

ISSUE DATE:

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PL111340

**Ontario Municipal Board**  
**Commission des affaires municipales de l'Ontario**

Abode Varsity Living Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Guelph to redesignate land at 716 Gordon Street from General Residential to High Density Residential to permit the development of 341 unit student housing project  
Approval Authority File No. OP1001  
OMB File No.: PL111340

Abode Varsity Living Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law (1995)-14864 of the City of Guelph to rezone lands respecting 716 Gordon Street from Specialized Service Commercial Zone to Specialty High Density Apartment Zone to permit the development of 341 unit student housing project  
OMB File No.: PL111341

**APPEARANCES:**

**Parties**

Abode Varsity Living Inc.

City of Guelph

Mayfield Park Community Association Inc.

**Counsel**

I. Kagan

P. Pickfield

J. Croome

**INTERIM DECISION DELIVERED BY M. C. DENHEZ AND ORDER OF THE BOARD**

**INTRODUCTION**

[1] This dispute, over a developer's proposed Official Plan Amendment ("OPA") and rezoning, was about the scale of development in "Intensification Corridors", student housing, and their relationship to downtowns in mid-sized Ontario cities.

[2] In the City of Guelph (the "City"), there is a key intersection at Stone Road and Gordon Street. The University of Guelph (the "University") owns the northeast corner, zoned for ten storeys; a Provincial Ministry occupies the northwest corner, also zoned

for ten; the southwest corner has a new Delta Hotel (six storeys), beyond which is a landscaped collection of buildings in a “research park”, again zoned for ten. This case targeted the southeast corner, currently occupied by a three-storey hotel, in a designated Intensification Corridor, but next to a suburban neighbourhood.

[3] Abode Varsity Living Inc. (“applicant”) builds purpose-built student housing. It proposed replacing that hotel with a high-rise student residence for over 1100 people – requiring an OPA and rezoning. In due course, the applicant produced alternative “Concepts” (development packages), essentially for a set of buildings where each façade was almost the size of a football field, flipped on its side.

[4] The City disagreed. This half-million square foot project, it said, was at a scale appropriate only (if anywhere) to the Central Business District (“CBD”). The City said the façades were too big, adding other arguments about density, students, competition with the downtown etc. The applicant appealed to the Ontario Municipal Board (the “Board”) pertaining to (a) its proposed OPA and (b) its proposed rezoning. Though the site is subject to site plan control, there was no reference to any site plan appeal.

[5] The City, for its part, produced two counterproposals (packages which it similarly called “Concepts”), at about 60% and 40% of the applicant's proposed size. At a pre-hearing conference, the Mayfair Park Community Association Inc. (“MPCA”) requested and was granted party status. It endorsed none of the packages, but said it had the least objections to the smallest.

[6] At the hearing, the three parties were ably represented by counsel, each with the support of expert witnesses. Though the parties partially resolved some issues (mostly about traffic, vehicles, parking and amenity space), the remaining ones took four weeks of hearing time, with most days starting early and/or ending late.

[7] The Board has carefully considered all the evidence (including three cubic feet of exhibits), as well as the submissions of counsel. The Board is satisfied that the location is appropriate for significant numbers of students, and that purpose-built facilities are preferable to having those students dispersed to *ad hoc* accommodation elsewhere. The Board agrees that it would be shortsighted to displace student pressures (and whatever perceived disruptions accompany them) onto other neighbourhoods.

[8] The applicant and City each presented planning instruments, tailored to fit their respective packages. However, the Board cannot accept the invitation, by either the applicant or the City, simply to select one package. Instead, the Board must assess the

underlying planning provisions/standards on their respective merits. In principle, it is the planning provisions which dictate buildable envelope and built form, not *vice versa*.

[9] This calls for Board findings on proper density, height, setbacks, angular plane (defined later), and other planning specifics. At the conclusion of this decision, the Board directs that new provisions be drafted accordingly. The Board finds:

- In this exceptional case, density figures are not determinative, because population density has less significance here than it normally might, and less significance than the buildings' mass and shape.
- Maximum height for most nearby lands (and in 23 "High-Density" areas across the City) is zoned for 10 storeys. On an average, the Board finds a figure of ten storeys similarly appropriate here.
- The Board refers to an "average", because the City's expert acknowledged that a "bump-up" would be appropriate closest to the intersection, with lower heights elsewhere. The Board therefore foresees a maximum of 11 storeys at the corner, and 9 storeys elsewhere.
- Mindful of the pattern of development in the research park and vicinity, the Board accepts the City's recommendation for a nine-metre landscaped setback along Stone Road (less than the Stone Road setback for the Delta Hotel).
- The same nine-metre setback would apply along Gordon Street, except immediately across from the Delta Hotel, where the Board is satisfied with a setback that copies that of the Delta Hotel, at 7.5 metres from Gordon Street.
- The applicant's proposed façades are simply too big. They are out of scale and character with the City, contrary to the Official Plan ("OP"). The Board accepts the opinion of the City's expert, who said the applicant's oversized façades needed to be "broken up".
- The Board therefore accepts the City's original recommendation for a format involving separate "towers", instead of continuous "slabs", subject always to the height limitations provided herein.

- Within the overall buildable envelope (as defined by height, setbacks, angular plane, and landscaped open space), the Board finds it unnecessary to take a position on how many towers may be built.
- The Board is satisfied with the applicant's proposed setbacks from neighbouring private property, at 15 metres (almost 50 feet).
- The Board has no issue with the City's maximum angular plane of 45° from the street, though there might be modest overage (described later) closest to the intersection.
- The Board is satisfied with the applicant's proposed lateral 45° angular plane on the south side of the property.
- On the east side of the property, next to the suburban houses, the Board accepts the City's recommendation of a 30° lateral angular plane, again subject to the possibility of modest overage closest to the intersection.
- This decision sets out provisions for the height and area of towers, the size of podia, setbacks, and angular planes. Other existing zoning provisions cover separation distances between towers, and the percentage of landscaped open space. Having defined the buildable envelope with that specificity, the Board finds it largely superfluous to attach figures for maximum Floor Space Index, just as it does the number of units per hectare. For that specific reason, the Board accepts the applicant's proposed figures for Floor Space Index and density.

[10] The Board therefore addresses the appeals as follows. The OPA appeal is allowed: the Board is prepared to redesignate the lands for "High Density Residential", in accordance with the applicant's proposed figures for same.

[11] The zoning appeal, however, is allowed only in part, as described above.

[12] The City is directed to produce a draft OPA and Zoning By-law amendment in accordance with the directions above, for the Board's approval. The Board withholds its final Order until that time. The details and reasons are set out below.

## **GEOGRAPHY**

### **2.1 The Property**

[13] The subject property, whose municipal address is 716 Gordon Street, measures some 1.7 hectares, at the corner of Stone Road and Gordon Street, across the street from the campus. The frontage on Gordon Street is 196 metres, and the frontage on Stone Road is 117 metres. This 1960's hotel property, part of the Best Western chain, is currently zoned for hotel uses, to a height of three storeys.

### **2.2 The Intersection**

[14] The Board finds the location important. Although there were some efforts to downplay it, the City's consulting planner, Timothy Smith, called this intersection "a gateway intersection in a prominent location". The City's design expert, Michael Spaziani, called the location "the front door face of Guelph".

[15] This is where two prominent arterial roads reach the campus, on the northeast corner of the intersection. Indeed, Donald O'Leary, a University vice-president, referred to the University's own intention to create a special entranceway there.

[16] Those University lands are zoned for ten storeys. The Board was told that one of its residences (Lennox Addington) is actually 12 storeys; another (Glengarry) is 10; but both of them, built a generation ago, are some distance from the intersection.

[17] On the southwest corner is the six-storey Delta Hotel (2008). According to its site plan, it has a 16.5 metre setback along Stone Road, and a 7.5 metre setback along Gordon Street.

[18] On the northwest corner, diagonally across from the subject property, is the headquarters of the Ontario Ministry of Agriculture & Rural Affairs ("OMAFRA"), 80 feet tall at the front (24 metres) and 91 feet (28 metres) at the back, though it *looks* like five storeys. It is long (125 metres, or 410 feet), with a pronounced curve. The building is set back 22 metres; indeed, as befits a Ministry devoted to food, there is a picnic area between the building and the intersection.

[19] The intersection is the junction of two parts of an Intensification Corridor, designated under the OP in 2009. The Corridor was said to follow s. 2.4.5.1(b) of the Province's Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). The



intersection marks the turning point of that Corridor: the latter runs from west to east along Stone Road; then, at the intersection, it turns south along Gordon Street. The Delta Hotel is thus at the pivot – perhaps not surprisingly, as it stands in a sea of parking lots. The subject property is mostly across from that parking.

[20] The corner is some distance from the CBD, beyond the campus. There was discussion of various projects underway in the CBD, such as high-rise development by a company named Tricar Group (“Tricar”). Unlike some other cities, Guelph's CBD is not at the centre of the municipal boundaries: it is off-centre to the north (north of the Speed River, with the traditional core north of the main rail line). This intersection, on the other hand, is directly at the geographic centre of the City.

### **2.3 The City and its Students**

[21] The University has some 19,000 students. Its student housing has beds for 5300 of them.

[22] The University had explored acquiring the subject property itself. Other student housing had been built a few years ago (on a street called Chancellor's Way), but the Board heard no evidence of any current University plans to build new residences.

[23] Although some local students live with their parents, one estimate was that “13,000+” upper year students cannot be lodged on campus, and seek accommodation elsewhere. That is not easy; counsel for the applicant emphasized that according to Canada Mortgage and Housing Corporation, the City had the third lowest vacancy rate in Canada. The Board was told that, for thousands of students, the alternative is to seek lodging in houses around the City. For example, one witness from nearby Evergreen Drive said there were two or three students living on that street.

[24] Such arrangements, however, have their own complications. The Board was told that students are not always the most welcome neighbours. One witness talked about “garbage, noise, litter, and foul behavior”; another said “these are people who don't have the same respect for boundaries as the adult population”. One of the applicant's witnesses, Mark Filo, testified to disturbances in his own neighbourhood.

[25] City planning staff (“staff”) appeared to share misgivings. Indeed, the City had previously tried to impose separation distances between lodging houses catering to students (though that initiative was later dropped). During the course of recommending new student housing on Chancellor's Way, the staff report explained overtly that the

rationale included diverting students away from other neighbourhoods, “to reduce some pressure to provide housing for students in established low-density residential neighbourhoods”. At this hearing, Mr. Smith equated large numbers of students with “risk”.

## **2.4 The Area**

[26] Stone Road looks like a typical Ontario commercial arterial road, with big box stores and shopping malls – except for the block immediately west of the intersection, where OMAFRA, the Delta Hotel and the twelve-hectare research park are located. Although several properties are zoned for 10 storeys, buildings are built on a lower corporate campus theme, with substantial landscaped setbacks. Mr. Spaziani called the existing pattern “trees at the front, buildings at the back” – a characterization which the Board accepts.

[27] Gordon Street, in turn, is eclectic, having traditionally served as a main highway into Guelph, with the usual mix of low-rise residential and commercial properties, though again well treed. Looking south along Gordon Street from the intersection, there is no building over three storeys within sight, notwithstanding its status as an Intensification Corridor. Some modestly higher buildings do exist, though many blocks further south.

[28] Southeast of the intersection, just beyond the subject property, lies a residential neighbourhood with its own different character. Abutting properties east and south of the subject property were developed as a suburban subdivision some fifty years ago, with single detached two-storey homes, but with no streetlights or sidewalks. The neighbourhood is represented by the MPCA. Six homes to the east back onto the property, along neighbouring Evergreen Drive, plus a seventh diagonally, at the corner of Monticello Drive. Conifers line the property boundary. A house-shaped dentist's office to the south, on Monticello at the corner of Gordon Street, also backs onto the subject property.

## **2.5 Existing Planning Documents**

[29] The City is subject to the Growth Plan, including the latter's provisions for Intensification Corridors. The City also has an OP and Comprehensive Zoning By-law. Other documents include the *Urban Design Action Plan* and the *Stone Road Corridor Urban Design Guidelines*, but those others are not binding.

[30] The OP and By-law allude to various standards. Some are straightforward, such as maximum height or minimum setback. Others are more complicated, like Floor Space Index ("FSI"), i.e. the ratio of the Gross Floor Area ("GFA") to the Gross Area of the lot. An FSI of 2.0 indicates that GFA can be up to twice the Gross Area of the lot. The zoning for University lands across the street specifies the maximum number of storeys, but no maximum FSI, whereas surrounding zoning specifies both.

[31] The Zoning By-law also has provisions specifying the minimum area of landscaped open space. Residential buildings of 5-10 storeys are usually required to have landscaped open space on 40% of the lot area.

[32] There are also density standards, usually measured in dwelling units per hectare ("UPH").

[33] Another standard is angular plane, i.e. the angle between horizontal and a line drawn to the top of the building. A 45° angular plane means a run to raise ratio of 1:1. The OP, which designates the property as General Residential, contains no height limits or angular plane; but the existing Zoning By-law has both (maximum angular plane is usually 45°).

[34] The applicant sought R4B zoning ("High Density"). By-law Map 68 already depicts "Suburban Areas" (in white) with zones of "10 storeys"; and much of the Corridor had already been zoned for eight.

## **PROPOSALS AND COUNTERPROPOSALS**

### **3.1 The Applicant's Proposals**

[35] The applicant's proposals for the property went through several iterations.

[36] The applicant first met staff to discuss an idea for a project of some 1600 beds, potentially involving two buildings (and potentially in two "phases"). The applicant did not specify a particular shape at the time, but instead attached examples of alternative shapes ("case studies"), inviting staff to indicate a preference. The Board calls this initiative the "Initial Discussion Proposal".

[37] Some "case studies" were shaped as "slabs" and others as "point towers". Large multi-residential buildings are often categorized that way: slabs, characterized by length, rely for internal access on a central corridor, whereas point towers, characterized by



height, have relatively little corridor space beyond each floor's elevator lobby. Towers are often atop a structure (a few storeys high, with a broader footprint) called a podium.

[38] Density and floor area were also under discussion. Under Guelph's OP, the maximum densities are anticipated in the CBD, at 200 dwelling units per hectare or "200 UPH". The FSI downtown can also reach 2.0, whereas other "High Density" designations outside the CBD (23 locations in the City) have a maximum FSI of 1.5. The OP does not define the expected UPH or FSI in Intensification Corridors.

[39] The number of units, however, was not the whole picture: the number of beds was a more meaningful measure of population density. The applicant proposed that the typical unit be divided into four or five bedrooms (the average was 4.4). This would mean that the typical "unit" here would house more adults than the typical "unit" in, say, the condominium market. Indeed, the applicant was concerned that its project might run afoul of the City's zoning provisions for lodging houses, e.g. "Lodging House Type 2."

[40] The applicant's second iteration was more fulsome. It was for a pair of slabs, one at 16 storeys, and one at 14. The Board will call it the "16-14 Proposal", with 1500 beds. The proposed FSI was 3.7, compared to the normal "High Density" maximum of 1.5.

[41] Staff's response was sent by e-mail on July 8, 2010. Staff said the applicant should choose between (a) one or more slabs at 4 - 6 storeys, or (b) one or more point towers, potentially to 10 storeys, at about 750 square metres per storey:

Staff have discussed the subject property and the proposed development and agree that some additional height and density could be supported. Staff agree that this site is a good location for student housing and are generally supportive of the site being developed in accordance with the "High Density Residential" designation and "Built Form: High-Rise Buildings" policies proposed in the Draft Official Plan....

"Built Form: High-Rise Buildings" policies proposed in the Draft OP (see section 7.11) generally apply to buildings above six storeys and require a podium and tower built form.

General comments:

The subject site is located at one of the highest points in the city and any proposed building will be highly visible from all directions.

The proposed height of 16 and 14 storeys is significantly higher than current permissions in the Zoning By-law and the proposed heights in the draft OP – staff would be supportive of a maximum height of 10 storeys for a portion of the building.

The proposed building is too bulky – if additional height and density are being proposed, the massing should be arranged in a podium and tower form. The floor plate size of the tower portion should be approximately 750 m<sup>2</sup>.

The "slab" style of building that is currently proposed could be considered for a mid-rise building (maximum 4-6 storeys).

Staff also have concerns with respect to how the development proposal will impact the low density residential neighbourhood to the east. Accordingly, we suggest that the building(s) have an appropriate built form transition to the low density residential neighbourhoods to the east. An example of this would be 4 storeys in proximity to the easterly property boundary, stepping up to a six-storey podium closer to Gordon Street, with the 10 storey tower closest to the intersection of Stone Road and Gordon Street. A tower could also be considered for the phase 2 building – the height of the tower should be less than the tower for phase 1. The exact location of the towers should be determined/refined based on the findings of a shadow study.

[42] Ultimately, Council did not make a decision on the applicant's second iteration, and it was on this iteration that the current appeal was launched in December 2011. However, this 16-14 Proposal was later formally withdrawn, to be replaced by the iterations described below.

[43] The third version (April 2012) was named "Concept A", this time for two slabs at 12 and 10 storeys, for 1216 beds. Its FSI would be 2.5. In response, in the summer of 2012, staff produced a report – 90 pages – critical of Concept A.

[44] Subsequently, the applicant produced a fourth proposal, "Concept B" (August, 2012), with the same 2.5 FSI, but exchanging some height for footprint. Whereas Concept A would cover 26% of the site, concept B would cover 35%. The City called it "Squash & Spread". This proposal would have three slabs at 9, 8 and 7 storeys, with 1150 beds.

[45] For purposes of comparison, in metric, an NFL football field measures 91 metres by 49 metres; Concept A's face print along Stone Road would measure 87 metres by 38 metres, and Concept B's would measure 95 metres by 27.3 metres. In short, the visual impression of scale would be close to a football field flipped on its side. The applicant suggested various visual devices to offset that impression (e.g., cladding the top and bottom in different materials, and introducing a terracing setback of 1.8 metres at the seventh storey level). These architectural details, said one of the applicant's experts, would "eliminate the canyon effect" (City witnesses were sceptical). A 3-metre knoll under the project would also be excavated out of existence.

[46] The applicant called on the Board to select between the two packages, Concept A and Concept B. Each had its own detailed measurements, floor plans, and artist's renderings.

[47] Yet another (fifth) version, for illustration purposes only (Exhibit 21), was of three "point towers" of 16, 15 and 14 storeys, with FSI of about 2.5 (like Concepts A and B),

and 1174 bedrooms (“in the same range”). This illustration was apparently prepared with surprising speed. The floor area in each tower would be 692 square metres.

[48] The applicant said the overall scale/density of all its proposals was driven by several factors. One was that student security services and amenities would enjoy economies of scale. A second was the enormous demand for student accommodation. The applicant's planner, Christopher Pidgeon, added that if students did not find accommodation in purpose-built facilities like this, then many would necessarily resort to converted houses, in less planned (and less supervised) circumstances, with impacts on other neighbourhoods. The applicant added that even at the scale proposed, the project would still not come close to meeting the student demand.

### **3.2 The Applicant's Proposed Planning Documents**

[49] The applicant said the only practical reason for needing an OPA was to allow the proposed density, notably units per hectare. Its proposed OPA would change the designation from “General Residential” to “High-Density Residential”. The existing “General Residential” designation is associated with low-rise construction of up to 100 UPH, well below the applicant's target (156 UPH for Concept A, 150 units for Concept B). The requested High Density designation usually refers to up to 150 UPH. If the Board chose Concept A, the Board would also be asked to specify a limit of 156 UPH.

[50] The High Density *designation* under the OP is not to be confused with High Density (R4B) *zoning* under the Zoning By-law. The latter refers to buildings of up to 10 storeys, with an FSI of up to 1.5. The applicant also sought this zoning, though with several exceptions: it sought site-specific provisions for higher FSI, adjustments to parking requirements, a provision to distinguish its units (some of which had five bedrooms) from lodging houses, and an adjusted rear setback near the dentist's office. In the case of Concept A (12 and 10 storeys), an exception was also needed for height since, in the R4B zone, there is usually a 10-storey height limit. There were also references to the project being “mixed-use”, since it proposed to include a café of 300 square metres, whereas the normal zoning category would limit a café to 250 square metres.

### 3.3 The City's Counterproposals

[51] There was little dispute at the City about the need for student housing, and its appropriateness here. According to Mr. Smith, "we (the City) want up to 750 students on the site". The City's concerns pertained to the size of the project, and its shape.

[52] The most tepid support for the project came from the University's Mr. O'Leary, a City witness. He said the University sometimes had to "struggle" to fill its own student housing. He argued that the project would also "jeopardize the opportunity for creating a welcoming gateway" to the campus: he would prefer a "significant signature entrance". "It's not (only) our hope: we're actually in the process of creating an entrance to the University" across the street, where five buildings were recently demolished for that purpose. "We're into open space, greenspace, connectivity, all that sort of thing". Although campus lands near the corner were zoned for 10 storeys, he said the University had not built over eight storeys in decades, and he did not think the applicant should build more than six.

[53] The City took a similar view on height and volume. It said "meaningful intensification" of this site would be appropriate, but that the applicant's proposals each represented "too much mass, scale and density for the context". The City objected that the proposals fit poorly with the neighbourhood, offered inadequate transition to neighbouring buildings, were an inappropriate entranceway to the City and campus, did not conform with the OP, and had excessive population density. The City added that the project was inappropriate to quality of life and safety; that it was incompatible with the existing built form; and that it did not comply with OP provisions about the City's "sense of place".

[54] In summary, said counsel for the City, "it's too tall, too long, and too dense". Mr. Spaziani said "Guelph expects something a little less in-your-face". Mr. Smith added: "There's not a single residential building in Guelph that has this length. It has a faceprint that is unprecedented, for a residential building". He suggested "seven storeys, with a little bit of a bump-up at the corner, to mark that gateway intersection". Mr. Spaziani agreed; he said the appropriate height is "midrise, 6 storeys plus or minus a storey".

[55] In that vein, the City produced two counterproposals:

- The first, called Concept C1, postulated three slabs at 7, 6 and 5 storeys. In accordance with figures elsewhere in the OP, it would

have 100 UPH, and 1.5 FSI. This counterproposal would have 752 beds, or roughly 60% of what the applicant proposed.

- The second, Concept C2, foresaw slabs at 5, 4 and 3 storeys, with an identical footprint, but different height. C1 would have 100 UPH, and 1.5 FSI; Concept C2 would have 65 UPH and FSI of 1.0. Beds would total 491, or roughly 40% of what the applicant proposed.

[56] City Council took a further initiative. In June 2012, its Official Plan Amendment No. 48 (OPA 48) designated the property for a maximum of 35 UPH, equivalent to the lowest residential designation in the City. As of the hearing, however, OPA 48 had not yet been approved by its approval authority. It was common ground that it was not binding on the application.

[57] The Board notes, strictly parenthetically, that neither the applicant's proposals nor the City's counterproposals bore any resemblance to one of the options that staff had initially suggested on July 8, 2010 – i.e. one or more point towers of up to 10 storeys, with adjustments for transition on the easterly side. The Board was not told why both sides walked away from that option, although a variant (with more storeys) was depicted for “illustration purposes” at Exhibit 21. The parties presumably had their reasons; but the Board was shown no planning shortcomings. The Board has no way of knowing whether, if that option had been pursued, these proceedings would have occurred.

### **3.3 The Position of the MPCA and Neighbours**

[58] Counsel for the MPCA called the applicant's various iterations “massive and overwhelming”. She called them out of character, with negative impacts on privacy and light. “This application is out of whack”. One witness referred to the project as “the monster”. The MPCA's own planning experts, Gary Davidson and Beate Bowron, reiterated objections to the scale.

[59] The MPCA also expressed apprehensions about the possibility that the proposed complex might later be converted to housing for the general population, instead of students, whereupon the pressures on e.g. the road system might change significantly.

[60] Other apprehensions were expressed by individual neighbours – one about security, another about a wind tunnel effect, shade, groundwater, and intrusion of



lighting (neighbours commended the aesthetic shadows of the trees on the snow). Yet another said light from the project would “destroy this wonderful dark night sky”.

[61] The applicant's side acknowledged the importance of transition. Indeed, its planner opined that “the challenge for the site is in its relationship to the adjacent low density residential uses to the east”. However, the applicant insisted that it had complied with all relevant criteria (adding that other aspects, like the effect of sunlight on snow, and dark night sky, were not recognized planning considerations).

[62] The respective positions of the applicant, City and MPCA were presented at the hearing. As part of pre-hearing preparations, the Board called on the parties to draft an Issues List of the topics in debate. Each of the three parties then drafted its own list – without evidencing any consolidation, or consensus on where they agreed to disagree. Indeed, they advised the Board: “The identification of an issue on the issues list does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board”.

## **CRITERIA**

[63] The planning process in Ontario is what the Provincial Policy Statement (“PPS”) calls “policy-led”, starting with Provincial policy. At the statutory level, the Board is directed to have “regard” for Provincial interests specified at s. 2 of the *Planning Act*. Section 2.1 also says there must be “regard” to relevant decisions of a Council or approval authority, and to “supporting information and material” thereto. The Board must also verify that proposed measures are “consistent” with the PPS, under s. 3(5) of the Act.

[64] The *Places to Grow Act* (s. 12) adds that Official Plans must also “conform” to the Growth Plan. It has indicated that growth in the Greater Golden Horseshoe, including Guelph, is the expectation of Provincial policy. The planning question in Guelph is therefore not whether there will be growth, but how it will be deployed.

[65] Intensification Corridors are one tool. The Growth Plan says they have “the potential to provide a focus for higher density mixed-use development”. However, the Growth Plan sets no specific targets; s. 2.2.5 simply states that “Intensification Corridors will be designated in official plans and planned to achieve increased residential and employment densities”. At s. 2.2.3.7(f), the Growth Plan also calls for “transition”, so that dramatically different scales of construction are not juxtaposed too abruptly.

[66] Rezoning must also “conform” to the relevant OP, under s. 24(1) of the *Planning Act*. Even where the OP itself is being amended (as was proposed here), it is appropriate to seek overall logical consistency with the thrust of the OP.

[67] OP policy 7.2.7 outlines four key criteria for development generally:

... The following development criteria will be used to evaluate a development proposal for multiple unit housing:

- a) That the building form, massing, appearance and siting are compatible in design, character and orientation with buildings in the immediate vicinity;
- b) That the proposal can be adequately served...;
- c) That the vehicular traffic generated from the proposal can be accommodated...;
- d) That adequate municipal infrastructure, services and amenity areas for the residents can be provided.

[68] OP policy 7.2.45 outlines two additional criteria specific to high density development:

The establishment of a new high density residential use, not within a "High Density Residential" designation on Schedule 1, will require an amendment to this Plan. When considering such amendments to this plan, the criteria of policy 7.2.7 will be considered, as well as the following:

- a) That the proposal is located in proximity to major employment, commercial and institutional activities; and
- b) That the proposal is located on an arterial or collector road.

[69] Of the above six criteria, compliance with five was essentially uncontested. The proposal “can be adequately served”; on the eve of the hearing, the parties essentially agreed on “vehicular traffic generated”; there was no dispute over “adequate municipal infrastructure”; the proposal is unmistakably located in proximity to “institutional activities”; and it is on an arterial road. Debate focused on one specific criterion above, the first, at Policy 7.2.7(a) pertaining to compatibility.

[70] Guelph's OP is also insistent on visual character:

2.3. The following represent the major goals of the Official Plan:

- 6. Ensure that any development in established areas of the City is done in a manner that is sympathetic and compatible with the built form of existing land uses.
- 13. Enhance the visual qualities of the City and protect the... unique character of the urban environment.
- 15. Maintain and strengthen the role of the Central Business District (Downtown) as a major focal area for investment, employment and residential uses.

22. Plan and design an efficient and attractive urban landscape that reinforces and enhances Guelph's sense of place and image while acknowledging innovative design opportunities.

3.2 Community Form Statement

...Guelph's beauty lies in its compact, small town character. It is a friendly sized City marked by rolling hills and scenic river valleys meandering through a low-profile townscape that is blanketed by a canopy of mature trees.

3.6 ... Objectives:

- a) To enhance the image of the City....
- e) To ensure that the design of the built environment strengthens and enhances the character of the existing distinctive... areas and neighbourhoods of the City.

- 3.6.1 This Plan promotes the creation of a "sense of place" which will set Guelph apart from other municipalities....

[71] As for intensification, OP policy 2.4.5.1(b) sets out the following policy:

The City will promote and facilitate intensification throughout the built-up area, and in particular within the urban growth centre (Downtown)... and the intensification corridors as identified on Schedule 1B "Growth Plan Elements".

## ANALYSIS

### 5.1 Introduction and Framework

[72] The Board offers a number of preliminary miscellaneous observations.

[73] First, this is an appeal under the *Planning Act*. The *Concise Oxford Dictionary* defines "to plan" as "to arrange beforehand". For present purposes, the question is not whether Guelph will have a substantial off-campus student population, but whether students will be lodged in a planned way, or ad hoc.

[74] The next preliminary observation is that the City did not turn the applicant down flat: to its credit, it produced counterproposals. Whatever the intrinsic merits of the respective positions, that commitment to constructive dialogue was commendable.

[75] The Board was then presented with a variety of package designs (two by the applicant, two by the City), and was essentially asked to *pick* one. Those "Concepts" were immensely helpful to the Board, to illustrate how the planning provisions under discussion could translate into built form. However, there should be no mistake about the Board's task: this is not a site plan appeal. In an OPA appeal or rezoning appeal, the objective is not to do a selection of artist's renderings: under the Act, it is not the Board's mandate to select construction "packages" verbatim, but to assess the merits of the underlying land-use controls (the OP and zoning provisions/standards for density,

height, FSI, setbacks, angular plane, massing etc.), in light of the criteria defined in the legislation and a hierarchy of official documents.

[76] It is with circumspection that the Board makes the above comment. It would have been immensely easier for all concerned (including the Board), if the Board had been able to find that one of the proposals or counterproposals epitomized the correct application of all the relevant land-use considerations. The Board is also mindful that every new architectural iteration represents a significant cost for the applicant and an investment of time and effort for all the parties. However, the Board must acknowledge reluctantly that despite its best efforts, it was unable to conclude that any single existing package met all the necessary criteria.

[77] Next, one of the two planning witnesses for the MPCA (Ms. Bowron) questioned whether this was indeed an ideal site for student accommodation. She was the only planning witness to do so. The Board, however, is guided by the OP's policy supporting student housing "conveniently accessible" to the campus, and accepts the testimony of all the other experts, to the effect that this site meets that objective. Indeed, the other experts essentially agreed that the main issue was not whether the site was appropriate to house students, but for how many, and in what kind/scale of buildings.

[78] The Board was then invited to "lean" in one of two directions. Robert Routledge, the University's former Coordinator of Orientation Programs, testifying for the applicant, said that for reasons of student security and supervision, as well as amenities (and to relieve pressure on neighbourhoods elsewhere), he recommended that the Board "absolutely lean toward bigger". The MPCA, on the other hand, emphasized that the planning documents do not support undue impacts on neighbours. The City, for its part, said it sought "balance".

[79] The Board finds that the main key to that debate was "mass". The word "massing" is used in many planning analyses, but seldom defined. It is, however, usually associated with the deployment of volume and the arrangement of three-dimensional shapes. On the question of "mass", the Board agrees with counsel for the City when he said that "this is a hearing where planning and urban design are the two primary themes".

[80] Next, one apprehension that can be addressed immediately is that of potential conversion of the complex to non-student apartments. The Board was not persuaded that it is a serious prospect. That is not to suggest that the question was unreasonable:

it has indeed happened in Ontario before (e.g. Pestalozzi College in Ottawa). In this case, however, floor plans indicate that the number of bedrooms is disproportionate to other living space (what the City itself called “dormitory-style”) and to the general apartment market; so the apprehension of conversion is at least counterintuitive. Furthermore, the applicant's planner testified that “conversion is not an option for the owner”, and there is no evidence before the Board on which to presume differently.

[81] Next, there was no dispute about infrastructure, or any suggestion that it would be problematic, regardless of what scale of project was eventually undertaken. Certain other questions, which had originally occupied a substantial part of the paper trail (parking, traffic, and amenity areas – exterior and interior) were not debated at the hearing either.

[82] A final preliminary observation is that the Board does not operate in a vacuum. Most properties are part of a pattern that has evolved over time, often in the light of planning provisions of some kind. The Board is sensitive to those patterns, and to the patterns of the standards that guided them. Where there is specific OP direction to maintain the resulting “character” or “sense of place”, the Board remains mindful of that direction.

## **5.2 Population Density**

[83] Debates over population density can usually involve two distinct levels. One is *internal* to a given complex – i.e. whether a given population would represent overcrowding (with accompanying stress levels and discomfort), and/or overtax the building's internal systems (elevators, laundry etc.). There was no suggestion, let alone evidence, of that category of density concern at the hearing.

[84] The second level pertains to *externalities* – the impacts of populations on their surroundings and on the municipal system (e.g. traffic, commotion, noise, and demands on municipal services like water, wastewater and amenities). It is at that level of externalities that the density debate was engaged.

[85] The OP supports “student housing developments conveniently accessible to the University of Guelph”. This proposal is across the street. In principle, one would normally infer that student accommodation here would be fully supported by the OP.

[86] The City did not advise the Board of any concerns about internal overcrowding. It did, however, say that it had three concerns about the externalities of density: it spoke



of population density figures in general, students in particular, and effects on “the structure of the City”:

- Concerning density generally, there was long debate about figures for units per hectare (UPH), and persons per hectare (PPH). According to Mr. Smith, “built form should be the driver (in determining this appeal), but people density is almost as important”.
- Next, concerning students in particular, Mr. Smith said that if the complex had “1200 students, the risks are too high, and too high to manage..., based on the knowledge of what's happened in other neighbourhoods.... We need to moderate the risk by moderating the density”.
- Third, the City said that the proposed concentration of people at this site would undermine the downtown's intended monopoly on such population densities.

[87] Those objections will be considered in turn. Parenthetically, references to UPH and PPH often came in the same breath as references to FSI. The Board treats those subjects as distinct. UPH and particularly PPH do refer to population density, but FSI refers to floor space in relation to lot area – a different (volumetric) topic, independent from occupancy.

[88] There were also many comparisons between UPH here and downtown, and with the recent project on Chancellor's Way (150 UPH). The Board would usually have attached weight to those numerical density standards (UPH and PPH), for two reasons: (a) the City's planning instruments often do, and (b) under normal circumstances, population density would be expected to have the externalities described, with significant planning implications accordingly.

[89] The Board finds, however, that both the OP and City acknowledge that numerical density standards sometimes become irrelevant, for geographic or demographic reasons.

[90] In the first category, that is the situation in the CBD. According to Mr. Smith, “we've removed density limits downtown, and gone to an urban design approach”. That is understandable. From a purposive perspective, and leaving aside the question of crowding, other impacts of high density largely disappear: vehicular pressures and

transit to get downtown would be non-issues, if the population was already there. Next, usual population demands on municipal servicing (like water and wastewater) were not concerns in Guelph. From a purposive perspective, the Board therefore finds nothing unusual in that geographic exemption.

[91] However, that leaves the question of why UPH and PPH would have more problematic externalities here. Typical concerns over externalities like rush-hour traffic and related vehicles/transit were again largely non-existent, because occupants would need neither vehicles nor transit to reach their daily destination across the street. Servicing was also a non-issue. In the absence of the usual concerns over density, the question was how UPH and PPH figures here were any more relevant than they were downtown.

[92] Furthermore, in 2009, this location became part of a designated Intensification Corridor. The Growth Plan contains an objective, at Policy 2.2.5.1, of “achieving increased residential... densities” for Intensification Corridors. If part of the Growth Plan's rationale for Intensification Corridors was to divert people to locations where they could reduce vehicular pressures, then that objective is amply fulfilled here. One would therefore have expected vigorous interest in intensification here: indeed, density would be an attribute – compared to the alternative of dispersing that same population, with different modes of transportation, to greater distances from their daily destination.

[93] Another consideration is that the OP already recognizes different densities for different demographics: different users simply make different demands on space and services. For example, OP policy 7.2.10 recognizes that, for seniors, it is appropriate to apply different density standards (indeed, Mr. Spaziani said “if I had seniors' units here, I'd build a lot more”). Mr. Smith said this distinct OP treatment was because seniors' units tended to be smaller. The applicants' experts added that their daily demands on municipal public services, roads and transit are typically different.

[94] That raises the question of why the same reasoning was not applied to students. The applicants' experts observed that students – like seniors – have different needs for access, vehicles, services etc. This was uncontradicted. Certain municipal amenities, which would normally be provided to the rest of the population (like recreational lands and sports facilities) are alternatively provided on campus to the student population; and compared to the population at large, students tend to make less demand on, say, dwelling space and municipal amenities like tot lots and drop-in centres.

[95] In short, virtually none of the normal externalities associated with population density were established in this case.

[96] Parenthetically, there is no *a priori* reason why planning instruments cannot recognize that reality. Granted, one must always remain mindful of the Supreme Court of Canada's admonition against "people zoning" in *Bell v. The Queen*, (1978) 98 D.L.R. (3d) 255, i.e. "not regulating the use of the building but *who* used it". The Supreme Court agreed with the appellate Judge who said: "I do not think personal qualification of this type or other personal characteristics or qualities have ever been suggested here as a proper basis for control of density or any issue relevant to land use or land zoning". However, it is one thing to purport to use zoning as a "control" on a demographic group; it is another to say that a given population, which is in place (or proposed), would have some specific zoning needs, and not others.

[97] A separate City argument was the City's equation between dense student populations and "risk", i.e. that higher numbers of students here would lead to more problematic externalities for the City, in terms of disturbance, nuisance, noise etc. The Board was not persuaded, for two reasons. First, that supposed linear relationship disregarded the applicant's proposition, which the Board accepts, that much depends on the level of security and supervision.

[98] Second, it overlooks the reality that students who cannot be accommodated here must go elsewhere – usually to lodging in converted houses, with at least commensurate levels of "risk" to neighbourhoods. That is problematic, as the City already recognized in its report on Chancellor's Way, where it noted that it was in the public interest to "reduce some pressure" on those neighbourhoods. The Board was not persuaded that it should now adopt the opposite approach, and displace the perceived "risk" to other neighbourhoods, without substantively addressing it, which the project proposed to do.

[99] Weighing the above factors, the Board concludes that the key issue here is not the impacts of population density. It is the deployment of mass. If this were a residential project for the general population, the implications of density would be different; as it is, assuming the expected level of security, the Board heard no compelling evidence that – aside from construction mass – population density within the complex would make any significant difference to the surrounding neighbourhood, roads, or municipal services.

The Board further finds that, aside from the question of “primacy of the downtown” (below), the proposed population density here would not undermine any of the objectives of the OP. Given those circumstances, UPH and PPH here are not determinative.

[100] That leaves the final density argument in the staff report, namely that the project “undermines the objective to focus high density development in strategic areas, including downtown”. The Board was not told why designated Intensification Corridors were not “strategic”. However, Mr. Smith argued that the project would upset the City’s planning priorities: “The intent is for (the CBD) to become *the* place for the highest densities in the City.... This (project) is a downtown density. It is beginning to alter the planned structure of the City. To allow a downtown level of density elsewhere in the City, you work against the paramount objective of focusing density downtown”. He added that this case would set a dramatic precedent: “This is pivotal. It could change how intensification is handled in the City, particularly outside the downtown. It would set a benchmark as to what’s acceptable in other areas”. To avoid overturning “the structure of the City”, he said, “The vision I see for this (subject) area is midrise”.

[101] The Board deals with project height in the next section. On the immediate question of whether project density would upset expectations for the CBD, clarifications are in order.

[102] On one hand, Guelph’s OP devotes substantial attention to the “vibrancy” of its CBD and the latter’s role as “major focal area for investment”. On the other, it also devotes attention to the City’s “sense of place”, and “character”. Guelph’s OP is hardly unique in that respect; those values are shared and expressed in the planning documents of many municipalities across Ontario.

[103] However, they also lead to a perceived conundrum. If intensification through redevelopment is a Provincial priority, notably in central business districts, then how can it be achieved, without changing the face – and hence the sense of place and character – of the very areas which traditionally gave the community its character? In some circles, the presumption was that those goals cannot be reconciled, and that compliance with Provincial priorities usually meant redeveloping the CBD, at whatever expense to local “character” – indeed, that downtowns should have a monopoly on high density redevelopment.

[104] That is not what the Growth Plan says – nor, for that matter, the OP. Guelph's OP foresees three kinds of intensification areas: Urban Growth Centres, Mixed-Use Nodes, and Intensification Corridors. If Guelph's OP had intended density limits on Intensification Corridors, it would have been an easy matter to say so. It did not. Indeed, figures for UPH, PPH and FSI were all conspicuously absent from OP provisions for these Corridors.

[105] One interpretation would be that no density figures were attached, out of inadvertence. Inadvertence, however, is not presumed (particularly not in a “planning” exercise). The Board finds that the better inference is that the omission of those density figures was intentional – “planned” – so that the City could retain the option to direct high density projects there (if only to avoid the “conundrum” described above). That interpretation is more plausible than the notion that this City, with the most European profile of any important city in Ontario, would intentionally constrain itself to confine such redevelopment solely to its core. That would not have been “in character”.

[106] Intensification Corridors provide cities with an alternative venue to accommodate major redevelopment. That is part of their *raison d'être*. The Board does not accept the City's argument of an implicit downtown monopoly. In short, at this particular location, there is no threat of overcrowding; there is no threat to services; there is no threat to the OP; and there is no threat to “City structure”.

### 5.3 Height

[107] There was long debate on what planning benchmark(s) the Board should draw inspiration from, in assessing appropriate height. Discussion focused on five supposed indicators: nearby zoning, the width of the right-of-way, the location's “gateway” function, angular plane, and (again) its location on an Intensification Corridor, as compared to the downtown. These will be considered in turn.

[108] First, the existing zoning around the intersection, on properties to the north, northwest and (aside from the six-storey hotel) to the west, is 10 storeys. The City and the MPCA said that nearby owners had not availed themselves of this right to build to 10 storeys; nonetheless, the Board simply cannot ignore what is buildable as-of-right, and what the planning instruments say.



[109] Furthermore, in its July 2010 e-mail, staff itself had floated the idea of a 10-storey tower format. Now, however, the City insisted on “midrise”, using the example of a seven-storey project some distance south on Gordon Street.

[110] The applicant, for its part, did refer to the prevalent 10-storey zoning, to which the Board will return. Much attention, however, was devoted to a second argument, by the applicant's designer Moiz Behar, who asked the rhetorical question: “How do streets get framed by buildings?” He answered that to get a “good street wall definition”, a proper sense of “enclosure” for the “urban room” should be computed on half the right-of-way (ROW) at that point:

$$\text{Streetwall} = \frac{\text{ROW}}{2}$$

[111] This, he said, was the correct approach to an “urban” context. For example, if the ROW measured 50 metres, then at the property line, the building façade should rise 25 metres (82 feet). By his calculation, this location would take “10 to 12 storeys to frame the street”. At only six storeys, the new Delta Hotel on the southwest corner was “an underdevelopment”, and the City's suggested 5-6 storeys would provide insufficient “enclosure”. He recommended Concept A, adding: “I don't think buildings should be hidden”. This project, he opined, would “highlight the urban setting of Stone Road East and Gordon Street”. He added that in his opinion, the proposed outcome would not have a “canyon effect”, thanks to the 1.8 metre terracing at the seventh floor.

[112] Aside from nearby zoning, and the “framing/enclosure” hypothesis, a third suggested indicator was the location's “gateway” function, mentioned most by the University's Mr. O'Leary; but he was not alone. The *Stone Road Corridor Urban Design Guidelines*, at s. 3.1.1, refer to the importance of “gateway markers”, and call for projects which “highlight gateways to the campus”. The City's experts agreed that greater height – “a little bit of a bump-up” – would be appropriate near the corner. Mr. Smith said the applicant's proposals, on the other hand, would “stick out, but not in a positive way”.

[113] The most prolific discussion, however, was of angular planes. The applicant's planner said Concept A exceeded the City's 45° zoning maximum “by only 9°” – not, in his words, a “significant” digression. Other projects downtown similarly exceeded the 45° angular plane. “It's not so sacred that it can't be adjusted”. The City disputed both the calculations and the approach (Mr. Spaziani started with an angular plane of 30°).

[114] A fourth suggested indicator was the site's location in an Intensification Corridor.

[115] In assessing the above arguments, the Board found that some carried more weight than others. The Board first considers the "enclosure" argument. The applicant's designer argued that "the streetwall, on both sides (Stone Road and Gordon Street), is conducive to a well-scaled pedestrian-friendly streetscape, proportioned the right way and articulated the right way..., a solid good continuous wall. (It is) a very effective urban environment. These buildings frame the streets; they don't shy away from them".

[116] The Board had several problems with that opinion. First, nothing within sight of the intersection could be described as characteristically "urban": it was characteristically "suburban." It was not a context normally in need of "framing". Even downtown, however, the Board was shown no example of "street enclosure" on such a scale (the closest counterpart, according to Mr. Behar's own testimony, was reputedly on Sheppard Avenue in Toronto). There was no apparent relationship to what the OP referred to as the image and character of the City.

[117] The only building with a reputedly similar faceprint is OMAFRA; but the Board finds OMAFRA distinguishable by three main factors: (a) despite a height that would fit a nine-storey residential building, it "reads" as a five-storey building; (b) it has much more setback from both streets; and (c) its prominently curvilinear shape effectively mitigates a canyon affect. The visual impression is hardly that of a typical "solid good continuous wall", let alone at the scale proposed by the applicant. OMAFRA is no precedent.

[118] The Board was also unconvinced by the calculation, by the applicant's designer, of streetwall computed on half the ROW. When asked for his authority for that calculation, he answered that it was his own, but attributed its inspiration to Jane Jacobs and theories of "the urban room". However, the Board finds that if this same calculation were applied to the traditional 66-foot right-of-way, any building significantly less than 33 feet high, at the property line, would represent underdevelopment; official plans and by-laws for some 99% of Ontario, outside the downtown cores of a handful of cities, would be underperforming; almost every arterial road outside central Toronto would be deemed underbuilt; and the Champs Élysées would represent an urban design disaster. For such a proposition, the Board would have expected more compelling evidence. No such evidence was presented, and the Board is unfamiliar with any such authority, from Jane Jacobs or otherwise.

[119] On the other hand, the Board was no more convinced of the City's insistence on midrise. The Board was not persuaded that the occasional project at seven storeys, many blocks away, constituted a signpost as to whether the same should necessarily be endorsed here, or take precedence over the 10-storey zoning that is prevalent closer to the site.

[120] On the question of whether the location deserved a "marker" as a "gateway", the Board heard ample evidence to that effect, from both the applicant's witnesses and the City's. Being at the geographic point where two arterial roads reach the campus, it would be fully expected to represent one of the most high-profile locations in the City. The Board therefore had difficulty with Mr. Spaziani's assertion that although "towers are appropriate when there is an iconic purpose, when they're supposed to be a landmark, this site warrants a background treatment". He added that the objective should be "a successful happy background corridor building". The Board finds no authority for that proposition. Indeed, if urban geography were the only relevant factor, this would be precisely the location for an "iconic" building.

[121] Granted, that is not the only factor; other factors include nearby zoning, angular plane, effects on neighbours, and the location's role in the broader urban landscape. The Board nonetheless agrees that, in principle, and subject to the caveats alluded to, the normal expectation would be that this "gateway" location deserved special treatment.

[122] To recap:

- Most of the zoning around the subject property is 10 storeys.
- 10 storeys is also what one could expect in R4 "High Density" zones across the City, of which there are 23.
- This intersection is arguably the most strategic location within this Intensification Corridor, designated in the OP.

[123] This all suggests that it would be logically consistent to foresee the same maximum height of 10 storeys here, like the properties nearby, and like other R4 zones. Indeed, if nearby property was already zoned for 10 storeys *before* adoption of the Intensification Corridor, the Board was offered no reason why a lower figure should now be selected after the area was targeted for intensification.

[124] Having found in favour of following the nearby pattern of 10-storey zoning, the Board acknowledges a caveat. The designers for both the applicant and the City referred to the appropriateness of a "bump-up" at the corner, in acknowledgment of its "gateway" or "marker" function. While maintaining an average zoned height of 10 storeys, the Board accepts that opinion, and is accordingly prepared to provide for a maximum height of 11 storeys at the corner, and nine elsewhere.

[125] That still leaves the large question of how much total space to foresee, how it will be deployed, and what its setbacks will be.

#### **5.4 Street Setbacks**

[126] Mr. Spaziani invited the Board to "move away from streetwall, toward a green foreground". "I don't see urban conditions here.... The buildings are objects in a landscape".

[127] The Board agrees: the phrase, "objects in a landscape", is certainly how one could characterize (a) OMAFRA, (b) the campus, and (c) the neighbouring research park. That is the local pattern.

[128] In accordance with that existing pattern, The City recommended a nine-metre landscaped buffer along the street edge. The applicant's experts replied that a six-metre buffer would be sufficient for tree-planting purposes. The Board finds, however, that the setback is not merely for landscaping (as important as that subject is): it is to maintain the sense of openness which is already part of the character of the area.

[129] Across the street, the Delta Hotel has a 16.5 metre setback along Stone Road, and 7.5 metres along Gordon Street. That setback along Stone Road would, however, be more than the 9 metres that the City recommended; the Board sets the Stone Road setback at the latter figure. For the Gordon Street setback, the Board is prepared to mirror the arrangements across the street, i.e. to foresee a setback identical to the Delta Hotel's (7.5 metres) – for the same distance, from the corner, as the façade of that hotel; elsewhere, the street setback will be 9 metres, as the City's expert recommended.

## 5.5 Angular Plane from the Street

[130] The existing by-law usually refers to a maximum angular plane of 45°. The staff report calculated the angular plane for Concept A at 57° from Stone Road, and 61° from Gordon Street. The applicant said it was 55°, adding that Concept B's angular plane generally met the 45° figure, except at one point where it was 45.55°.

[131] However, that was for Concepts A and B. The Board has now found in favour of different heights and setback, making the previous discussion moot. Having agreed with the City that the setback should (usually) be 9 metres, then mathematically, 9 storeys beyond that setback and right-of-way would not be far off that 45° plane. The Board takes no issue with maintaining the City's standard in that respect.

[132] The exception is the "bump-up" at the corner. The Board does not have figures on the angular plane for an 11-storey corner building, at a 7.5 metre setback, with a ROW which spreads to 45 metres at the corner (including turning lanes). It is probably not far off 45°. However, even if there were slight overage, it was common ground that some exceptional treatment was appropriate at the corner. Accordingly, the Board is prepared to accommodate an angular plane for the 11-storey corner building (as described later) which might hypothetically exceed 45°, on condition that it does not (by the City's calculation) exceed 55°, which is the figure that the applicant had advanced.

## 5.6 Mass

[133] The City's *Urban Design Action Plan* states that in Intensification Corridors, "long buildings should be articulated to prevent a continuous wall effect". The City maintained that in terms of total faceprint (width and height), the continuous expanse of façade for both Concepts A and B would be non-compliant, and indeed unprecedented in Guelph. It would produce what Mr. Spaziani called "a canyon-like wall relationship".

[134] Increasing the number of buildings, he said, would "increase the degree of modulation." He recommended designs which "broke up" the streetwall, to create a "crenellated condition".

[135] The Board is compelled to agree. The proposed façades are out of scale. The Board was not persuaded that the canyon effect was "eliminated" by the mere device of a 1.8 metre terrace at the seventh floor. Whether or not this expanse of faceprint might have fit on Sheppard Avenue, the Board finds no sufficient evidence to show that it



would fit in Guelph, and no grounds to suppose that it would “strengthen and enhance the character of the existing distinctive... areas and neighbourhoods of the City”, or its “sense of place”, as expected by the OP.

[136] Elsewhere in the City of Guelph, the Board similarly found in favour of breaking up the mass of a proposed development, though on a smaller scale, in *McKinnon v. Guelph (City)*, [2009] O.M.B.D. 26. For the subject property, that is what the tower iteration (Exhibit 21) would have done. It would split the mass. City staff had originally opined (in its e-mail of July 8, 2010) that a tower floorplate could measure up to 750 square metres; the Exhibit 21 illustration had three towers, each with a floorplate of 692 square metres. The Board takes no position on an ideal floorplate, except that if a maximum of 750 square metre floorplate was originally considered appropriate by City planning staff, the Board sees no reason to stipulate otherwise.

[137] Exhibit 21 illustrated three towers of 16, 15 and 14 storeys. The Board has already decided on a maximum of 9 storeys, except for the corner tower, at a maximum of 11. The Board takes no position, however, on the number of towers. They need not be limited to three. The complex must, however, respect (a) the setbacks and angular plane from the street, (b) the setbacks and angular plane from surrounding properties (described in the next section), and (c) the requirements for landscaped open space. Towers must also be separated by a separation distance specified in the existing Zoning By-law, with which the Board has no reason to disagree.

[138] As the City noted in its e-mail of July 8, 2010, it is not uncommon for a tower to surmount a podium. As for the footprint of podia, they can be interconnected, and are not bound by the same floorplate considerations as the tower; they are bound instead by setbacks and whatever zoning rules pertain to landscaped open space. Podia can also be in slab format.

[139] As for their height, however, it would be counterproductive if podia could reinstitute the canyon effect which this decision proposes to avoid. Their height must be kept in proportion to their visual function. The *Oxford English Dictionary* defines “podium” (in the architectural sense) as “a continuous projecting base or pedestal under a building”. Although that is not a legal definition, the Board finds that it would be at least counterintuitive for a “base” or “pedestal” to be more prominent than what it is supporting – e.g. a so-called “podium” that represented 70% of the building's total

height. The Board would not expect a podium here to exceed four storeys in the case of an 11-storey building, or three storeys in the case of nine-storey buildings.

## **5.7 Impacts and Transition**

[140] The applicant's planner said that, compared to most major projects, this one would have relatively less impact on traffic and parking. Services/infrastructure were a non-issue, and he said sky views were not a planning criterion recognized by the OP. Finally, said the applicant's experts, in the absence of formal shadow standards in Guelph, it remained acceptable to have up to four hours of shade on backyard amenity areas.

[141] The City disagreed. Although servicing was a non-issue, and disputes pertaining to traffic and parking were largely resolved, questions pertaining to shadow and sky view remained prominent. Mr. Smith said that "the shadow impacts are unacceptable".

[142] In the Board's view, much of that debate is now moot. Although the Board decision to "break up" the mass of the proposed buildings was reached for reasons independent of shadow and sky views, those issues too would be fundamentally changed by having separated towers, to replace the continuous 10-storey wall along Gordon Street (in Concept A), between Evergreen Drive and the setting sun.

[143] As for setbacks and angular planes, the Board distinguishes the relationship of the neighbour to the south from that of neighbours to the east. The neighbour to the south is a dentist's office, in an Intensification Corridor, whereas neighbours to the east are residential, outside that Corridor, in an area designated by the OP for some of the lowest densities in the City. The relative need for "transition", as required by the Growth Plan, is clearly different.

[144] Abutting the dentist's property, the Board heard no compelling reason why the applicant's proposed setback of 15.24 metres (50 feet) would be insufficient, nor that its proposed lateral angular plane of  $47.31^\circ$  would be inappropriate at the mutual property line, as proposed in Concept A.

[145] The eastern boundary abutting the Evergreen Drive homes is more complex. Concepts A and B propose the same setbacks as beside the dentist's office, at 15.24 metres (50 feet). The Board finds that distance substantial; indeed, if the applicant had been building homes backing onto the Evergreen Drive residences, subject to the very

same zoning as Evergreen Drive, the required rear setback would have been only 7.5 metres. The Board is satisfied with the appropriateness of the proposed setback.

[146] That leaves the angular plane. The applicant proposed 45°, measured from the mutual property line. The City proposed 30°. The Board finds the 30° angle more appropriate in complying with the Growth Plan policy on transition, for two reasons.

[147] First, the Board is mindful of the caution expressed by the Board in *870215 Ontario Ltd. v. Halton Hills (Town)*, [1996] O.M.B.D. 736. That caution applied to situations where “the highest residential density... is being proposed in close proximity to just about the lowest residential density”.

[148] More importantly, and as demonstrated at Exhibit 42, p. 28, if one drew a straight line – from the top of a 32-metre tower beside the intersection, to the property line of the Evergreen Drive houses – it would have an angle of about 30°. Although that is entirely coincidental, the Board is satisfied that this angle consummately meets the definition of a transition between that corner tower and the neighbouring property.

[149] One other question raised by neighbours pertained to student pedestrian traffic, and whether it would create a hazard crossing Stone Road. Although most of those pedestrians were expected to cross at the intersection, some might be tempted to walk east to Evergreen Drive, and cross there, or even mid-block. In response, it is not the Board's prerogative to dictate signalization; but the Board is confident that the City has many ways at its disposal to address that problem, if it should arise.

## **5.8 Floor Space Index**

[150] FSI is often a useful tool in regulating total mass, particularly if other zoning tools are amorphous in defining the overall buildable envelope. However, when other tools (provisions for height, setbacks, angular plane and landscaped open space) define the envelope with precision, they make FSI largely redundant.

[151] For the subject property, there was no shortage of such other tools under discussion, to define the buildable envelope. In this decision, the Board has done so in terms of height, setbacks, and angular plane. Other existing zoning provisions also regulate dimensions. The Board finds that this has been done with sufficient precision to make FSI figures essentially superfluous.

[152] In that light, the Board has no objection to the applicant's proposed figures for FSI, any more than the Board has to the applicant's figures for UPH.

## CONCLUSION

[153] This appeal focused on proposals to adopt an Official Plan Amendment and a site-specific Zoning By-law.

[154] The Board allows the OPA appeal. It finds that an OPA is appropriate, to designate the property for "High Density Residential". For the reasons outlined, the Board has no objection to the applicant's figures for the maximum number of units per hectare for the proposed student accommodation. The Board withholds its Order on that account, until a "clean" copy of the OPA can be submitted for its approval, at the same time as the Board issues its final Order to amend the zoning, below.

[155] The Board allows the applicant's zoning appeal in part. In essence, the Board agrees with the applicant concerning some provisions, but with the City and MPCA for others.

[156] Not surprisingly, when the applicant and the City produced their respective draft by-laws, no one could anticipate how an appeal, allowed in part, might affect the wording. That wording will need to be revisited accordingly, in consultation with all the parties.

[157] The Board therefore avails itself of its authority, under s. 34(11.0.2)(c) of the Act, to direct that the applicable By-law be amended in accordance with the Board's Order, though the Board reserves the authority to issue the final Order combining both sets of amendments. The Board expects counsel for the applicant and for the City to agree on their respective drafting responsibilities. Specifically, the Board directs that the zoning amendment shall provide as follows:

1. The basic zoning category is R4B.
2. For purposes of the *Planning Act* and the City's Zoning By-law, this post-secondary school residence is not to be confused with a lodging house; but this does not change whatever status it may have under s. 1.4.1.2 of Ontario Regulation 350/06 of the *Building Code Act* or any other provisions arising from the latter statute, which in any event

were not addressed at the hearing..

3. For the specific reasons outlined, the Board accepts the applicant's figure for the maximum permissible number of units per hectare.
4. The complex shall consist of podia, surmounted by one or more towers.
5. The podium closest to the intersection may be to a maximum height of four storeys. This maximum podium height applies, along the Stone Road frontage, to an eastward point coextensive with the tower atop it, plus a distance of 5 metres. It applies, along the Gordon Street frontage, to a southward point, equidistant from the intersection, aligned in parallel with the southeastern edge of the Gordon Street façade of the Delta Hotel.
6. Elsewhere, podia shall be to a maximum height of three storeys.
7. The floorplate of each floor in a tower shall not exceed 750 square metres.
8. The normal 45° angular plane from Stone Road and from Gordon Street shall apply to all construction except the tower closest to the intersection; that tower (no taller than 11 storeys) may exceed 45°, though not 55°.
9. All towers shall be limited to a maximum height of 9 storeys, except the tower closest to the intersection, limited to 11.
10. The setback along Gordon Street shall be a minimum of 7.5 metres, for the distance between Stone Road and a southward point, equidistant from the intersection, aligned in parallel with the southeastern edge of the Gordon Street façade of the Delta Hotel. All other street setbacks shall be 9 metres.
11. The setbacks along the east and south property boundaries



shall be a minimum of 15 metres.

12. The side angular plane, measured from the south boundary line, shall be no more than 45°.
13. The side angular plane, measured from the east boundary line, shall be no more than 30°, with the exception of the tower (up to 11 storeys) closest to the intersection.
14. Other existing zoning provisions, e.g. for separation distances between buildings and percentage of landscaped open space, are presumed to continue to apply.
15. Because the project is subject to the standards above, the Board accepts the applicant's figure for the maximum permissible Floor Space Index.
16. Up to 300 square metres may be permitted for commercial use.
17. The Board understands that other necessary zoning amendments, e.g. for parking and amenity space, are intended to be incorporated in the final draft by consensus.

[158] The Board provides a period of two months, from the issue of this decision, for the parties to draft an appropriate OPA and By-law for the Board's consideration and Order. If that draft elicits a dispute from any party, the Board may be spoken to. In the event of dispute, the Board reserves the right to reconvene the hearing, by appearance or by teleconference, to address final wording.

[159] In the event that the parties agree on an alternative approach to drafting the standards and limitations for the property, notably via prospective site plan arrangements, the Board may be spoken to.

[160] This Member remains seized.

"M.C. Denhez"

M. C. DENHEZ  
MEMBER