Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: November 03, 2026 **CASE NO(S).:** OLT-26-000220

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

Applicant/Appellant:	Indwell Community Homes
Subject:	Minor Variance
Description:	Variances requested to Zoning By-law 85-2002 in order to permit a 5-storey apartment containing 35 affordable units and associated supportive services
Reference Number:	A46/2025
Property Address:	353 George Street
Municipality/UT:	Sarnia/Lambton
OLT Case No.:	OLT-26-000220
OLT Lead Case No.:	OLT-26-000220
OLT Case Name:	Indwell Community Homes v. Sarnia (City)

Heard: September 22, 2026 by video hearing

APPEARANCES:

Parties	**Counsel**
Indwell Community Homes	Max Laskin Elad Dekel (Student-at-law)
City of Sarnia	Paul DeMelo

DECISION DELIVERED BY ERIC S. CROWE AND ORDER OF THE TRIBUNAL

Link to Order

INTRODUCTION

[1] This appeal arises under s. 45(12) of the *Planning Act*, ("Act") by Indwell Community Homes ("Applicant"), regarding the refusal by the City of Sarnia ("City") for a Minor Variance Application ("Application"). The intent of the Application is to permit the development of a five-storey apartment building on the lands municipally known as 353 George Street ("Subject Site").

Requested Variances to Zoning By-law 85 of 2002

[2] The Original Application proposed development requires relief from the following sections of Zoning By-law 85 of 2002 ("ZBL"):

a. Relief to permit a building height of 18.0 m, whereas the ZBL permits a maximum height of 10.0 m;

b. Relief to permit a landscaped open space strip of 2.4 m adjacent to a Residential Zone, whereas the ZBL requires a minimum landscaped open space strip of 3 m to be provided adjacent to a Residential Zone;

c. Relief to permit a landscape strip of 4.5 m to be provided along Bright Street, whereas the ZBL requires a minimum landscape strip of approximately 6.0 m adjacent to Bright Street (as it existed on the date of passing of the By-law);

d. Relief to permit a minimum parking ratio for an apartment dwelling to be 0.75 spaces per affordable dwelling unit, per the Affordable Housing Community Improvement Plan ("AHCIP") for the residential component, a total of 27 parking spaces shall be provided; and

e. Relief to permit a reduction in the minimum parking ratio of 1 space per 30 square metres (“m^2”) for minor institution use to 0 spaces per 30 m^2

[3] The first three variances outlined above were identified by the Applicant in the revised application. Upon review, the City indicated the last two variances relating to parking were also required.

[4] For the reasons that follow, the Tribunal allows the appeal and finds the proposed development facilitates appropriate intensification within a Strategic Growth Area, supports affordable housing, makes efficient use of existing municipal services, transit and active transportation infrastructure, provides appropriate built form and transition to surrounding uses, and maintains an appropriate supply of on-site parking.

HISTORY OF THE APPLICATION

[5] In October 2025, the Applicant submitted an application (The “**Original Application**”) to the Committee of Adjustments (“COA”) in order to facilitate the development of a 5- storey building containing 50, 1-bedroom supportive housing units, 25 parking spaces, 35 bicycle parking spaces. The proposed building was located close to the George Street frontage with parking located on the west and south sides of the proposed building. Landscape planting areas and privacy fencing were proposed along the property's eastern and southern sides. Pedestrian and vehicle entrance/exit was from/to George Street. No vehicular access was provided from Bright Street.

[6] The City Staff Report recommended refusal of the variances on the basis that the variances required to permit the use are not, on the whole, considered to be minor. As well, the City Staff Report indicated additional variances may be required and clarification of the nature of the supportive housing use was necessary.

[7] On December 16, 2025, the COA held a public hearing. At the public hearing the agent for the Applicant requested a deferral of the Original Application in order to address City Staff concerns. The COA granted the deferral request.

[8] On January 14, 2026, the Applicant amended the proposal and variance applications (the "**Updated Proposal**" and "**Updated Applications**", respectively). The Updated Proposal did not alter the size of the proposed building but did include a reduction in the number of proposed units from fifty (50) to thirty-five (35), an increase of two parking spaces to 27 spaces, and the relocation of the garage receptacle. On-site office space for staff was limited to the ground floor, rather than being located on all five floors of the proposed building.

[9] A City Staff Report, dated February 10, 2026, was presented at the COA meeting. The Staff Report:

a) determined additional variances related to parking will be necessary to permit the proposal. These additional variances relate to: 1) a reduction in the minimum parking ratio for an apartment dwelling to 0.75 spaces per affordable dwelling unit, per the AHCIP; and 2) a reduction in the minimum parking ratio of 1 space per 30 m^2 to 0 space per 30m^2 for minor institution use.

b) recommended approval of the Updated Application including the additional variances subject to the following Conditions:

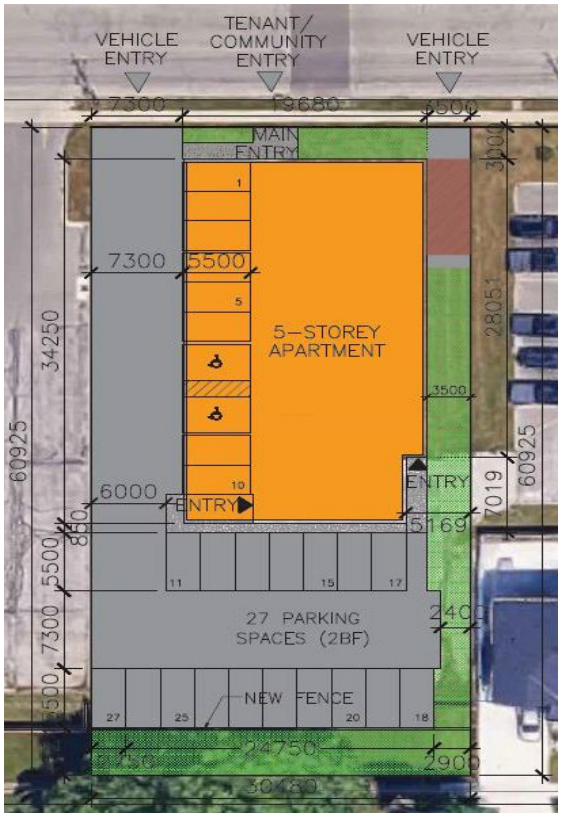
   i. The applicant enters into an AHCIP agreement with the City for the provision of reduced parking spaces for the proposed affordable housing development. This agreement may form part of any Site Plan Control Agreement and be registered on title.

ii. That the above noted condition be fulfilled within two years of the date of the Notice of Decision, failing which the parking rate will revert to the standard rate in the by-law.

[10] Subsequently, after the presentations from the Applicant and interested parties, the COA refused the Applications.

SUBJECT SITE AND AREA CONTEXT OVERVIEW

The Site (Exhibit 9 Applicant Visual Evidence)

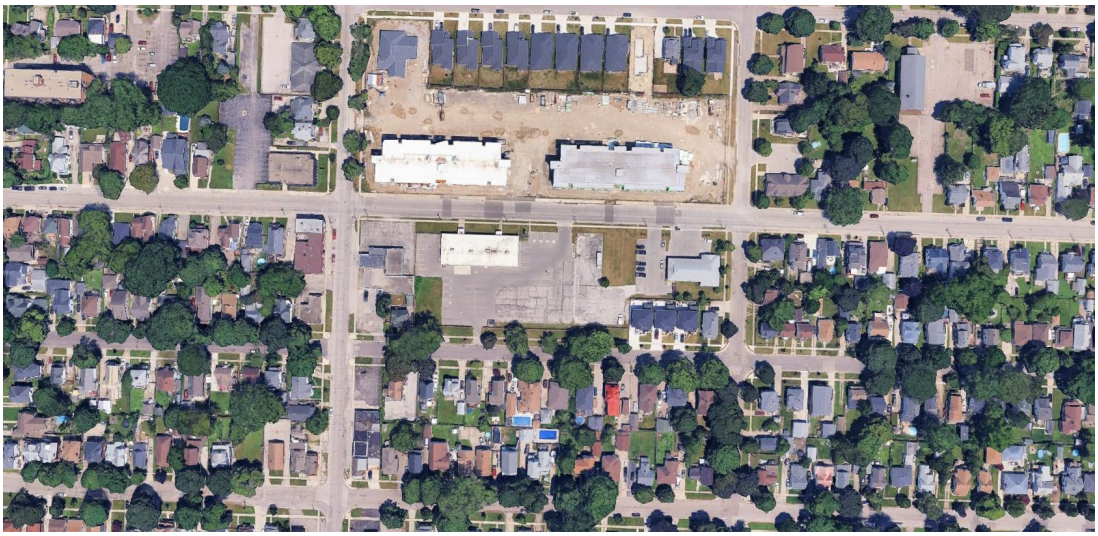


[11] The Subject Site is located on the south side of George Street, east of Mitton Street North and west of Mackenzie Street North. The Subject Site comprises a lot area of 1,856 m^2 and is rectangular shaped with a frontage of 30.48 metres ("m") and a depth 60.93 m.

[12] The Subject Site is currently vacant and was previously used for parking at the former Sarnia General Hospital. The Site is relatively flat with no trees.

SURROUNDING AREA

Surrounding Area (Exhibit 9- Visual Evidence of the Applicant)



[13] Surrounding the Subject Site is the following:

[14] East: a cluster of 4 detached dwellings with frontage along Bright Street and the County's Emergency Management Services base and associated parking area that fronts onto George Street. Further east, along George Street and MacKenzie Street are detached dwellings.

[15] West: a 1-storey medical clinic and associated parking area. Further west along Mitton Street are commercial uses and commercial uses with residential uses on the second storey.

[16] South: opposite the Subject Site on the south side of Bright Street are 1- and 2-storey detached dwellings.

[17] North: opposite the Subject Site on the north side of George Street are two, 4-storey apartment buildings.

LEGISLATIVE TEST

[18] Subsection 45(1) of the *Planning Act* states that a successful minor variance application shall meet the general intent of the Official Plan ("OP") and ZBL, be minor in nature, and be desirable for the appropriate development or use of the lands. The Proponent is to prove that all four elements must be satisfied. Section 2 of the Act sets out matters of provincial interest that planning authorities must also have regard to when making a planning decision and the applications must also be consistent with the Provincial Planning Statement 2024 ("PPS 2024"). The Tribunal is also required to have regard to the COA decision pursuant to Section 2.1 (1) of the Act.

HEARING

[19] Previously, during the Case Management Conference ("CMC") on May 6, 2026, GA Farag Properties Ltd., and Richard Chumko were granted Party Status. During a CMC on June 25, 2026, GA Farag Properties Ltd. and Mr. Chumko withdrew their Party Status and were granted Participant Status. There were 30 Participant Statements granted with 15 opposed and 15 for the development.

[20] The Applicant brought forward one witness, Jordan Fohkens, a Land Use Planner retained by the Applicant to provide expert opinion evidence in the area of land use planning, who was qualified by the Tribunal. The City's witness was Allan Ramsay who was also qualified by the Tribunal to provide expert opinion evidence in the area of land use planning.

[21] Prior to the start of the Hearing the Parties advised the Tribunal that the Parking issues were resolved and the Transportation expert would not be appearing to provide evidence.

ISSUES / ANALYSIS

Permitted Use – Is for a Minor variance application and not a ZBLA application

[22] The main focus of the City's evidence is the characterization of the permitted use. The City submits that the application described the proposed development as affordable housing and that Mr. Fohkens in his Planning Rationale never described supportive housing which all Parties agree are distinct since supportive housing requires more services for the residents.

[23] The City contends that the public and nearby residents were presented with the proposed use as an Apartment with a component of affordable housing and not supportive housing. The City assert the use of the property is a relevant consideration on how it is going to be used.

[24] City Counsel submitted that Mr. Fohkens didn't identify in the pre-application that the City donated the Subject Lands to the Applicant in 2025. The City highlighted the Restrictive Covenant Agreement (Exhibit 14) between the Appellant and the County concerning the land donation with a condition to have not less than thirty-five (35) Supportive Units.

[25] Mr. Ramsay testified that the term supportive housing has no definition in the OP or ZBL and would be considered residential units with onsite support services for the residents. Since "support services" is not a defined term, it is Mr. Ramsay's opinion, supportive housing should be in the context of a Zoning By-law Amendment ("ZBLA") or OPA to define the use and assess needs to be considered in supporting uses and nature of uses.

[26] Therefore, the City submits, COA were correct to deny the application since there is no minor variance request for supportive housing but instead the application should

be for a ZBLA for a new definition for supportive housing and the application should be refused.

[27] Counsel for the Applicant submits that the City permitted use argument is a “red herring” and based on the law and on the evidence, the characterization of the use cannot provide a basis to refuse to allow the appeal.

[28] Mr. Fohkens testified that supportive housing is in the City Staffing Report as early as December 16, 2025 which states;

> Minor Variance Application A46/2025 was submitted to permit the development of a 5-storey apartment building at 353 George Street. However, it is planning staff’s understanding that the proposed apartment building is being developed for supportive housing. Supportive housing integrates housing and supports, with on-site staff providing varying levels of support within the residences. Accordingly, Minor Variance Application A46/2025 has been evaluated based on that use.
>
> Planning staff understands that the proposed apartment building will be developed for a supportive housing use. According to the applicant’s website, Indwell Community Homes proposes to develop the subject property as “permanent housing with supports that encourage resident success through housing affordability combined with health, social, and housing supports”. To this end, the Indwell website states that:
>
> > “an Indwell staff team will typically be on-site at this enhanced support program from 8 a.m. until 10 or 11 p.m., seven days per week. Overnight, Indwell will provide 24-hour on-call support and on-site security. The Indwell staff team will include a program supervisor, housing support workers, nurses, psychosocial support staff, and addictions support staff. This program will also offer medication support, a meal program, and case management to support individuals on their recovery journey."
>
> Moreover, restrictive covenants have been imposed on the property, prohibiting any use other than the development of supportive housing units for 50 years.

[29] City of Sarnia Staff Report re: Appeal (April 27, 2026) stated;

> Given the nature of the additional variances, such as adding a new definition for supportive housing and establishing a new supportive

> housing parking requirement, staff recommended refusal of the application. Staff determined that the proposal did not meet the four tests prescribed within the Planning Act, more specifically, the proposal on the whole was not considered to be minor and a Zoning By-law Amendment is required. This approach would avoid establishing a new parking requirement for apartment buildings through a minor variance.
>
> The revised application was proposed as an apartment building with units being rented at the rates stipulated on the Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin, and would remain affordable for a minimum of 10 years. The revised application demonstrated that parking for the affordable units complied with the Parking Incentive Program under the City's Affordable Housing Community Improvement Plan, eliminating the need for the new definition and parking ratio as outlined in the December 2025 staff report.

[30] Notwithstanding Staff's recommendations, the COA refused the application on the following basis:

> "The reasons for the refusal are due to the alleged overdevelopment of the site, and that the proposed use would be more appropriately considered to be a supportive housing unit, and the proposal should be considered via Zoning By-Law Amendment with a new definition."

[31] Mr. Fohkens testified that Planning Staff refused the initial application based on the variance was not minor in nature. A revised application was submitted, whereby the Planning Staff recommended approval in their Staffing Report dated February 10, 2025.

[32] Mr. Fohkens provided his revised Planning Rationale dated January 12, 2026 which includes a Parking and Transportation Impact Study ("PTIS") dated October 7, 2025 which was provided to the City. The Executive Summary states;

> This Transportation Impact Study (TIS) was prepared for the proposed supportive housing development at 353 George Street in Sarnia supports planning applications for a zoning by-law amendment, lot consolidation, and site plan approval. The project will deliver approximately 50 deeply affordable, permanent supportive housing units. The County donated the site to advance its Housing Development Plan, which seeks to expand affordable and supportive housing options in Sarnia and Lambton County.

[33] Mr. Fohkens testified, the PTIS clearly identified supportive housing in which it states the PTIS was prepared for the proposed supportive housing development. The Introduction also states the PTIS has been prepared in support of planning applications to permit the development of an application for a supportive residential development.

[34] Counsel for the Applicant contends that the Tribunal cannot second guess whether the requested variances are sufficient to permit the proposal, nor can it interpret the ZBL to assess whether the variances are correctly framed.

[35] Counsel for the Applicant submits that the Tribunal must take the Minor Variances as they are and determine whether the applicable tests in section 45 of the Act are met. Counsel cited several cases where the Ontario Municipal Board ("OMB"), Local Planning Appeal Board ("LPAT") and the Toronto Local Appeal Body ("TLAB") determined they had no jurisdiction to change or correct an application after it was already reviewed by a City Examiner or City Staff and the only remedy is to appeal to the Superior Court of Justice.

[36] Counsel cited an OMB Minor Variance Case, *Jankovic, Re*, 2013 CarswellOnt 5029, in paragraph 24 where the Board Member writes;

> The TPRA challenged the findings of the Zoning Examiner, arguing that he had incorrectly interpreted the front wall of the garage to be the front wall of the house and thereby missed a required variance for the front yard setback. The Board finds that this issue is not a matter before the Board, as the City's Zoning Examiner is charged with making that interpretation. The Board is charged with determining whether the variances before it at the hearing meet the criteria in s. 45(1) of the Planning Act.

[37] In a motion, the Chair of the TLAB dismisses the motion in that case *Skene, Re, 2022* CarswellOnt 11656, finding in paragraph 21 and 36;

> Para 21; He noted that the only reason he appealed the Application relates to his concern that the amount of soft landscaping in the rear yard being proposed by the Applicant will contribute to groundwater runoff

> onto his property. His concern related specifically to Variances 2 and 4 as requested by the Applicant, and how the numbers in those variances were calculated.
>
> Para 36; I also agree with Mr. Skene that the TLAB is not the venue to propose alternate Zoning By-law application methods nor is the TLAB in a position or properly constituted to 'correct' the By-law and its application by City staff. This is a matter which is outside the jurisdiction of the TLAB.

[38] In another minor variance TLAB case, *F&A Associates, Re,* 2018 CarswellOnt 1553*,* the Chair writes*;*

> Para 47: Before the variances are specifically analyzed, it may be important to first pay attention to the stated reasons for the opposition's Appeal and whether they fall within the jurisdiction of TLAB. The Appellants' objections may be phrased as:
>
> There is a change to the grade as a result of an infill that is not referenced in the Site Plan. Therefore the ostensible height of the cabana is higher than what is being stated.
>
> While the TLAB has the power to grant relief from many by-laws which reference average grade for measurement purposes, the actual determination of what constitutes average grade, its history and evolution is beyond that jurisdiction…
>
> …It is for the Chief Building Official to determine applicable grades and the City Zoning Examiner to determine how much relief is required to build according to the plans supplied, and if so, by how much. It is the product of that process which appears at the COA and TLAB, on appeal, if circumstances so warrant.

[39] Finally, in a severance and minor variance case in *Koniuszewski, Re, 2021* CarswellOnt 15048c*,* a TLAB decision, the Chair finds;

> Para 25 (1); A person who considers themself aggrieved by an order or decision made by the chief building official, a registered code agency or an inspector under this Act [except conditional permits where there may be delay] may appeal the order or decision to the Superior Court of Justice within 20 days after the order or decision is made. which all confirmed the Tribunal has no jurisdiction to revisit the City's determination of the relief required to permit the proposal.
> Para 32: Because of s. 25, I consider that I have no jurisdiction to revisit any aspect of Ms. Zaltzman's examination, including:

> The quantum of the gross floor area;
>
> The decision to characterize the building as a semi with more than one secondary suite;
>
> The conclusion that the building is not a fourplex;
>
> The decision to exclude basement area from gross floor area including the interpretation of the zoning by-law's statutory language; and
> What constitutes a basement physically.
>
> Because both the plans examiner and I have to read the entire by-law it may seem that our tasks are the same, but they are not. The examiner is to apply the provisions of the by-law; I am to ascertain its intent, whether the intent is maintained and whether the variances are justified.

Finding

[40] The Tribunal agrees with all the jurisprudence cited above as described by a Board Member in *Jankovic, Re*, 2013 CarswellOnt 5029, that, “The Board is charged with determining whether the variances before it at the hearing meet the criteria in s. 45(1) of the Planning Act.”

[41] City planning staff reviewed the revised applications as minor variance applications and not a ZBLA application. Even though some of these cases describe Chief Building Official or City Examiner it is the same for City Planning Staff making a determination of an application.

[42] Under Cross Examination, Mr. Ramsay conceded that the City Staff understood that it was supportive housing through the PTIS Report and stated, “staff clearly understood, yes that is what you can tell from the summary,” even though he maintained that Mr. Fohkens compliance of the application was based on an apartment and minor institutional use.

[43] In any event, the Tribunal finds that Mr. Fohkens and Mr. Ramsay agree that the use is permitted and that no ZBLA can be required where the use is permitted. Mr.

Ramsay testified that The ZBL 85-02 does not include a definition for “supportive housing”. As a result, the proposed development falls within the definition of a “apartment dwelling” and “minor institution”.

The Proposed Development has appropriate regard for the matters of Provincial interest identified in S. 2 of the Planning Act - and is consistent with the Provincial Planning Statement, 2024

Section 2 of the Act

[44] In relation to Provincial Interest under Section 2 of the Act, there were only two policies in contention. Mr. Ramsay contends that **(p)** the appropriate location of growth and development; and **(r)** the promotion of built form that, (i) is well-designed, (ii) encourages a sense of place, and (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant, are not satisfied.

[45] In reference to policy **(p)** Mr. Ramsay testified the Subject Site is an appropriate location for growth and development. The Subject Site is located in a Strategic Growth Area. However, according to Mr. Ramsay, the Subject Site is not appropriate for the **extent** of the growth and development proposed by the Applicant. The proposed density (189 units per hectare (“ha”) and height (5 storeys) represent an overdevelopment of the Subject Site and will not fit with the existing and planned context of the surrounding lands. According to Mr. Ramsay the Subject Site abuts the ‘Existing Neighbourhoods Designation’ and requires measures to ensure compatibility, sensitive integration and an appropriate transition to those abutting properties.

[46] In reference to Policy **(r)** Mr. Ramsay testified the proposed development with its overall height, massing and scale, will not result in an appropriate built form that is well designed, encourages a sense of place or provides public spaces. The 5-storey building with no additional design measures to address transition to lower scale buildings will not

fit harmoniously with the existing and planned context. The proposed development will not be well integrated into the surrounding context.

[47] Mr. Fohkens testified the proposed development incorporates appropriate measures to transition to surrounding properties, including enhanced setbacks, landscaping and screening, and the application of the 45-degree Angular Plane. The location of the Subject Site and the availability of public transit in the surrounding area further support the efficient use of existing infrastructure and promote transit-supportive and pedestrian-oriented development.

PPS 2024

[48] The PPS 2024 provides broad based guidance and direction for all land use within the Province. Mr. Ramsay contends the proposal “does not represent an efficient land use” and therefore, is not consistent with the PPS 2024. Mr. Ramsay testified that the proposed development was not transit supportive.

[49] Mr. Fohkens testified the proposed development represents an efficient use of land and existing municipal services within a Settlement Area. The proposed increase in building height facilitates additional dwelling units on an appropriately located site within the City’s existing Built Boundary and Strategic Growth Area. This is consistent with Section 2.3.1.2 of the PPS 2024, which directs planning authorities to support general intensification and redevelopment within Settlement Areas and promote the efficient use of land and resources.

Analysis of Sec. 2 and PPS 2024

[50] Counsel for the Applicant highlighted that Mr. Ramsay’s interpretations in Sec. 2 improperly read in language that is not there. In addition, Counsel for the Applicant submitted that Mr. Ramsay refused to apply the PPS 2024 policies and imported OP policy into his analysis.

Section 2

[51] Counsel for the Applicant highlighted that the policy states “the appropriate location of growth and development” and should be read as it is written. Both planning experts agree that the Act should be read in its entirety. Counsel for the Applicant submits that policies are independent, standalone policies whereas Mr. Ramsay contends that you have to look at the OP policies, appropriate location for the **extent** of the growth and development proposed by the Applicant.

[52] Counsel for the Applicant highlighted that Mr. Ramsay is improperly reading language that is not there. Counsel suggests that by inputting the word **extent** of the growth and development that it changes a different concept that is not in the Act.

PPS 2024

[53] Counsel for the Applicant submitted that Mr. Ramsay refused to apply the PPS 2024 policies and imported OP policy into his analysis contrary to a ruling in a LPAT consent case, *Green v. London (City)*, 2020 CarswellOnt 4529. The Member in that case writes in Para 44;

> …Obviously, the planning principles, topics and terms are common between the OP and PPS. However, an assessment of conformity with the OP, should, at least in the first instance, be restricted to the OP itself. At the same time, consistency with the PPS is required, and that necessitates a similar and separate review of an application against the PPS. Despite their overlaps in subject area, these are independent evaluations. One arises from s. 51(24)(c) of the Act, and the other from s. 3(5).

[54] In another LPAT case cited is a ZBLA. The Member in *K.P. Isberg Construction Inc. v. Toronto (City)*, 2020 CarswellOnt 7604, finds in Para 56;

> The Tribunal however is unable to accept Mr. Friedrich's summary conclusion that the Development as proposed does not have regard to s. 2(p) and (r) of the Act and is therefore inconsistent with the PPS. Frankly,

> the Tribunal has some difficulty understanding Mr. Friedrich's final planning opinion in this regard. Mr. Friedrich asserts that the OP is the most important vehicle for implementation of the PPS, including the identification of areas appropriate for intensification — a policy imperative that is not disputed and is readily accepted by the Tribunal (and now highlighted in the preamble of the 2020 PPS). Mr. Friedrich, upon this premise, somehow concludes that, ergo, as the proposed Development does not conform to design, built-form, and development policies of the OP, that the Development is thus inconsistent with the policy outcomes of the PPS.
>
> Para 57: The Tribunal finds this approach difficult to accept must agree with Mr. Smith's opinion that the Development in its proposed form, and its located designation in the OP, has regard to both these identified section of the Act and is consistent with the policies of the PPS. The urban design and built-form issues are properly matters addressed in the City's OP and related policies and are not matters that give rise to inconsistency with the PPS. A proposed development may achieve consistency with the PPS, and conform to the higher order intensification, optimization and development policies in the Growth Plan, but fail to conform to the local planning policies which more specifically deal with the site-specific development and design issues that are addressed in the OP.

[55] In reply to Mr. Ramsay’s assertion that the proposed density of 189 units per ha was overdevelopment, Mr. Fohkens testified the OP’s generally applicable policies do not use units per ha as a policy tool. Further, the OP does not establish a maximum density for the Subject Site. Rather, the OP contains several policies that support increased densities, particularly within Strategic Growth Areas, including:

a. The principle of a Sustainable/Resilient City includes encouraging development with “higher-density built forms and higher-intensity land uses” (Section 3.1a)b.).

b. The City’s affordable housing strategy includes promoting higher-density housing forms within identified mixed-use centres and corridors, in part because reduced per-unit land costs can contribute to housing affordability (Section 3.2h)i.).

c. Existing Strategic Growth Areas are intended to facilitate residential intensification through higher-density, mixed-use development that supports an efficient and integrated transit system (Section 4.3c)).

[56] Mr. Fohkens opines, density is not synonymous with overdevelopment. Extent of development is also regulated by standards such as building setbacks and lot coverage. According to Mr. Fohkens the proposed development complies with the appliable setback standards, significantly exceeding the minimum rear setback. In addition, the proposed lot coverage is 35%, substantially less than the maximum of 50%. The appropriateness of the proposed development must also be considered in the context of the planned function of the Strategic Growth Area and the applicable built-form and transition policies. According to Mr. Fohkens given the physical and planned context, the deployment of massing, and the integration of multiple transition measures the proposed development is not an overdevelopment of the site.

[57] In reference to design measures, Mr. Fohkens testified the proposed density supports the City's objectives for residential intensification and the efficient use of land, while the proposed five-storey building remains below the maximum height of 6 storeys or 22 m contemplated in the OP for Mid-Rise Buildings. In Mr. Fohkens opinion, the proposed development therefore has appropriate regard for the relevant matters of provincial interest.

Finding

[58] The Tribunal prefers the evidence of Mr. Fohkens and agrees that policies are independent, standalone policies and that Mr. Ramsay by imputing the word **extent** of the growth and development has changed a different concept that is not in the Act.

[59] The case law cited is explicit the Sec 2 policies specifically in this case policies **(r)** and **(p)**, are standalone policies.

[60] In reference to Mr. Ramsay's concerns of the proposed building having no additional design measures to address transition to lower scale buildings and not fitting harmoniously with the existing and planned context, Mr. Fohkens testified the landscape strips would provide sufficient room for future vegetation and increased rear yard setbacks that would provide more separation. Privacy fencing would be provided along the east and south property lines and vegetation would be planted to screen the proposed building from Bright Street and adjacent low-density residential areas.

[61] Based on the evidence and the jurisprudence presented, the Tribunal finds Mr. Ramsay's approach of interpretation difficult to accept and must agree with Mr. Fohkens opinion. The evidence shows that there are design measures to address transition to lower scale buildings and by Mr. Ramsay interpretation of Sec 2 as not a standalone definition of the growth and development has changed a different concept that is not in the Act.

[62] In regard to the PPS 2024, the Tribunal prefers the evidence of Mr. Fohkens and finds the three-storey as-of-right permission on the Subject Site demonstrate that the proposed five-storey building does not represent a departure from the existing and planned context and is consistent with the PPS 2024. The parking issues initially raised by Mr. Ramsay were resolved prior to the hearing. Regarding Mr. Ramsay's contention that the "Site's overdevelopment is evident by significant reductions to parking and landscaped open space strips required to facilitate the development", Mr. Fohkens testified the reduced landscape strip adjacent to the residential use is limited in geographic extent. Further, there is no variance for setbacks; the reduction does not result from an increase in building footprint. Rather, it is primarily required to accommodate the functional layout of the parking area.

[63] As noted by Mr. Fohkens, the OP policy for Mid-Rise Buildings is up to 6 storeys or 22 m, and the surrounding area has an existing 4 and 7-storey apartment buildings, the former 6-storey hospital, the permitted 12-m height in adjacent residential zones,

and the three-storey as-of-right permission on the Subject Site demonstrate that the proposed five-storey building does not represent a departure from the existing and planned context.

[64] Therefore, the Tribunal finds these reductions to the landscape strips do not represent a significant reduction in landscaping and are not indicative of overdevelopment. The proposed landscape strip remains an appropriate interface with Bright Street that is consistent with the existing streetscape.

[65] The Tribunal finds the Minor Variances have appropriate regard for the matters of provincial interest identified in Sec 2 of the Act. The proposed development is in an underutilized site, with 35 affordable housing units in a strategic growth area with a compact design and is transit supportive which are in the Provincial interest and represents good planning and the proposed application is consistent with the PPS 2024.

Section 2.1 (1)

[66] The City submits that the City Planning Staff are not represented at the hearing and cannot be questioned and it is only the expert's planning opinion including Mr. Fohkens that is relevant and not that of the City Planning Staff.

[67] In reference to Section 2.1 (1) of the Act, Counsel for the Applicant highlighted OMB case *Molloy v. London (City),* 2010 CarswellOnt 9870 which referenced that the Tribunal is to pay only minimal deference to the COA decision and regard needs to be had to the recommendations of City Staff. The Member in that case writes;

> Para 13; Before concluding this portion of my decision, some comments regarding Council's decision in this matter and the application of s. 2.1 of the Planning Act are in order. When determining the proper interpretation of or the appropriate emphasis to be placed on the words "have regard to", I am guided by the decision of the Divisional Court in Minto Communities Inc. v.Ottawa (City), 2009 Can LII 65802, (2009), 63 O.M.B.R. 389 (Ont. Div. Ct.). The Court at paragraph 31 stated.

> The legislature used language that suggest minimal deference when choosing the words "have regard to", considering the many other expressions it could have used to signal the level of deference suggested by the City in this appeal. In my view, the traditional role of the Board, and the broad powers it exercises, should not be altered radically without a more clear and specific expression or legislative intent.
>
> Para 15; In view of the direction regarding deference set out by the Divisional Court in Minto supra and based on the evidence presented in this case, **including the planning opinions of the City Planning Staff** [emphasis added] as well as a detailed review of the provisions of s. 3.6.9 (iii) of the City OP, I am not satisfied that the decision of Council in this matter was correct.

Finding

[68] The Tribunal specifically asked both experts how they view or incorporate City Planning Staff Reports into their overall land use planning expert opinion.

[69] Mr. Fohkens advised that City Planning Staff are responsible for interpreting the uses and relies on Planning Staff for that interpretation and whether it should be a Minor Variance Application or a ZBLA Application with a new definition. Mr. Fohkens testified he reads the OP as it is written and he is to apply the four-part test for a minor variance.

[70] Mr. Fohkens testified that there was no request for a minor variance definition for supportive housing but for a five-story apartment building with a minor institutional use. Planning Staff identified the use of the property with affordable housing units and were aware of what was proposed in the pre-application which included the Indwell Community Homes website which provided more detail of the proposed application. In addition, Mr. Fohkens referred to his Planning Rationale report dated January 2026.

[71] Mr. Ramsay explained the Staffing Report as quite detailed and that it identified affordable housing as the use and not the proposed supportive use. He explained Staffing Reports can be a range of opinions on matters in which some he agrees and with some he doesn’t. Mr. Ramsay described the Staffing Report as “background information” however, he informed his own opinion on the evaluation of the facts.

[72] In reference to Staffing Reports on Cross Examination Mr. Ramsay elaborated, that he thought there were relevant application materials such as the Public statements, City department and agencies comments/reports which were all relevant in assessing the application and stated, “useful information yes.”

[73] The Tribunal agrees with both experts that the Staff Reports provide relevant material and facts. Experts do not have to agree with Staffing Reports and the Tribunal does not have to follow any recommendation from these Reports. However, to suggest that only the experts’ opinions matter without qualifying how they formed that opinion, this reasoning is fundamentally flawed.

[74] It is clear from the cited *Molloy* case, that regard is also given to the Planning recommendations of City Planning Staff. Therefore, the Tribunal finds in regard to Section 2.1 (1) of the Act, it has regard to the COA decision and in this case also the recommendations of City Planning Staff.

Four Tests Under Section 45(1) of the *Planning Act*

The Application maintains the general intent and purpose of the City OP

Compatibility

[75] The Subject Site is designated as ‘Strategic Growth Area’ and ‘Mixed Use Corridor II’ on Schedule 2 – Land Use Plan of the City’s OP. Lands within the ‘Mixed-Use Corridor II’ designation are intended to “provide opportunities for creating vibrant, pedestrian, and transit-oriented places through residential intensification, refill and redevelopment…”. Residential apartments are permitted in this land use designation, in both low-rise and mid-rise buildings.

[76] Mr. Fohkens testified that compatible development shall be considered in the evaluation of all development proposals throughout the City. The City OP requires that all new development is compatible with surrounding built form and landscape contexts.

[77] Mr. Ramsay contends that the proposed development lacks sensitive integration and appropriate transition with the adjacent lower-density Existing Neighbourhoods Designation lands. He states, “the proposed development does not employ any of the mechanisms outlined in the official plan to ensure compatibility, sensitive integration and appropriate transition to abutting properties. In fact, the proposed development provides for minimum or reduced standards with respect to setbacks, landscape planting strips, building step backs and building heights”.

[78] Mr. Ramsay contends the proposed development shall enhance the character of the community and there is to be no undue effects on adjacent properties. It also must be transit-supportive which in his opinion is not transit-supportive with limited bus service available to the Subject Site.

[79] Mr. Fohkens advised the proposed apartment dwelling is proposed to have a height of five stories and conforms to the Permitted Built Form/Use policies found in subsection 5.3.3.2 of the OP, as the policies permit service commercial uses and apartment buildings in mid-rise buildings (buildings with heights of six storeys or less) (subsection 5.1.5.2). OP policies require development within the “Mixed-Use Corridor II” designation to also conform with the following development policies:

- Development should be compatible with its surroundings, with sensitive integration and appropriate transition to abutting existing neighbourhoods (subsection 5.3.3.3(c)(d)),

- Development should be transit supportive, as well as incorporate the Active Transportation Network (subsection 5.3.3.4a)), and

- Adequate parking should be provided on site (subsection 5.3.3.4(b)).

[80] Mr. Fohkens highlighted the surrounding area which contains several other mid-rise and high-rise buildings located adjacent to low-rise residential buildings. These developments include:

- Embassy Tower Apartments, located at 230 Forsyth St. N (230 m to the west), is a seven-storey apartment building that is located approximately 5.0 m from adjacent low-density residential uses to the south. It contains a parking area that does not appear to provide a landscape strip adjacent to residential uses.

- Skyline Apartments, located at 220 Mitton Street North and 205 Mackenzie Street North (across the street to the north), are four-storey apartment buildings that contain 59 dwelling units each.

[81] Mr. Fohkens testified the proposed development incorporates multiple mechanisms identified in the OP for sensitive integration and appropriate transition, including:

a. reduced building height relative to the maximum contemplated by the OP;

b. an enhanced rear yard setback;

c. landscaped planting strips and screening; and

d. compliance with a 45 degree Angular Plane.

[82] Mr. Fohkens testified the proposed development is transit-supportive showing bus stops on George Street and transit within 175 m away from the proposed development. Mr. Fohkens advised the Subject Site is within a two-minute walk of

multiple bus stops of transit routes that provide 40 minute service. The Subject Site is also less than a six-minute walk (less than 500 m) from the London Road Express transit route, which provides 30 minute service. In his opinion, the availability of multiple transit routes within a short walking distance of the Subject Site provides meaningful access to public transit.

Affordable Housing

[83] Mr. Fohkens testified, the City's OP requires the City to promote the supply of new affordable housing and has set a target of 30% or all new dwelling units to be affordable. The Plan encourages the following strategies to achieve this target to promote higher density housing forms within mixed-use centres and corridors and the proposed height increase would provide a higher density housing form within a mixed-use centre and provide an opportunity for additional affordable housing units on the property. According to Mr. Fohkens this would be achieved with a development that is compatible with its surroundings.

[84] Mr. Fohkens opines that the proposed variances meet the general intent of the City's OP, as the increased height would be compatible with its surroundings and incorporate appropriate transitioning and buffering techniques adjacent to lower density land uses. The Parties both agree the application would provide additional affordable housing units in the City and help the City achieve its minimum affordable housing targets. Mr. Fohkens also highlighted the December 16th Staff Report stated that "staff are of the opinion that the proposal maintains the intent of the Official Plan".

Angular Plane

[85] In regard to Angular Plane there were submissions discussing where the Angular Plane should be measured from. Mr. Fohkens testified, although the City's draft ZBL is not in effect, it does provide insight to the intent of the height regulations for mid-rise

buildings. More specifically, the proposed regulations limit a building's height to the Angular Plane, which is a 45-degree plane measured from the rear lot line, or side lot line adjacent to a residential use.

[86] According to Mr. Fohkens, the proposed five-storey building would be located outside of the Angular Plane (measured from the rear lot line), as the proposed building would provide a rear yard setback that is greater than the proposed height. It would also be located outside the Angular Plane, as measured from the lot line of the adjacent residential lot to the east.

[87] Mr. Ramsay contends the rear lot line measurement doesn't accurately reflect intent of Angular Plane privacy shadowing. Mr. Ramsay testified the proposed development does not fall within the 45-degree Angler Plane while applied from the rear property of the abutting property located at 190 Bright Street. City Counsel also took issue with Mr. Fohkens relying on the City Draft ZBL which has not been adopted or approved and is not determinative and that Mr. Fohkens should not pick and choose examples of the City Draft ZBL that are only relevant to his consideration.

[88] On Redirect Examination, Mr. Fohkens testified the Angular Plane is a new concept and not defined in the City OP, so he referred to the City Urban Design Guidelines and the Draft ZBL measured from a point at grade on an identified lot line. . Mr. Fohkens explained the Angular Plane is one tool used and the combination of additional separation is how to determine compatibility.

[89] Mr. Fohkens highlighted the City staff report that the proposed building height meets the general intent of the OP, including the application of the Angular Plane. As noted in the report, the "proposed building will be situated at the north-eastern section of the site and will not be directly adjacent to/beside the low-rise residential buildings to the east" and "based on the angular plane analysis provided with the application, the proposed building will be situated outside of the angular plane".

Finding

[90] The Tribunal prefers the evidence of Mr. Fohkens and finds the application is compatible to the surrounding built form and landscape contexts with a reduced building height relative to the maximum contemplated by the OP, an enhanced rear yard setback, landscaped planting strips and screening and compliance with a 45-degree Angular Plane. The application will provide a sensitive and appropriate transition between the proposed development and adjacent lower-scale developments, particularly the residential properties to the south and south-east.

[91] Regarding density and height Mr. Ramsay testified that it was “2.5 fold increase in massing” and the density and height of the proposed development “far exceeds the scale of development identified by the City.”

[92] Counsel for the Applicant highlighted that Mr. Ramsay in explaining the surrounding area in his witness statement and his testimony did not address that buildings in the adjacent residential zones to the south and south-east which can be developed with residential buildings up to 12 m in height, or the lands immediately north of the Subject Site which were previously occupied by a six-storey hospital building.

[93] The Tribunal asked if the proposed development was transit supportive and Mr. Ramsay provided an explanation and definition about bus times. As pointed out by the Applicants Counsel during Cross Examination, Mr. Ramsay’s evidence did not fairly present the policy context and showed a tendency of overstatement. Mr. Fohkens evidence was direct showing bus stops on George Street and transit within 175 m away which clearly showed the proposed application was transit-supportive.

[94] In regard to the Angular Plane. The Tribunal prefers the evidence of Mr. Fohkens who testified that the proposed building would be located outside of the Angular Plane, would cause limited shadowing on adjacent residential lots, and provide mechanisms to

provide, and an appropriate transition to a lower density residential neighbourhood. Mr. Ramsay's contention is that someone standing in the backyard will be affected and an adverse impact is not sustainable.

[95] The Parties both agreed that the proposed development provides supportive housing that contributes to the achievement of a complete community. Therefore, based on the evidence of Mr. Fohkens, the requested variances maintain the general intent and purpose of the OP. The proposed development is consistent with the planned function of the Mixed-Use Corridor II designation, provides appropriate transition to adjacent residential properties, is transit-supportive and incorporates the transition mechanisms identified in the City OP. It also supports the City's objectives for intensification and affordable housing within a Strategic Growth Area.

The Application maintains the General Intent and Purpose of the ZBL

[96] Mr. Ramsay contends the intent of zoning regulations for maximum building height is to lessen the visual massing of an apartment building. The proposal to allow an increase in the maximum building height from 10.0 m to 18.0 m facilitates a significant increase in the overall massing by allowing three additional storeys.

[97] Mr. Fohkens testified, the intent of the building height regulation is to ensure that building massing remains compatible with surrounding development. In this case, the combination of increased setbacks, compliance with the City's Angular Plane approach, building orientation, landscaping and demonstrated shadow impacts achieves that objective. Accordingly, the requested height variance maintains the general intent and purpose of the ZBL.

[98] Mr. Fohkens testified, the requested reduction in parking and landscape strips would facilitate a 7.3-m by 0.6-m area for a turn-around area and improve the functionality of the parking area, as well as a 5.5-m by 0.1-m area that would allow the

27th parking space to be provided. To accommodate these spaces, the reduction in landscaped strip only affects a small portion of the Subject Site at the southern end. The landscaped strip is reduced from the by-law standard of 3.0 m to 2.4 m for a length of only 4.38 m. It then widens to 2.9 m (0.1 m less than the by-law standard).

[99] Mr. Fohkens described the proposed landscape strip adjacent to Bright Street would remain approximately 50% larger than a landscape strip required elsewhere in the City and approximately three times larger than the landscape strip proposed in the City's Draft ZBL. Further, the landscaped area would match what is currently provided on the neighbouring lands to the west.

[100] Mr. Fohkens advised the City Council adopted the new OP on July 25, 2022. Following the OP adoption, work began on a Comprehensive ZBL Review for the City. Since November 20, 2023, there have been four drafts of a new Comprehensive ZBL, including a Final Draft that was released on April 27, 2026. The new Comprehensive ZBL has not been enacted as of the date of this hearing but indicates staff's intended recommendations to Council.

[101] The subject site is proposed to be zoned "Mixed Use 2 Exception 18 (MU2*18)" in the Final Draft of the ZBL, which would permit apartment dwellings, minor institutions, multiple use apartment dwellings, offices, and additional needs housing.

[102] The proposed development would comply with the building height and parking regulations in the Final Draft of the ZBL. Variances would be required for landscape strip regulations, if the Final Draft of the ZBL came into effect.

Finding

[103] The Tribunal prefers the evidence of Mr. Fohkens and finds the requested variances maintain the general intent and purpose of the ZBL. The proposed development continues to comply with the majority of the applicable zoning standards,

including lot coverage and building setbacks, and provides increased setbacks and landscaping in appropriate locations. The requested relief is limited and does not undermine the overall function or purpose of the applicable zoning regulations.

The Application is Desirable for the Appropriate Development or Use of the Land

[104] Mr. Ramsay testified that an increase in building height contributes to the overdevelopment of the Site by facilitating a significant and undesirable increase in the overall massing by allowing three additional storeys and an additional 1,929 m^2 of floor area. The additional floor area represents more than a 2 ½ fold increase to the massing of the first and second storeys.

[105] According to Mr. Ramsay, permitting reduced landscaped open space strips is not desirable for the appropriate development of the site. The reduced landscaped open space strips limit opportunities to 1) mitigate impacts along the streetscape and abutting residential property and 2) provide for compatible development.

[106] Mr. Fohkens testified the landscape strip exceeds the 3 m standard for the majority of the property line. The reduction is limited to 0.1 m and 0.6 m adjacent to a walkway and screened by an existing 1.8 m privacy fence.

[107] Mr. Fohkens testified, the development would make efficient use of an underutilized site while contributing to the City's supply of affordable housing.

[108] According to Mr. Fohkens the building height variance in particular allows for an additional 17 affordable housing units on floors 4 and 5. The provision of affordable housing is supported by the PPS, the City OP and the City's AHCIP. The PPS 2024 supports the provision of an appropriate range and mix of housing, including affordable housing, while the City OP establishes objectives for residential intensification and affordable housing.

[109] The proposed development would assist the City with meeting its targets for intensification (45%) and affordable housing (30%) and would advance the Province's objectives related to housing, intensification and affordable housing. According to Mr. Fohkens the requested variances would allow the subject site to be developed with an apartment building that would positively contribute to the George Street streetscape and be compatible with its surroundings.

Finding

[110] The Tribunal prefers the evidence of Mr. Fohkens and finds the proposed development is desirable for the appropriate development or use of the Subject Site. As previously noted, the development would provide affordable housing on an appropriately located site within an existing Settlement Area and Strategic Growth Area, while maintaining appropriate transition to adjacent properties.

The Application is Minor in Nature

[111] Mr. Ramsay contends the requested variance is not minor. The additional building mass that occurs with an increase in building height, coupled with the proposed reduction in landscaped open space, represents significant visual and privacy impacts for the abutting residents, and will contribute to nuisance impacts from the parking area on the adjacent property, particularly at 190 Bright Street.

[112] Mr. Ramsay testified the proposed reduction in the Bright Street landscape open space strip permits the limit of the proposed parking lot to extend 1.5 m closer towards Bright Street, which in turn disrupts the established streetscape pattern along the north side of Bright Street and the proposed reduction on landscape open space will limit the opportunity to screen and buffer the parking area.

Bright Street Landscaping Area (Exhibit 9- Visual Evidence of the Applicant)



Existing Landscape Strip Adjacent to Bright Street

[113] Mr. Ramsay contends there would be a viewing impact for 190 Bright Street however, he agreed that it was an oblique view and not a privacy impact. The Applicant's Counsel highlighted that the building would not be adjacent to 190 Bright Street residence so that there was not an undue impact.

[114] Mr. Fohkens testified, the proposed 4.5 m south landscape strip provides function and privacy fence which is 1.5 m wider from the Draft ZBL and maintains a consistent streetscape along Bright Street with a generous landscaping area (as noted in the Photo above). There are no adverse impacts with a streetscape continuation of fence.

[115] Mr. Fohkens testified that there were 30 Participant Statements with 15 opposing the development and 15 for the development. The Applicant Counsel highlighted that the residents of 190 Bright Street did not provide a Participant Statement or express any concerns to the proposed development.

[116] Mr. Fohkens testified the test of "minor" is not a simple numerical assessment but is rather an assessment of overall impact. The proposed apartment dwelling would be located at the front of the site, adjacent to George Street, and provide a streetscape that is consistent with what has been built along George Street and Bright Street.

Finding

[117] The Tribunal prefers the evidence of Mr. Fohkens, which was thorough, cogent and measured. Mr. Ramsay's concerns of a limited buffer for the parking area to contribute to nuisance impacts from the parking area on the adjacent property were based on apprehension and not a thorough analysis.

[118] The Tribunal agrees with the Applicant's Counsel, that concerns with the residents of 190 Bright Street are unfounded and that refusing a proposal for 35 affordable housing units on the basis of potential views from one dwelling to the proposed building is not in the public interest. In any event, landscaping details are properly addressed through the site plan process with no City Staff concerns at this point.

[119] The Tribunal finds the requested variances are minor in nature. The requested relief is limited in scope, including a reduction of 3 parking spaces, localized reductions to landscape strips, and a height increase that would facilitate two additional storeys above the three-storey development that could be constructed as-of-right. The proposed development also provides substantial setbacks, landscaping and screening, and the proposed building does not penetrate the applicable Angular Plane. When considered individually and cumulatively the requested variances do not result in unacceptable adverse impacts.

Reliability of a Witness

[120] Mr. Fohkens testimony throughout the hearing was consistent, measured and unwavering including in Cross Examination. Although Mr. Ramsay has approximately 45 years of experience as a Land Use Planner, Mr. Fohkens was more experienced in the City area with approximately ten (10) years of experience including the initial planner for the City on providing the consent for the Subject Site. Mr. Fohekns analysis

in all aspects of the hearing was comprehensive and directly relevant to all of the issues.

[121] In contrast, through the evidence, Mr. Ramsay only had two (2) projects in the City throughout his entire career. Although we can assume planning issues are generally the same throughout the province, in this case, Mr. Fohkens being the initial planner on the consent of the Subject Site and having worked on projects in the City for over ten years and previously working with City Planning Staff clearly demonstrated his intimate knowledge and experience in interpreting the City OP and ZBL policies for this revised application.

[122] The Tribunal does not take lightly credibility issues with experts. However, in this case the Tribunal agrees with the Applicant's Counsel that Mr. Ramsay's testimony in this hearing was inconsistent which undermined his reliability, he overstated policies as previously noted by importing words which were not in policy.

[123] The Tribunal relies on experts to assist and comply with their Duty to the Tribunal to provide opinion evidence that is fair, objective and non-partisan. Even though this may be difficult for the expert at times with the volume of files and paperwork where the omission of certain information is caused by an oversite, however, in this case, Mr. Ramsay in his witness statement (para 25) indicates written submissions from the public opposing the application were presented at the February 10, 2026 COA hearing. He lists 10 written submissions and only indicates opposition even though there were also 17 letters of support.

[124] The Tribunal understands experts can be selective at times in presenting evidence however, if an expert is to provide factual evidence to the Tribunal, it's their duty to present measured evidence for the Tribunal to have as accurate depiction of the proposed application as possible. Even though Mr. Ramsay provided an explanation stating it was only to provide a summary to the Tribunal in the case of the Participant

Statements and acknowledged in Cross Examination that he could have provided a more fulsome summary, the Tribunal does not find this is anyway assisting the Tribunal in a fair and objective way.

[125] Counsel for the Applicant pointed out Mr. Ramsay's witness statement and in Cross Examination, that in Mr. Ramsay's opinion, the extent of significant reduction in parking is considered over development with no facts to support that opinion. Counsel pointed out to Mr. Ramsay that even with a PTIS Report where the expert concluded there was adequate parking and where Planning Staff supported the parking rate, Mr. Ramsay still could not concede this fact even after there were no longer Parking issues for this hearing.

[126] Even though Mr. Ramsay is not an expert in transportation, it is his duty to provide opinion evidence that is related only to matters that are within his area of expertise. The Tribunal understands that with Mr. Ramsay's 45 years of experience he may provide evidence on a topic that he believes he can comment on depending on the Member presiding. In this case though, the Tribunal has difficulty with Mr. Ramsay's contention against the PTIP and Staff Report providing no facts or evidence. All of these issues go to the reliability of an expert witness's evidence and how much weight should be given to that evidence.

BOOKS OF AUTHORITIES

[127] The Applicant cited seven (7) cases and two Acts (*Building Code Act*, *City of Toronto Act*) for the Tribunal to consider while the City provided none.

[128] Although determinations in other cases are neither binding, nor do they fetter the discretion exercised by the Tribunal, the Tribunal has exercised its discretion in referencing all seven (7) cases from the Applicants Book of Authorities which are deemed relevant cases on the issues before this Tribunal.

PARTICIPANT STATEMENTS

[129] Mr. Fohkens addressed all of the concerns of the Participants. The Participant Statements in support generally identify the appropriateness of the proposed parking supply, the site's access to transit and active transportation, the compatibility of the proposed building with the surrounding area, the provision of affordable housing, and the broader community benefits of the proposed development.

[130] The Participants' concerns raised generally relate to parking, privacy, visual impact, density, neighbourhood character, landscaping and green space, setbacks, fire access, property values, building height, future expansion, the concentration of institutional uses, consistency with the PPS 2024, and potential crime.

[131] Mr. Fohkens testified the PTIS concludes that the proposed development would provide sufficient on-site parking and was no longer an issue at the hearing. According to Mr. Fohkens, privacy concerns are addressed by the proposed building being separated from the adjacent properties by parking areas associated with the medical centre to the west and the Ambulance Dispatch Facility to the east. The proposed building also does not include balconies on the east elevation. Mr. Fohkens opines, the proposed building location, setbacks and design provide an appropriate relationship with the surrounding properties and would result in minimal privacy impacts.

[132] In regard to density and neighbourhood character concerns, Mr. Fohkens opines the proposed development is appropriate for the Mixed-Use Corridor II designation and reflects the type of intensified development contemplated along George Street. The proposed building is also substantially less impactful in massing than the former Sarnia General Hospital building and is lower in height than other apartment buildings in the surrounding area. The Functional Servicing Report and PTIS also demonstrate that the site can be appropriately serviced.

[133] In regard to landscaping and setbacks Mr. Fohkens opines, concerns were raised regarding green space and the proximity of the building to George Street, Bright Street and adjacent businesses. Mr. Fohkens testified the proposed development would provide approximately twice the overall quantity of landscaped open space required by the ZBL. The proposed building complies with the applicable building setbacks and would be located approximately 22 m from Bright Street, compared to the 15 m minimum requirement, and approximately 6 m from the nearest commercial property, compared to the applicable 3 m requirement.

[134] In regard to fire access concerns of one Participant, Mr. Fohkens advised, correspondence from City Fire and Emergency Services received during the Minor Variance and Pre-Application review did not identify concerns regarding fire access. In addition, property values concerns were raised regarding potential impacts on property values and Mr. Fohkens opines, potential changes in property value are not a planning consideration relevant to the four tests under Section 45(1) of the Act.

[135] Mr. Fohkens advised, low-density residential designation were raised as concerns and some Participants expressed the view that the area was intended to return to low-density residential uses. Mr. Fohkens advised while the Subject Site was previously designated for low-density residential uses, the City's OP was amended in 2018 to redesignate the subject site to Mixed-Use Corridor II. The current City OP therefore, establishes the applicable land use planning framework for the Subject Site, rather than the previous low-density residential designation.

[136] While future additional units was raised as a concern that additional dwelling units could be added to the building in the future. Mr. Fohkens explained any future proposal to increase the number of dwelling units in a manner requiring additional planning approvals would be subject to the applicable requirements of the Act and the City's planning review process. In addition to the concerns of a concentration of institutional uses or similar uses in the area Mr. Fohkens advised, the proposed

apartment building is a residential use that is permitted within the Mixed-Use Corridor II designation and applicable zoning framework, subject to the requested variances.

[137] Regarding building height concerns of one Participant Mr. Fohkens explained, the three-storey height that was established through the 2018 planning process. As one of the authors of the 2018 staff report, he stated he could provide additional context regarding that process. While the 2018 review involved an extensive consideration of the proposed OP and ZBLA, the primary focus was on the proposed land uses and associated zoning permissions. An increased building height was not requested as part of the ZBLA application and therefore was not evaluated. The maximum height applicable to the parent GC1 Zone was therefore carried forward into the amended zoning framework. The requested height variance is being considered through the current Minor Variance process.

[138] In regard to one concern on strategic growth areas Mr. Fohkens advised the proposed development is consistent with City OP and PPS 2024 policies. The PPS 2024 directs Strategic Growth Areas to accommodate significant population and employment growth, while the City OP establishes the appropriate form and scale of development within the City's Strategic Growth Areas, including the Mixed-Use Corridor II designation. The proposed development represents an appropriate form of residential intensification within this designation and incorporates appropriate measures to transition to the adjacent lower-density neighbourhood.

[139] Although some Participant concerns fall outside the jurisdiction of the Tribunal and some are not relevant within a land use planning context, the Tribunal weighed all Participants Statements accordingly in the findings on this matter and is satisfied that from a land use planning perspective these concerns and issues have been adequately addressed not only by the Applicant but also by the peer reviewers of this application.

SUMMARY CONCLUSION

[140] Based on this evidence the Tribunal finds the requested variances do not result in overdevelopment or incompatible development and have appropriate regard for the matters of provincial interest identified in Section 2 of the Act, are consistent with the PPS 2024, represent good land use planning and are in the public interest.

[141] The Tribunal concludes that the proposed Minor Variances have met the requirements for the four tests for a minor variance. The proposed variances are consistent with the general intent and purpose of the OP; are consistent with the general intent and purpose of the ZBL; are desirable for the appropriate development of the land; and are minor in nature. The proposed development satisfies the four tests required for a Minor Variance Application under the Act.

ORDER

[142] **THE TRIBUNAL ORDERS THAT** the appeal is allowed and the Variances to Zoning By-law No. 85-2002 are authorized subject to the following Conditions:

a. The Applicant enters into an Affordable Housing Community Improvement Plan (AHCIP) agreement with the City for the provision of reduced parking spaces for the proposed affordable housing development. This Agreement may form part of any Site Plan Control Agreement and be registered on title.

b. That the above-noted Condition be fulfilled within 2 years of the date of the Notice of Decision, failing which the parking rate will revert to the standard rate in the by-law.

“Eric S. Crowe”

ERIC S. CROWE
MEMBER