

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 17(40) of the Planning Act, R.S.O. 1990, c. P. 13, as amended

Appellant/Applicant: 30 Duke Street Limited
 Subject: Failure of Approval Authority to announce a decision respecting a Proposed Official Plan Amendment
 Municipality: City of Kitchener
 Reference No.: OPA 20/005/W/JVW
 Legacy Case No.: PL210104
 OLT Lead Case No.: OLT-22-002377
 Date of Hearing: April 22, 2025
 OLT Case Name: 30 Duke Street Limited v. Kitchener (City)

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

Appellant/Applicant: 30 Duke Street Limited
 Subject: Failure of Approval Authority to announce a decision respecting a Zoning By-law Amendment
 Municipality: City of Kitchener
 Reference No.: ZBA 20/013/W/JVW
 Legacy Case No.: PL210104
 OLT Lead Case No.: OLT-22-002377
 Date of Hearing: April 22, 2025
 OLT Case Name: 30 Duke Street Limited v. Kitchener (City)

PROCEEDING COMMENCED UNDER subsection 42(6) of the Ontario Heritage Act, R.S.O. 1990, c. P. 13, as amended

Appellant/Applicant: 30 Duke Street Limited
 Subject: Failure of Approval Authority to announce a decision respecting a Zoning By-law Amendment
 Municipality: City of Kitchener
 Reference No.: HPA-2022-V-015
 OLT Lead Case No.: OLT-22-002377
 Date of Hearing: April 22, 2025
 OLT Case Name: 30 Duke Street Limited v. Kitchener (City)

REPLY WITNESS STATEMENT OF PEGAH FAHIMIAN, M. Arch. MUD

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Reply:

1. The following is a reply to the Witness Statement of Andrea Sinclair, dated February 26, 2025, regarding the Appeals of the Official Plan Amendment and Zoning By-law Amendment applications for 22 Weber Street West.
2. I have prepared this Reply Witness Statement to assist the Tribunal and provide clarification, where it is needed. When I refer to a specific paragraph in Ms. Sinclair's Witness Statement, I have italicized the font to distinguish from my own paragraphs.
3. In paragraph 45, Mrs. Sinclair states, "*The building features a contemporary design using traditional building materials. The proposed building includes a defined podium base reflective of the two-storey building height of adjacent buildings on Weber Street. The face of the tower steps back above the podium base.*"
4. In my opinion, the submitted rendering does not match the final floor plans provided by the Applicant and relied on the preparation of the witness statements. The tower should step back a minimum of 3 meters from the base. While the rendering shows a step back, the floor plan does not reflect this, indicating a lack of coordination. As a result, the tower does not have a clearly defined base.
5. In paragraph 131, Mrs. Sinclair states "*With respect to landscaping, Weber Street is a Regional Road and any landscaping or streetscape improvements within the Region's right-of-way will be determined during the detailed site plan approval process. The placement of the building maximizes the rear yard setback to lower density uses along Roy Street and also improves the pedestrian realm by bringing the building to the street.*"

6. In my opinion, the proposal does not meet the requirement for physical separation, and its proximity to the property lines prevents the inclusion of any landscaped area at grade. Additionally, no space has been designated for a rooftop amenity, making it deficient in the required landscaped area.

7. In paragraph 152, Mrs. Sinclair states *“There are no amenity space requirements within the current zoning framework that apply to the Subject Lands. Notwithstanding this, amenity space is proposed in the form of private balconies as well as shared indoor amenity space. Opportunities for a shared rooftop amenity area can be explored during the site plan review stage. The Proposed Development includes indoor secure bicycle parking for residents.”*

8. The Urban Design Manual is a council-approved document that must be implemented through development applications. As it is not feasible to include all design requirements and standards within a zoning by-law, the Urban Design Manual was developed to provide detailed guidelines for use in preparing and evaluating development proposals. According to the City of Kitchener Urban Design Manual, Part C, Sections 11 and 12, the required outdoor amenity area is calculated as follows:

$$(2 \text{ sq.m} \times \text{number of units}) + (2.5 \text{ sq.m} \times \text{number of bedrooms} - \text{number of units}) =$$
 Outdoor Amenity Space

9. Amenity spaces should be of high quality and connected to the building. While detailed calculations for amenity areas are finalized at the site plan stage, the proposed built-form regulations, including reduced setbacks and rear yard, significantly limit opportunities for rooftop or outdoor amenity areas. Therefore, amenity and landscape areas must be considered during the Official Plan Amendment and Zoning By-law Amendment stage to ensure that any approved zoning regulations do not hinder the ability to require these essential site features during the site planning process. If amenity space (and the Urban Design Manual more generally) is not considered at the OPA/ZBA stage, it is possible that an approval authority or the Tribunal may approve zoning that allows for a development that cannot actually be built because it cannot meet urban design guidelines. Therefore, while final amenity calculations are determine at site plan, as a

threshold issue, we must ensure that the OPA/ZBA allow for the proposal to be built while meeting the Urban Design Manual to be considered good planning.

10. In paragraph 159, Mrs. Sinclair states *“The Proposed Development includes a compact tower form of development that will contribute to the changing City skyline within the Downtown and MTSA’s. The proposed height is lower than heights approved and contemplated on the opposite side of Weber Street, ensuring that there will be variety in the skyline along the Weber Street corridor.”*

11. The proposed development does not conform with the maximum height permitted under the current zoning regulations and lacks a proper transition to the adjacent low-rise heritage conservation district to the rear, making it incompatible with the existing and future built form along Weber Street West and the existing built form in the adjacent heritage conservation district. Furthermore, the proposed development does not meet the required setbacks and physical separation, which could constrain potential development (rear yard additions, etc.) on adjacent properties.

12. The proposed tower’s height is 2.3 times greater than the maximum permitted height for adjacent properties (proposed SGA-2 zone, under appeal) and 1.8 times greater than the current zoning (the minimum rear yard setback is half the building height - which in this case for the proposed tower height would be 29.3 metres for the tower portion). In this context; therefore, it does not meet the relative height requirements for this neighborhood.

13. In paragraph 193, Mrs. Sinclair states *“In my opinion the Proposed Development achieve an appropriate transition of built form.”*

14. In my opinion, the proposed tower is deficient in meeting the tall building design standards for tower separation, setbacks, rear yard setback, and podium design, resulting in an insufficient transition to the low-rise neighborhood.

15. In paragraph 207, Mrs. Sinclair states *“With respect to building setbacks, it is my opinion that the proposed zoning by-law amendment addresses adequate setbacks.”*

16. Built form and typology requirements are not included in the City of Kitchener zoning by-law but are provided within the Urban Design Manual. According to the Urban Design Guidelines for Tall Building Design, the required separation will be calculated by multiplying the building length and height, then dividing by 200. The proposal does not meet the separation target.
17. In paragraph 219, Mrs. Sinclair states “ *In my opinion, consideration should be given to the City’s Urban Design Manual. However, these guidelines should not be treated as policies or zoning regulations, for which conformity/compliance is required.*”
18. The Urban Design Manual is a council-approved document, and the City’s planning team is obligated to implement it. We do provide flexibility, considering the site context and location. However, the proposal fails to meet the majority of the Tall Building Design Guidelines and the Official Plan; and as such, it is not a compatible built form for this context.
19. In paragraph 228, Mrs. Sinclair states “ *It is unclear what is meant by the Proposed Development “complementing” adjacent built form through compatible height, scale, massing, and materials. The Civic Centre policies recognize that higher intensity development is anticipated along Weber Street and as such, it is my opinion that is appropriate for the height, scale and massing to be different than surrounding properties. In my opinion appropriate regard has been made with respect to compatibility.*”
20. The Urban Design Manual serves as a compatibility test for proposals that exceed zoning requirements. The proposal is deficient in meeting several Tall Building Design Guidelines, including tower separation, setbacks, and sufficient transition; as such, it does not achieve compatibility.
21. In paragraph 238 and 239, Mrs. Sinclair states “ *18 Weber Street West, located directly east of the Subject Lands, is a narrow lot with a total site area of 1,384.6 sq m. The frontage of this property is approximately 12 metres which is not physically wide enough to accommodate a useable footprint for a tall building. As such, the development of a tall building east of the Subject Lands could occur only through the consolidation of 18 Weber Street West with 54 Queen Street North (St. Andrews Presbyterian). 28 Weber*

Street West located directly west of the Subject Lands is a shallow lot with a total site area of only 577.0 sq m. The size of this lot would restrict the ability to design and build a tall building, even if designed with 0.0 metre setbacks to all property lines. As such, the redevelopment of this parcel with a tall building could likely only occur through the consolidation with 32 Weber Street West (Zion United Church).

22. There are too many possibilities for the redevelopment of adjacent properties, which is precisely why tower separation requirements should be met on-site. Since we cannot predict future developments off-site, tower separation is applied to all properties based on existing property lines. In my opinion, both 18 and 28 Weber Street have some potential for redevelopment. This proposal could significantly limit the development potential of these sites, as it does not meet the on-site separation target for tall building design.
23. In paragraph 241 Mrs. Sinclair states *“The City’s guidelines for tall buildings define overlook as, “the overlap that exists between two neighboring towers.” The guidelines set maximum overlook targets between abutting towers. The Subject Lands do not abut any other towers, and as such it is my opinion that the overlook guidelines do not apply to the Proposed Development.*
24. The tower should comply with the separation target to address potential overlook issues with future towers or developments. The separation target will be measured to the property line to ensure proper overlook management.
25. In paragraph 259 Mrs. Sinclair states *“ In my opinion the Proposed Development provides a suitable transition in scale, massing, building height, building length and intensity. This considers both the planned function of properties on the opposite side of Weber Street and the existing transition area along the south side of Roy Street”*
26. The proposal does not meet the tower separation, setbacks, and built-form requirements, resulting in an insufficient transition to the adjacent properties.

Conclusions

27. Overall, having reviewed the witness statement of Andrea Sinclair, I maintain my professional opinion that:

- a. The City's Urban Design Manual needs to be considered at a threshold level at the OPA/ZBA stage;
- b. The proposal lacks a proper transition to the adjacent low-rise heritage conservation district;
- c. The proposal does not meet the City's Urban Design guidelines applying to Tall Buildings, including tower separation, overlook, built form, amenity area, landscaped area, and built form/massing;
- d. The applications are not appropriate as they:
 - i. Do not conform to the City OP;
 - ii. Do not meet the City's Urban Design guidelines; and
 - iii. Do not represent good planning in the public interest.

28. For these reasons, the Appeals should be dismissed by the Tribunal.