

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 15, 2017

CASE NO(S): PL150686

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Alfonso Gallucci General Construction Limited
Subject:	By-law No. 0178-2015
Municipality:	City of Mississauga
OMB Case No.:	PL150686
OMB File No.:	PL150686
OMB Case Name:	Alfonso Gallucci General Construction Limited v. Mississauga (City)

Heard: September 18, 2017 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Alfonso Gallucci General
Construction Limited

B. Horosko

City of Mississauga

R. Kehar and N. Perhar

MEMORANDUM OF ORAL DECISION OF THE BOARD DELIVERED BY HUGH S. WILKINS ON SEPTEMBER 18, 2017 AND ORDER OF THE BOARD

[1] This decision arises from a settlement conference held in Mississauga regarding an appeal brought by Alfonso Gallucci General Construction Limited (the "Appellant") with respect to the passing of Zoning By-law No. 0178-2015 (the "Zoning By-law") by the City of Mississauga (the "City"). The Zoning By-law is a site-specific by-law regarding the property known municipally as 5109 Hurontario Street at the southeast

corner of Hurontario Street and Nahanni Way (the “subject property”).

[2] The Appellant proposes to build a 33-storey apartment building on the subject property. It applied for an Official Plan Amendment and for an amendment to the City’s Comprehensive Zoning By-law No. 0225-2007 to increase the allowed density and height at the subject property in order to permit the proposed development. On June 24, 2015, the City approved the applications by passing the Zoning By-law and Official Plan Amendment No. 30.

[3] The Zoning By-law zones the subject property as “H-RA5-23”. Among other things, it allows for a maximum height of 33-storeys, a maximum of 392 dwelling units, and minimum gross floor area of 313 square metres (“sq m.”) for specified non-residential uses. It also sets out parking space requirements. The Zoning By-law stipulates that the “H” holding symbol shall be removed upon the Appellant satisfying certain requirements, including the execution to the satisfaction of the City of an agreement under s. 37 of the *Planning Act* (“s. 37 Agreement”). Section 37 states that, provided that it is permitted under the applicable official plan (which in the present case it is), a municipal council may pass a by-law authorizing height and density increases otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services and matters as are set out in the by-law.

[4] On July 20, 2015, the Appellant appealed the Zoning By-law to the Board. The Appellant’s main issues concerned the fact that provisions of the s. 37 Agreement required for lifting the “H” holding symbol under the By-law were not specified or agreed to by the Appellant and the City.

[5] On September 14, 2017, the Appellant notified the Board that the issues in dispute had been resolved and it requested the scheduling of a settlement conference.

[6] A settlement conference was held on September 18, 2017 at which the Parties jointly requested the Board to allow the appeal, in part, and modify and approve the

Zoning By-law regarding regulations for unit count, non-residential gross floor area, and parking. In all other respects, the Zoning By-law would not be altered by the settlement. The Parties stated that they had drafted a s. 37 Agreement under which the Appellant agreed to convey part of the subject property to the City for use as a local road and landscape buffer. The Parties stated that all of the By-law's "H" holding symbol requirements have now been satisfied apart from certain technical legal steps regarding escrow documentation that still need to be completed to finalise the s. 37 Agreement.

[7] At the settlement conference, the Board heard opinion evidence from Janice Robinson on behalf of the Appellant. She was qualified by the Board to provide opinion evidence in the area of land use planning.

[8] Ms. Robinson described the background to the appeal, noting that the subject property is in an area designated under the City's Official Plan as "Residential High Density" and is in the "Uptown Major Node Character Area" of the City.

[9] Ms. Robinson outlined the proposed amendments to the Zoning By-law (Exhibit 4) regarding regulations for unit count, non-residential gross floor area, and parking. Regarding the proposed unit count amendment to the Zoning By-law, she stated that it would increase the permissible number of units from 392 to 404 to reflect market demand. She stated that there have been no concerns raised by neighbours in this regard. The Appellant submitted that this increase is modest and caused by the Appellant's wish to increase the number of smaller, more affordable units in the proposed development.

[10] Regarding the proposed non-residential floor area amendment, Ms. Robinson stated that an appropriate retail tenant had not been secured for the space proposed for non-residential uses. She stated that under policy 13.3.4.7 of the City's Official Plan, a minimum retail commercial floor space of 313 sq m. "will be permitted", but is not required. She opined that the proposed amendment to the Zoning By-law to eliminate the non-residential uses requirement for the subject property conforms with this policy.

[11] Regarding parking, Ms. Robinson stated that the proposed amendment would decrease the number of parking spaces at the subject property. She stated that policies 8.4.3 and 8.4.7 of the City's Official Plan allow for a reduction in the required number of off-street parking spaces where there is access to public transit. She stated that public transit in the form of a new Light Rail Transit system is being planned to run along Hurontario Street and will be accessible to residents of the proposed development. She stated that the proposed reduced parking is not inconsistent with similar standards applied in Toronto and elsewhere and she stated that it is appropriate.

[12] She stated that public notice of the proposed amendments has been served and that there has been no opposition to the proposed amendments from local residents.

[13] Ms. Robinson opined that the proposed amendments are consistent with the Provincial Policy Statement, 2014 (the "PPS"), and conform with the Growth Plan for the Greater Golden Horseshoe, 2017 (the "Growth Plan"), the Regional Official Plan, and the City's Official Plan. She further opined that they represent good planning and are in the public interest.

[14] At the conclusion of the settlement conference, the Board orally allowed the appeal, in part, and approved the Zoning By-law in the form contained in Exhibit 4. The Board directed that the Order be withheld until such time as being advised in writing by the City that the escrow documents referenced in the s. 37 Agreement have been provided to the City in a form that is satisfactory to the City Solicitor. The Board noted in its oral decision that it may be spoken to in order to address any issues that may arise in the meantime.

[15] On October 19, 2017, the City wrote to the Board advising that the outstanding condition to the Board issuing its Order was satisfied and that the Board could issue its written Decision and Order.

[16] On November 23, 2017, the Appellant wrote to the Board requesting a further

amendment to the proposed by-law. It stated that its plan has been that the proposed underground garage on the subject property would be built to the interior lot line; however, s. 4.15.6.23.20 of the Zoning By-law permits a zero setback to the street line rather than to the interior lot line of the subject property. The City's Comprehensive Zoning By-law No. 0225-2007 applies to setbacks from interior lot lines. It requires a 3 metres ("m") setback from interior lot lines for underground parking garages.

[17] On November 28, 2017, the City wrote to the Board stating that it did not have an issue with the Appellant's requested modification to s. 4.15.6.23.20 of the Zoning By-law. The Parties agreed that the revised wording for s. 4.15.6.23.20 should be:

Minimum setback from a **parking structure** completely below finished grade to any **lot line**: 0.0 m (bold in original)

[18] Both Parties submitted that the proposed revision constitutes the correction of a minor technical error. The Appellant filed an Affidavit sworn by Ms. Robinson, sworn on November 27, 2017, confirming this (marked by the Board as Exhibit 9). She stated that the Appellant's plans, which were previously submitted to the City, propose that the development's below grade parking structure have a 0 m. setback from the south lot line of the subject property. She stated that the planning reports that were presented to City Council (dated June 3, 2014 and March 24, 2015) describe zoning standards for the proposed development that include a "minimum setback from underground parking lot to any lot line: 0 metres". Ms. Robinson opined that the requested change conforms with the Growth Plan, the PPS and the City and Regional Official Plans.

[19] The City supported the Appellant's position. It submitted that Council had considered the development proposal on the basis of the zero setback being to "any lot line".

[20] Having considered the uncontested opinion evidence of Ms. Robinson, and upon receipt of the City's written confirmation that the condition in the Zoning By-law has

been satisfied, the Board finds that the proposed amendments to the Zoning By-law, including the additional amendment to s. 4.15.6.23.20, are consistent with the PPS, and conform with the Growth Plan, the PPS, and the City and Regional Official Plans.

[21] Based on the opinion evidence presented to the Board and given the consent of the parties, the Board allows the appeal, in part, and approves the Zoning By-law as set out in Exhibit E to the Affidavit of Janice Robinson, sworn November 27, 2017, which is attached hereto as Appendix A to this Decision.

ORDER

[22] The Board orders that the appeal is allowed, in part, and the Zoning By-law is approved as set out in Exhibit E to the Affidavit of Janice Robinson, sworn November 27, 2017, which is attached hereto as Appendix A to this Decision.

“Hugh S. Wilkins”

Hugh S. WILKINS
MEMBER

If there is an attachment referred to in this document
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

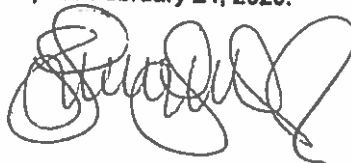
Ontario Municipal Board

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APPENDIX A

EXHIBIT E

Lorraine Elaida Santos,
a Commissioner, etc.,
Province of Ontario,
for Goldberg Group.
Expires February 24, 2020.

A handwritten signature in black ink, appearing to read "Lorraine Santos", written over the typed name and title.

SCHEDULE "A" TO
 ONTARIO MUNICIPAL BOARD
 ORDER DATED _____

OMB Case No. PL150686

OMB File No. PL150686

Alfonso Gallucci General Construction Limited

1. By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by deleting Exception Table 4.15.6.23 and substituting the following therefor:

4.15.6.23	Exception: RA5-23	Map # 36W	By-law:
In a RA5-23 zone the permitted uses and applicable regulations shall be as specified for a RA5 zone except that the following uses/regulations shall apply:			
Additional Permitted Uses			
4.15.6.23.1	(1) Retail Store (2) Personal Service Establishment (3) Financial Institution		
Regulations			
4.15.6.23.2	The provisions contained in Subsection 2.1.14, Article 4.1.15.1 and the regulations of Lines 11.1, 11.2 and 11.3 contained in Table 4.15.1, of this By-law shall not apply		
4.15.6.23.3	Maximum number of dwelling units		404
4.15.6.23.4	The uses contained in Sentence 4.15.6.23.1 shall only be located within a building, structure or part thereof, used for an apartment dwelling, long-term care dwelling, retirement dwelling, or any combination thereof		
4.15.6.23.5	Uses contained in Sentence 4.15.6.23.1 on the first storey shall be within an area having a minimum depth of 10.0 m measured from the streetwall abutting Hurontario Street		
4.15.6.23.6	The lot line abutting Hurontario Street shall be deemed to be the front lot line		

4.15.6.23	Exception: RA5-23	Map # 36W	By-law:
4.15.6.23.7	Minimum front yard:		
	(1)	for that portion of the dwelling with a height less than or equal to 12.0 m	3.0 m
	(2)	for that portion of the dwelling with a height greater than 12.0 m	13.0 m
4.15.6.23.8	Minimum exterior side yard:		
	(1)	for that portion of the dwelling with a height equal to 6.5 m	3.0 m
	(2)	for that portion of the dwelling with a height greater than 6.5 m	4.5 m
4.15.6.23.9	Minimum interior side yard:		
	(1)	for that portion of the dwelling containing a residential use with a height equal to 6.5 m	4.5 m
	(2)	for that portion of a building, structure or part thereof, with uses contained in Sentence 4.15.6.23.1	3.0 m
	(3)	for that portion of the dwelling with a height greater than 6.5 m	23.0 m
4.15.6.23.10	Minimum rear yard:		
	(1)	for that portion of the dwelling with a height equal to 6.5 m	3.0 m
	(2)	for that portion of the dwelling with a height greater than 6.5 m	37.0 m
4.15.6.23.11	Minimum landscaped area		22% of lot area
4.15.6.23.12	Indoor amenity area accessory to an apartment dwelling, long-term care dwelling or retirement dwelling, shall not be permitted on the first storey within 10.0 m of the lot line abutting Hurontario Street		
4.15.6.23.13	Minimum floor space index - apartment dwelling zone		2.9
4.15.6.23.14	Maximum floor space index - apartment dwelling zone		5.1
4.15.6.23.15	Maximum gross floor area - apartment dwelling zone		29 200 m ²
4.15.6.23.16	Minimum height of a building, structure or part thereof		6.5 m

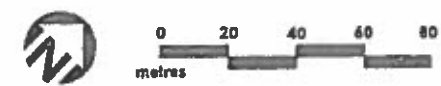
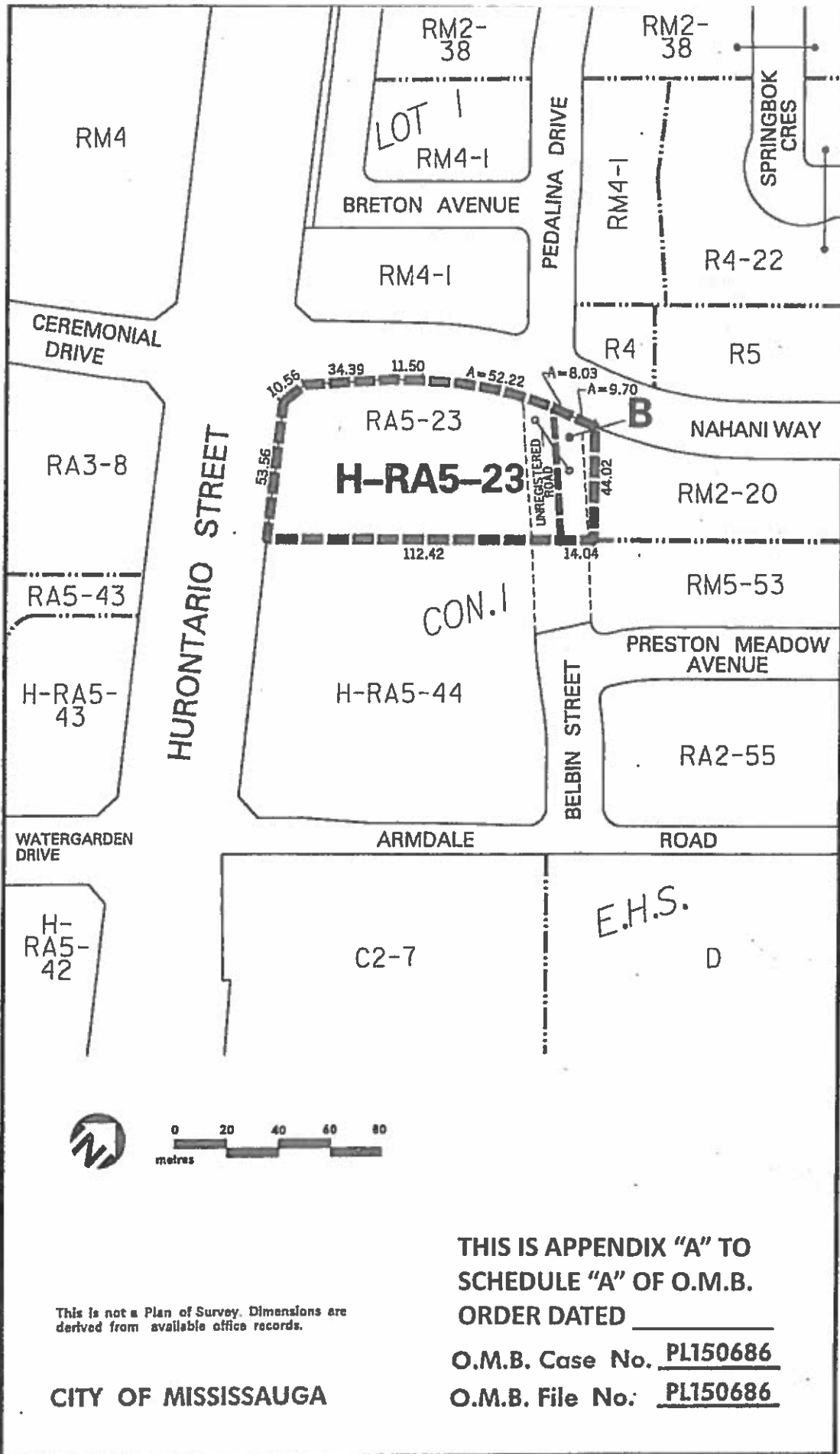
4.15.6.23	Exception: RA5-23	Map # 36W	By-law:
4.15.6.23.17	Maximum height		33 storeys
4.15.6.23.18	Main front entrance for uses contained in Sentence 4.15.6.23.1 and located on the first storey shall face Hurontario Street		
4.15.6.23.19	Main front entrance of an apartment dwelling, long-term care dwelling or retirement dwelling shall face Nahani Way		
4.15.6.23.20	Minimum setback from a parking structure completely below finished grade to any lot line		0.0 m
4.15.6.23.21	Minimum vertical depth		1.0 m
4.15.6.23.22	A driveway, aisle, parking area or loading space shall not be permitted between a wall of a building or structure , or part thereof and the lot line abutting Hurontario Street and Nahani Way		
4.15.6.23.23	Minimum number of resident parking spaces per bachelor condominium apartment dwelling unit		0.8
4.15.6.23.24	Minimum number of resident parking spaces per one-bedroom condominium apartment dwelling unit		0.9
4.15.6.23.25	Minimum number of resident parking spaces per two-bedroom condominium apartment dwelling unit		1.0
4.15.6.23.26	Minimum number of resident parking spaces per three-bedroom condominium apartment dwelling unit		1.2
4.15.6.23.27	Minimum number of visitor parking spaces per condominium apartment dwelling unit		0.10

4.15.6:23	Exception: RA5-23	Map # 36W	By-law:
4.15.6.23.28	<p>For the visitor parking space component, a shared parking arrangement may be used for the calculation of required visitor/non-residential parking in accordance with the following:</p> <p>the greater of</p> <p>0.10 visitor parking spaces per unit</p> <p>or</p> <p>Parking required for all non-residential uses</p>		
4.15.6.23.29	<p>Minimum number of parking spaces per 100 m² gross floor area - non-residential for uses contained in Sentence 4.15.6.23.1</p>	4.3	
4.15.6.23.30	<p>Minimum depth of a landscaped buffer abutting all lot lines</p>	3.0 m	
4.15.6.23.31	<p>A sidewalk having a maximum width of 1.5 m is permitted abutting the interior side lot line within the required landscaped buffer</p>		
4.15.6.23.32	<p>"Vertical Depth" means the distance between the finished grade level of the lands measured to the top of the roof membrane of a below grade parking structure</p>		

4.15.6:23	Exception: RA5-23	Map # 36W	By-law:
Holding Provision			
<p>The holding symbol H is to be removed from the whole or any part of the lands zoned H-RA5-23 by further amendment to Map 36W of Schedule B contained in Part 13 of this By-law, as amended, upon satisfaction of the following requirements:</p> <ul style="list-style-type: none"> (1) provision of any outstanding technical plans, studies and reports, including: <ul style="list-style-type: none"> (1.1) revised functional servicing report showing all fire flow calculations to the satisfaction of the Region of Peel; (1.2) updated acoustical report to the satisfaction of the Transportation and Works Department that provides sufficient detail to confirm that the proposed food store will be compliant with City/MOECC stationary noise criteria at the residential receptor locations; (1.3) quantitative wind study. (2) delivery of an executed Development Agreement in a form and on terms satisfactory to the City addressing and agreeing to the implementation of: <ul style="list-style-type: none"> (2.1) requirements/conditions of site plan approval; (2.2) warning clauses; (2.3) such other provisions the City may require in relation to the proposed development. 			

4.15.6.23	Exception: RA5-23	Map # 36W	By-law:
<p>(3) delivery of an executed Servicing Agreement in a form and on terms satisfactory to the City, which includes but is not limited to:</p> <p>(3.1) dedication to the City of the Belbin Street extension and remnant buffer block;</p> <p>(3.2) satisfactory arrangements to the City and the Region of Peel for the construction of the Belbin Street extension and construction of a 300 mm watermain from the north limit of Draft Plan T-M09004 W5 to Nahani Way within the identified future Belbin Street right-of-way;</p> <p>(3.3) cash payment or security for the ultimate streetscape/landscape works across the Hurontario Street frontage and satisfactory arrangements for the implementation of streetscape works and planting details proposed for Nahani Way, Belbin Street extension and any interim works on the Hurontario Street boulevard.</p> <p>(4) execution of a Section 37 - Public Benefits agreement to the satisfaction of the City.</p>			

2. Map Number 36W of Schedule "B" to By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by changing thereon from "RA5-23" to "H-RA5-23" and "B", the zoning of Part of Lot 1, Concession 1, East of Hurontario Street, in the City of Mississauga, PROVIDED HOWEVER THAT the "H-RA5-23" and "B" zoning shall only apply to the lands which are shown on the attached Schedule "A", which is deemed to be an integral part of this By-law, outlined in the heaviest broken line with the "H-RA5-23" and "B" zoning indicated thereon.



This is not a Plan of Survey. Dimensions are derived from available office records.

CITY OF MISSISSAUGA

THIS IS APPENDIX "A" TO SCHEDULE "A" OF O.M.B.

ORDER DATED _____

O.M.B. Case No. PL150686

O.M.B. File No. PL150686

APPENDIX "B" TO SCHEDULE "A" OF

O.M.B. ORDER DATED _____

OMB Case No. PL150686

OMB File No. PL150686

Explanation of the Purpose and Effect of the By-law

The purpose of this by-law is to amend the Council approved version of the "H-RA5-23" zone (Apartment Dwellings - Exception with a Holding Provision) to reflect an OMB settlement that changes certain regulations. The portion of the site that was rezoned to "B" (Buffer), on the east side of the future Belbin Street extension is not impacted by this settlement.

"H-RA5-23" permits 392 units in a 33 storey apartment dwelling with minimum landscaped area and building setback requirements, and a minimum of 313 m² of non-residential uses.

"H-RA5-23" (revised) permits a maximum of 404 units and removes the requirement for non-residential uses.

Upon removal of the "H" provision, the "RA5-23" zone will permit an apartment dwelling.

"B" permits a buffer between the existing semi-detached dwellings on Nahani Way and the future Belbin Street extension.

Location of Lands Affected

Southeast corner of Hurontario Street and Nahani Way, in the City of Mississauga, as shown on the attached Map designated as Schedule "A".

[http://teamsites.mississauga.ca/sites/18/Bylaws/OZ 13 018 W5 \(0178-2015 appealed to OMB\).ss.jmcc.docx](http://teamsites.mississauga.ca/sites/18/Bylaws/OZ 13 018 W5 (0178-2015 appealed to OMB).ss.jmcc.docx)