larger households are required to ensure a wider mix of housing types.
- 32. Mr. Ariens erroneously states in paragraph 123 that policy 3.6.1.3 establishes "...a size range for Neighbourhood Commercial parcels between 3 to 6 hectares in area". In my opinion the 3 to 6 ha size range refers to the overall area designated as Neighbourhood Commercial and not a minimum and maximum size for individual parcels. This is evident in the immediate area as all of the 13 Neighboring Commercial parcels are less than 1 ha in size. Furthermore, the Grimsby Zoning By-law establishes a minimum of area requirement of 0.2 ha.

33. Mr. Ariens indicates at paragraph 125 that the site plan includes 5 lay by parking spaces along the north side of Main St to facilitate direct access to the ground floor commercial space. I agree that the lay by parking can facilitate direct access to the ground floor commercial space. However, the proposed lay by parking proposes to relocate the existing sidewalk and remove a large portion of the existing boulevard, significantly limiting the ability to incorporate street trees, streetscape furniture, hardscaping and areas for gathering resulting in an unattractive streetscape.
34. At paragraph 131 Mr. Ariens asserts that the “NC Zone allows residential units above the ground floor with a maximum height of 8.5 m ... as such, the Subject Lands could accommodate a 2 or 3 storey mixed use building as of right”. In my experience, within a maximum building height of 8.5 m a two-storey mixed use building could be accommodated based on a minimum floor to ceiling height of 4.5 m for the ground floor commercial space and 2.7 m for the upper storey. Under these parameters a three-storey mixed use building would require a minimum building height of 9.9 m.
35. Regarding overlook and privacy impacts with townhouses at 8 Nelles Road Mr. Ariens indicates that “...the window on the south facing front wall of these townhouses are for the primary bedroom. Primary bedroom windows are typically dressed in curtains or blinds which remain closed when in use” (paragraph 133). I disagree with Mr. Ariens’ inference that the primary bedroom of these townhouse units will not be impacted by the proposed development. In my experience bedroom windows, even with curtains and blinds, need to be protected from undue, adverse impacts. The windows along the south facing front wall of these townhouses are opposite 24 units with windows and balconies (storeys 2 to 4) that will have direct overlook.

Conclusions

36. Having reviewed the Witness Statements submitted on behalf of Burgess I maintain my opinion that:
- (i) The Proposed OPA and Proposed ZBA would permit an overdevelopment of the site, are not in keeping with the character of the area and will be incompatible with the existing and planned uses located adjacent to the site.
 - (ii) The Proposed OPA and Proposed ZBA do not have sufficient regard for matters of Provincial Interest in Section 2 of the *Planning Act* and are not consistent with the Provincial Policy Statement. The Proposed OPA and Proposed ZBA do not conform with the Growth Plan for the Greater Golden Horseshoe.
 - (iii) The Proposed OPA and Proposed ZBA would authorize a form of intensification on the Subject Lands that does not conform with the Intensification Strategy outlined in the GOP. According to the Intensification Strategy, the Town has two Major Intensification Areas. The Subject Lands are not situated in either of these Major Intensification Areas. Further, the extent of intensification proposed in the Revised Proposal is similar to the scale of development permitted in Major Intensification Areas and would not be compatible with the low-rise character of the surrounding area.
 - (iv) The Proposed OPA and Proposed ZBA do not represent good planning and should not be approved.

(v) I recommend the appeals by the Burgess not be allowed.

Respectfully Submitted:



October 7, 2022

Date

Signature