

O.L.T. Lead Case No.: OLT-22-002377**Ontario Land Tribunal**

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

Applicant and Appellant:	30 Duke Street Limited
Subject:	Failure of Approval Authority to announce a decision respecting a Proposed Official Plan Amendment
Reference Number:	OPA 20/005W/JVW
Property Address:	22 Weber Street W (22 Weber Street W.)
Municipality/UT:	Kitchener/Waterloo
OLT Case No.:	OLT-22-002377
OLT Lead Case No.:	OLT-22-002377
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.

Applicant and Appellant:	30 Duke Street Limited
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Reference Number:	20/013/W/JVW
Property Address:	22 Weber Street W (22 Weber Street W.)
Municipality/UT:	Kitchener/Waterloo
OLT Case No.:	OLT-23-002378
Legacy Case No.:	PL210105
OLT Lead Case No.:	OLT-22-002377
Legacy Lead Case No.:	PL210104

PROCEEDING COMMENCED UNDER subsections 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended.

Applicant and Appellant:	30 Duke Street Limited
Subject:	Appeal of the Decision to Council to issue a permit with terms and conditions to (alter/erect/demolish/remove) a building or structure
Reference Number:	HPA-2022-V-015
Property Address:	22 Weber Street W
Municipality/UT:	Kitchener/Waterloo
OLT Case No.:	OLT-22-004383
OLT Lead Case No.:	OLT-22-002377
Legacy Lead Case No.:	PL210104

WITNESS STATEMENT OF
ANDREA L. SINCLAIR, MUDES, BES, MCIP, RPP

March 19, 2025

1.0 INTRODUCTION

1. In preparation for the Ontario Land Tribunal Case No. OLT-22-002377, I, Andrea Sinclair of MacNaughton Hermsen Britton Clarkson Planning Limited (MHBC), have prepared a Witness Statement dated February 26, 2025.
2. Prior to the submission of this Reply Witness Statement, I have reviewed the Witness Statements of Mr. Eric Schneider (the "Schneider Witness Statement"), Ms. Pegah Fahimian (the "Fahimian Witness Statement") and Ms. Deeksha Choudhry (the "Choudhry Witness Statement"), prepared on behalf of the City of Kitchener (collectively referred to as the "City Witness Statements").
3. Prior to the submission of this Reply Witness Statement, I have also reviewed the Witness Statement of Mr. Michael Barton (the "Barton Witness Statement"), prepared on behalf of the Friends of Olde Berlin Town (FOBT) as well as all Participant Statements submitted in advance of preparing this Reply Witness Statement.
4. The purpose of this reply is to:
 - Identify the main areas requiring resolution as they relate to planning and urban design matters;
 - Address any errors or misstatements included in the City Witness Statements;

- Review and assess any new information included or referenced in the City and Barton Witness Statements or in the Participant Statements; and
 - Reflect on my professional opinion as may be appropriate based on the opinions expressed in the City and Barton Witness Statements, and determine whether there is any need to reconsider my opinion.
5. This Reply also summarizes minor revisions proposed to the draft Zoning By-law Amendment and the concept plan, prepared in direct response to concerns raised in the City Witness Statements.
6. City of Kitchener (collectively referred to as the "City Witness Statements").

2.0 ERIC SCHNEIDER EXPERT WITNESS STATEMENT

7. The Schneider Witness Statement addresses Issues 2, 5, 6, 9, 10, 16, 17, 19, 20, and 22 of the Issues List. It is assumed that Mr. Schneider has no concerns with respect to the remaining issues from a land use planning perspective, including Issue 1 as it relates to Section 2 of the *Planning Act*.
8. With respect to Issue 6, Mr. Schneider consents that the proposed applications conform to Regional Policies 3.A and 3.B. I agree with this opinion.
9. With respect to Issue 17, Mr. Schneider consents that the proposed applications conform to City Transportation policies 13.C.1.6, 13.C.1.13, 13.C.3.12. Further, Mr. Schneider provides his opinion that Policies 13.C.7.3 and 13.C.8.4 are not applicable. I agree with Mr. Schneider's opinion with regard to these policies.

Provincial Planning Statement

10. In paragraph 33, Mr. Schneider provides opinion with respect to Section 2.1.4 of the PPS and states:

In my professional opinion, the proposed applications are not consistent with this policy. The way in which a planning authority can provide for an appropriate range and mix of housing options and densities is to identify different parcels of land for different housing densities and apply policies to regulate those densities based on the context of the lands and their ability to contain density, factored by specific parameters such as lot size and surrounding context. The policy direction of Policy 2.1.4 is largely implemented through existing Official Plan policies and Zoning By-law regulations in effect as outlined below. The proposed applications do not evaluate the context of the lands when attempting to establish an appropriate building height, placement, and scale of massing. Therefore, it is my opinion that the proposed applications are not consistent with Policy 2.1.4 of the PPS 2024.

11. Policy 2.1.4 speaks to the requirement for municipalities to maintain the ability to accommodate residential growth through lands which are designated and available for residential development, and to maintain lands with servicing capacity sufficient to provide for at least a three-year supply of residential units available through lands suitability zoned.
12. The Subject Lands are designated and zoned to allow for residential growth. The subject lands are also located in an area that has servicing capacity. Policy 2.14 does not speak to context or lot size, simply that the City should maintain lands that allow for residential growth. The subject lands are within an MTSA and the proposed use (multiple residential) is permitted by the current designation and zoning.
13. Similarly in response to Policy 2.16. a), paragraph 36 of the Schneider Witness Statement, I disagree with Mr. Schneider's policy interpretation. Policy 2.1.6 a) states:

Planning authorities should support the achievement of complete communities by:

a) accommodating an appropriate range and mix of land uses, housing options, transportation options with multimodal access, employment, public service facilities and other institutional uses (including schools and associated child care facilities, long term care facilities, places of worship and cemeteries), recreation, parks and open space, and other uses to meet long-term needs;

14. Policy 2.1.6 a) simply states that planning authorities should accommodate an appropriate range and mix of land uses, housing options, etc. It does not speak to how a complete community is evaluated and where densities and heights should be allocated. Notwithstanding, the Subject Lands are designated and zoned for High Density development and are located within an MTSA, a strategic growth area.
15. In Paragraph 39 of the Schneider Witness Statement, he provides his opinion that, *“The proposed applications contemplate a height and density that will, in my opinion, cause adverse impacts to abutting lands and therefore do not meet the health and well-being requirements of current and future residents.”*
16. It is unclear what adverse impacts Mr. Schneider is referring to, but he goes on to suggest in Paragraph 39 that overdevelopment of the Subject Lands could affect the development of surrounding adjacent lands (including 18 and 28 Weber Street West) and the overall efficient use of land and resources.
17. The proposed development exceeds the side yards setback requirement of the existing zoning by-law, meaning under current zoning a building could be located closer to 18 and 28 Weber Street. The concerns about redevelopment of surrounding properties are not substantiated.
18. In paragraph 45, Mr. Schneider relies on the Council adopted Strategic Growth Area zoning. As stated by Mr. Schneider, this zoning does not apply to the subject lands,

nor was the Strategic Growth policies or zoning in place at the time the applications were filed.

Civic Centre Secondary Plan

19. In paragraphs 95 and 96 of the Schneider Witness Statement, opinion is provided related to the "High Density Multiple Residential" land use. This designation was applied to existing high rise apartment buildings located within the Secondary Plan Area and is a different designation than that which applies to the Subject Lands.
20. I agree with Mr. Schneiders statement that the "High Density Multiple Residential" land use designation was intentionally applied to existing high rise residential buildings in the Civic Centre neighbourhood. However, I disagree that this was intended to limit any further high rise residential developments. This opinion ignores the fact that the Secondary Plan contains an additional "High Density" designation, being the "High Density Commercial Residential" designation that applies to the Subject Lands, intended to provide for "higher intensity uses adjacent to the downtown".
21. The "High Density Commercial Residential" designation has the same density permissions as the "High Density Multiple Residential" land use but allows additional non-residential uses in addition to multiple dwellings.
22. Ms. Choudhry provides similar opinion to Mr. Schneider in paragraphs 43 and 44 of her Witness Statement but goes further in stating "*the Secondary Plan provides clear direction that high-rise development is limited to those properties only, as these developments were not typical of the existing character in that neighbourhood*".
23. There is no such policy direction provided for in the Secondary Plan.

Front Yard Setback

24. In paragraph 81, Mr. Schneider comments on the proposed front yard setback of 0.0 metres and raises concerns that this could potentially conflict with future pedestrian or cycling facilities or streetscape features and the ability to provide universally accessible elements (such as ramps, railings and canopies).

Similar statements are made in Paragraphs 89 and 102 of the Schneider Witness Statement.

25. I disagree with Mr. Schneider's opinion. In response to this matter, I confirm the following:

- Weber Street West is a Regional Road.
- The 0.0 metre front yard setback is the result of a requested widening from the Region. There is a signed settlement with the Region and the Region has not raised concerns with respect to the 0.0 metre setback as it relates to future plans for pedestrian or cycling facilities within the right-of-way.
- The proposed development is setback 3.0 metres from the existing property line and will be setback more than 4.0 metres from the existing public sidewalk along Weber Street West.
- St. Andrews Presbyterian Church (54 Queen Street North) located to the east of the Subject Lands has a reduced setback when compared to 22 Weber Street West, with the existing church sitting at the current property line. The right-of-way in front of the church is also reduced when compared to the right-of-way further west along Weber Street with no opportunity for further widening. As a result, opportunities to provide for pedestrian or cycling infrastructure directly adjacent the new property line will be limited because of the church. The proposed development will be setback more than 3.0 metres behind the existing setback of the church.

- There are still opportunities to provide for street trees or other plantings/street furniture which can be reviewed during the site plan review process. This may include entering into an encroachment agreement with the Region or recessing the ground floor of the development. Bike racks can be located at the rear of the site.
- A universal (accessible) entrance is proposed to the building from Weber Street. The grades are such that ramps and railings are not anticipated. Through the detailed site plan process the building entrance can be further reviewed and could be recessed to provide for weather protection at the entrance.
- Zoning By-law 85-1 includes zones where 0.0 metre setbacks are permitted (for example the D-1 zone allows a 0.0 metre setback from King Street).
- The City has approved 0.0 metre front yard setbacks for other developments, in particular where a widening is requested. An example of this is the "Drewlo" development currently under construction at 471, 475, 481 & 505 King Street East and 18-24 Cameron Street South, approved through By-law 2018-073.

Maximum Height Permission

26. Throughout the Schneider Witness Statement, reference is made to building height. In Paragraph 60, Mr. Schneider states "*The zoning by-law regulates overall massing, building location, and height with the intention to regulate a development to ensure an appropriate scale on the subject lands which respects the surrounding context.*"
27. Neither the existing land use designation, nor the existing zoning regulate height on the subject lands. In other words, the existing High Density Commercial Residential designation and the existing CR-3 Zoning do not contain minimum or maximum height permissions. In contrast, there are other designations within the Official Plan where height is regulated.

28. Similarly, under Zoning By-law 85-1 there are several other zones that permit multiple residential development, where a maximum height provision is included as a regulation.
29. In paragraphs 52, 99 and 104, Mr. Schneider infers that the Zoning By-law indirectly regulates building height through a combination of the maximum Floor Space Ratio and the rear yard setback.
30. I disagree with Mr. Schneider's interpretation of the purpose and intent of these regulations. All zoning regulations are subject to amendment, and with respect to the proposed applications, no amendment is required to the building height, since no such restriction applies. With respect to the proposed rear yard setback, the 14.0 metre setback provided exceeds the recommended tower separation calculated based on the City's Tower Separation Guidelines, and meets or exceeds rear yard setbacks applied in other zones where building height is not restricted.
31. As an example, neither the R-9 or MU-3 zone restricts building height. The R-9 zone contains a rear yard setback of 7.5 metres regardless of building height. The more recently established MU-3 Zone requires a rear yard setback of 7.5 metres for structures less than 24 metres in height; or 7.5 metres plus an additional 0.33 metres for each additional metre of building height above 24 metres, up to 14 metres of rear yard. While the MU-3 zone similarly increases the rear yard setback depending on the building height, the setback is capped at 14.0 metres. The proposed rear yard setback is consistent with the approach used in the more contemporary MU-3 zone, exceeds the recommended tower separation of the City's guidelines, and in my opinion, represents an appropriate rear yard setback for the proposed development.
32. While FSR controls the massing of a building on site, it does not establish a consistent height permission. A site could be developed with varying heights all with the same FSR depending on the size of the building footprint, or the size of the site.

33. As an example, if the proposed development was proposed on 32 Weber Street West (located west of the subject lands), the same 19 storey building could be accommodated at an FSR of just over 4.0 (or potentially at or under the FSR of 4.0 if the bike room was removed).
34. In paragraph 98, Mr. Schneider states that, "*The proposed applications are requesting a Floor Space Ratio of 8.0, double the maximum permitted FSR in the High Density Commercial Residential Designation. The maximum Floor Space Ratio figure is important in regulating the massing and scale of proposed buildings to ensure lands are not overbuilt, which can lead to adverse impacts to abutting lands.*"
35. There have been multiple developments and towers approved within the City of Kitchener that have obtained significant relief from existing FSR permissions, with FSR's ranging from 8 to over 20 depending on the development. Several of these projects have been located within MTSA's. In these instances, the City reviewed and determined that those sites were not being overbuilt.

3.0 PEGAH FAHIMIAN WITNESS STATEMENT

36. The Fahimian Witness Statement addresses Issues 9-13, 16, 17, 23, 24, 26, 27, 28, 30, 31, 33, 34 and 35 of the Issues List. It is assumed that Ms. Fahimian has no concerns with respect to the remaining issues from an urban design perspective, including issues related to the Planning Act, PPS and Region of Waterloo Official Plan.

Issue 10

37. Similar to the Schneider Witness Statement, Ms. Fahimian speaks to an existing height permission. In paragraph 20 she states:

In my professional opinion, the proposed development does not conform with the maximum height permitted under the current and proposed (under appeal) zoning regulations for adjacent properties along Weber Street 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

38. As previously stated, the current CR-3 zoning does not contain a maximum height permission. The adjacent properties on Weber Street are also zoned CR-3. Ms. Fahimian suggests a requirement to conform with the height permitted on adjacent properties along Weber Street. There is no such requirement to conform with height permissions of adjacent properties. Notwithstanding, in this case the existing zoning, and the zoning in place at the time the applications were submitted is the same for adjacent properties on Weber Street.
39. In paragraph 20, Ms. Fahimian also speaks to “required setbacks and physical separation”. There are no regulations in the zoning by-law requiring physical separation. There are physical separation guidelines in the City’s Urban Design Manual. The City has supported and approved multiple developments that do not meet the recommended physical separation calculated by applying the City’s design guidelines.
40. Later in the Fahimian Witness Statement (paragraph 49), Ms. Fahimian states that *“the proposed development must fully meet the Tall Building Guidelines, specifically regarding separation, as these guidelines serve as an excellent compatibility test for a proposed development that is exceeding zoning permissions”*.
41. My opinion remains that while consideration should be given to the City’s Urban Design Manual, these guidelines should not be treated as policies or zoning regulations, for which conformity/compliance is required. As stated herein, the City has supported and approved multiple tall buildings which do not meet the physical

separation recommended by the guidelines. Further, as stated in my initial Witness Statement, the physical separation is intended to be applied between towers, not between towers and low-rise development.

42. Ms. Fahimian suggests the guidelines are an excellent compatibility test for a development that is exceeding zoning permissions. There is no maximum height regulation in the current zoning. The proposed development exceeds the minimum side yard requirements. Where setback relief is requested (front and rear yards) the proposed development exceeds the physical separation recommended by the guidelines.

Issue 11 and 30 (Amenity Space)

43. In response to Issue 11, Ms. Fahimian concludes that the proposed development does not provide sufficient outdoor amenity space.
44. The CR-3 zoning does not require a minimum amount of indoor or outdoor amenity space. Notwithstanding, indoor amenity space is proposed as well as private outdoor amenity space in the form of balconies.
45. Ms. Fahimian relies on the Urban Design Manual (Part C Sections 11 and 12) to determine the required outdoor amenity area and calculates this as:

$$(2 \text{ sq.m} \times \# \text{ units}) + (2.5 \text{ sq.m} \times \# \text{ bedrooms} - \# \text{ units}) = \text{outdoor amenity space}$$

46. Part C, Section 11 of the Urban Design Manual provides guidance for outdoor amenity areas for multiple residential and institutional developments. This guideline was prepared 15 years ago and, in my opinion, was intended to apply to ground oriented low-density forms of multiple residential development such as cluster townhouse developments. According to the guideline, the minimum 2.0 square metres of common outdoor amenity space is to be provided at ground level for

either each resident or each dwelling unit. For more compact sites and tall building sites, outdoor amenity is typically provided in the form of balconies and/or rooftop/podium amenity areas given site size constraints. All units on floors 2-19 have balconies with balcony sizes ranging from 8 square metres to 17 square metres per unit. A common indoor amenity room is proposed on the ground floor.

47. Part C, Section 12 of the Urban Design Manual provides guidance for outdoor play areas for children. Under the Design Criteria section of this guideline, it clearly states "Where outdoor play space is proposed for a multiple residential development containing more than 20 dwelling units, the area and the play space must be barrier free accessible. A minimum of 2.5 square metres of outdoor play space shall be provided for each bedroom which exceeds the total number of dwelling units within the development. The required play space will form a component of the overall required landscaped open space, and shall be provided as follows..."
48. In my opinion the design criteria are to be considered where an outdoor play space is proposed. And if the outdoor play space is proposed, it can form a component of the overall required landscape area, suggesting again that these guidelines apply to ground oriented multiple developments that may incorporate at-grade play areas. Play space is defined in Section 12 as an area at ground level.
49. There is nowhere that indicates a minimum ground floor play area of 2.5 square metres is to be provided in addition to the 2.0 square metres per unit noted in Section 11.
50. Ms. Fahimian concludes that based on the Design Manual the required amenity area would be 588 square metres. The draft Zoning By-law submitted to the Tribunal in December 2024 includes a minimum amenity area requirement of 1,500 square metres, almost three times the amenity area recommended by Ms. Fahimian.

51. Upon review of the City Witness Statements, I have further revised the draft Zoning By-law to add a requirement that the minimum amenity area shall require at least 130 square metres of common amenity space, including a minimum of 40 square metres of outdoor common amenity space. As previously stated, there is no such requirement under the current zoning for the Subject Lands. A redline version of the proposed revisions to the zoning by-law is included as **Appendix A** of this Reply Statement with a clean copy included as **Appendix B**. A modified site plan concept and modified floor plans showing additional indoor common amenity space and the potential location for the outdoor shared amenity area is included as **Appendix C**.

Issue 16

52. In response to Issue 16, Ms. Fahimian provides opinion with respect to Policy 13.C.1.4.d, which is not referenced in Issue 16.
53. It is unclear if Ms. Fahimian has concerns with respect to the Active Transportation objectives that were identified in Issue 16.

Issue 17

54. In response to Issue 17, Ms. Fahimian provides opinion with respect to Policy 3.2.5, which is not referenced in Issue 17. Ms. Fahimian does provide opinion with respect to Policy 13.C.1.4 d referenced in Issue 17 in her response to Issue 16.
55. It is unclear if Ms. Fahimian has concerns with respect to the remaining Transportation policies that were identified in Issue 17.

Issue 24

56. In response to Issue 24, Ms. Fahimian raises concerns with respect to 18 Weber Street West and 24 Weber Street West. She concludes that these properties have

potential for modest future development and that decisions on the subject lands should not limit the development potential of adjacent lands along Weber Street West.

57. It is unclear how “modest future development” of these lands are limited as a result of the proposed development of 22 Weber Street. With respect to side yard setbacks, the proposal exceeds the minimum requirement of the zoning by-law. It remains my opinion that both 18 and 24 Weber Street are constrained from significant redevelopment unless consolidated with adjacent properties given the size of these two parcels.

Issue 26

58. In response to Issue 26, Ms. Fahimian states that the 45-degree angular plane is used as a compatibility test for sites adjacent to low-rise or heritage conservation districts.
59. I disagree. The City’s Urban Design Manual does not contain guidelines related to angular plane. The angular plane guideline is specific to the CCNHCD and is not applied broadly across the City. There are instances throughout the City where taller buildings are permitted as-of-right adjacent to existing low-rise without an angular plane requirement. The MU-3 zone is one such example, where the rear yard increases depending on building height to a maximum of 14.0 metres, regardless of whether or not adjacent development to the rear is low rise.

Issue 31

60. In response to Issue 31, Ms. Fahimian relies on the SGA-2 zoning (currently under appeal) of adjacent properties as opposed to the zoning and policy framework that applied at the time the applications were filed. The development should be evaluated based on the policy and zoning regime at the time the applications were

submitted. Notwithstanding, I disagree that the proposed building is not compatible with the SGA-2 zone that has been applied to abutting properties on Weber Street because the height is 2.3 times that which is contemplated in the SGA-2 zone. This opinion recognizes that there are multiple locations within the MTSAs where the City has applied an SGA-3 zone (25 storeys or more than 3 times the height permitted in the SGA-2 zone) or an SGA-4 zone (no height restriction) adjacent to an SGA-2 zone.

Issue 35

61. In paragraph 72, Ms. Fahimian responds to a City-Wide guideline related to the screening of parking areas, and then applies this guideline to the driveway. It is unclear how the driveway is to be screened through landscaping, and this is not the intent of the guideline that Ms. Fahimian is responding to. The driveway needs to be visible from Weber Street for safety reasons. Privacy fencing along the rear and side property lines will ensure that any headlights from vehicles entering into the site will not illuminate adjacent properties. Ultimately, treatment of the driveway and access onto the adjacent roadway will be confirmed at site plan.

4.0 MICHAEL BARTON WITNESS STATEMENT

62. I have reviewed the Witness Statement prepared by Mr. Barton. It is challenging to determine which issues Mr. Barton is replying to as this is not identified within the Witness Statement.
63. As a general comment the Barton Witness Statement relies heavily on the Strategic Growth Area policy framework that has recently been applied within the City of Kitchener. This was not the policy regime in place at the time the applications were submitted. Similarly, the Barton Witness Statement compares the proposed development to the SGA-2 zone, which does not apply to the subject lands and, at the time of preparing this Reply Witness Statement, is not in effect.

64. Throughout the Barton Witness Statement there are statements related to the Subject Lands being located outside of the Urban Growth Centre or Downtown and suggests that the intent is that properties outside of the Urban Growth Centre will be subject to different permissions and performance standards than properties inside the Urban Growth Centre (see paragraphs 21, 34, 69).
65. I agree that the Subject Lands are located adjacent to, but outside of the Downtown/ Urban Growth Centre. Mr. Barton states that the Subject Property *"is located outside of the Downtown Growth Area, which is intended for the most significant levels of intensification"*. Under the City of Kitchener Official Plan both the Urban Growth Centre and the MTSAs are considered priority intensification areas. Under the new PPS, both are considered "Strategic Growth Areas" and there is no priority placed on the Downtown over an MTSA area. Several significant intensification projects have been approved within MTSAs and outside of the "Downtown" including projects with building heights in the 40-50 storey range.
66. In paragraph 69, bullet two, Mr. Barton provides his opinion that the Subject Lands are *"within a stable neighbourhood in a Major Transit Station Areas which should not be the primary focus for intensification."*
67. I disagree. The Subject Lands are located on a Regional Road and are designated and zoned for high-density development. Within the Civic Centre Secondary Plan, the stable interior of the neighbourhood was designated accordingly, while areas where redevelopment was expected to occur (including along Weber Street) were designated to allow for intensification.
68. In paragraphs 88-90, Mr. Barton provides commentary as it relates to Section 3 (Guidelines for Central Neighbourhoods) of the City's Urban Design Manual. Section 3 was not included on the Issues List, but more importantly, Section 3 does not apply to the Subject Lands as the lands are not designated Low-Rise residential.

5.0 PARTICIPANT STATEMENTS

69. I have reviewed Participant Statements submitted as part of these proceedings. This includes Participant Statements from those located in closest proximity to the Subject Lands, including:
- 27 Roy Street;
 - 31 Roy Street;
 - 31 Roy Street; and
 - 28 Weber Street West
70. I have reviewed the Participant Statement of Ron Brohman, owner of 27 Roy Street, which directly abuts the rear of the Subject Lands. Mr. Brohman does not directly oppose the development and provides his opinion that no heritage buildings will be ruined as a result of the Weber Street development. With respect to Mr. Brohman's property there will on occasion be shadows that fall on his property as a result of the proposed development. It is noted that the rear yard of 27 Roy Street is used in its entirety for parking and does not include rear yard amenity space.
71. I have reviewed the Participant Statement of Mr. Neil Baarda, who owns and resides at 31 Roy Street, immediately abutting the subject lands. His concerns relate to shadows, obstruction of views and overlook. The proposed building has been designed such that the stairwell is located at the rear of the property, meaning there are no units that face onto 31 Roy Street. Any windows at the rear of the building are to the stairway/hallways. Similarly, there are no balconies located on the rear of the proposed building. Should the common outdoor amenity space be located above the single storey bike room, this can be designed with privacy screens to ensure no overlook onto the Roy Street properties.

72. I have reviewed the participant status of Mica Sadler, who owns 35 Roy Street, just west of the Subject Lands. Sadler has confirmed support of the proposed development.
73. I have reviewed the Participant Statement from Simon Euteneier, the owner of 28 Weber Street West, as well as Cathryn Harris, a tenant at 28 Weber Street West.
74. Mr. Euteneier raises concern about loss of heritage aspects of his building as a result of the proposed development, as well as parking, privacy and shadow concerns. He suggests height limit of 8 storeys would be more appropriate.
75. Ms. Harris' concerns relate to any development that is more than 3 storeys in height, privacy for patients using her psychology practice and traffic as a result of the proposed development.
76. In response to the Statements from 28 Weber Street West, the as-of-right zoning would already allow for a building taller than 3 storeys, located closer to 28 Weber Street West. With respect to traffic, the proposal no longer includes vehicular parking. An 8-storey building at the minimum side yard setback would have similar or worse shadow and overlook with 28 Weber Street West.
77. I have reviewed the other Participant Statements, primarily from those residing within the Civic Centre District. A number of the Participants did not provide their property address. Some of the participants have expressed the requirement for a heritage permit. This will be addressed through Phase 2 of the hearing depending on the outcome of this Phase 1 hearing.
78. Having reviewed the Participant Statements, it continues to be my opinion that the proposed applications represent good planning, that the proposed development has appropriate setbacks, and represents an appropriate height along a Regional Road and within an MTSA and that impacts to surrounding properties are minimized through careful consideration of unit and balcony placement; by providing for a

small building footprint that results in narrow shadows that move quickly throughout the day and by providing a 14 metre setback at the rear of the property.

6.0 ERRORS/CLARIFICTIONS IN FEBRUARY 2025 WITNESS STATEMENT

79. Paragraph 169 of my Witness Statement was not complete. Upon further review, I have nothing further to add with respect to Issue 16. Paragraph 169 can be disregarded.
80. Region of Waterloo Official Plan Map Excerpts contained within the MHBC Planning Report (PDF pages 117-120 of my February Witness Statement) have incorrectly mapped the location of the Subject Lands. This discrepancy does not change the analysis or conclusions of the Planning Report.

7.0 CONCLUSION AND OPINION

81. In my opinion, the updated concept plan and zoning by-law amendment attached herein addresses the City's concerns with respect to an adequate provision of amenity space.
82. It remains my opinion, from a planning and urban design perspective, the applications have regard for Section 2 of the Planning Act, are consistent with the PPS, conform to the Region of Waterloo Official Plan and City of Kitchener Official Plan, and represent good planning and are within the public interest.

Dated at the City of Kitchener, March 19, 2025



Andrea Sinclair, MUDES, BES, MCIP, RPP
Partner, MHBC

Appendix A

Redline Revision to Draft Zoning By-law

PROPOSED BY – LAW

XXXXX, [2022/2025](#)

BY-LAW NUMBER ____

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to amend By-law 85-1, as amended, known as
the Zoning By-law for the City of Kitchener)
22 Weber Street West

WHEREAS it is deemed expedient to amend By-law 85-1 for the lands specified above;

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

1. Schedule Number 121 of Appendix “A” to By-law Number 85-1 are hereby amended by changing the zoning applicable to 22 Weber Street West, in the City of Kitchener, from Commercial Residential Three Zone (CR-3) to Commercial Residential Three Zone (CR-3) with Special Regulation Provision XXXR and Holding Provision XXXH.
2. Appendix “D” to By-law 85-1 is hereby amended by adding Section XXXR thereto as follows:

XXXR

Notwithstanding Section 46.3, Section 6.1.2a), and 6.1.2b)vi) of this By-law, within the lands zoned Commercial Residential Three Zone (CR-3), shown as affected by this subsection, on Schedule 121 of Appendix “A”, a Multiple Dwelling shall be permitted in accordance with the following:

Design Standards & Parking

- a. The maximum Floor Space Ratio shall be 7.95.
- b. The maximum Building Height shall be 19 storeys and 59 metres.
- c. The minimum Front Yard shall be 0.0 metres.
- d. For portions of the building up to 5.0 metres in height, the minimum Rear Yard shall be 8.0 metres.
- e. For portions of the building greater than 5.0 metres in height, the minimum Rear Yard shall be 14 metres.
- f. The minimum Side Yard shall be 2.5 metres.
- g. The minimum landscape area shall be 5%.
- h. Dwelling Units shall be permitted on the ground floor within either a mixed-use or multiple dwelling building.

- i. Exclusive use patio areas are not required for ground floor units.
- j. Rear Yard Access requirements do not apply.
- k. The minimum ground floor height shall be 4.5 metres.
- l. The minimum Class A Bicycle Parking Stall requirement shall be 1 per dwelling unit, located within the unit or within a secure bicycle storage room.
- m. The minimum Class B Bicycle Parking Stall requirement shall be 6.
- n. The minimum parking requirement shall be 0 spaces per unit.
- o. The minimum visitor parking requirement shall be 0 spaces per unit.
- p. A minimum amenity area of 1,500 square metres shall be provided and shall include balconies and ~~shared~~common amenity space.
- p-q. The minimum amenity area shall include at least 130 square metres of common amenity space, including a minimum of 40 square metres of outdoor common amenity space.
- q-r. Geothermal Energy Systems shall be prohibited.

3. Appendix "F" to By-law 85-1 is hereby amended by adding Section XXXH as follows:

XXXH

Notwithstanding Section 46.1 of this By-law, within the lands zoned CR-3 and shown as affected by this subsection on Schedule Numbers 84 and 121 of Appendix "A":

No residential use shall be permitted until a detailed transportation (road) and stationary noise study has been completed and implementation measures recommended to the satisfaction of the Regional Municipality of Waterloo or the City of Kitchener. The detailed stationary noise study shall review stationary noise sources in the vicinity of the site, the potential impacts of noise (e.g. HVAC systems) on the on-site sensitive points of reception and the impacts of the development on adjacent noise sensitive uses.

4. This By-law shall come into effect only upon approval of Official Plan Amendment No. XX, for 22 Weber Street West, but upon such approval, the provisions hereof affecting such lands shall be deemed to have come into force on the date of passing hereof.

Appendix B

Revised Draft Zoning By-law "Clean" Copy

PROPOSED BY – LAW
XXXXX, 2025
BY-LAW NUMBER ____
OF THE
CORPORATION OF THE CITY OF KITCHENER
(Being a by-law to amend By-law 85-1, as amended, known as
the Zoning By-law for the City of Kitchener)
22 Weber Street West

WHEREAS it is deemed expedient to amend By-law 85-1 for the lands specified above;

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

1. Schedule Number 121 of Appendix “A” to By-law Number 85-1 are hereby amended by changing the zoning applicable to 22 Weber Street West, in the City of Kitchener, from Commercial Residential Three Zone (CR-3) to Commercial Residential Three Zone (CR-3) with Special Regulation Provision XXXR and Holding Provision XXXH.
2. Appendix “D” to By-law 85-1 is hereby amended by adding Section XXXR thereto as follows:

XXXR

Notwithstanding Section 46.3, Section 6.1.2a), and 6.1.2b)vi) of this By-law, within the lands zoned Commercial Residential Three Zone (CR-3), shown as affected by this subsection, on Schedule 121 of Appendix “A”, a Multiple Dwelling shall be permitted in accordance with the following:

Design Standards & Parking

- a. The maximum Floor Space Ratio shall be 7.95.
- b. The maximum Building Height shall be 19 storeys and 59 metres.
- c. The minimum Front Yard shall be 0.0 metres.
- d. For portions of the building up to 5.0 metres in height, the minimum Rear Yard shall be 8.0 metres.
- e. For portions of the building greater than 5.0 metres in height, the minimum Rear Yard shall be 14 metres.
- f. The minimum Side Yard shall be 2.5 metres.
- g. The minimum landscape area shall be 5%.
- h. Dwelling Units shall be permitted on the ground floor within either a mixed-use or multiple dwelling building.

- i. Exclusive use patio areas are not required for ground floor units.
 - j. Rear Yard Access requirements do not apply.
 - k. The minimum ground floor height shall be 4.5 metres.
 - l. The minimum Class A Bicycle Parking Stall requirement shall be 1 per dwelling unit, located within the unit or within a secure bicycle storage room.
 - m. The minimum Class B Bicycle Parking Stall requirement shall be 6.
 - n. The minimum parking requirement shall be 0 spaces per unit.
 - o. The minimum visitor parking requirement shall be 0 spaces per unit.
 - p. A minimum amenity area of 1,500 square metres shall be provided and shall include balconies and common amenity space.
 - q. The minimum amenity area shall include at least 130 square metres of common amenity space, including a minimum of 40 square metres of outdoor common amenity space.
 - r. Geothermal Energy Systems shall be prohibited.
3. Appendix "F" to By-law 85-1 is hereby amended by adding Section XXXH as follows:
- XXXH
- Notwithstanding Section 46.1 of this By-law, within the lands zoned CR-3 and shown as affected by this subsection on Schedule Numbers 84 and 121 of Appendix "A":
- No residential use shall be permitted until a detailed transportation (road) and stationary noise study has been completed and implementation measures recommended to the satisfaction of the Regional Municipality of Waterloo or the City of Kitchener. The detailed stationary noise study shall review stationary noise sources in the vicinity of the site, the potential impacts of noise (e.g. HVAC systems) on the on-site sensitive points of reception and the impacts of the development on adjacent noise sensitive uses.*
4. This By-law shall come into effect only upon approval of Official Plan Amendment No. XX, for 22 Weber Street West, but upon such approval, the provisions hereof affecting such lands shall be deemed to have come into force on the date of passing hereof.

Appendix C

Revised Site Plan and Floor Plan Concepts

