

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 23, 2021

CASE NO(S): PL210275

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Nelson Benevides
Applicant:	2691597 Ontario Inc.
Subject:	Minor Variance
Variance from By-law No.:	By-Law No. 6593
Property Address/Description:	11 Robert Street
Municipality:	City of Hamilton
Municipal File No.:	HM/A-21:35
OLT Case No.:	PL210275
OLT File No.:	PL210275
OLT Case Name:	Benevides v. Hamilton (City)

Heard: October 21 and 27, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Nelson Benevides

A. Bouchelev

2691597 Ontario Inc.

N. Smith

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] On January 28, 2021, 2691597 Ontario Inc. ("Applicant") applied to the City of Hamilton ("City") Committee of Adjustment for variances to the City's Zoning By-law No.

6593 (“Zoning By-law No. 6593”). The proposed variances are to facilitate the development of a six-storey mixed-use building with a ground floor commercial use and 28 dwelling units in the upper storeys at 9-11 Robert Street (“subject property”).

[2] The subject property has a frontage of 15.6 metres (“m”), is 39.3 m deep, and has an area of 616 square metres (“sq m”). Laneways abut the side and rear of the subject property. Presently, there is a vacant single-storey commercial building situated on the subject property.

[3] Under the Urban Hamilton Official Plan (UHOP), the subject property is identified as “Downtown Urban Growth Centre” (Schedule E– Urban Structure) and “Downtown Mixed Use Area” (Schedule E-1 – Urban Land Use Designations). Under the Downtown Hamilton Secondary Plan (“Downtown Secondary Plan”), the subject property is designated as “Downtown Mixed Use – Pedestrian Focus” and identified as “Low-rise 2”. It is zoned “H” District - Community Shopping and Commercial under Zoning By-law No. 6593.

[4] In 2018, the City adopted amendments to its Comprehensive Zoning By-law No. 05-200 (“Zoning By-law No. 05-200”) in order to implement modifications to the Downtown Secondary Plan. The Parties agree that the subject property was intended to be zoned “D2 – Downtown Mixed Use, Pedestrian Predominant Zone” (“D2”) under the new zoning. This specific zoning for the subject property was inadvertently left out when mapping for the new zoning by-law was conducted. The proposed development, including the requested variances, is permitted under D2 zoning.

[5] On January 12, 2021, the City granted conditional site plan approval for the proposed development. During the site plan approval process, the mapping error was identified by the City and brought to the Applicant’s attention. The mapping error was corrected through housekeeping zoning amendments in September 2021 (after this proceeding was commenced).

[6] The proposed variances relate to density, building height, setbacks, gross floor area, landscaping, parking, and loading spaces. The proposed variances would permit:

- a maximum of 28 dwelling units;
- a maximum building height of six storeys and 20.0 m;
- a minimum front yard depth of 2.5 m;
- a minimum rear yard depth of 2.6 m;
- a maximum gross floor area of 4.2 times the area of the lot;
- no planting strip to be required or maintained along the rear lot line and both the westerly and easterly side lot lines;
- no parking spaces, including no visitor parking, to be provided and maintained for the residential component; and,
- no loading spaces to be required.

[7] On March 4, 2021, the City's Committee of Adjustment granted the requested variances.

[8] On March 24, 2021, Nelson Benevides ("Appellant"), who owns property adjacent to the subject property, appealed the Committee of Adjustment's decision. The Appellant owns the laneway, which abuts the subject property to the east. This laneway is subject to a registered right-of-way in favour of the subject property.

[9] On October 21 and 27, 2021, the Tribunal heard the appeal by video hearing.

PRELIMINARY ISSUE

[10] At the commencement of the hearing, the Appellant submitted that with the recent passage of the housekeeping amendments to Zoning By-law No. 05-200 in September 2021, the Tribunal does not have the authority to adjudicate the appeal. He submitted that the subject property is now governed exclusively by Zoning By-law No. 05-200. The Appellant responded that the appeal was made regarding variances to

Zoning By-law No. 6593 and the passage of the amendments to Zoning By-law No. 05-200 does not remove the Tribunal's authority to adjudicate the appeal.

[11] Section 8(1) of the *Ontario Land Tribunal Act* gives the Tribunal exclusive jurisdiction in respect of all matters in which jurisdiction is conferred on it by statute. In the present case, s. 45(16) of the *Planning Act* confers jurisdiction on the Tribunal to hold a hearing and s. 45(18) sets out the powers of the Tribunal on the appeal. An applicant is entitled to have its application evaluated on the basis of the laws and policies as they existed on the date that the application was made. In this case, given the jurisdiction conferred on the Tribunal, the appeal in this proceeding relates to Zoning By-law No. 6593, which was the zoning that existed on the date that the Applicant's variance application was made. Section 2.1(1) of the *Planning Act* requires the Tribunal when making a decision on a planning matter under the *Planning Act* to have regard to any decision that is made under the Act by a municipal council or by the relevant approval authority (here - the City's Committee of Adjustment) that relates to the same planning matter as well as to any information and material that was considered in making the decision. In the present case, Zoning By-law No. 05-200 is a decision that was made under the Act by City Council that relates to the planning matter before the Tribunal. Based on s. 2.1(1), the Tribunal will have regard to Zoning By-law No. 05-200. However, the Tribunal emphasizes that the focus of the appeal is on Zoning By-law No. 6593 and the proposed variances to it.

CENTRAL ISSUES IN THE PROCEEDING

[12] The central issues in this proceeding are whether or not the proposed variances meet the four tests under s. 45(1) of the *Planning Act*. These tests are:

- do the proposed variances maintain the general purpose and intent of the Urban Hamilton Official Plan?
- do they maintain the general purpose and intent of Zoning By-law No. 6593?

- are they desirable for the appropriate use of the subject property?
- are they minor?

The proposed variances must also be consistent with the Provincial Policy Statement, 2020 (“PPS”) and conform with the Growth Plan for the Greater Golden Horseshoe, 2020 (“Growth Plan”). When making its decision, the Tribunal must have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and it must have regard to the decision of the Committee of Adjustment and the information considered by it. It also must have regard to Zoning By-law No. 05-200 as required under s. 2.1(1) of the *Planning Act*.

EVIDENCE, SUBMISSIONS, ANALYSIS AND FINDINGS

[13] James Webb is a land use planner who was retained by the Applicant. The Tribunal qualified him to provide opinion evidence in the area of land use planning. He provided oral testimony. The Applicant also filed with the Tribunal a witness statement written by Mr. Webb, dated October 8, 2021.

[14] Heather Travis is a land use planner employed by the City who was summoned by the Applicant to provide evidence. She provided fact evidence by oral testimony describing the mapping error and the passage of the housekeeping amendments to Zoning By-law No. 05-200.

[15] Terence Glover is a land use planner who was retained by the Appellant. The Tribunal qualified him to provide opinion evidence as an expert in land use planning. He provided oral testimony. The Appellant also filed an affidavit affirmed by Mr. Glover, dated October 15, 2021, and a Planning Issues Report, dated October 5, 2021.

[16] The Appellant, Mr. Benevides, provided fact evidence by means of oral testimony.

[17] Each of the identified central issues will be addressed below.

Issue 1 Do the proposed variances maintain the general purpose and intent of the Urban Hamilton Official Plan?

Applicant's Evidence and Submissions

[18] Mr. Webb opined that the proposed variances maintain the general purpose and intent of the Urban Hamilton Official Plan. He stated that the subject property is designated as "Downtown Mixed Use with a Pedestrian Predominant Overlay" in both the Official Plan and the City's Downtown Secondary Plan and mapped as "Low-Rise 2 Residential" in the Secondary Plan.

[19] Regarding the number of dwelling units, Mr. Webb stated that there is no policy in either the Urban Hamilton Official Plan or the Downtown Secondary Plan regulating density in the City's downtown area. He stated that the Urban Hamilton Official Plan's policies permit multiple dwelling-unit buildings and the Downtown Secondary Plan focusses on built form policies in order to achieve appropriate development. He said the Urban Hamilton Official Plan encourages a higher density form of housing in the area of the subject property, but states in its Volume 1, policy E.4.47, that height and density shall be set out in the Downtown Secondary Plan. He said the Downtown Secondary Plan aims to increase residential densities and revitalize the area. It does not include density restrictions for the areas designated as Downtown Mixed Use, including the subject property. Mr. Webb stated that medium density requirements in Urban Hamilton Official Plan, Volume 1, policies E.3.5.7 and E.3.5.8 do not apply to the area. Based on this, he opined that the proposed number of dwelling units is permitted. He also noted that D2 zoning under By-law No. 05-200 does not regulate density.

[20] Regarding the proposed height, Mr. Webb stated that the Downtown Secondary Plan allows for a six-storey building (such as that proposed by the Applicant) for the Low Rise 2 Height overlay area provided that criteria related to transition, built form, and

urban design are satisfied. He stated that those criteria are satisfied in the present case. He said there are several buildings of a similar height in the area and he opined that the proposed variances would facilitate a development that is compatible with the surrounding area and provide for appropriate transition. Mr. Webb stated that the proposed development was reviewed by the City's Design Review Panel, which generally supported the proposed massing and scale of the building. He also said that he conducted a shadow study for the proposed development, which found that the proposed development would satisfy the applicable requirements in the Downtown Secondary Plan.

[21] Regarding heritage issues, Mr. Webb stated that the Urban Hamilton Official Plan, Volume 1, policy B.3.4.2.12 states that a cultural heritage assessment shall be submitted where a proposed development has the potential to adversely affect neighbouring cultural heritage resources. He stated that the City's heritage staff reviewed the proposed variances and determined that based on the scale of the proposed development, there would be no adverse effects on neighbouring cultural heritage resources. He said staff found that the proposed development fits in with the heritage context of the area. He stated that the subject property is not in a cultural heritage overlay area and, in any event, the proposed transition from nearby heritage buildings to the proposed development is acceptable. He stated that requiring a cultural heritage assessment is left to the discretion of the City and the Applicant is not required to prove that an assessment is not needed. Mr. Webb stated that the design elements of the proposed development address cultural heritage concerns and are included in the conditional site plan approval for the proposed development.

[22] Regarding parking issues, Mr. Webb stated that the Urban Hamilton Official Plan, Volume 1, policy E.4.4.14 allows for reduced parking where higher order public transit services are available and amenities and services are located close by, such as in the present case. He said the subject property is 450 m from the West Harbour GO Station, which is a Higher Order Transit Station, and within a Major Transit Station Area. He

also stated that there are sidewalks, bike lanes, and other infrastructure for active transportation in the area.

[23] Regarding setback issues, Mr. Webb stated that the proposed variance is for a minimum front yard depth of 2.5, whereas the Zoning By-law requires 6 m. He said the Downtown Secondary Plan encourages the placement of buildings closer to the street line and to provide for an active and safe pedestrian environment. He said the proposed front yard variance does this by locating the proposed development closer to the street line and using design elements that will encourage pedestrian use and character through a patio, landscaping, and bicycle facilities. He also stated that with the abutting laneways, the other setbacks for the proposed development are appropriate.

Appellant's Evidence and Submissions

[24] Mr. Glover stated that the proposed variance does not maintain the general purpose and intent of the Urban Hamilton Official Plan. He said high density development is not permitted on the subject property and the proposed density would be uncharacteristic for the neighbourhood. He stated that the proposed development would have a far greater density than neighbouring properties. He said a medium density development would be more appropriate on the subject property.

[25] Regarding height issues, Mr. Glover stated that the proposed development would be taller than neighbouring structures, including several cultural heritage buildings. He said the nearby John Weir Foote VC Armoury, which is a national historic site, is a significant attraction in the area and that the proposed development would distract from it. He stated that Christ's Church Cathedral is located close by and the proposed development would be twice the height (or more) of this and other buildings in the area. He said a six-storey building is permitted under the Urban Hamilton Official Plan provided that certain criteria are satisfied, but the Applicant did not undertake sufficient studies to demonstrate that these criteria are met. He said the proposed height,

massing and density of the proposed redevelopment are not appropriate for the area and the proposed variances would result in the subject property being overbuilt. At the hearing, Mr. Glover acknowledged that many of his previous concerns regarding shadowing had now been addressed by Mr. Webb's shadow study.

[26] Regarding heritage issues, Mr. Glover stated that a cultural heritage assessment report is required under the Urban Hamilton Official Plan, Volume 1, policy B. 3.4.2.12. He said the subject property is in a neighbourhood that maintains a 19th Century character and it is not possible to determine whether there will be impacts to existing heritage resources without a cultural heritage assessment being done. He stated that City staff examined whether the existing building on the subject property has cultural heritage attributes, but he did not think that staff adequately looked at the impacts of the proposed development on adjacent heritage resources. He opined that the proposed variances would result in a development that does not fit within the existing neighbourhood character of the area.

[27] Regarding parking issues, Mr. Glover stated that the Urban Hamilton Official Plan, Volume 1, policy E.4.4.14 allows for reduced parking where higher order public transit services are available, but that does not mean zero parking. He stated that a parking study is needed.

Analysis and Findings

[28] The Tribunal finds that the proposed variances maintain the general purpose and intent of the Urban Hamilton Official Plan and the Downtown Secondary Plan. The subject property is in an area of the City's downtown that is designated as Downtown Urban Growth Centre and Downtown Mixed Use Area. These designations permit mixed use buildings, such as the proposed development. The proposed development is also permitted under the Downtown Hamilton Secondary Plan, which designates the subject property as Downtown Mixed Use – Pedestrian Focus.

[29] Regarding density issues, the Tribunal finds that, based on the Urban Hamilton Official Plan, Volume 1, policy E.4.4.7 and E.4.4.8 and the policies in the Downtown Secondary Plan, there are no specific density regulations for the subject property, but a higher density form of housing is encouraged. The Tribunal finds that the proposed density variance maintains the general purpose and intent of these policies.

[30] Regarding height issues, Map B.6.1.-2 (Maximum Building Heights) of the Downtown Secondary Plan identifies the subject property as within the Low Rise 2 category, which allows for six-storey buildings subject to certain criteria. These criteria are set out in Downtown Secondary Plan policy 6.1.4.6, which requires the evaluation of (a) compatibility with adjacent land uses; (b) transition in height to adjacent and existing buildings; (c) compatibility of height, massing, scale and arrangement of buildings and structures and sympathy to the character and heritage of the neighbourhood; and, d) the conservation of on-site and adjacent cultural heritage resources. Based on the evidence before the Tribunal, it finds that the proposed use is compatible with similar mixed uses in the area. It finds that there are buildings of a similar height in the area and the proposed transition in height is acceptable. It finds that the proposed height, massing, scale and arrangement of the proposed development is compatible with existing structures and, based on the reviews conducted by City's heritage staff, the applicable cultural heritage conservation requirements have been satisfied. The Tribunal finds that the proposed height variance maintains the purpose and intent of the Urban Hamilton Official Plan and the Downtown Secondary Plan.

[31] Regarding cultural heritage issues, the Tribunal finds that the City's heritage staff properly reviewed the proposed variances and their potential impacts, and, under Urban Hamilton Official Plan, Volume 1, policy B.3.4.2.12, staff determined that a cultural heritage assessment is not required for the proposed variances. The Tribunal notes that the City has the discretion to determine whether a cultural heritage assessment is required and that there was no compelling cultural heritage evidence provided by the Appellant to contradict the City staff's findings. The subject property is not in a cultural heritage overlay area, which would support the need for such an assessment. Based

on the evidence before it, the Tribunal finds that the proposed height variance will facilitate a development that is compatible with the surrounding heritage resources and provides for adequate transition from neighbouring buildings.

[32] Regarding the proposed parking variance, the Urban Hamilton Official Plan, Volume 1, policy E.2.3.1.16 states that reduced parking requirements shall be considered to encourage a broader range of uses and densities and to support transit. Policy E.4.4.14 states that reduced parking requirements shall be considered in recognition of the high level of transit service to the area designated Downtown Mixed Use. The Tribunal finds that the proposed parking variance maintains the purpose and intent of these policies.

[33] Regarding setbacks, the Tribunal notes that Urban Hamilton Official Plan, Volume 1, policy E.4.4.10 states that the Downtown Mixed Use Area shall be designed as a pedestrian focused area and that buildings are to be situated close to and oriented to the street. Based on Mr. Webb's evidence, the Tribunal finds that the proposed front yard setbacks will be compatible with the existing streetscape and, with the Applicant's proposed patio and bicycle facilities, will create a pedestrian and active transportation focused environment. It also finds that, with the abutting rear laneway, the proposed rear yard setback maintains the purpose and intent of the Urban Hamilton Official Plan and the Downtown Secondary Plan.

[34] Also, based on the evidence before it, the Tribunal finds that there are no requirements in the Urban Hamilton Official Plan or the Downtown Secondary Plan that conflict with the proposed gross floor area, planting strip, or loading space variances. In these regards, the Tribunal finds that the proposed variances maintain the general purpose and intent of the Urban Hamilton Official Plan and the Downtown Secondary Plan.

Issue 2 Do the proposed variances maintain the general purpose and intent of Zoning By-law No. 6593?

Applicant's Evidence and Submissions

[35] Mr. Webb opined that the proposed variances maintain the general purpose and intent of Zoning By-law No. 6593. He stated that when modifications to the Downtown Secondary Plan were passed, the subject property was intended to be zoned Downtown Mixed Use – Pedestrian Focus (D2) Zone. He stated that due to a mapping error, the subject property was not included in amendments to the zoning. He said all other relevant properties in the immediate area were included. He stated that, but for the mapping error, the proposed development would have been permitted under the new D2 Zone for the area. Ms. Travis supported Mr. Webb's evidence in this regard.

[36] Regarding density, height and gross floor area, Mr. Webb reiterated that the proposed variances would facilitate a development that achieves an appropriate scale with a mixed-use building providing commercial uses on the ground floor, residential uses above, and an appropriately scaled street wall. He stated that the proposed development would have a height of six storeys or 20 m, whereas Zoning By-law No. 6593 requires a maximum height of four storeys or 17 m. He stated that the proposed height would be compatible with existing buildings in the area. He stated that the proposed height is within the 45 degree angular plane for the street and would not result in undue shadow impacts. He also reiterated that his shadow study demonstrates that there would be no undue shadow impacts caused by the proposed development.

[37] Regarding parking spaces, Mr. Webb reiterated that there is public transit nearby, including buses and a GO Station, as well as local services and amenities. He stated that reduced parking variances have been permitted elsewhere in the City's downtown to facilitate intensification and where amenities, employment, and services are located close by, as in the present case. He noted that, based on the proposed unit

mix, on-site parking is not required under By-law No. 05-200 for the proposed development.

[38] Regarding setback issues, Mr. Webb reiterated that the proposed front yard setback variance is consistent with the front yard setbacks of existing neighbouring buildings. He reiterated that the proposed variance would facilitate the creation of a continuous street wall and a pedestrian environment. For the proposed rear yard setback, he stated that the proposed development's scale and massing are appropriate and there would be appropriate transition to neighbouring developments. He again said there would not be shadow issues.

[39] Regarding loading area requirements, Mr. Webb stated that loading will be facilitated at the rear of the proposed development for small deliveries. He stated that small trucks and vans will have the space and will be able to manoeuvre down the laneways beside the proposed development and access the area at the rear of the building. Regarding possible trespass issues with vehicles entering the Appellant's property, he said the Applicant is willing to construct a fence at the rear of the subject property to prevent such trespassing. He said street parking will be available for larger deliveries at the front of the proposed development. He stated that there is parking on Robert Street in front of the subject property, which is sufficient for loading. He said the Applicant has had discussions with the City to have that space made into a loading zone. He stated that such a change would have negligible impacts on parking in the area. He said that large vehicles, including garbage trucks and large moving vans, would need to load from the street. He noted Zoning By-law No. 05-200 does not require loading spaces for developments such as that proposed by the Applicant.

[40] Regarding permitted uses on the subject property, Mr. Webb stated that dwelling units are permitted on the subject property. He stated that the proposed variances would increase the number of permitted units and would not result in a change in use. He noted that the Urban Hamilton Official Plan and the Downtown Secondary Plan both

encourage intensification in the area. He noted that the proposed uses also are permitted under Zoning By-law No. 05-200.

Appellant's Evidence and Submissions

[41] Mr. Glover opined that the proposed variances do not maintain the purpose and intent of Zoning By-law No. 6593. He stated that the Applicant has provided insufficient information to determine whether there will be enough parking for the proposed development. He said no professional parking or traffic study was undertaken. He stated that residents of the proposed development may end up parking in the Appellant's laneway. He stated that the Applicant must provide proof that there will not be a parking problem before the variances are authorized. Mr. Benevides said there is insufficient parking in the area and people often illegally park in his laneway and on his property. He expressed concern that snow removal from the subject property could end up pushing snow on to his property.

[42] Regarding loading, Mr. Glover stated that there is insufficient space at the rear of the subject property for loading. He said that given the narrow laneways surrounding the subject property, there is insufficient space for trucks to turn at the rear and trucks would likely trespass on the Appellant's property to make the turn. He said the Applicant holds an easement over the Appellant's laneway adjacent to the subject property, but under its conditions, it must be kept clear and open and not blocked by vehicles. He stated that the loading space variance should not be authorized without the Applicant providing a traffic engineering report demonstrating that trucks would not trespass. Under cross-examination, Mr. Glover agreed that if a fence were erected preventing vehicles from trespassing on the Appellant's property, this could alleviate the issue.

[43] Mr. Glover stated that the proposed development contemplates a new multiple dwelling use of the subject property, which is not permitted under Zoning By-law No. 6593 and can only be authorized through a zoning by-law amendment. He said

residential units located above commercial uses are only permitted where they do not exceed the area of the commercial use. He stated that a variance should not be used to change permitted uses on a property.

Analysis and Findings

[44] The Tribunal finds that the proposed variances maintain the general purpose and intent of Zoning By-law No. 6593. Under that Zoning By-law, the maximum height for a building on the subject property is four storeys (or 17.0 m). This regulation is to prevent overdevelopment and make sure that there is an appropriate transition in scale. Based on Mr. Webb's evidence, the Tribunal finds that the proposed density and height variances facilitate a development that will be compatible and will provide acceptable transition requirements from neighbouring buildings. The Tribunal also notes Mr. Webb's evidence that the proposed development will have a height that is within the 45 degree angular plane for the street and will not result in undue adverse shadow impacts.

[45] Regarding heritage issues, the Tribunal notes that the City's heritage planning staff did not have concerns arising from the proposed variances. City staff's findings, and the heritage evidence relied on by staff, was not contradicted by the Appellant with compelling heritage evidence. In this regard, the Tribunal finds that the proposed variances maintain the general purpose and intent of Zoning By-law No. 6593.

[46] With respect to the proposed parking variance, the Tribunal accepts Mr. Webb's evidence on the location of nearby public transit and active transportation infrastructure, including bike lanes and sidewalks, and finds that the zero parking variance maintains the purpose and intent of the Zoning By-law No. 6593.

[47] Regarding loading areas, the Tribunal finds that given the modest scale of the proposed mixed use development, the use of the street for loading is appropriate. It notes that smaller deliveries will be received at the rear of the building and that the

Applicant has indicated a willingness to construct a fence at the rear to prevent trespassing on the Appellant's property. The Tribunal also notes that street parking is available at the front of the proposed development. Given this context, the Tribunal finds that the proposed loading space variance maintains the purpose and intent of Zoning By-law No. 6593.

[48] Regarding permitted uses on the subject property, the Tribunal finds that dwelling units are allowed on the subject property and that the proposed variances would increase the number of permitted units and would not result in a change in use.

[49] Based on the evidence before it, the Tribunal finds that the proposed variances for front yard and rear yard depths are consistent with the setbacks of existing neighbouring buildings and are appropriate. It also finds that the absence of planting strips will maintain existing conditions and will be compatible with the character of the area. In these regards, the Tribunal finds that these proposed variances will maintain the general purpose and intent of the Zoning By-law No. 6593.

Issue 3 Are the proposed variances desirable for the appropriate use of the subject property?

Applicant's Evidence and Submissions

[50] Mr. Webb opined that the proposed variances are desirable for the appropriate use of the subject property. He reiterated that intensification is encouraged in the area and that the proposed density and height of the development are desirable. He stated that the proposed parking and loading variances are desirable given the need for intensification in the area and the location of services, transit and amenities close by. He stated that the proposed development satisfies urban design and cultural heritage requirements and comments from the City's Design Review Panel, which have been included in the conditional site plan approval. He said the proposed variances would provide setbacks that are similar to those of neighbouring buildings and consistent with

the area's character. Regarding other issues raised by the Appellant, Mr. Webb said the proposed development includes balcony amenity areas for residents and the proposed development would not be tall enough for the City to require a wind study. He said several of the Appellant's concerns, including those relating to lighting, urban design, landscaping, electrical upgrades, and stormwater management are addressed in the conditional site plan approval for the proposed development. Regarding a concern raised by the Appellant that a cell phone tower could be erected on the top of the proposed development, Mr. Webb stated that the Applicant has no intention of installing such a tower. Regarding storm water management concerns, Mr. Webb stated that the Applicant prepared and submitted a stormwater management report for the proposed development to the satisfaction of the City. He stated that there would be no stormwater run-off on neighbouring properties.

Applicant's Evidence and Submissions

[51] Mr. Glover stated that the proposed variances are not desirable for the appropriate use of the subject property. He reiterated cultural heritage, parking, and transition concerns. He also again raised concerns that if garbage trucks or other vehicles travel to the rear of the proposed development, they may trespass on the Appellant's property when turning. Regarding planting strips, he stated that the current absence of landscaping on the subject property is not an appropriate rationale for a lack of landscaping to be required for the proposed development. In his planning report, he also raised concerns regarding the ability of neighbours to harness solar energy due to shadowing caused by the proposed development, the impacts of lighting from the proposed development on adjacent heritage buildings, the possibility of the installation of a cell phone tower on the top of the proposed development, impacts of a proposed roof top amenity area on the proposed development, and the re-location of an electrical transformer. He stated that all of the proposed variances and their impacts should be considered together, including storm water management and trespassing, to determine whether the proposed variances are desirable. He reiterated that more information and studies are needed. In his planning report, Mr. Glover stated that an archaeological

assessment, transportation impact study, and a more complete functional service report are needed. He also suggested the need for a vibration study, wind study, parking and loading study, urban design brief, geotechnical report, environmental impact review, and a photometric plan. He suggested that more amenity areas should be included in the proposed development and that building materials should be used to ensure that the development is consistent with the character of the area. He said the proposed development does not include any soft surfaces to allow for the infiltration of stormwater and there may be run-off on to neighbouring properties. Under cross-examination, Mr. Glover acknowledged that stormwater management issues will be addressed at the site plan approval stage and that they were considered by City staff.

Analysis and Findings

[52] The Tribunal finds that the proposed variances are desirable for the appropriate use of the subject property and are in the public interest. The Tribunal finds that the proposed variances will facilitate development that helps increase residential intensification in the area. As noted above, it finds that the proposed increased density, height, and gross floor area variances are appropriate. The Tribunal finds that the proposed variances will not result in transition, compatibility, or cultural heritage issues. It finds that the proposed front yard setbacks are consistent with the existing streetscape and the proposed rear yard setback is appropriate given the function of the abutting laneways. It also finds that given the site context with abutting laneways, the absence of planting strips is appropriate. The Tribunal notes that stormwater management issues will be addressed at the site plan approval stage. The Tribunal finds that the Appellant's concerns regarding the impacts of lighting from the proposed development on adjacent heritage buildings, impacts of a proposed roof top amenity area on the proposed development, the re-location of an electrical transformer and other issues are addressed at the site plan approval stage.

Issue 4 Are the proposed variances minor?*Applicant's Evidence and Submissions*

[53] Mr. Webb opined that the proposed variances are minor. He stated that the proposed height variance facilitates a development that is only 3 m higher than the height permitted under the Zoning By-law, there would be appropriate separation from neighbouring properties, and that a shadow analysis was completed demonstrating that the proposed development would not unduly block sunlight on the public realm or neighbouring properties. He again that the proposed development would have a 45 degree angular plane applied to the front elevation of the proposed building. He said his shadow study confirms sun coverage on the adjacent public realm and no undue overshadow, blocking of light, or loss of privacy impacts from the height, orientation, design and massing of the proposed development. He said public parking is available near the subject property and that the proposed parking and loading variances would not have unacceptable adverse impacts. Mr. Webb stated that the proposed front yard setback variances would not likely have adverse impacts on the streetscape and are consistent with the front yard setback requirements in Zoning By-law No. 05-200 for D2 zoning.

Appellant's Evidence and Submissions

[54] Mr. Glover stated that the proposed variances are not minor. He stated that the proposed height variance is significant, there would be visual impacts, including on the heritage character of the area, and the loading variance could result in acts of trespass that would impact the Appellant's property. He said the proposed height variance would facilitate a development that results in wind impacts on neighbouring properties and he said the Applicant proposes a new use for the subject property that is not a minor change.

Analysis and Findings

[55] The Tribunal finds that the proposed variances are minor. The Tribunal finds that the Applicant has provided evidence that the proposed density, height, setback, parking, loading, and other variances will not unduly impact neighbouring properties nor are they of a significant size that departs from the existing zoning requirements. The Tribunal accepts the Applicant's evidence that there will be no shadow impacts caused by the proposed variances and that the proposed development is not of a sufficient height to require a wind study.

The PPS, Growth Plan, and s. 2 of the *Planning Act*

Applicant's Evidence and Submissions

[56] Mr. Webb opined that the proposed variances are consistent with the PPS. He stated that the subject property is within a designated settlement area. He said the proposed variances facilitate efficient development of land that will cost effectively complete the planned pattern of development of the area using existing infrastructure. He said the proposed variances facilitate an appropriate form of intensification and facilitate the development of an underutilized property using existing roads, infrastructure, and public service facilities.

[57] Mr. Webb also opined that the proposed variances conform with the Growth Plan. He stated that the subject property is within the City's built boundary and the proposed development would assist in the development of a complete community by adding to the mix and range of residential housing types in the area, providing residential units that are close to local amenities and services, and supporting public transit and active transportation. He also reiterated that the subject property is close to a Higher Order GO Transit Station. He stated that the proposed variances facilitate intensification, promote transit policy, and the achievement of provincial housing objectives.

[58] Mr. Webb also stated that he had regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. He said these include the matters of provincial interest related to ecological protection, conservation of features of significant architectural, cultural, historical, archaeological or scientific interest, the adequate provision of a full range of housing, the appropriate location of growth and development, and the promotion of development that is designed to be sustainable, to support public transit, and to be oriented to pedestrians.

Appellant's Evidence and Submissions

[59] Mr. Glover stated that he has no concerns regarding the consistency of the proposed variances with the PPS or their conformity with the Growth Plan or whether the matters of provincial interest set out in s. 2 of the *Planning Act* have been considered.

Analysis and Findings

[60] Based on Mr. Webb's uncontradicted opinion evidence in this regard, the Tribunal finds that the proposed variances are consistent with the PPS and conform with the Growth Plan and that there has been regard given to the matters of provincial interest set out in s. 2 of the *Planning Act*.

Conclusions

[61] The Tribunal finds that the proposed variances satisfy the tests in s. 45(1) of the *Planning Act*, are consistent with the PPS, conform with the Growth Plan, and constitute good planning. The Tribunal has had regard to the matters of provincial interest in s. 2 of the *Planning Act* and the decision of the Committee of Adjustment regarding this matter and the information that the Committee had before it. It also has had regard to Zoning By-law No. 05-200.

ORDER

[62] The Tribunal orders that the appeal is dismissed and the following variances to By-law No. 6593 are authorized:

1. a maximum of twenty-eight (28) dwelling units shall be permitted within a six (6) storey building and where the gross floor area of the residential component exceeds the gross floor area of the commercial component notwithstanding that the Zoning By-law permits a maximum one dwelling unit for each 180.0 m² of area of the lot upon which the building is situated provided that the building does not exceed two (2) storeys in height and provided further that the gross floor area of the building used for dwelling units does not exceed the gross floor area used for commercial purposes;
2. a maximum building height of six storeys and 20.0 m shall be permitted instead of the maximum building height of four storeys and 17.0 m permitted;
3. a minimum front yard depth of 2.5 m shall be permitted instead of the minimum 6.0 m front yard depth required;
4. a minimum rear yard depth of 2.6 m shall be permitted instead of the minimum 7.5 m rear yard depth required;
5. a maximum gross floor area of 4.2 times the area of the lot shall be permitted whereas the Zoning By-law states that no building or structure in an "H" District shall have a gross floor area of more than four (4) times the area within the district of the lot on which it is situated;
6. no planting strip shall be provided and maintained along the rear lot line and both the westerly and easterly side lot lines whereas the Zoning By-law requires a minimum 1.5 m wide planting strip along every side lot line and rear lot line adjoining a residential use;

7. no parking spaces including no visitors parking shall be provided and maintained for the residential component instead of the minimum 28 parking spaces including six (6) visitors parking spaces; and
8. no loading space shall be required for the 28 unit multiple dwelling instead of the minimum one (1) loading space required.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.