

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: February 24, 2022

CASE NO(S): OLT-21-001227

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

Appellant:	Scott Albrecht
Applicant:	Corley Development Inc.
Subject:	Minor Variance
Variance from By-law No.:	85-1
Property Address/Description:	926 and 936 King Street East
Municipality:	City of Kitchener
Municipal File No.:	A2021-069
OLT Lead Case No.:	OLT-21-001227
OLT Case No.:	OLT-21-001227
OLT Case Name:	Albrecht v. Kitchener (City)

Heard: January 13, 2022 by Video Hearing

APPEARANCES:

Parties

Counsel*/Representative

Scott Albrecht

Self-represented

926 King Development Inc. c/o
Corley Developments Inc.

Kim Mullin*

City of Kitchener

Katherine Hughes*

**MEMORANDUM OF ORAL DECISION DELIVERED BY T.F. NG ON JANUARY
13, 2022 AND ORDER OF THE TRIBUNAL**

[1] 926 King Development Inc. c/o Corley Developments Inc. (“Applicant”), of 926 and 936 King Street East (“subject property”/“subject site”), in the City of Kitchener (“City”) applied for relief from the provisions of Zoning By-law No. 85-1, in order to permit the development of a 10-storey building with 98 residential units with ground floor live/work units.

[2] The minor variances sought (as amended) are in respect of relief from Zoning By-law No. 85-1 (“ZBL”) to:

1. Permit a maximum building height of 32 metres (10 storeys), whereas Special Regulation 541R permits a maximum building height of 19.5 metres (6 storeys).
2. Provide that the mechanical penthouse shall not be included in the calculation of building height under section 4.2.
3. Permit off-street parking at a rate of 0.42 spaces per unit, whereas section 6.1.2.a requires one space per unit for a multiple dwelling in the MU-2 zone.
4. Permit visitor parking at a rate of 5% of the required parking spaces, whereas section 6.1.2.b(vi)B requires visitor parking at a rate of 20% of the required parking spaces for multiple dwellings containing more than 60 units.
5. Permit a structural pillar and portion of the building in the Corner Visibility Triangles (“CVT”) at the intersection of King Street and Dane Street and the intersection of King Street and Borden Avenue, whereas section 5.3 does not permit any obstruction to visibility within a CVT.

The Tribunal having been asked to consider an application, which has been amended from the original application, and the Tribunal having determined as provided for in s. 45(18.1.1) of the *Planning Act* (“Act”) that no further notice is required. The

amendments proposed are minor, do not change the substance of the variances requested, but merely clarify the wordings of the variances by deleting unnecessary words and adding others for clarity.

[3] The City's Planning Staff recommended the original application (before the amendment) be denied. The Committee of Adjustment ("COA") approved the variance application on July 20, 2021 ("approval") subject to conditions. The Appellant, Scott Albrecht, appealed the COA's approval.

[4] The City approved: "The application of 926 King Development Inc and C/O Corley Developments Inc permission to construct a 10-Storey building having a maximum building height of 32m and 35m to mechanical penthouse rather than a maximum building height of 19.5m; having a parking rate of 0.42 off-street parking spaces/per unit rather than required 1.0 off-street parking space/per unit; having 5% visitor parking rather than the required 20% visitor parking: and, that the Corner Visibility Triangle (CVT) be measured as 3m from the street line by 4.5m from the edge of the driveway, being the same measurement as a Driveway Visibility Triangle (DVT) in Zoning By-law 2019-51, and to permit a structural pillar to be located within the CVT, whereas the By-law does not permit encroachments in the DVT, on Lot 37, Lot 38, Plan 218, Part of Lot 36, 926-936 King Street East, Kitchener, Ontario, BE APPROVED subject to the following conditions:

1. That the owner shall ensure the proposed multi-residential building has an 18m setback from the northerly lot line.
2. The owner shall enter into an agreement with the City which shall require that the owner provide the City with annual confirmation of the building's rental status for 10 years following registration of said agreement, all to the satisfaction of the City solicitor.

3. That the installation of balconies on the north elevation of the building are prohibited.
4. That the approval of the minor variance related to the encroachment into the Driveway Visibility Triangle (DVT) be in general accordance with the Site Plan application included with the application.
5. That the owner shall be required to implement Transportation Demand Management (TDM) measures to the satisfaction of Director of Transportation Services through the Site Plan approval process”.

SITE CONTEXT

[5] The subject property is approximately 0.26 hectares (0.66 acres) in area and rectangular in shape. The subject property is vacant and was previously occupied by an Automobile Dealership, which recently burnt down. It encompasses an entire City block along King Street East between Dane Street and Borden Avenue North. A complete Site Plan Application has been filed with the City on November 18, 2020.

[6] The variance application is submitted in support of the site plan application and proposes a development consisting of a 10 storey (32 metres high), 98-unit multiple residential dwelling with ground floor live/work units, and a maximum floor space ratio (“FSR”) of 3.43. The massing of the proposed building is oriented towards King Street East with direct pedestrian access provided at multiple points along the King Street East frontage. The orientation of the building towards King Street East allows for a significant setback of 19.25 metres from the abutting low-rise residential lands. The proposed building has a unique slender design with an internal layout, which provides for a “single loaded” corridor with units oriented to the King Street East frontage. A total of 41 parking spaces are also provided.

[7] The subject property has frontage on three streets, King Street East, Dane Street and Borden Avenue North. Low rise residential uses fronting on Borden Avenue North and Dane Street border the property to the north. Existing commercial uses along the King Street East corridor surround the subject property on the other three sides.

HEARING

[8] The Tribunal granted participant status to Jay Leasa without objections, and his participant statement was taken into consideration.

[9] Kim Mullin, the Applicant's counsel, called Pierre Chauvin, a land use planner, as witness and he was qualified to give expert opinion evidence on land use planning matters. Counsel also called transport engineer, Erica Bayley, who was qualified to give expert opinion evidence on transport engineering and parking management matters. The Applicant's Document Book was marked as Exhibit 1 and the Applicant's Visual Evidence was marked as Exhibit 2.

[10] The self-represented Appellant, Scott Albrecht, called Craig Dumart, a planner with the City (who was under summons). Mr. Dumart did not execute an acknowledgment of expert's duty and was not qualified to give opinion evidence. The Tribunal allowed him to give factual evidence in relation to the planning staff report he authored.

THE CITY'S POSITION

[11] Counsel for the City, Katherine Hughes, confirmed that the City was not taking any position on the proposal at the hearing.

THE APPELLANT'S POSITION

[12] The Appellant contended that the proposed development is not appropriate for the area, which was too tall when compared to the existing buildings and that the

variances failed the four tests. He obtained a summons for the attendance of the City planner, Mr. Dumart, who was the author of the planning report, which recommended the COA to deny the application.

[13] Mr. Dumart testified on factual matters leading to his report dated July 7, 2021.

[14] The Appellant obtained the following from the factual evidence of Mr. Dumart.

[15] The property is designated as Mixed Use Corridor in the King Street East Secondary Plan ("KSSP") and identified within a Major Transit Station Area ("MTSA") on the City's Urban Structure Map.

[16] The property is zoned as Medium Intensity Mixed Use Corridor Zone (MU-2) with Special Regulation Provision 541R in Zoning By-law No. 85-1.

Planning Report Comments

[17] It was the *viva voce* testimony of Mr. Dumart that in this case, the Site Plan application has not been deemed complete by the Planning division or fully reviewed. However, based on staff's preliminary review, staff have identified additional Zoning deficiencies beyond the requested variances under consideration through this application.

Additional Zoning Deficiencies

[18] Building Height is defined in Zoning By-law No. 85-1 as the vertical distance between the highest finished grade level at the perimeter of the building and the uppermost point of the building. Antennae, chimneys, spires, cupolas, elevator penthouses, or other similar features shall be disregarded in calculating building height. According to planning staff, the proposed building's penthouse includes additional building gross floor area ("GFA") including a washroom, corridor, stairs, elevator, and

access to a roof top amenity space. A mechanical penthouse cannot include GFA or is counted towards the overall building height. Based on the site plan and floor plans submitted, the proposed building height is 35 metres rather than 32 metres as the 11th floor mechanical penthouse includes GFA.

[19] Special Regulation 541R of the Zoning By-law requires a setback of 16.0 metres to residentially zoned properties plus an additional 0.6 metres for every additional metre above 13.5 metres in height. The proposed building is 32 metres in height (35 metres to the mechanical penthouse with GFA), which would require a 27.1 metre setback (28.9 metres for a mechanical penthouse that includes GFA) to residentially zoned properties. Additional relief should be requested to Special Regulation 541R for this setback. The Applicant has identified the building will be located 19.25 metres to residentially zoned properties. From staff's review of the site plan, this measurement appears to be incorrect and does not include the building's upper floors (floors 2 to 10), which are proposed to cantilever above a portion of the ground floor parking. The requested 19.25 metre setback appears to be measured to the first floor. The upper floors appear to be located approximately 17 metres to residentially zoned properties.

[20] The proposed building is located within two corner visibility triangles. Corner Visibility Triangles are a triangular area formed within a corner lot by the intersecting street lines or the projections thereof and a straight line connecting them 7.5 metres from their point of intersection. Corner Visibility Triangles do not allow obstruction to visibility, whether from buildings, motor vehicles, landscaping or other impediments.

[21] Furthermore, staff question whether or not the number of parking spaces proposed can be appropriately accommodated on site. There may be a need to reduce the number of parking spaces on site through a detailed review of the design through such matters as shifting the building to be located outside of the Corner Visibility Triangle and providing a 1.5 metre landscape buffer around the perimeter of the surface parking lot.

[22] With the exception that staff acknowledged that the intent of the City Official Plan was met, Planning staff was of the view that the other required tests for variances, on the ZBL, desirability and minor in nature, were not met.

[23] The Participant Statement of Mr. Leasa echoed the contents of the staff planning report, in particular, the 541R provision requirements. Further concerns raised related to matters that occurred at the COA meeting of July 20, 2021. Generally, the Participant Statement expressed concerns similar to the Appellant.

THE APPLICANT'S POSITION

[24] Mr. Chauvin explained that the subject property is designated Mixed Use Corridor in the KSSP and zoned Medium Intensity Mixed Use Corridor (MU-2) with Special Regulation 541R. The Mixed Use Corridor designation is intended to provide residential development opportunities together with appropriate commercial and institutional uses that primarily serve the adjacent residential neighbourhoods.

[25] The policies of the current Secondary Plan also require that new development be compatible to surrounding residential neighbourhoods and be at an appropriate height and density to the adjacent low rise residential development. In this regard, the subject property as well as abutting lands on the northern side of King Street East, have a special regulation imposed in the Zoning By-law (541R), which limits the building height relative to specific setbacks from the abutting residential uses (notwithstanding, the maximum building height and FSR permitted in the MU-2 zone).

[26] The KSSP is under review. This review is intended to implement the Planning Around Rapid Transit Stations ("PARTS") Central Plan, which identified the subject property as 'Mixed Use Medium Density'. The draft Secondary Plan land use designation that was presented by staff in April 2019, proposed to designate the lands as 'Mixed Use' with Special Policy Area 3, which provided for a maximum building height of 32 metres (10 storeys) and a maximum FSR of 2.0. This was subsequently

revised in December 2019, with a MIX-3 zoning applying to the subject lands, which proposes a maximum building height of 24 metres and a maximum FSR of 4.0. The draft zoning also proposes to delete Special Regulation 541R in favour of a general regulation, which regulates the height to 12 metres within 15 metres of any low density residential uses. Outside of the 15 metres, a building up to the maximum building height (24 metres) would be permitted.

[27] The City of Kitchener Official Plan Mixed Use policies require that new developments be compatible with surrounding residential neighbourhoods and be of an appropriate height and density in relation to adjacent low rise residential development. The policies of the Plan require that in locations that immediately abut low rise residential land uses, new development is permitted to have a minimum FSR of 0.6 and a maximum FSR of 2.0. However, the policies also permit new development to exceed this maximum FSR in locations, which abut arterial or major collector roads that are well separated from low rise residential development, and have adequate municipal infrastructure. In such cases, minimum FSR of 1.0 and a maximum FSR of 4.0 may be imposed. Given its location along King Street East, the subject property is zoned to permit a maximum FSR of 4.0. The proposed development will be below this maximum FSR at 3.43. The building is proposed to be 10-storeys. The mechanical penthouse on top of the building provides elevator shaft/access to a sheltered outdoor patio and Mr. Chauvin opined that it is to be disregarded in considering the building height.

[28] The subject property is within an identified Intensification Area (MTSA) and is designated Mixed Use. In accordance with the Official Plan policies, intensification and development of mixed use lands within Intensification Areas will be the primary means of accommodating the majority of development or redevelopment in the City while efficiently utilizing land and infrastructure.

[29] The planned function of the MTSA is to provide a focus for accommodating growth that supports transit and rapid transit. The subject property is well located, relative to the existing Light Rail transit system with the ION Borden station

approximately 120 metres (less than a minute walk) from the subject property. There are also several bus stops located on both sides of King Street, Charles and Ottawa Street North and Borden Avenue, near the ION Borden Station. The subject property is well supported by frequent conventional and higher-order transit service, thus providing future residents of this development with the opportunity to choose non-auto travel more frequently. Ultimately, the proposed development will provide urgently needed attainable housing in close proximity to transit.

[30] The Mixed Use designation policies also support and allow for a broad range of uses that support flexibility to respond to land use pattern changes and demands. As a result, the designation permits a broad range of uses and intensities. These areas play an important role in achieving the planned function of intensification areas, and are expected to accommodate additional density and in ensuring the community vibrancy intended for this land use designation.

[31] Mr. Chauvin stated that the policies of 4.C.1.8 of the Official Plan also provide additional direction with respect to reviewing minor variances to facilitate residential intensification to ensure that new buildings are appropriate in mass and scale, and compatible with the built form and community character of established neighbourhoods. In this regard, careful consideration has been given to the design of the building and the surrounding context, while trying to provide much needed attainable rental units for the City. To realize the greatest potential of the site and meet the zoning requirements, the building has been designed with very slender building footprint permitting a double loaded parking area between the building and the adjacent single family residential unit neighbours. The slender building footprint requires a single loaded corridor plan. The single loaded corridor typology results in a building with two distinct façades; the corridor façade and a unit façade. Proposed units face the public realm of King Street East, while the building's corridor faces towards the private residential neighbourhood. This unique design provides for a compatible development with an appropriate mass and scale that conforms to the designations permitted FSR.

[32] Given the foregoing, the proposed additional building height and parking variances are consistent with the intent of the MTSA and Mixed Use designation policies of the Official Plan.

[33] The Medium Intensity Mixed Use Corridor (MU-2) Zone provides for a wide range of residential and non-residential uses. The zoning permits a maximum FSR of 4.0 and maximum building height of 24 metres. Notwithstanding, the permitted maximum building height in this zone, Special Regulation Provision 541R limits the building height relative to specific setbacks from the abutting residential uses (Note: this special provision is proposed to be removed with the update to the Secondary Plan). The intent of this special provision is to ensure compatibility in terms of building mass and scale relative to the adjacent low rise residential neighbourhood. Building mass and scale is a typically measured space ratio, and in this instance, the FSR for the proposed development is below the maximum permitted.

[34] Notwithstanding the height limitations in 541R, the special provision does contemplate additional height provided additional setback is provided (i.e. 0.6 metres of setback from the minimum 16 metre setback for every one metre of additional building height above 13.5 metres of height). At a proposed building height of 32 metres, an additional setback of 11.1 metres would be required for a total of 27.1 metres (16 metres, plus 11.1 metres). As noted above, the mass of the proposed building is oriented towards King Street East with a proposed setback of 19.25 metres to the abutting residential zone. This is a difference of 7.85 metres from what would be required. The Applicant has nevertheless not requested a variance of this setback from the abutting residential zone.

[35] In Mr. Chauvin's opinion, the intent of the zoning by-law provisions has been met as the building mass has been oriented as much as possible, away from the abutting residential neighbourhood. The proposed design and placement of the building along the streetscape has maximized the prominence of the building with an active streetscape on all three street frontages. The single-loaded corridor design of the

building is planned to minimize overlook onto the neighbourhood, the FSR is below the maximum permitted and fencing/landscaping between the properties is contemplated, all with the intent of ensuring a compatible built form with the adjacent residential neighbourhood. Additionally, in response to public comments and in an effort to 'animate' the rear façade, similar treatment to the glazing on the King Street façade has been applied to the rear elevation facing the residential area.

[36] Shadow studies prepared by NEO Architecture, submitted with the site plan application, also demonstrate that shadow impacts on neighbouring properties are minor as a result of the increased building height.

[37] The Traffic Impact Study ("TIS") prepared by Paradigm Transportation Solutions in support of the site plan application, and to which, Ms. Bayley provided oral testimony, concluded that the amount of parking provided is sufficient for the development. This opinion recognizes the property's location relative to conventional and high-order transit as well as the implementation of Transportation Demand Management ("TDM") measures such as unbundled parking and long-term indoor bicycle parking. With these measures in place, the TIS concludes that the development is in line with the Region's Transportation Master Plan.

[38] Mr. Chauvin opined that the requested variances meet the intent of the OP and Zoning By-law.

[39] The variances are desirable for the appropriate use of the property as it will allow for the development of much needed attainable rental housing with excellent access to the established transit system. It will contribute to the creation of a vibrant MTSA while maintaining the mixed use intent of the land use designation and zoning. The proposed subtle but enhanced architectural detail of this building will create visual interest and enhance the public realm along this urban corridor. Ultimately, the proposed building design and orientation provide an opportunity to create a distinctive architectural design along the frontage of this emerging mixed use corridor.

[40] The proposed variances are considered minor as the shadow impacts associated with the additional building height are negligible as a result of the increased building height. The setbacks to the adjacent neighbourhood have been maximized and overlook will be minimized as a result of the single loaded corridor design.

[41] The property's location relative to transit as well as the implementation of TDM measures will encourage alternative modes of transportation and less dependence/demand for automobile parking. As a result, the impacts of the variance will be negligible.

[42] Mr. Chauvin took the Tribunal through the Provincial Policy Statement 2020 ("PPS 2020"), the Growth Plan for the Greater Golden Horseshoe 2020 ("Growth Plan"), the City Official Plan ("OP"), the KSSP, and the relevant Zoning By-laws and the statutory tests with respect to minor variances. He concluded that the proposal represents good land use planning and in the public interest.

ANALYSIS AND DECISION

[43] The Tribunal decides every matter upon its own particular facts. The Tribunal is persuaded by the land use opinion evidence of Mr. Chauvin and Ms. Bayley's transport and parking opinion evidence. Having heard the experts' evidence and the submissions, the Tribunal accepts and prefers the uncontroverted evidence of the Applicant's expert witnesses (which withstood cross-examination), who were the only experts to give expert opinions on the proposed development. In coming to its conclusions, the Tribunal has evaluated only the five variances as requested.

[44] The issue for the Tribunal is whether the proposed development will be consistent with the PPS, has regard to provincial interests, and whether the variances requested meet the statutory tests set out in s. 45(1) of the Act.

[45] The Tribunal is satisfied that the proposed variances at the subject property have regard for the matters of provincial interest as set out in s. 2 of the Act in particular s. 2(j) on the provision of a range of housing; s. 2(p) the appropriate location of growth and development; s. 2(q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and s. 2(r) on the promotion of built form that is well-designed.

[46] An Applicant must satisfy the Tribunal that the four tests in s. 45(1) of the Act are met, that: the variances maintain the general intent and purpose of the Official Plan and the Zoning By-law, are desirable for the appropriate development or use of the land building or structure and are minor in nature.

PROVINCIAL POLICY STATEMENT 2020 (“PPS”)

[47] The proposal is an efficient use of land and provides for a healthy, liveable and safe community. The proposed development on market based rental, accommodates an appropriate affordable and market-based multi-unit housing while being a transit-supportive development. It is in line with the policies of intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs; and preparing for the regional and local impacts of a changing climate (Policies 1.1.1(b), (e), (i)).

[48] This proposed development is identified in an appropriate location and is transit-supportive. It will supply residential apartment units through intensification and redevelopment of a site (s.1.7.1(b) and (f)) where suitable existing or planned infrastructure and public service facilities are available to accommodate projected needs.

[49] The PPS encourages intensification and use of infrastructure and identifies settlement areas as the focus for growth and development, to promote intensification

and redevelopment (sections 1.6.3 and 1.6.6.2). The Tribunal is satisfied that the variance application is consistent with the PPS.

GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE (2020), (“Growth Plan”)

[50] The Growth Plan in Policy 2.2.1.2(c)i, directs growth to settlement areas and directs that growth will be focused in delineated built up areas. The subject property is within a delineated built up area. The proposed development will provide additional housing within this settlement area in a priority transit corridor and implements the policies of the Growth Plan.

[51] MTSA on priority transit corridors will be planned for a minimum density target of 160 residents and jobs combined per hectare for those that are served by light rail transit or bus rapid transit. The proposed development is within 120 m of the light rail transit ION station and served by several rapid transit bus routes. The proposal is within the boundaries of major transit station areas in a transit-supportive area and will maximize the number of potential transit users that are within walking distance of the station and bus stops (s. 2.2.4 and s. 2.2.4.3(b)). The Tribunal is satisfied that the variance application conforms to the Growth Plan.

CITY OFFICIAL PLAN (“OP”)

[52] Mr. Chauvin stated that the subject property is in the City Urban Area under the OP and in the Built-Up Area (Map 1). In the Urban Structure (Map 2), the subject site is situated within the MTSA within the existing transit corridor and the planned transit corridor. Opposite the subject property across King Street East is the Light Rail Transit (“LRT”) Corridor with Borden Rapid Transit Station, thereon.

[53] Section 3.C.2.16 of the OP provides that “Major Transit Station Areas are designated in the Regional Official Plan, are identified on Map 2 and are a conceptual

representation of the area of a ten minute walking radius centered around the location of Rapid Transit station stops”. Mr. Chauvin added that nearby the subject site are transit stops, various regular bus routes and the LRT station across the street.

[54] He emphasized that the planned function of MTSA's, in order to support transit and rapid transit is to provide a focus for accommodating growth through development to support existing and planned transit and rapid transit service levels; provide connectivity of various modes of transportation to the transit system; and achieve a mix of residential, office, institutional and commercial development wherever appropriate (s.3.C.2.17 (a), (b), (c)). The Tribunal agrees that this proposal is transit supportive. It is located in the MTSA and significantly, the Borden LRT station is right across from the subject site.

[55] Section 4 of the OP identifies a number of objectives that guide policy direction, including providing an appropriate range, variety and mix of housing types and styles, densities, tenure and affordability to satisfy the varying housing needs of the community through all stages of life; ensuring the City's housing supply is consistent with the community's needs; and ensuring that new residential areas and the redevelopment of lands for residential infill projects reflect a high standard of urban design (s. 4.1.1; s. 4.1.2; and s. 4.1.3)). The OP objectives in s.13.C.1 are aimed at enhancing the pedestrian realm to increase levels of convenience, comfort and safety by improving connections of sidewalks, multi-use pathways etc.; and are aimed at cyclists by creating safe and comfortable cycling networks on streets and multi-use trails, while supporting the provision of bicycle parking facilities on private lands etc.

[56] The Tribunal agrees with Mr. Chauvin that the proposed redevelopment of this subject site is residential intensification. Under s. 4.C.1.9 intensification and /or redevelopment is generally permitted within existing neighbourhoods where it is designed to respect the existing character. A high degree of sensitivity to surrounding context is important in considering compatibility. The Tribunal finds that the proposal has taken into consideration measures to address sensitivity to the existing context.

Nevertheless, it is recognized that compatibility does not mean the same or similar. The requirement is that the development can co-exist with the existing residential development. The residential building design, its orientation on the subject site with the contemplated landscape buffers, the comprehensive traffic impact study, together with the Transportation Development Management (“TDM”) measures (that emphasize pedestrians and cyclists modes) incorporated for the subject site, address the sensitivity of the existing context.

[57] The Tribunal finds that the OP recognizes that some redevelopment and intensification is anticipated and permitted adjacent to residential areas in order to support their vitality and regeneration. This includes the provision of a range of housing options that meets the policies relating to the increase of the housing stock and meeting the provincial targets for the number of residents per hectare.

[58] The proposed development would constitute residential intensification and/or redevelopment in an existing built up and developed area where transit infrastructure and municipal services are available. Increasing the residential and affordable housing stock for households in the City is a policy of the OP and this transit supportive development will maintain the built form compatibility and character of the neighbourhood. The Tribunal is satisfied that the variances sought maintain the general intent and purpose of the OP.

KING STREET EAST SECONDARY PLAN (“KSSP”)

[59] The proposed revised KSSP according to Mr. Chauvin is currently deferred, that is, it is not in effect and subsection part D of the OP does not apply. However, he went through the provisions to give context.

[60] These are:

1. Section 15.D.4.21: The maximum building height on lands designated Mixed Use within the Urban Growth Centre (Downtown) or Major Transit Station Area on Map 2 may be regulated in the Zoning By-law.
2. Section 15.D.4.22: Generally no building will exceed:
 - a. 10 storeys or 32 metres in height, whichever is greater, at the elevation, on lands designated Mixed Use identified as a City Node, or Community Node on Map 2.
 - b. 8 storeys or 25 metres in height, whichever is greater at the highest grade elevation, on lands designated Mixed Use as an Urban Corridor on Map 2.
 - c. 4 storeys or 14 metres in height, whichever is greater, at the highest grade elevation on lands designated Mixed Use identified as a Neighbourhood Node on Map 2.
3. Section 15.D.4.23: Notwithstanding Policy 15.D.4.22, the City may consider increases to the permitted building height of up to 50 percent of the permitted building height where a development or redevelopment provides a mixed use building containing residential units. It must be demonstrated that a pedestrian scale base, appropriate massing along the streetscape and compatibility with adjacent lands is achieved and that all the applicable policies within this Plan are satisfied.

[61] The permitted uses are high-rise and mid-rise residential uses and non-residential uses. The FSR requirements for all new residential or mixed use building development or redevelopment within lands designated Mixed Use will be as follows:
s.15.D.4.17. c) A minimum FSR of 0.6 and a maximum FSR of 4.0 on lands within the Urban Growth Centre (Downtown) or MTSA.

[62] The subject property's FSR is 3.43 and meets the requirements under consideration by the municipality. Further, the existing and proposed KSSP policies are supportive of the proposal and speaks to new development being compatible with adjacent lands.

[63] The existing KSSP designates the subject property under Mixed Use Corridor.

ZBL

[64] The subject property is zoned Medium Intensity Mixed Use Corridor (MU-2) with Special Regulation 541 ("541R") under the ZBL.

[65] Special Regulation 541 reads:

Notwithstanding section 54.2 of this By-law, within the lands zoned MU-2 as shown as affected by this subsection...the following special regulations shall apply:

- c.) the maximum building height shall be 13.5 metres, however, the building height may be increased to a maximum of 19.5 metres provided that for each additional metre of building height beyond 13.5 metres a minimum of 0.6 metres of additional setback from residentially zoned properties is provided.

[66] According to Mr. Chauvin, the intent of this 541R is to move the mass of a new building development as far as possible, away from the adjacent residential area. This is to provide some stepping away of the mass of the mid-rise building away from the low-rise. It is instructive to note that, the Zoning By-law No. 2019-051 provisions (repealing the ZBL insofar as they affect the lands shown in Appendix A) has a removal of 541R. Mr. Chauvin added that Zoning By-law No. 2019-051 is not in force, with respect to the subject property. Nevertheless, the new zoning provisions are indicative of the direction that the City is moving towards.

[67] By way of example, Mr. Chauvin stated that the lands opposite and across King Street East from the subject site is without height restrictions. In any event, the ZBL currently permits a building height for MU-2 designation of up to 24 metres or 8-storeys, subject to 541R, when located adjacent to an abutting residential zone. When the new mixed use designation takes effect, the height permissible will be 8 to 10 storeys.

[68] The Zoning requirements that apply to the subject property on parking are in s. 5 of the ZBL. Mr. Chauvin opines that the requirements are generally met but for the variances requested. Insofar as the off-street parking rate (0.42 spaces per unit) and visitor parking rate (5% of required parking spaces) proposed, are concerned, Ms.

Bayley's parking study and the TDM proposed indicate that the rates are adequate and appropriate for the proposed development.

[69] He explained that under the zoning, antennas, chimneys, elevator penthouses, or other similar features are disregarded in calculating the vertical distance (height) (s. 4.2 definition of ZBL). As such, the Applicant is requesting a variance, that excludes the mechanical penthouse.

[70] The Tribunal agrees with Mr. Chauvin that in the proposed development, height and design would have the most impact on maintaining compatibility in built form and the separation between adjacent properties as well as controlling the perception of overall size and mass of the building. The Tribunal agrees with Mr. Chauvin that the overall mass of the proposed building is reduced by the design. This helps in mitigating any increased massing associated with the increase in height. The proposed single loaded corridor design also leads to a slimmer building, averting massing. The parking space location further puts some separation from the residential area. These architectural elements help in mitigating and decreasing the overall mass of the building.

[71] The Tribunal finds that the single pillar design that are sited in the Corner Visibility Triangles (CVT) framed by the 7.5 metres at the intersection, will not occlude visibility and will not cause any traffic or safety concerns for drivers or pedestrians.

[72] The built form will be compatible with the existing and planned built form character of the area. With the contemplated landscape buffers, the streetscape character is not adversely impacted. The Tribunal is satisfied that the variances maintain the general intent and purpose of the ZBL.

DESIRABLE

[73] The proposal on the subject property will result in a new 10-storey, well-designed slender building that is 'pushed away' from the low-rise residential area. The building is remarkable in that it has a gentle slender built form and will display colored reflections of sunlight off its south elevation, reflecting off the iridescent film covered glass of the balconies. According to the Applicant's planner, the south elevation fronting King Street East, is designed to be the 'artwork' canvass and the north elevation facing the existing residential dwellings, is like the easel. The back face of the building will not have balconies, while the frontage on King Street East will contain the balconies, to prevent overlook towards the low-rise area.

[74] The subject property will be landscaped and have 41 parking spaces for the 98 residential units. The objective being to encourage residents to walk to and use the public transit infrastructure in the area. Furthermore, the development will provide 98 bicycle parking spaces (one per resident unit) to encourage cycling as an alternative mode thus, aiding the community to achieve a healthier lifestyle with the concomitant benefit of carbon reduction.

[75] The subject site used to contain a structure, which burnt down. The redevelopment of the subject site, with the intensification of this underutilized subject property, will increase the residential stock in the City. This represents a goal of the City's OP and an appropriate use and development of the subject site.

[76] This proposed development will utilize the municipal services and the transit infrastructure that exist in this neighbourhood. This proposal is on a sizeable lot, which incorporates an architectural style and built form that is compatible in this neighbourhood. The proposal is in built form, height and massing, as those permitted in built and planned context, in this area. The new residential building can co-exist with the existing residential dwellings in the area. The proposed development is appropriate for the subject property and represents good planning. The Tribunal is satisfied that the

proposed variances are desirable for the appropriate use and development of the subject property.

MINOR

[77] The proposed use of the 10-storey rental apartment residential building with the proposed parking spaces, bicycle parking facility and contemplated landscaping buffers will not result in unacceptable adverse impacts on the adjacent properties. The height and massing were designed specifically to be shifted away from the neighbouring residential area. The shadow assessment studies demonstrated that there will be minimal shadowing impacts on adjacent properties. The building is designed to have no balconies facing the adjacent residential area in order to avoid and minimize overlook issues.

[78] The traffic and parking studies and reports addressed the various concerns raised on traffic flows, parking and safety issues. The Tribunal is persuaded that the development with the TDM is safe; good for the community, and will have no negative impacts on the adjacent properties or its residents.

[79] The proposed building orientation on the subject site and separation from the existing residential dwellings will ensure that shadowing, privacy or overlook concerns are minimized. The contemplated landscape vegetation buffers will additionally provide some screening and blending with the public realm such that there will be little or no adverse impact on the streetscape. The built form is compatible with the neighbourhood and there is no evidence of any unacceptable adverse impact on the surrounding properties. The Tribunal is satisfied that the variances are minor in nature.

[80] Having considered the opinion of Mr. Chauvin outlined in paragraph 34 of this decision, the Tribunal is not inclined to adopt the suggestions of Ms. Hughes to tie the requested variances to the site plan accompanying the application because the Tribunal finds that condition 1 is not an appropriate condition, but rather is a required variance

from the By-law which is not properly before the Tribunal. Condition 2 of the COA conditions does not relate to land use planning (rentals status), while conditions 3 and 4 relate to the site plan. As such the Tribunal will only impose the condition with respect to the TDM.

ORDER

[81] **The Tribunal Orders** that the appeal is dismissed and the variances as amended, pursuant to a determination under s. 45 (18.1.1) of the *Planning Act*, to Zoning By-law No. 85-1 are authorized subject to the condition:

1. That the owner shall be required to implement Transportation Demand Management (TDM) measures to the satisfaction of the Director of Transportation Services through the Site Plan Approval process.

“T.F. Ng”

T.F. NG
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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.