

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O.

Applicant and Appellant: Burgess Heritage Group Inc.
Subject: Request to amend the Official Plan - Failure of Town of Grimsby to adopt the requested amendment

Existing Designation: Neighbourhood Commercial Areas
Proposed Designated: Site Specific (To be determined)
Purpose: To permit a 5-storey mixed use building
Property Address/Description: 133 and 137 Main Street East
Municipality: Town of Grimsby
Approval Authority File No.: 26O-16-1901
OLT Case No.: OLT-21-001631
Legacy Case No.: PL200201
OLT Lead Case No.: OLT-21-001631
Legacy Lead Case 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

Applicant and Appellant: Burgess Heritage Group Inc.
Subject: Application to amend Zoning By-law No. 14-45 - Refusal or neglect of Town of Grimsby to make a decision

Existing Zoning: Neighbourhood Commercial
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit a 5-storey mixed use building
Property Address/Description: 133 and 137 Main Street East
Municipality: Town of Grimsby
Municipality File No.: 26Z-16-1904
OLT Case No.: OLT-21-001632
Legacy Case No.: OLT
Lead Case No.: PL200202
Legacy Lead Case No.: OLT-21-001631 PL200201

REPLY WITNESS STATEMENT OF

CATHERINE JAY, BLA, CSLA, OALA, MCIP, RPP

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**”).

4. Tab 3 of the Ariens Statement contains an updated Draft Official Plan Amendment (the “**Draft OPA**”). There is no explanation in the Ariens Statement regarding the revisions and no commentary on the proposed urban design criteria that are now included in the proposed Official Plan policy.

5. The Draft OPA proposes that the development must conform with the following “urban design criteria”:

- (i) Underground parking access/service facilities shall not dominate the view of the streetscape;
- (ii) The implementing Zoning By-law shall include details regarding minimum interior side yards, minimum exterior side yards, minimum rear yards, and building heights;
- (iii) The implementing Zoning By-law shall include details regarding the location of parking; and
- (iv) 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.

6. In my opinion the proposed “urban design criteria” are not appropriate and provide no relevant guidance in terms of ensuring an appropriate design response to the planning instruments provided. Successful urban design criteria ensure compatibility and fit with the surrounding character for both the built form, including setbacks, setbacks, articulation, and shadow, as well as the overall site design, including building orientation and access, servicing, loading and outdoor amenity space. The newly proposed “urban design criteria” provide little to no appropriate urban design direction for these types of criteria.

7. Any site specific urban design criteria in the Draft OPA should be drawn from other urban design criteria found in the Town’s Official Plan, particularly policies 2.5.5, 3.4.7.2 and 3.4.7.8 which address similar types of built form in a similar context. Accordingly, it is my opinion that if the Draft OPA imposes site specific urban design criteria on the subject site, those criteria that will ensure a high quality urban design and built form and an enhanced streetscape should include the following:

- (i) New *development* shall be compatible with and consider the impact on adjacent and neighbouring residential built form including overlook and shadowing, the character of the surrounding area and the need for a transition in heights and densities:
 - a) where a mixed use building in excess of 4 storeys in height abuts a Low or Medium Density Residential designation or existing *development*, a 45 degree angular plan shall be established at a point 7.5 metres directly above the abutting interior side and/or rear property line;

- b) where adjacent lands are designated Low or Medium Density Residential, the height of all new buildings, within 25 metres of the property line of these designations, shall not be greater than 2 storeys above the existing adjacent buildings; and
 - c) a shadow study in accordance with Town requirements shall be submitted to ensure the proposed building does not result in undue adverse impacts on adjacent properties particularly in regard to adequate sunlight for both the public realm and private outdoor amenity areas.
- (ii) The main entrances to each commercial/retail at grade unit shall face and directly access the public sidewalk along Main Street and Nelles Road;
 - (iii) Residential lobbies shall directly access a public sidewalk with minimum changes in grade meeting all accessibility requirements;
 - (iv) Any surface parking, loading, servicing, or underground access shall be located behind the main front wall of Nelles House;
 - (v) Rooftop mechanical equipment should be screened from view with materials that are complementary to the building;
 - (vi) Massing and scale of a mixed use building shall be minimized with building articulation and architectural elements including stepbacks and setbacks to reduce visual impact and promote compatibility with adjacent development;
 - (vii) Where permitted, at grade residential units shall be setback a minimum 3 metres to provide privacy to individual units and include landscaping with hedges and fencing no taller than 1.5 metres; and
 - (viii) At grade outdoor amenity areas shall provide opportunities for recreation and social interaction.

In my opinion these are appropriate urban design criteria based on the Town's Official Plan that the current proposal does not respond to or articulate in a suitable manner.

8. Paragraphs 10 and 42 a) of the O'Brien Statement reference a private street and 1.5 and 2-storey residences to the north of the subject site. The existing residences directly adjacent and to the north of the site are 1 storey bungalow townhouses facing a 6m private lane. Attached as **Appendix A** to this Responding Witness Statement is an extract from the Town's site specific zoning regulations that apply to these townhouses show that the permitted height is 1 storey.
9. Paragraphs 57 to 62 of the O'Brien Statement refer to several Town Official Plan policies which were not addressed in my original witness statement. These policies include: Policy 2.2.12 related to Municipal Structure Principles in Section 2.2; Objective 2 in Section 2.3 Municipal Structure Elements; Policy 2.4.6(f) in Section 2.4 Growth Management and Section 2.5 in respect of the intent of the Housing policies. In my opinion, these policies and objectives either do not apply to the proposed development or are not relevant to an urban design analysis. Mr. O'Brien also addresses some additional streetscape policies under Section 7 of the Official Plan. My responses to his comments on these policies are as follows:

(i) **Policy 7.1.2 – utilities**

Policy 7.1.2 describes the requirement for all new developments to locate utilities underground, where feasible. In my opinion this policy does not apply as the proposed development is an infill development where existing utilities will need to be addressed in the context of the site plan and Town requirements.

(ii) **Policies 7.1.4 and 7.1.6 – replacement trees**

Policies 7.1.4 and 7.1.6 require existing street trees to be maintained and for all new development to coordinate tree planting within the street allowance. The O'Brien Statement indicates that roughly 24 large and medium sized deciduous trees will be provided in a similar fashion to the existing trees on site that are proposed to be removed. Based on the landscape concept prepared by Adesso, I disagree that replacement trees will be provided in a "similar fashion" as these trees will not provide appropriate shade and do not relate to the Nelles House in a way that compensates for all the mature trees being removed on the site. In particular, there are no large shade trees being proposed surrounding the Nelles House where the existing trees are proposed to be removed. It is unclear where the underground parking is proposed in relation to the Nelles House remaining in situ, but this should not inhibit the planting of large shade trees where existing ones are being removed.

(iii) **Policy 7.1.7 – surface parking to be screened**

Policy 7.1.7 states that surface parking lots should be screened through landscaping. The O'Brien Statement indicates that detailed landscaping can be provided at the site plan stage. However, given a new landscape concept was provided as part of the O'Brien Statement, much more detail regarding landscaping to screen the parking ought to have been provided to support his assertion that the proposed development conforms with this policy.

(iv) **Policy 7.1.8 – pedestrian routes**

Policy 7.1.8 states that for mixed use developments, pedestrian routes from building entrances and parking to the street be provided. While I agree there are some pedestrian walkways internal to the site that connect to Nelles Road and one to Main Street, I disagree with the response that fine-tuning of pathways can be addressed during site plan review. In the context of a mixed use building, sidewalks that connect directly to the sidewalk and the Main Street streetscape are particularly important in order to ensure the success and viability of the non-residential component of the development. The landscape concept provided eliminates all walkways from what is proposed to be commercial space along main street and replaces the space between the building and Main Street entirely with landscaping. There are no sidewalks and therefore no access from the commercial units along the street.

(v) **Policy 7.2.2 – vehicular access to minimize disruptions**

Policy 7.2.2 states that individual direct access to any development site shall minimize disruptions to traffic flow and safety and improve the attractiveness of the road. I agree that a single access along Nelles Road improves safety along Main Street.

10. At Paragraphs 49-55 of the O'Brien Statement, Mr. O'Brien reviews the policies in Section 3.6.1 of the Town's Official Plan. While I agree that these policies are technically applicable since the proposed designation of the site is Neighbourhood Commercial, these criteria have little relevance for the type of mixed use development proposed by Burgess. In my opinion, the policies in Section 3.6.1 of the Official Plan: Neighbourhood Commercial Area do not contain any policies that apply to ensure a mixed use residential area and are therefore not meaningful or practically useful in assessing the proposed development particularly from an urban design perspective.
11. Tab 3 of the O'Brien Statement includes a new coloured landscape concept plan that was not previously provided. This plan shows two outdoor amenity areas on what appears to be the 5th floor. Given the proximity of these amenity areas to the one storey townhouses to the north of the property, I am concerned about overlook and privacy. These amenity areas are within the 25 m setback contemplated in Town Official Plan policy 2.5.5 and would have a direct view into the homes and back yards of the existing residential properties to the north.
12. Paragraph 21 of the O'Brien Statement refers to a newly proposed landscape area at the corner of Main Street and Nelles Road and paragraph 63 of the O'Brien Statement includes a table with responses to the Region's comments on the Urban Design Brief submitted as part of the original applications. One of the Region's comments suggests that a corner feature area with a small seating area be incorporated at the corner of Nelles Road and Main Street that relates to the heritage building and helps to anchor the site. While I agree in principle with this recommendation, in my opinion the proposed corner treatment shown on the updated landscape plan merely provides screening for a proposed transformer with two benches facing away from each other. This small space neither addresses the street nor adequately integrates with the rest of the site, providing no connection to the Nelles House.
13. In summary, my opinion on the proposed development remains unchanged following my review of the Ariens and O'Brien witness statements:
 - (i) The proposed development does not conform with the Town of Grimsby Official Plan as it does not respond to the vision of a small-town, small scale development in accordance with section 2.1 of the Town's Official Plan;
 - (ii) The proposed development is not compatible with the surrounding context;
 - (iii) The proposed development does not conform with policy 11.A.2 of the Region of Niagara's Official Plan;
 - (iv) The proposed development would not allow for successful or viable non-residential uses on the site; and
 - (v) The proposed built form does not provide sufficient space to accommodate an active at grade, walkable streetscape to support a mixed use building and provide a successful Main Street East streetscape.

Site Specific	By-law #	Address	Zone	Additional Permitted Uses	Sole Permitted Uses	Excluded Uses	Lot, Building and Structure Exceptions
272	12-18	Nelles Road North and Wentworth Drive	RM1 (H)				<p>Maximum encroachment of a porch into a front or <i>side yard</i>: 2 m. Minimum parking requirement: - 1 space / <i>dwelling unit</i> 0.5 visitor spaces / unit to be provided on Common Element lands. The Common Element shall be deemed to a <i>street</i> .</p> <p>A second floor window shall not be permitted to face north on lands shown as Area A and to face west on the lands shown as Area B.</p> <p>On area A of Schedule 67 on Appendix A: Minimum <i>front yard</i>: 4.0 m. Minimum <i>exterior side yard</i>: 6 m. Maximum height: 1 storey</p> <p>On area B of Schedule 67 on Appendix A: Minimum <i>lot area</i>: 160 sq.m. Minimum <i>front yard</i>: 4 m. Minimum <i>exterior side yard</i>: 3 m. Minim <i>rear yard</i>: 6 m. Maximum height: 1 storey</p>