

**OLT 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
Failure of the City of Kitchener to announce a decision respecting Proposed Official Plan Amendment No. OPA 20/005W/JVW	
Municipality:	City of Kitchener
OLT Case No.:	PL210104
OLT File No.:	PL210104
OLT Case Name:	30 Duke Street Limited vs. 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
Application to amend Zoning By-law No. 85-1 - Refusal or neglect of the City of Kitchener to make a decision	
Existing Zoning:	Commercial Residential Three Zone
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 15 storey residential building
Property Address/Description:	22 Weber Street W.
Municipality:	City of Kitchener
Municipality File No.:	20/013/W/JVW
OLT Case No.:	PL210104
OLT File No.:	PL210105

**PROCEEDING COMMENCED UNDER** Subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.22.

Applicant and Appellant:	30 Duke Street Limited
Subject:	Heritage Conservation Act Appeal
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
OLT Case Name:	30 Duke Street Limited vs. Kitchener (City)

**Closing Submission**

**Friends of Olde Berlin Town**  
May 9, 2025

**Hal Jaeger**  
**Neil Baarda**  
**Co-Representatives**

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## Introduction

1. Friends of Olde Berlin Town (“FOBT”) takes issue with the Official Plan Amendment and Zoning Bylaw Amendment applications for 22 Weber St. W. (the “Applications”) in OLT Case 22-002377 (30 Duke Street Limited v. Kitchener (City)). In particular, FOBT takes issue with the Applications’ inadequate regard for the Tall Building Guidelines (“TBG”) and the Civic Centre Neighbourhood Heritage Conservation District Plan (“HDP”). We oppose 30 Duke Street Limited’s request to:
  - a) double the Floor Space Ratio (“FSR”) from 4.0 to 7.95;
  - b) reduce the front yard setback from 3m to 0m;
  - c) reduce the rear yard setback from
    - i. 7.5m or one half the building height, whichever is greater, to
    - ii. 14m for a tower of 59m in height; and
  - d) reduce the minimum landscaped area from 10% to 5%.
2. FOBT is a community group representing concerned neighbours within the Civic Centre Neighbourhood Heritage Conservation District (“HCD”) in pursuit of a compatible, inclusive development of 22 Weber St. W. While FOBT supports development of the present-day surface parking lot on the Subject Property, we maintain the degree of relief sought would impose excessively on adjacent heritage properties and harm the HCD by:
  - a) compromising the streetscape views of heritage assets,
  - b) limiting sunlight and skyviews,
  - c) detracting from neighbourhood character,
  - d) setting a precedent for further erosion of context along the perimeter of the HCD, and
  - e) undermining the willingness of nearby property owners to maintain the heritage resources in their care.
3. The adverse impacts to be considered with regard to an HDP can extend beyond the traditional concerns of shadow, wind, privacy, etc., applied in decisions on zoning of non-heritage resources. The adverse impacts to be considered with regard to this particular HDP include the visual and aesthetic impacts set out in the applicable policies and guidelines of the HDP. The visual impact of concern is primarily that seen from the public sphere; in other words, from the perspective of people walking along both sides of the surrounding public sidewalks, unless otherwise noted.
4. As these arguments may be read by members of the public who have not followed the entire hearing, the Tribunal has determined that FOBT may not frame arguments in the context of the in-force designations and zoning (OPA 49 and ZBA 2024-065) on the adjacent and surrounding lands.

## Evidence

5. The evidence was delivered via Expert Witnesses Sinclair (Land Use and Urban Design) and Currie (Cultural Heritage), for the Applicant-Appellant (“30 Duke”); Barton (Land Use), for FOBT; and Schneider (Land Use), Fahimian (Urban Design) and Choudhry (Cultural Heritage) for the City of Kitchener (“City”).

## 30 Duke's Evidence – Land Use and Urban Design

6. Expert Witness Sinclair spoke to Land Use and Urban Design on behalf of 30 Duke and concluded (Para 124-129, Witness Statement Compendium (“WSC”) p. 77-78) that the Applications meet the tests

and appropriately consider the City of Kitchener Urban Design Manual (“UDM”). She recommended that the Tribunal approve the Applications.

7. Sinclair asserted that the Applications have regard for Matters of Provincial Interest a) - s) (Para. 60 WSC p. 21-26). Issues List item #1 cites only Matters of Provincial Interest 2 d), n), p) and r) as under dispute. FOBT urges the Tribunal to recognize that a lack of regard for one or more Matters of Provincial Interest or policies of the PPS is fully dispositive of the Applications.<sup>1</sup>

8. Sinclair argued the Applications would provide attainable rental housing in a Strategic Growth Area. However, in aiming at ‘attainable’ rather than affordable housing, she confirmed that the pricing will be out of reach to 60% of Kitchener’s population<sup>2</sup>.

9. Sinclair claimed the Applications would provide for an improved streetscape along Weber St. W. Under cross, when asked “Do you accept that the desired pedestrian and public realm is a matter to be determined by the community, staff and council?”, Sinclair replied, “I would agree that in terms of the pedestrian realm, I think there’s a number of people that have a degree of interest in that” (Apr. 24, 11:36)<sup>3</sup>. It is self-evident and uncontested that the oblique views of the buildings, which contribute to the streetscape, along the north side of Weber St W would be reduced/eliminated, if a build at the Subject Property were to be set so close to the front property line.

10. Sinclair asserted, both in her Witness Statement (Ex. 3, p.76-77) and *viva voce* (Apr. 22,2025 14:26) that, “If approved, the Proposed Development will assist the City in meeting intensification targets including minimum intensification targets within MTSA’s.” Under cross, Sinclair stated, “In my opinion, just because you’re in an MTSA, it doesn’t automatically qualify you to have significant intensification or height” (Apr. 24, 12:18) and conceded that she was unaware of the density in the City Hall Protected Major Transit Station Area (“PMTSA”) (Apr. 24, 13:34). She said it was possible that the minimum target has already been achieved (Apr. 24, 13:34). Barton established that the target was surpassed in 2019 *viva voce* (Apr. 25, 14:21).

11. Sinclair argued the Applications would provide for a transition in height from the unlimited height permitted on the south side of Weber Street to the lower-density uses internal to the Civic Centre Neighbourhood. Barton, Schneider, Fahimian and Choudhry denied that an appropriate transition would be delivered to the immediate neighbours within the HCD.

12. Sinclair argued that the Applications would be compatible with surrounding land uses and impose no unacceptable adverse impacts. Again, Barton, Schneider, Fahimian and Choudhry denied that a 59m tower with limited setbacks and no stepbacks could be compatible with the surrounding 2-4 storey builds. Sinclair acknowledged that the proposal does not meet the TBG. The non-adherence to the rear

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<sup>1</sup> Northgate v. Waterloo (Region), 2023 CanLII 50968 (ON LT) at [para 56](#).

<sup>2</sup> 30 Duke is proposing to offer ‘attainable’ housing, a term introduced by the development industry. While not numerically defined, ‘attainable’ housing applies to housing more expensive than affordable housing, but still within reach of the remainder of the community. ‘Affordable housing’ is a defined term, meaning housing that consumes no more than 30% of a households’ income for a household with low to moderate income. 60% of Kitchener’s households have been determined to be of low to moderate income. Therefore, 60% of the population would not be able to afford the housing proposed to be built at the Subject Property ([p. 54, Affordable Housing Strategy Phase 2: Housing Needs Assessment](#)).

<sup>3</sup> All timestamps are approximate and refer to dates in 2025.

yard setback and the TBG was seen as a substantial source of incompatibility by Fahimian. Barton, Schneider, Fahimian and Choudhry all denied that the recess above the first floor, at the front of the proposed build, met the stepback requirement.

13. Witness Sinclair argued the Applications would allow for intensification within the HCD without the removal of any heritage attributes while ensuring the conservation of all existing heritage attributes on adjacent properties. It was uncontested that the proposal does not call for the removal of a heritage resource. Nonetheless, Sinclair lacks the expertise to opine on whether the surrounding heritage resources could be conserved in the face of the new environment proposed by the Applications.

14. Sinclair argued the Applications need not conform to the guidelines in the UDM. She suggested the matter was open to negotiation between 30 Duke and the City. Under cross, Sinclair conceded that a reasonable interpretation of 'guidelines', in this instance, includes that municipal planning staff are to be permitted a degree of flexibility in applying the guidelines in *their* assessment of applications and informing *their* recommendation to Council (Apr. 24, 11:35). Sinclair, furthermore, acknowledged that the province's general call for intensification is not license to ignore urban design guidelines (Apr. 24, 11:55). Fahimian agreed that there can be flexibility in applying the UDM guidelines, but stated that the intent of the UDM must be preserved.<sup>4</sup> Fahimian asserted that the intent of the setbacks and stepbacks of the TBG and zoning was not being preserved. She asserted that the proposal does not meet even 50% of the TBG's physical separation requirement. She asserted that there would be adverse impacts, including visual impacts and a compromise of the skyviews and natural light.

15. There was substantial difference between the representation of the context delivered with Sinclair's Witness Statement and her *viva voce* evidence. Contrary to her Witness Statement (PJR, WSC, p. 185), her *viva voce* evidence confirmed the residential uses (Apr. 24, 10:50) and the aesthetic value of the buildings and streetscape along the south side of Roy Street (Apr. 24, 10:46).

16. Her Witness Statement asserted that "Weber Street has a variety of built forms, setbacks and building heights" (Para 22, WSC p. 11). Under cross, she stated that the existing heights along Weber St W, within the Heritage District range from 1-4 storeys, with the possibility that the churches might be closer to the equivalent of 5 storeys (Apr. 24, 10:34).

17. Under cross, she conceded that the existing builds directly opposite the Subject Lands on the south side of Weber St W include a 2 ½ storey build, with sloped roof situated at 17 Weber St W and that the tallest building on the south side of Weber St W, opposite the HD, measures 11 storeys (Apr. 23, 14:22). There was no dissension from the other Expert Witnesses as to Sinclair's conceded uses and heights on the surrounding lands.

18. When asked, "Do you agree that the lands on the north side of Weber St. W. are subject to substantially different policies and regulations than those on the south side of Weber St. W.?", Sinclair responded, "Yes, there's different designations and different zoning on the north side of Weber Street and the south side of Weber Street. And one is in the urban growth center." To the follow-up question, "The other one's in the heritage district, right?", Sinclair replied, "That is correct" (Apr. 24, 10:33).

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<sup>4</sup> See "Church" at [para 32](#), guidelines "are important component considerations in the Board's overall evaluation of the appropriateness of the proposed development's design in relation to its surroundings."

19. Sinclair introduced a faulty argument in discussing the height permitted under the Commercial Residential Three (CR-3) Zoning on the Subject Property. Sinclair asserted that there was no height limit. Barton and Schneider disagreed, asserting that height limitations were established in two ways,
- via the combination of the Floor Space Ratio regulation, lot size and setback/stepback requirements and
  - via the combination of the rear yard setback regulation and the distance from the rear of a build to the rear property line.

Under cross, Sinclair acknowledged that, “an FSR limit of four influences the achievable height on the Subject Lands” and that, using the proposed tower footprint and the FSR of 4.0, about 9 or 10 storeys could be built on the Subject Lands (Apr. 24, 10:27). The fault in the argument is that the relief sought on to the Floor Space Ratio limit and the rear yard setback regulation is predicated on the absence of a specific, non-derived height limit. As the Tribunal knows, there is no license to increase the limit on one zoning regulation until it aligns with the maximum provisions of another. The argument is all the more spurious as the very regulations from which the proposal seeks relief are specifically constructed so as to limit massing and control its placement on the lot.

20. The evidence from the FOBT cross of Sinclair shows that the Applicant approached the City on two separate occasions in 2019, via the Neighbourhood Planning Review (JDB p. 3384-89) and the Pre-Submission Consultation (WSC, p. 150-53) in pursuit of a similar proposal with a Floor Space Ratio of 6.0. City Planning Staff considered the request and explained that it could not be supported. Sinclair explained, “There was no desire at that time to stay within the regulations.” (Apr. 24, 10:28).

21. The question was posed: “Would a proposal that satisfies the CR-3 zoning regulations without amendment adhere better to the City of Kitchener OP?”. Sinclair replied, “If it meets the CR zoning, it presumably then meets the FSR, you wouldn't need an official plan amendment. That being said, obviously, there's always a right as a landowner to amend those policies and designations” (Apr. 24, 13:38). At no point did Sinclair assert that the High Density Commercial Residential (“HDCR”) designation or the CR-3 zoning on the Subject Property failed to conform to the Region of Waterloo Official Plan (“ROP”) or were inconsistent with the Provincial Planning Statement 2024 (“PPS”) or the Planning Act.

### 30 Duke's Evidence – Heritage

22. Expert Witness Currie spoke to Cultural Heritage on behalf of 30 Duke and concluded (Para 53, WSC p. 347) that the Applications are consistent with the objectives of the HDP.

23. Currie underpinned his argument in stating that “the CCNHCD Plan acknowledges that the Weber Street area is anticipated to have higher density developments and taller buildings” (Para 58, WSC p. 350). However, Currie is misrepresenting the HDP. Choudhry notes, “The Plan does recognize that there might be development, and it might be in conflict with the Plan” (Apr. 30, 11:36):

The High Density Commercial Residential designation, located on Weber Street and extending slightly into College and Young Streets has the potential to be in conflict with the intent of the heritage conservation district plan. Similar to Victoria Street, this designation is identified in the Municipal Plan as one intended to recognize the area's proximity to downtown and primary roads. Zoning in this area is generally CR-3, permitting a range of residential, commercial, office and service uses, with a floor space ratio of 4 and no height restrictions. Potential infill or redevelopment along Weber Street could have a negative

impact on the heritage character of the area if not undertaken in a sensitive manner, particularly as this street contains nearly half of the oldest buildings in the District (HDP, P. 2394, JBD, emphasis added).

24. Currie described the process for evaluating conformity with the HDP as follows (Para 49, WSC p. 345):

- 1) Identify the potentially relevant policies and guidelines in the HDP;
- 2) Reduce the set of potentially relevant policies and guidelines to those that are actually relevant;
- 3) Assess each policy or guideline for potential conflict;
  - a) In the event of conflict with the wording, assess whether there is still a conflict with the intent;
  - b) In the event of a conflict with both wording and/or intent, assess each policy or guideline for adverse impacts as per InfoSheet #5.

25. Currie then walked the Tribunal through his assessment process and concluded there were no conflicts or that, when there were, they resulted in no adverse impacts.

26. Currie is relying on an invalid authority. InfoSheet #5 (JDB, p. 2579, 2597-2600) was an educational pamphlet with no legal standing shared by the Ministry of Culture in 2006, alongside PPS 2005. PPS 2005 is no longer a valid authority. InfoSheet #5 is no longer included on the Ministry's website. Even when PPS 2005 was a valid authority, InfoSheet #5 was not policy. Per InfoSheet #5:

*"\*Note: This InfoSheet was developed to assist participants in the land use planning process and to understand the PPS, 2005 policies related to the conservation planning of cultural heritage and archaeological resources. The information in the InfoSheet should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter"* (JDB, p. 2600).

27. Currie identified five guidelines in HDP Section 6.9.4. (JDB, p. 2343) pertaining to Weber St. W., as requiring interpretation. FOBT asks the Tribunal to consider three guidelines, bullets #2, #6, and #7.

28. Regarding 6.9.4, bullet #2, *"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"*, Currie ignored the direction of the guideline and substituted his own criteria. Currie opined that there is no consistent front-yard setback along Weber St. W., and, therefore, the Applications' proposed front-yard setback falls in the range of neighbouring properties along Weber (Para 53b, WSC p. 347). The guideline, by comparison, requires alignment *"with the building that is most similar to the predominant setback on the street"*, which is 28 Weber St. W. Currie claimed a potential 3m road widening by the Region of Waterloo as another reason to not follow the guideline. A potential road widening has no bearing on the capacity to align with 28 Weber St. W.

29. Regarding 6.9.4, bullet #6, *"Any new buildings taller than 3 to 4 storeys should incorporate some form of height transition or stepbacks to minimize the perception of height and shadow impacts to pedestrians on the street and provide more visual continuity. Stepbacks should be a minimum of 2 metres to provide for useable outdoor terraces for the upper levels"*, Currie stated that a stepback is provided at the second floor (Para 53e, WSC p. 347). *Viva voce*, Currie agreed that the third and above floors protrude to the front, in line with the first storey (Apr. 25, 12:45 & 30 Duke VE, p. 35). Barton, Schneider, Fahimian and Choudhry asserted that the recess does not meet the intent or function of a

required setback.

30. Regarding 6.9.4, bullet #7, *“Any buildings taller than 5 storeys abutting a residential property to the rear should be constructed within a 45 degree angular plane where feasible, starting from the rear property line, to minimize visual impacts on adjacent property owners”*, Currie offered five different arguments.

31. Similar to Sinclair, Currie argued (1) that guidelines differ from policies and need not be met (Apr. 24, 15:31), in opposition to ROPA6 Policy 2.F.3 which states

*“Where development occurs on properties designated under the Ontario Heritage Act, the intensification targets in Table 3 are encouraged to be met through context-sensitive infill that conserves cultural heritage attributes. This development will consider Statements of Cultural Heritage Value and be consistent with any applicable Heritage Conservation District guidelines”* (JDB, p. 1409, *emphasis added*).

In contrast, Choudhry agreed that flexibility can be extended, but, like Fahimian, maintained that the intent must be met (Apr. 30, 13:30). Choudhry asserted that the intent of the guidelines was not being met (Apr. 30, 13:48).

32. In his two HIAs and Witness Statement, Currie asserted (2) that the angular plane should not be struck at the rear property line, because the abutting properties to the rear were designated Office-Residential Conversion, as opposed to Low Rise Residential-Preservation, like the properties on the north side of Roy St (HIA, JDB, p. 311; Para 53, WSC p. 349), again substituting his own criteria. Under cross, Currie acknowledged that the properties to the rear were/are zoned for residential use (Apr. 25, 13:03). Currie did not contest that the properties are being used as residences (Apr. 25, 12:45). Currie also acknowledged (Apr. 25, 12:57) that Choudhry’s arguments in Paragraphs 54-58 of her Witness Statement (WSC p. 598-599), as reiterated below by Choudhry, under direct examination, are worth considering:

*“The subject property abuts 27 Roy Street and 31 Roy Street. They both have residential uses. They’re both zoned R-5. Another thing that I’d like the board to consider is that, in addition to these factors, the policy doesn’t say anything about land use and zoning or reference the Secondary Plan designation. It simply says that any buildings taller than five stories abutting a residential property. The current zoning regulations permit a variety of uses, including residential uses. Both of these properties, those being 27 Roy Street and 31 Roy Street, are located within an existing low rise residential neighborhood. And were originally built as residential buildings. Even with the office residential conversion land use designation in the secondary plan that we’ve heard about, and that the HIA mentioned, it is assumed that any business or commercial use would be taking into account their residential built form typology”* (Choudhry, *viva voce*, Apr. 30, 11:55).

33. Currie (3) went on to present examples of other builds that do not stay under a 45-degree angular plane struck from the property line (Apr. 24, 16:09). The examples included several side-yard to rear-yard transitions and builds approved prior to the enactment of the HDP. These are all poor examples that do not inform the rear yard to rear yard transition under discussion, as per the guideline.

34. Currie suggested the guideline, even if not met, could, (4) nonetheless, be waived as it produced no unacceptable adverse shadow impacts (Apr. 24, 15:12). To support his claim, Currie turned to the shadow impact analysis introduced by Sinclair, which is a tool of analysis applied to any property,



whether heritage designated or not. Currie never addressed the adverse impact identified in the guideline itself: *“to minimize visual impacts on adjacent property owners”*, again substituting his own criteria.

35. Finally, Currie asserted that (5) the *“where feasible”* clause meant that the guideline need not be applied, if it rendered a development along Weber St. W. economically unfeasible. Currie contested the economic feasibility of complying with the angular plane guideline (as well as guideline 6.9.4, bullet #2) (Apr. 24, 16:02). A determination of economic feasibility is not within the scope of Currie’s expertise. Moreover, if the guidelines are to be repealed in the face of economic feasibility, the eventual outcome could well be the erosion and elimination of the HCD. This interpretation is logically inconsistent with the HDP’s goal of preserving the HCD.

36. Returning to the rightful origin of the angular plane, Currie admitted that his interpretation does not hold up in the following exchange under cross (Apr. 25, 13:05):

Question: *“The Angular plane guideline in the [HD] Plan says that you have to measure it from the rear property line, right?”*

Currie: *“It does.”*

Question: *“You’ve measured it here from across the street, right?”*

Currie: *“Correct.”*

Question: *“You’d agree with me, the policy does not say, measure it from a non-adjacent property across the street.”*

Currie: *“It does not. Sorry, I don’t mean to laugh. I’m just agreeing with you. I see the, anyways. Yeah, it does not.”*

Ultimately, Currie acknowledged that *“the proposed development does not meet the angular plane guideline when it’s measured from the rear property line”* (Apr. 25, 11:49), as stipulated in the guideline.

37. During cross-examination, Currie acknowledged that, under Section 41.2(2) of the *Ontario Heritage Act*, in the event of a conflict between a HDP and a municipal by-law, the HDP prevails (Apr. 25, 12:27).

#### FOBT’s Evidence – Land Use

38. A lack of funds prevented FOBT from presenting a full complement of Expert Witnesses. FOBT engaged Expert Witness Martindale, who prepared a report on the Heritage Impact Assessment (HIA) and Heritage Permit Application (HPA) (JBD p. 3072), which was delivered before the Municipal Heritage Committee in March 2022 (JBD p. 4456) and City Council in August 2022 (JBD p. 2877). He remained available throughout the scheduled window for Expert Witness Meetings in December 2022. However, 30 Duke did not engage in the Expert Witness Meetings and then had these proceedings adjourned without the consent of FOBT in January 2023. Since the resumption of the proceedings, Martindale’s wife fell ill, and he is now winding down his practice. We would have been pleased to have the City’s Heritage Witness comment on Martindale’s report, and, more generally, to provide evidence via the City’s witnesses.

39. FOBT did not seek to establish Barton as an Urban Design Expert as his credentials do not match those of the Applicant’s or the City’s Witnesses, even though Barton has previously delivered evidence



to the Tribunal on Urban Design<sup>5</sup>. We did ask that he be granted license to opine on Urban Design, to a limited degree, with less accorded weight (Apr. 28, 11:45), in a similar manner to the approach adopted by the Tribunal with Witness Fahimian regarding Land Use (Apr. 29, 15:49).

40. Expert Witness Barton spoke to Land Use on behalf of FOBT and concluded (Paragraphs 115-21, Pages 501-503, Exhibit 3 WSC) that the Applications lack appropriate regard for the existing and planned context, and

- lack sufficient regard to the Matters of Provincial Interest in Sections 2 (d), (n), (p) and (r) of the Planning Act;
- are not consistent with Provincial Planning Statement, 2024, in particular with Policies 2.4.1.3., 4.6.1. and 4.6.3, 6.1.1., 6.1.7, 6.1.11, and 6.1.12;
- do not conform to the Region of Waterloo Official Plan, specifically objective 3.8, and policies 2.D.1, 3.G.1 and 3.G.6;
- do not conform to the City of Kitchener Official Plan and
- are not consistent with the City of Kitchener Urban Design Guidelines.

Barton concluded that the Applications do not represent good planning and are not in the public interest. He recommended that the Tribunal refuse the Applications.

41. Barton underscored that, while the PPS and Region of Waterloo Official Plan Amendment 6 (“ROPA6”) support and encourage exceeding growth, density, and/or intensification targets, they prohibit overriding other PPS policies in pursuit of further growth or intensification (Para 46, WSC p. 482; Apr. 28, 10:16). Barton established that the density target for the City Hall PMTSA was exceeded in 2019 (Apr. 25, 14:41) and that the City is monitoring its growth targets and “ensuring that the city continues to have the potential to accommodate its allocated population and employment growth within its urban area” (Apr. 25, 14:35). He argued that, as such, the City is within its rights to determine where additional density is to be allocated, as per the defined role of the PPS, “Municipal official plans are the most important vehicle for implementation of the Provincial Planning Statement and for achieving comprehensive, integrated and long-term planning. Official plans should coordinate cross-boundary matters to complement the actions of other planning authorities and promote mutually beneficial outcomes” (Para 41, WSC p. 481). Barton argued that when a municipality is achieving the minimum targets, then “the municipality is tasked with identifying appropriate type and scale of development within strategic growth area, as well as transition” (Apr. 25, 15:58).<sup>6</sup> He argued that the City and Region both established Weber St. W. as a clear transition between the top order of intensification that is to be achieved in the Urban Growth Centre and the HCD (Apr. 25, 14:31-14:41). All the Land Use Witnesses agreed that a PMTSA need not be intensified uniformly throughout, and that the density needs to vary according to local context. The import, according to Barton is, “What we’re talking about now is whether there is some benefit or planning policy ... that indicates [approving these Applications] on this property ... is contributing to a planning goal or something that, is desirable” (Apr. 25, 15:45).

42. Barton opined that the requested site-specific designation and zoning regulations will not provide appropriate spatial separation and transition to the existing and planned uses in the immediately adjacent low-rise residential neighbourhood nor to the flanking neighbours. He stated that the 4.0

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<sup>5</sup> 919819 Ontario Ltd. v Vaughan (City), [2023 CanLII 23977 \(ON LT\)](#); Velmar Centre Properties Limited v Vaughan (City), [2022 CanLII 109895 \(ON LT\)](#)

<sup>6</sup> Whitby Brock Estates Inc. v Whitby (Town), [2022 CanLII 71596 \(ON LT\)](#) at [para 63](#) supports Barton’s approach.

FSI/FSR limit is intended to control massing and scale to ensure that there is a compatible built form built on the property and that the rear yard setback requirement ensures that “height is a function of how close you are to neighboring property” to the rear (Apr. 25, 15:34). “So there's a clear intent here that if you site the building further away from the rear property line, that you can go higher. And that's intended to provide a level of compatibility with those single detached dwelling structures that exists on Roy Street” (Apr. 28, 12:08). He pointed to the Kitchener Official Plan Policy 3.C.2.9 which permits the City to impose requirements affecting the massing and placement of buildings” and Policy 4.C1.9. which states that “A high degree of sensitivity to surrounding context is important in considering compatibility” (Para 69, WSC p. 487), which he asserted indicates that “compatibility doesn't speak only to adverse impact. It's indicating here that a degree of sensitivity to the surrounding context is important in considering compatibility” (Apr. 28, 10:49). He stated that the height is not appropriate, the front and rear yard setbacks are inadequate, and the landscaped area is inadequate. Finally, he noted that it does not represent good planning to establish site-specific Official Plan and Zoning By-Law provisions that are significantly different than the surrounding existing and planned context (Para 115-121, WSC p. 501-503).

#### City's Evidence- Land Use

43. Expert Witness Schneider spoke to Land Use on behalf of the City and concluded (Para 105-107, WSC p. 539) that the Applications fail the tests. He opined that “the site can be developed with a building of smaller scale, under the current land use designation and zoning regulations, with a more thoughtful placement to achieve compatible infill development that provides housing in this intensification area that is appropriate and compatible with the existing neighbourhood and the Civic Centre Neighbourhood Heritage Conservation District. It is also my opinion that the subject lands can achieve the planned function of the PMTSA without the proposed applications” (Para 106-107, WSC p. 539).

#### City's Evidence- Heritage

44. Expert Witness Choudhry spoke to Cultural Heritage on behalf of the City and concluded (Para 109, WSC p. 611) that the Applications are incompatible with the overall character of the HCD and are not sympathetic to its character due to its proposed design, height, massing, transition and overall built form. Choudhry stated that “I do not think the proposed development conforms with the District Plan” (Apr. 30, 11:34) and opined that the proposed development does not meet the HDP in failing to meet the guidelines in section 6.9.4.

45. Choudhry opined that the Applications would have a negative impact on the heritage attributes, and character of the HCD. She asserted that the proposed development would (Apr. 30, 11:36):

- overshadow and dominate both of its immediate adjacent properties<sup>7</sup>;
- disrupt and not respect the established built form of the streetscape, due to its proposed 0-m setback and current design and height;

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<sup>7</sup> The decision in “Church” [Para. 48-49](#) agrees with Choudhry's concept of overwhelming the neighbouring heritage properties, finding, in that case, that “the building functions in isolation of its surroundings without appropriate regard for its immediate context, especially for the immediate heritage context; and it overwhelms and subordinates the physical attributes of these much smaller buildings with little or no regard for the cultural heritage therein. ... A tall building with these minimal setbacks, lack of appropriate transition and failure to respond to the particular development limitations and heritage factors of its immediate context all serve to confirm that this development does not represent good planning.”

- because of the lack of a meaningful setback, overpower everything else in its immediate surroundings and fail “to lessen that perception of height, especially to the rear and to the side. ... this contributes to the disruption of that existing character and the visual continuity that currently exists on the street”; and
- introduce visual incompatibility in failing to adhere to guideline 6.9.4, bullet #7 and intruding more than half of the building into the 45-degree angular plane.

46. Choudhry opined that “the angular plane should be taken from the rear lot of the subject land, which has a shared property line with 27 and 31 Roy Street” (Apr. 30, 11:57) and that the proposed development “is not capable of existing together in harmony within the area with its current design” (Apr. 30, 13:35).

### City’s Evidence – Urban Design

47. Expert Witness Fahimian spoke to Urban Design on behalf of the City and concluded (Para 73-77, WSC p. 563-566) that the Applications are not suitable given the site-specific context and should not be approved.

48. Fahimian asserted that the Applications do not conform with the planned function of the HCD and will impact the viewshed from Weber St. W. Fahimian opined that the Applications lack a proper transition to the adjacent low-rise HCD to the rear, making it incompatible with the existing and future built form along Weber St. W. and the existing built form in the HCD.<sup>8</sup> She also opined that consideration needs to be given to the totality of the relief being sought from urban design Official Plan policies, zoning regulations, and the UDM. She asserted that the Applications do not adhere to the City’s TBG, specifically that standards for tall building design are not met for tower placement, setbacks, and setbacks. Fahimian acknowledged that zoning setbacks prevail for the first eight storeys and that, the requirements of the TBG prevail for floors nine and above (Apr. 29, 13:37). Fahimian asserted that the Subject Lands can be developed with a more compatible development within the current land use permissions that still provide additional housing in an intensification area that is appropriate and compatible with the planned function of Weber St. W. and the HCD.

### Weighing Evidence

#### Land Use

49. With respect to land use planning, FOBT suggests the Tribunal prefer the evidence of Expert Witnesses Barton and Schneider over Expert Witness Sinclair.

50. Sinclair addressed matters beyond the Issues List to argue that the Applications are consistent with other policies and guidelines. FOBT urges the Tribunal to recognize that a lack of regard for one or more Matters of Provincial Interest or policies of the PPS is fully dispositive of the Applications.<sup>9</sup> As listed in paragraphs 7-12 herein, FOBT takes issue with six of the nine benefits that Sinclair asserts the Applications, if approved, would deliver (Para 123, WSC, pp 76-77). Sinclair’s Witness Statement and

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<sup>8</sup> Bayview Ottawa Holdings Ltd. v Ottawa (City), [2021 CanLII 77608 \(ON LT\)](#) at [para 87](#) agrees, “In order to minimize impact on the character of the streetscape, and to allow the heritage buildings to retain their dominant presence in the streetscape, a gradual transition in height is required. A building that complies with the required angular plane would likely result in one more compatible in terms of height and massing with the streetscape and the HCD.”

<sup>9</sup> Northgate v. Waterloo (Region), 2023 CanLII 50968 (ON LT) at [para 56](#).

*viva voce* evidence under direct examination presented an incomplete and, at times, inaccurate portrayal of the surrounding context. To Sinclair's credit, she readily corrected and completed the account under cross. Sinclair did not address Issue 31, *Is the proposed building height compatible and aligned with adjacent neighbouring properties* (emphasis added) and key policies 6.1.7, 6.1.11, and 6.1.12 in Issue 2a) in her Witness Statement. Sinclair refused to elaborate on some of her broader approaches that informed her opinion on these particular Applications, for example, the appropriate front yard setback from Weber St W for the block between Queen St N and Young St (Apr. 24, 10:39). In particular, Sinclair offered no criteria for assessing compatibility beyond not producing adverse impacts.

51. Barton was unwavering and did not need to change the opinions he presented in his Witness Statement, despite the last-minute requirement to remove all reference to OPA 49 and ZBA 2024-065. He was clear and open under cross. Under both examination and cross examination, Schneider was concise and direct.

### Urban Design

52. With respect to urban design, FOBT suggests the Tribunal prefer the evidence of Expert Witness Fahimian over Expert Witness Sinclair.

53. Fahimian is an architect as well as an urban design planner. Combined with her specific role with the City, her opinions should be held in higher regard. Fahimian's acknowledgement of the need to plan for and respect the development potential of flanking lots demonstrates a more reasoned approach than that taken by Sinclair; the position taken by Sinclair may be advocating for her client's taking of the flanking neighbours' development rights. Fahimian's approach to guidelines is more logical than Sinclair's. Both witnesses agree that there can be flexibility in the application of the UDM guidelines. However, taken to its ultimate conclusion, Sinclair's argument that each Applicant and their Planner should have a full say over which guidelines are to be applied and to what extent would render the guidelines meaningless. For the guidelines to be of any value, they must be decided upon with consistency by Council, with the advice of Planning Staff.

### Cultural Heritage

54. With respect to Heritage, FOBT suggests the Tribunal prefer the evidence of Expert Witness Choudhry over Expert Witness Currie.

55. While Choudhry was slow and careful with her responses, she was consistent. Her pace accorded with her experience before the Tribunal.

56. Currie was imprecise; like Sinclair, he vaguely described the height of the 1-4 storey buildings along Weber St. W. as of "greater variability" (Apr. 24, 14:13). Currie mischaracterized the HDP (Para. 24 herein). Currie leaned on an invalid authority (Para. 27 herein). Currie ignored the direction of two of the guidelines and substituted his own criteria (Para. 29 & 33 herein). Currie's multiple and logically-inconsistent interpretations of guideline 6.9.4, bullet #7, regarding the 45-degree angular plane speaks volumes. He downplayed the role of HDP guidelines in opposition to the direction of ROPA6 Policy 2.F.3. (Para. 32 herein). He acknowledged that the examples he offered as comparators do not inform the decision at hand (Para. 34 herein). Finally, Currie veered into financial feasibility for support (Para.

36 herein). While Witness Currie may have some familiarity with the interests of his clientele, he is not licensed to speak to financial feasibility; he was qualified as a Heritage witness. Currie acknowledged the flaws in his own arguments and even laughed at his own assertions (Para. 37 herein).

57. FOBT calls on the Tribunal to dismiss Currie's dubious evidence.

#### Responses to 30 Duke's Closing Submissions

58. Ms. Meader inaccurately conveyed a citation and some evidence. Ms. Meader cited the case of 375-381 Queen Street West Inc. v Toronto (City), [2014 CanLII 103708](#) (ON LPAT) as a proposal for a 16-storey building that was approved in discussion of a build in a Toronto Heritage Conservation District. In fact, the proposal was for a 7 storey, 30-metre high building containing multiple setbacks. Due to time limitations and the page-limit on this closing submission, we share only the following three examples of inaccurately conveyed evidence.

59. Ms. Meader writes, "Ms. Fahimian further suggested that the Tall Building Guidelines would supersede as-of-right zoning by-law permissions" (p. 10 of her Closing Submission). Fahimian said zoning prevails for the first eight storeys and the TBG prevail above. There would be no value in establishing TBG if they were superseded by zoning. When Ms. Meader asked, "You're suggesting now, Ms. Fahimian, that the guidelines trump the as-of-right zoning permissions?" Fahimian replied as follows at about 16:18, Apr. 29, 2025:

*"I think I already answered this question. 1.2[m] requirement in the zoning does not apply to the tall building. That's why we contemplated tall building in order to calculate the physical separation, the side yard setback according to that calculation. So, the 1.2[m] applied to the podium of the building, because it's low rise, midrise-ish typology. So, whatever we had in the zoning is a minimum requirement for any structure to be built. When you are talking about the tower, the 1.2m setback does not apply to the top portion of the tower. So, you can apply 1.2[m] to the podium, which is in the range of two- to four-storey or five-storey. But, we have a separate calculation for the physical separations of the tower. So, we cannot, like you cannot build a tower within 1.2[m] from the property line and then have another tower within 1.2[m]; so that requirement doesn't apply to the top."*

60. Ms. Meader claims that "During cross examination, she [Fahimian] agreed that it [the recently approved project at 900 King St W] did not meet the Tower Separate guidelines" (p. 11 of her Closing Submission). This is not accurate. Fahimian said 900 King St. W. fully met the Tower Separation Guidelines on three sides and met the intent on the fourth side (Apr. 29, 16:07). Fahimian had already elaborated at 15:52 on why the tower at 900 King St. W. was a good fit:

*"So, in this context, because it was well buffered from the low rise residential, it's in the corner and it was deemed appropriate because the adverse impact was minimal. It was not directly abutting the low-rise residential. It was not directly abutting any heritage-sensitive areas. So, it was well buffered from those. And it was a good location because it was a corner, framing the street and does not have any impact on the civic center, was not close to any of those civic center criteria. So, we identified this is the good location to have the high density. So, it's different from this context."*

61. Ms. Meader claimed that "Ms. Fahimian insisted that the Proposed Development was deficient in

outdoor amenity and in children play areas, but did acknowledge in cross examination that the guideline calls for no more than a minimum of 40m<sup>2</sup> of outdoor amenity space” (p. 11). This is, again, an inaccurate account of the evidence provided. Fahimian said that the guideline calls for a minimum of 2m<sup>2</sup> outdoor common amenity space per unit, with a base minimum of 40m<sup>2</sup>. The following exchange on the matter began at about 3:19pm, Apr. 29, 2025 with a question from Ms. Meader, “And we’ve enshrined that in the proposed zoning bylaw that 40 meters. But we’ve actually said 130 square meters of common amenity space, including a minimum of 40 square meters of outdoor common area. That’s enshrined in the bylaw, right?”. Fahimian replied:

*“Yeah. But look at those paragraph above [in Urban Design Manual, Part C: Design Standards, Section 11.0, Outdoor Amenity Areas – Multiple Residential and Institutional Developments, (Exhibit 8)]: it says two square meter per number of unit. So, it does not meet exactly what the urban design manual is asking for. This, so 40 square meter is, for example, if you have a 22 units or 25 units, the minimum standard for outdoor amenity is 40. Or, even if you have 12 units, we usually ask for minimum 40 square meter. But, when you exceed certain number of the units, that 40 square meter is not sufficient to accommodate the needs of all those residents. So, we have to use this [two square meter per unit] calculation in order to make sure we have enough space to accommodate all those units. So, it doesn’t come that, 400 units, you can still have 40 square meter and 20 units means still need to have 40 a square. So, it doesn’t work like that.”*

## Conclusion

62. FOBT suggests that the Applications’ proposed spot-zoning is disconnected, context-agnostic and ignores broader planning and heritage frameworks. Good planning, by contrast, takes into account cumulative impacts, community input, the need for consistency in zoning and appropriate transitions between zones, and the long-term needs and direction of the City. Good planning must be future-oriented, but must also be grounded in the existing context to ensure compatibility.

63. FOBT asks that the Tribunal see that this case must meet two tests. First, on the basis of land-use, zoning and urban design legislation, policies and guidelines and, second, on the basis of cultural heritage legislation, policies and guidelines. We ask that the Tribunal determine that the Applications may fail on either front, but must demonstrate consistency or conformity with all respective authorities on both fronts to succeed. In other words, each test is fully dispositive.

64. Regarding Land Use, the City and Region of Waterloo have determined that the rightful location of the transition between the Downtown Urban Growth Centre and the Olde Berlin Town neighbourhood and HCD is Weber St W itself. FOBT sees the Applications as asserting that a substantial transition should be borne within the HCD, across the property lines separating the Subject Property and its immediate heritage-designated neighbours, including adjacent low-rise zoned properties to the north. FOBT finds these arguments advanced in support of the Applications to be unsubstantiated and without merit.

65. Regarding Cultural Heritage, FOBT suggests this decision is unlike most taken by the Tribunal, wherein subsequent redevelopment of surrounding properties may reduce any immediate incompatibilities introduced by an overdevelopment at the Subject Property. If the Tribunal approves these Applications, the owners of the neighbouring properties may no longer be willing to maintain the heritage property in their care, due to a lack of a supportive setting. The implications could cascade



further into the neighbourhood. Consequently, if heritage resources are lost, PPS 2024 Policy 4.6.3., “Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property unless the heritage attributes of the protected heritage property will be conserved” (JBD, p. 1102 emphasis added) will have been violated. Any damage will be irreparable; lost heritage resources cannot be replaced.<sup>10</sup>

66. FOBT suggests that a new path that supersedes the 1994 Secondary Plan and zoning for this neighbourhood was established in 2008, via the adoption of the HDP. FOBT perceives the Applications as challenging this path, more than 15 years later, with a flawed and deficient interpretation. FOBT calls on the Tribunal to dismiss Currie’s dubious HIA, HPA, Witness Statement and testimony. Should the Tribunal determine that it cannot approve the HIA and HPA, the Tribunal must refuse the Applications.

67. FOBT calls on the Tribunal to recognize the Applications as:

- Lacking regard for the Ontario Heritage Act,
- Lacking regard for the Planning Act,
- Inconsistent with the Provincial Planning Statement,
- Failing to conform to the Region of Waterloo Region Official Plan (ROP) and Amendment #6,
- Failing to conform to the City of Kitchener Official Plan (OP),
- Inconsistent with the direction of the City’s Urban Design Manual (UDM), and
- Failing to conform to the Civic Centre Neighbourhood Heritage Conservation District Plan

We, furthermore, ask that the Tribunal find that the Applications represent poor planning and are not in the public interest.

68. The Tribunal has heard from the City’s Expert Witnesses that there is potential to re-develop the site with a build that would align with the direction of the HDP, the zoning and the TBG. No property or development rights would be curtailed, and the Subject Property would not be singled out for unfair treatment, should the Applications be rejected. The Subject Property has seen substantial market uplift from public investment in the Light Rail Transit, the removal of minimum parking requirements, and reduced development charges and parkland dedication fees.

69. FOBT recognizes that all Parties appear to agree that the HDCR designation and CR-3 zoning on the Subject Property are no longer appropriate and that the Subject Property should be developed. The question is only *how*. FOBT perceives that all Parties appear to agree that:

- a) The proposal’s revised minimum sideyard setback of 2.5m is a step in the right direction
- b) The front yard setback under the zoning need not be more than 3.0m. This setback is consistent with both the CR-3 zoning and the direction the City is heading.
- c) There can be some flexibility in the interpretation of “*where feasible*” in HDP Site/Area Specific Design Guideline 6.9.4, bullet #7, P. 6.32. The guideline reads “Any buildings taller than 5 storeys abutting a residential property to the rear should be constructed within a 45-degree angular plane where feasible, starting from the rear property line, to minimize visual impacts on adjacent property owners.” However, for the guideline to hold any meaning and deliver any value, the decision as to the maximum height at which the angular plane is to be struck above grade, at the rear property line, cannot be a matter determined by this Applicant nor their Cultural Heritage consultant.

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<sup>10</sup> The decision in “Church” agreed that conservation of the heritage attributes of the adjacent properties took priority over an overly-intensive redevelopment of a surface parking lot.



70. Beyond the above, we perceive that FOBT and the City appear to agree that:

- a) given the location and the small interior lot, should the Subject Property be developed to a height in excess of eight storeys, much more rigorous adherence to the TBG will be necessary and
- b) the minimum 10% landscaped area must be upheld.

71. Finally, we identify in Appendix A the many aspects of the proposed Zoning Bylaw Amendment on which FOBT makes no comment, and note that, while FOBT is interested in the preservation of the streetscape along Weber St. W., inside the HCD, the means by which a potential road widening in front of the Subject Property may be handled by the Region and/or City is not a matter with which FOBT need be involved.

72. If, despite our submissions, the Tribunal is inclined to approve the Applications, we beseech it to impose strict, time-bound conditions. We ask that any approval include a "use it or lose it" clause, whereby failure to proceed within a defined period would see permissions revert to those in effect at that future time.

73. For the foregoing reasons, FOBT respectfully requests that the Tribunal refuse the Applications or, at least,

- a) deny an increase to the Floor Space Ratio,
- b) deny a reduction to the front yard setback,
- c) deny changes to the rear yard setback, and
- d) deny a reduction to the minimum landscaped area

Respectfully submitted this 9th day of May, 2025,

Hal Jaeger  
Co-Representative for FOBT

Neil Baarda  
Co-Representative for FOBT

# FOBT Closing Submission

## Appendix A

FOBT makes no comment  
on items marked with a  
red asterisk \*

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 second storey shall be stepped back a minimum of 2.0 metres above the ground floor.
- \* m. 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.
- \* n. The minimum Class B Bicycle Parking Stall requirement shall be 6.
- \* o. The minimum parking requirement shall be 0 spaces per unit.
- \* p. The minimum visitor parking requirement shall be 0 spaces per unit.
- \* q. A minimum amenity area of 1,500 square metres shall be provided and shall include balconies and common amenity space.
- \* r. 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.
- \* s. Geothermal Energy Systems shall be prohibited.
- \* t. Balconies shall not permitted on the rear building elevation.
- \* ~~s-u.~~ The maximum percentage of façade openings (windows or entrances) on the rear building elevation shall be limited to 15% of the total rear façade area.

- \* 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.