

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

**REPLY WITNESS STATEMENT OF DAN CURRIE, MA, MCIP, RPP, CAHP
ON BEHALF OF 30 DUKE STREET LIMITED**

INTRODUCTION

1. I prepared a Witness Statement with respect to this matter on February 26, 2025 which was subsequently filed with the Tribunal on February 26, 2025.
2. I have reviewed the relevant Witness Statements filed on behalf of the City of Kitchener and I am providing this Reply Witness Statement to address relevant matters raised in the Witness Statement of Deeksha Choudry.

REPLY TO WITNESS STATEMENT OF DEEKSHA CHOUDRY

Paragraphs 11, 33, 36, 39, 40, 47, 70, 81, 87, 102, 103, 109, and 110

3. In a number of paragraphs throughout her Witness Statement Ms. Choudry states that the proposed development is not compatible with existing surrounding development. For example, in paragraph 39 Ms. Choudry states:

“The proposed development is also not consistent, nor comparable, in height, massing, and built form with the immediately adjacent buildings, or with any other buildings on the same block of Weber Street West within the HCD.”

She then opines that “These buildings are not compatible with a 19-storey tower in between them.”

4. Reply: In my opinion, Ms. Choudry has not applied the proper definition of “compatible” as defined in the City’s Official Plan. Part F of the City of Kitchener Official Plan (2014) defines ‘compatible’ as

“Compatibility/compatible – land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area without causing unacceptable adverse effects, adverse environmental impacts or adverse impacts. Compatibility or compatible should not be narrowly interpreted to mean “the same as” or even as “being similar to””.

5. Throughout her witness statement Ms. Choudry has concluded and provided opinion that the proposed development is not compatible with adjacent heritage

resources because the proposed building is not similar to, or the same as, surrounding development and heritage resources. She has not, in my opinion, demonstrated that the proposed development will result in unacceptable adverse impacts as required by the definition of compatible in the City's Official Plan.

Paragraphs 40, 41, 48

6. In paragraph 41 of Ms. Choudry's Witness Statement, she describes the renderings provided in the Heritage Impact Assessment drafted by MHBC as "very conceptual and do not depict an accurate representation of the existing built form along Weber Street West." In other paragraphs she makes similar comments that the architectural design and details of the proposed building are not appropriate.
7. Reply: The proposed applications are for an Official Plan amendment and Zoning Bylaw amendment that would allow for the height, density and placement of the proposed building. A site plan application applying a site level of detail would be required should the OPA and ZBA be approved. Similarly, a Building Permit that would describe the building elevations, building materials and other components of the building's architectural design and detail would follow approval of the site plan application. A Heritage Permit is also required.
8. Therefore, the building design that has been submitted with the OPA and ZBA applications is somewhat conceptual since detailed design is addressed at later stages of the planning process. At the same time, there has been effort to provide a concept with a level of detail to demonstrate how the building could look and that achievement of the guidelines regarding architectural details are feasible.
9. The typical process for the City of Kitchener is to require an Addendum to the HIA or a Phase 2 HIA that would provide further evaluation of any architectural details in support of any future Site Plan Application, Building Permit and Heritage Permit.
10. The conceptual renderings of the building and the conceptual renderings of surrounding development are not intended to be misleading – as Ms. Choudry states in paragraph 41. The primary issues that are before the Tribunal are the macro scale issues of building height, mass, location, setback. The level of detail shown in the conceptual renderings of both the proposed building and surrounding development is appropriate to be able to evaluate the relationship of

the proposed building to the surrounding area in regard to these macro scale issues. I disagree with Ms. Choudry's claim that they are misleading.

Paragraph 47

11. In paragraph 47, Ms. Choudry speaks to the front yard setback of the proposed building and conformity to the guideline that addresses setbacks along Weber Street. She states that the proposed 0.0 metre front yard setback of the proposed new building is not compatible with existing built form and street edge and that the proposed development does not meet the intent of this guideline, which states:

“Setbacks of new development should be consistent with adjacent buildings. Where significantly different setbacks exist on either side, the new building should be aligned with the building that is most similar to the predominant setback on the street.”

12. Reply: In her discussion of building setbacks, Ms. Choudry does not compare “apples to apples”. The 0.0 metre front yard setback of the proposed new building reflects a 3.0 metre road widening, which is required by the Region of Waterloo. Her calculation of the setbacks of buildings immediately adjacent to the subject property along Weber Street West does not consider the Regional Road widening and therefore overestimates their setback by three metres.

13. I also disagree with her conclusion that the proposed setback would be “distinctly different from the existing built form...”. As described in my Witness Statement, the existing building setbacks for properties along Weber Street are not uniform and vary substantially. In my opinion, neither of the adjacent buildings are “similar to the predominant setback on the street”.

14. I believe that Ms. Choudry in reaching her conclusion on setbacks has not considered the predominant setback on the street. For example, the second property to the east of the subject lands (St. Andrews church) has a 0 metre setback (before a 3.0 metre road widening). Whereas, the property directly adjacent to the east of the subject lands (18 Weber Street) has a setback of approximately 13 metres (before a 3.0 metre road widening) which is the deepest setback along the street. The other properties along Weber Street have a setback between 0 and 13 metres (before an assumed 3.0 metre widening). In my opinion, the proposed setback of 3.0 metres (before the road widening) is not inconsistent with the existing setbacks and is certainly compatible with the existing setbacks given the lack of uniformity.

Paragraph 102

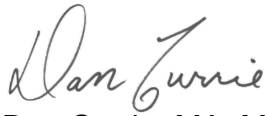
15. In paragraph 102, Ms. Choudry states that higher density development is planned for the south side of Weber Street (i.e. lands that are outside the HCD) and that there is a need to ensure that development of the lands on Weber Street within the HCD provide “sufficient transition from these higher density areas to conserve the character of the low-rise character of the neighbourhood”.
16. Reply: I disagree with Ms. Choudry’s conclusion in paragraph 102. Nowhere in the HCD Plan does it state that the Weber Street area is to provide a transition to or from lands and development outside of the HCD. This concept is not included in any of the goals, objectives or principles of the Plan.
17. Instead, the HCD acknowledges that some areas within the HCD are planned for higher density and height and the policies of the plan identify that higher intensity uses should be focused at the perimeter of the HCD along Weber Street and other similar locations. These policies, however, do not stipulate that the height and density of adjacent lands outside the HCD are a measure or consideration of appropriate height and density for proposed development within the HCD.

Paragraph 110

18. In paragraph 110, Ms. Choudry references the existing tall, multi-storey buildings in the HCD and states that the purpose of the HCD Plan is to guide future development to prevent non-compatible development. She states that since the HCD was approved, there has not been any development approved that has similar height and massing as the proposed building.
19. Reply: In my opinion, Ms. Choudry’s conclusion in paragraph 110 is only partially correct. Based on her description in paragraph 110, I believe she is concluding that one purpose of the HCD is to prevent tall buildings. If so, this is an incorrect conclusion.
20. The HCD plan explicitly states that there are locations within the HCD that are planned for high density development. The Weber Street area is identified as one of these areas. The HCD Plan acknowledges that proposals for higher density and taller buildings may be considered in this area and provides specific policies and guidelines to guide such development. Therefore, I disagree with her assertion that the purpose or objective of the HCD Plan is to prevent higher density and/or taller buildings within the HCD.

21. I agree that since the HCD Plan has been approved, there has not been any approvals for buildings with similar height (19 storeys) and massing (tall, thin tower) as the proposed building. However, other buildings with greater height and massing than the existing buildings have been approved within the HCD area.

Dated at the City of Kitchener, March 19th, 2025

A handwritten signature in cursive script that reads "Dan Currie".

Dan Currie, MA, MCIP RPP CAHP
Partner, MHBC