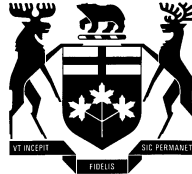


ISSUE DATE:

**April 23, 2012**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL110384

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Fieldgate (Infill) Niagara Ltd.  
Subject: Minor Variance  
Variance from By-law No.: 438-86, 1156-2010 (this by-law has been repealed)  
Property Address/Description: 90 Niagara Street  
Municipality: City of Toronto  
Municipal File No.: A-0518/10TEY  
OMB Case No.: PL110384  
OMB File No.: PL110384

#### **APPEARANCES:**

##### **Parties**

Fieldgate (Infill) Niagara Ltd.

City of Toronto

Eight residents seeking party status

##### **Counsel**

M. Flowers  
M. Maslow (Student-at-law)

S. Bradley

I. Flett

##### **Participant**

Theresa Scott

#### **DECISION DELIVERED BY H. JACKSON AND C. CONTI AND ORDER OF THE BOARD**

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#### **Introduction**

Fieldgate (Infill) Niagara Limited (Applicant) has appealed to the Ontario Municipal Board (Board) from a City of Toronto (City) Committee of Adjustment decision (dated April 6, 2011) pursuant to subsection 45(12) of the *Planning Act* that refused a series of

variances for a property at 90 Niagara Street. The subject property contains a vacant industrial building. The Applicant, represented by Mark Flowers, proposes to demolish the existing building and construct a five-storey, residential condominium building containing 45 units. Matthew Maslow, student-at-law, assisted Mr. Flowers. Variances to Zoning By-law 438-86 as amended: for height, angular plane penetration, building depth, set-backs, density and gross floor area (GFA), indoor amenity space and soft landscaping are required for this proposal, as well as variances for parking.

The Applicant brought forth qualified experts in urban design (Ralph Gianone), land use planning (Peter Swinton), and transportation/parking (Douglas Hall). A City staff planner, Jeff Markowiak, provided evidence for the Applicant under subpoena.

The City, represented by Stephan M. Bradley, appeared in opposition to the application. The City presented qualified experts in planning (Franco Romano) and parking (Michael Tedesco).

Eight residents requested and were granted party status, identified in Exhibit 1. These residents, in opposition to the proposal, were represented by legal counsel, Ian Flett. Theresa Scott, a resident in opposition to the proposal, was granted participant status. An evening session was provided for the residents to provide submissions to the Board.

### **Planning context - the site**

90 Niagara Street is located on the north side of Niagara Street, west of Bathurst Street, and east of Tecumseth Street. The lot is 1481 m<sup>2</sup>, and is occupied by a vacant industrial building that was previously used as a City printing facility. The building is built out to the east and north lot lines, and an undersized private lane is located to the north.

To the west of the site, on the north side of Niagara Street, is a one-storey, industrial building that is currently in use. On the east side of the site, is a two-storey semi-detached Victorian home owned by long-time resident Mellanie Abel, a member of the

party represented by Mr. Flett. Across the street, on the south side of Niagara Street, is a six-storey, heritage building, referred to as the “coffin or casket factory”. This building is in the City’s inventory of heritage properties.

The area is eclectic, with a mix of housing types, including semi-detached homes and row houses. The Summit development is nearby to the north, and the recent Sorbara development that consists of a ten-storey, a six-storey and a three-storey building is located to the east. The three-storey and six-storey buildings front onto Niagara Street and the ten-storey building is at the corner of Niagara and Bathurst Streets. The mix of housing types is well portrayed in the photographic evidence provided in Exhibit 4.

The site is designated as Employment Area in the City’s Official Plan (Official Plan) with Neighbourhoods designation immediately to the east (Exhibit 2 page 236). The site is within the Garrison Common North Secondary Plan (Secondary Plan). This is treated with official plan status, as a secondary plan is intended to provide additional planning detail. The interior of the area is “Area 2”, and the Secondary Plan states that “a mix of employment and residential uses is permitted provided that employment uses are restricted to those compatible with adjacent and neighbouring residential uses in terms of emissions, odour, noise and generation of traffic.” The Secondary Plan does not include specific restrictions on density (Exhibit 2 page 475).

In response to development pressures in the area, a City-initiated planning study for the area bounded by King Street West, Bathurst Street, Stanley Terrace and the Canadian National Railway corridor began in 2004 and resulted in a staff planning report in 2006. This planning report led to site-specific Zoning By-law 461-2006 that amended Zoning By-law 438-86 (the report is provided in Exhibit 2 Tab 8). The report recommended that two areas be distinguished, the Interior of the Neighbourhood (Interior), east of Stanley Park, and the Edges of the Neighbourhood (Edges), along King Street West and Bathurst Street. A Transition Area between the two zones was recommended in the staff report, but this was not identified in the subsequent zoning by-law.

The Interior of the area, where the subject property is located, is zoned R3 Z1.5, with a height limit of 12.0 m (including mechanical penthouse). The zoning in effect allows

residential uses at a density of 1.5 times the lot area and non-residential uses at 2.0 times the lot area in GFA. Buildings with a combination of residential and industrial uses are allowed a density of 2.0. Permitted uses include light industrial (as defined in the by-law, Exhibit 2 Tab 9), with residential uses permitted as of right. Apartment buildings to a height of four storeys are permitted.

The Edges are permitted to have buildings to a height of 36 m. The effect of having different height standards for the Edges and the Interior helps to preserve the lower grade residential character of the interior of the area in comparison to the distinctly higher height of the buildings at the Edges.

The property is also subject to site plan control under subsection 41 of the *Planning Act*. The City and the Applicant have agreed that the site plan will be addressed following this hearing. A site plan application for the property is with the City awaiting the outcome of this hearing.

### **Background to the application**

A detailed chronology describing the consultation undertaken in regards to the proposed development was prepared by Mr. Swinton and submitted as Exhibit 9. The chronology indicates that a series of pre-application consultation meetings were held with the City councillor, the Applicant's consultants, and City planning and urban design staff. Members of the community that were involved in the neighbourhood planning study were invited to attend these initial meetings. At that time, it was recommended to the Applicant by the area councillor that the proposal be submitted by way of minor variance application.

The Applicant's urban designer consulted extensively with the City planning and urban design staff to satisfy the City's concerns regarding step-backs and massing of the proposed building. Upon consent of the Applicant, the City provided Exhibit 10 which resulted from "without prejudice" discussions between the Applicant and the City. Exhibit 10 showed illustrations, for discussion purposes only, of various perspectives of

the proposed building showing the compromises under discussion at the time between the Applicant and the City regarding the built form of the building. Ultimately, the Applicant submitted for the proposed development a compromise plan that satisfied the City's urban design and planning staff.

However, as the consultations proceeded, it became apparent that many of the neighbours in direct vicinity of the project were in opposition to the proposal. These residents have indicated that their preference is for a townhouse development. Many of these residents have continued in their opposition to the proposal, and are members of the Party represented by Mr. Flett.

### **Design details of the proposed building**

Mr. Gianone testified that the building design "responds to existing architectural cues" in the immediate vicinity. As he described and as shown in Exhibit 5, the base of the building consists of two-storey, brick clad townhouse units with front stoops, to reflect the existing pedestrian streetscape. The third floor is a transition space reflecting the Victorian architecture to the east, and the fourth and fifth floors are more industrial looking, with strong piers and metal cladding to mirror the opposite industrial looking buildings. The fourth and fifth floors are stepped back somewhat from the front, and more significantly in the back. The fourth and fifth floors are also set back from the east lot line to match the two-storey house adjacent to the east. The mechanical penthouse is embedded in the fifth floor at the back, and extends about 1.7 m above the roof line. It will not be visible from Niagara Street.

Other design elements of the building shown in the plans in Exhibit 5 include green roofs and vegetative strips along the edges of the terraces to mitigate the overlook at the rear and the sides of the building. The lot and boulevard at the front of the building are to be landscaped with soft landscaping, including shrubs. Mr. Gianone testified that trees could not be planted due to extensive underground services.

The residential entrance at street level is on the east side, and the entrance to the underground garage is on the west side, with the garage door recessed 6 m from the lot line. All the parking for the building will be underground, and consists of six spots for visitors and 27 spots for residential owners. Parking for motorcycles and bicycles is also provided in the area underground. Loading and servicing (for waste and recycling pick-up) are provided for within the building, on the ground floor. At the rear of the building, the ramp leading to the underground garage is covered, resulting in a one-storey structure that extends to 0.7 m from the north lot line, the top of which is landscaped outdoor amenity space. As testified by Mr. Gianone, the covering of the ramp mitigates against the noise and light impacts of the service vehicles and of the cars using the ramp to the underground garage. The covered ramp does not extend the entire length of the rear of the building; the three easterly units have private rear patios at ground level (see page 12, Exhibit 5).

### **Requested variances**

The requested variances to the Zoning By-law 438-86 that were listed in the Committee of Adjustment notice of decision are as follows:

1. The by-law limits the residential gross floor area in an area zoned R3 to 1.5 times the area of the lot (2220.60 m<sup>2</sup>).

The proposed residential gross floor area of the building will be 2.68 times the area of the lot (3976.16 m<sup>2</sup>).

2. The minimum required front lot line setback is 1.00 m.

The proposed front lot line setback will be 0.20 m.

3. The minimum required side lot line setback is 0.60 m, where the side wall contains no openings.

The proposed side lot line setback will be 0.4 m on the east side and 0.3 m on the west side.

4. The minimum rear yard setback is 7.5 m.

The proposed rear yard setback will be 0.70 m.

5. The maximum permitted building height is 12.0 m.

The proposed apartment building will have a height of 17.85 m.

6. The by-law requires a minimum of 39 resident parking spaces to be provided.

In this case, 27 resident parking spaces will be provided.

7. The minimum required number of visitor parking spaces to be provided is 12.

The number of proposed visitor parking spaces will be six.

8. A minimum of 90 m<sup>2</sup> of indoor residential amenity space is required.

The proposed residential amenity space will be 80.8 m<sup>2</sup>.

9. The required maximum depth of a building or structure is 17.0 m.

The proposed building will have a depth of 30.6 m.

10. No building is permitted to penetrate the 44 degree angular plane projected over the lot from a height of 9 m above the average elevation of the ground at the street.

The building will penetrate the angular plane on the south elevation.

11. The portion of the lot between the front lot line and the line of the main front wall of the building as produced to the side lot lines shall be maintained with 80 per cent soft landscaping (22.55 m<sup>2</sup>).

The proposed soft landscaping at the front will be 30.8 per cent or 8.7 m<sup>2</sup>.

12. The minimum required soft landscaping is 15 per cent of the lot area (222 m<sup>2</sup>).

The proposed soft landscaping is 4.4 per cent the area of the lot (65.8 m<sup>2</sup>).

13. The minimum required landscaped open space is 30 per cent of the area of the lot (444.12 m<sup>2</sup>).

The proposed landscaped open space will be 18.3 per cent of the area of the lot (270.8 m<sup>2</sup>).

## **Issues**

The issue in this appeal is whether the proposal meets the statutory tests set out in subsection 45(1) of the *Planning Act*. The “four tests” under this section allow the Board to authorize variances to a municipal by-law where the variances are minor; they are desirable for the appropriate development or use of the land, building or structure; they maintain the general intent and purpose of the Official Plan; and they maintain the general intent and purpose of the zoning by-law.

## **Evidence and findings**

The Board has carefully reviewed the testimony and evidence provided by the expert witnesses and the submissions made by the residents in opposition to the proposed development. This information informs the evaluation of whether the requested variances, individually and cumulatively, meet the four tests of the *Planning Act*.

The Applicant proposes a development of modest intensification, consisting of a five-storey, condominium-type building with 45 units in the King and Bathurst Streets area. The Applicant describes the area as a mix of residential and non-residential uses that is very diverse in building types and styles. Further, the area is a very desirable place to live and work, with great diversity in built form and experiences of people in the neighbourhood, and is close to transit. The Applicant contends that this is a development that will fit harmoniously into the context of the neighbourhood, and notes that the neighbourhood has succeeded in the intermingling of styles and sizes of homes within a small geographical area. It is the Applicant's view that the proposed building constitutes good urban design and will represent a significant improvement to the streetscape.

As testified by Mr. Romano, it is the City's contention that the purpose of the by-law that was approved in 2006 was to provide clarity for stakeholders related to future development for the area, especially in terms of height and density restrictions. It is the City's view that the legal, non-conforming use of the casket factory building across the street from the development should not be used as justification for this proposal. The City and local residents in opposition to the development expressed the view, among other issues, that the proposed structure is too high and the density is too great. Mr. Romano testified that it is his opinion that the proposal represents over-development and over-intensification, and is ill-suited to the site and adjacent development in relation to the neighbourhood context in terms of physical character, built form, and density. In his opinion, the proposal seeks to substantively alter density and built form that has been planned and intended within the interior of this neighbourhood for this site and its adjacent development, and that the result is not a good fit.

Mr. Romano testified that it is his opinion that though the general area is diverse in nature and character on a macro level, on a micro level the prevailing character consists of ground oriented residential building form, of 2- to 2.5-storeys in height. The prevailing building depths are at less than 17 m, and the buildings do not occupy the entire lots. Mr. Romano noted that the Sorbara development is located within the edge and the Transition Area (as shown in Exhibit 34), it has a different physical context, and the development preceded the Niagara zoning by-law.

The residents that spoke in opposition to the proposal, indicated that they favoured a townhouse-type of development for the property and were opposed to a multi-unit, condominium-type of building. Some residents also raised concerns regarding the level of consultation that was undertaken, stating that it was either insufficient, or with the wrong people. In regard to this concern, the City staff planner, Mr. Markowiack, described events in the series of consultation meetings that were held. He explained that ultimately, the Applicant chose to pursue obtaining the required approvals by way of a series of minor variances for the development, rather than a zoning by-law amendment. In any event, Mr. Markowiack testified that if the project had proceeded by way of a zoning by-Law amendment instead of a series of minor variances, it is likely that the outcome would be the same. Mr. Markowiack testified that the required notice and consultation had been undertaken.

The opposition to the proposal by the City and the neighbouring residents is focussed primarily on the variances related to the height of the proposed building, the increase in density (GFA), the rear yard setback, the length of the building, and the variances for parking. The variances for front and side lot line setback, angular plane penetration on the south side, indoor amenity space, and soft landscaping requirements were less of a concern. With regard to parking, there was consensus between the parties that there is no opportunity for offsite parking on the street, therefore the underground parking must accommodate all the required parking for the site.

The intent of the Official Plan designations and provisions of the site-specific by-law is to maintain a distinction between the higher rise areas at the Edges and the lower rise areas in the Interior. It is clear from the evidence that a proposal with this height and

density would be appropriate on the edges of the neighbourhood closer to Bathurst Street.

A critical issue for the Board to evaluate is whether the proposal goes too far beyond the standards for the interior of the neighbourhood to ensure that there is a distinction between the edge and interior, and also, whether the proposal goes too far beyond the by-law's standards to allow the variances.

### **Official plan designation and policies**

By way of background, the lands are designated as Employment Areas in the current Official Plan, whereas the Secondary Plan contemplates a mix of residential and commercial uses. The current Residential zoning dates to 2006, and was rezoned from former Industrial zoning.

As testified by Mr. Swinton, at the time the Niagara Area Study was being done, the Garrison Common North Part II Plan was in place (Exhibit 2 tab 6). When By-law 461-2006 was passed (based on the Niagara Area Study), and prior to the passing of the new Official Plan, the area was Mixed Industrial Residential Area. It is Mr. Swinton's opinion that when the Secondary Plan came into effect in July 2006 and removed the density restrictions, that this is significant in regard to the City's intent with respect to density, though Mr. Romano disagrees emphatically with this interpretation.

When the new Official Plan was adopted, the area where the site is located became Employment Lands, with Avenues on either side of King Street, and east of Bathurst Street and south of the rail corridor became Downtown and Central Waterfront Area. The land use designations where the site is located consist of a mix of Neighbourhoods, Mixed-Use Areas and Employment Areas. The photos in Exhibit 4 show the inter-mix of commercial lands and homes, and Mixed-Use Areas.

As testified by Mr. Swinton, two Official Plan sections that are particularly relevant for this application include Section 2.2 Structuring Growth in the City: Integrating Land Use

and Transportation; and Section 2.3.1 Healthy Neighbourhoods. Official Plan Policy 2 (Section 2.2) directs that growth in the city is to be to Centres, Avenues, and Employment Districts. This policy relates to the efficient use of infrastructure, locating development in areas well served by transit, facilitating social interaction, and improving energy efficiency. The site is within an Employment Area and therefore it is Mr. Swinton's opinion that it is in a growth area, and further, that the proposal conforms to these policies.

In regards to the Healthy Neighbourhoods policies of the Official Plan (Section 2.3.1), Mr. Swinton testified that the development is in a location designated as an Employment Area, immediately adjacent to a Neighbourhood designation. Mr. Swinton testified that the proposal meets the policies that relate to the stepping back and setting back of buildings, and policies related to transition and compatibility of an Employment Area adjacent to a Neighbourhood area. Mr. Swinton testified that the proposal, in his opinion, is not significant intensification, though Mr. Romano disagrees. It is Mr. Romano's view that the proposal will alter in a significant fashion, all those parameters that make up the intensification basket (GFA, density, depth, length, height, etc.), and that when viewed against the adjacent development context, the proposed development is significantly higher intensity of development than that found adjacent to the site.

In regards to urban design, the Official Plan policies promote and encourage the use of skilled professionals (Section 3.1.1 Policy 1) in the design of buildings. The Board finds that this policy is met by the building design produced by Mr. Gianone (a recognized urban design professional) and his firm.

The Board is in agreement with the opinion and testimony of Mr. Swinton, wherein he describes that the proposed building meets the appropriate policies related to Built Form (Official Plan Section 3.1.2). These are met by a number of features, including: generally locating the building parallel to the street; locating the main building entrance at the public sidewalk; and developing appropriate street edges (based on the height of the building). With regard to parking and access, the curb cut will be reduced and all surface parking will be removed. All parking will be underground and integrated into the

building. The lane won't be used for the proposed development, but will be improved as a result of a 0.7 m of setback from the lot line (that will merge with the private lane). The development will consolidate all the access to the building, by having a driveway for underground parking fronting on the west side of the building, and a main door for internal units fronting on the east side of building.

Mr. Swinton testified that the proposal meets the built form policy that requires that new development be massed to fit harmoniously into the existing context, and limit the impacts to the neighbouring properties. The Board is in agreement that this is achieved by the use of a number of measures, including respecting the existing street proportion and improving upon transitions with the use of notches and step backs. In particular, step backs have been incorporated into the design to limit the impact to Ms. Abel to the east and the rear yard neighbours to the north. Mr. Swinton testified that in regards to the outdoor amenity space that is located on the roof of the ramp to the underground garage, there will be a green strip of vegetation to prevent overlook to the backyards of the homes on King Street. The same mitigation measure will be installed on the edges of the upper terraces, to prevent overlook to the yards of the homes on Wellington Street. The Board is of the view that this is an appropriate mitigation technique to limit the impact of overlook to the adjacent neighbours.

Mr. Swinton testified that the building design uses setbacks and step backs to assist in transitioning the proposed building to the homes in the area. He noted that apartment buildings are permitted in this area, and that the transition between the homes and the proposed building is within a relatively small area. The design of the building and the transition measures were developed based on the recommendations and discussions with the City urban design and planning staff. The Board accepts the view that the City urban design staff and planning staff are satisfied with the design of the building.

Mr. Gianone had undertaken to update the shadow study during the course of the hearing, and provided Exhibits 22A and 22B that showed the updated analysis. The analysis was done with regards to what the shadow would be if the plan as shown in Exhibit 10 (the design developed in consultation with the City staff urban designer) was built, and this was compared to the as of right development. The analysis, as described

by Mr. Swinton, showed both incremental increases and incremental decreases when comparing the as of right development and the proposed development. It was Mr. Swinton's opinion that the massing is appropriate and when the existing vegetation is considered, there is not likely to be a noticeable difference in the shadowing resulting from the proposed building.

Mr Swinton testified that the proposal is massed to define the edges of the streets, and will maintain sky views. The site will be comfortable for pedestrians, as canopies and awnings are provided for the main and individual entrances. There will be planters for greenery. Since the front boulevard has numerous buried utilities, it was agreed that shrubs and ground cover would be provided in the place of trees. Mr. Swinton testified, and the Board is in agreement, that the proposed building will be a significant improvement over the existing condition.

The built form policies of the Official Plan require that every significant new development is to provide outdoor amenity space. In this proposal, 26 of the 45 units have either balcony terraces or private patios, and seven units have front porches. The Board agrees that this policy is met by this development proposal, as there is a significant amount of outdoor amenity space planned for the building.

The Official Plan also has policies related to the provision of the full range of housing to meet the current and future needs of City residents. Mr. Swinton testified that this project provides a diverse range of housing, including smaller units, as well as two-storey units. The community has expressed the desire to see townhouses on the site. The Board finds that the range of housing type to be offered by the Applicant's proposal more closely meets the Official Plan policy in this regard.

Mr. Swinton testified that within the Official Plan, there are policies that provide guidance for growth and change in local areas by way of secondary plans. This area has a secondary plan in place. As testified by Mr. Swinton, a policy of a secondary plan is to stimulate and guide development, particularly in large areas of vacant or underutilized land. It was Mr. Swinton's view that this is a growth district with lands designated for growth, and therefore there is a responsibility to stimulate development

by the Secondary Plan. In regard to land use designations, this area is within an Employment Area, and Employment Areas are designated for growth. Mr. Swinton testified that he recognizes that growth in Employment Areas is the intent, but in this situation, he interprets that growth of residential use is the appropriate interpretation of the policy. It is Mr. Swinton's contention that this proposal provides growth that meets this objective.

Mr. Romano's strongly stated opinion is that the parent Official Plan does not identify the area as an area targeted for residential growth or residential intensification. He states emphatically that it is not appropriate to transfer the statement that growth for employment can be transferred to a Residential Area. The Secondary Plan as well does not identify the area as a Growth Area, nor as an Intensification Area. To the contrary, it is Mr. Romano's opinion that the way the plan is implemented is to protect the site and area from increased densities that Mr. Swinton has indicated should be accommodated on the site.

The Board is of the view that though the policies of the Official Plan that encourage intensification in Employment Areas are meant for the intensification of employment uses, the site-specific by-law recognizes some potential growth for both employment and residential uses and it is intended that the area retain a mix of the two uses. The site is a former industrial site that will have a residential use. The increased density is appropriate given the degree of increase, the area context, and the built form. While the intent of the Official Plan and applicable Secondary Plan is to maintain a mix of residential and industrial uses in the area, there is no need to maintain both uses on individual properties. There was no evidence raised by the City that industrial uses needed to be maintained on the subject lands.

The Board finds that the proposal does conform to the Official Plan and the applicable Secondary Plan. This view is also held by Mr. Markowiak, who testified that this proposal is an acceptable form of development of the site, and that no outside agency had objection to the proposal. Mr. Markowiak also testified that the site is in a designated Employment Area, and the proposal conforms with Employment Area policies and conforms with the Secondary Plan.

The Official Plan and the Secondary Plan contemplate that this site be used for employment purposes, with some restrictions, or for residential uses, with condominium apartment buildings being permitted. On this basis, the Board finds that the proposed development is in line with the intent and purpose of the Official Plan.

### **Zoning by-Law considerations**

Those in opposition to the development contend that there is a relatively recent site specific Zoning By-law 461-2006 that applies to the site and that provides the performance standard for this site. It is the contention of the City that the planning report, upon which the recently developed zoning by-law is based, provides the rationale and the intent of the community and the City in respect to the development for the area. The staff report identifies the concerns of *ad hoc* applications for condominium development and has undertaken community consultation to prepare this amendment so that City can maintain control over the development within the area.

Mr. Swinton testified that prior to the enactment of Zoning By-law 461-2006, the area was zoned I1 D3 Industrial with three times lot density, under Zoning By-law 438-86. Where there were residential pockets, these were zoned R3 Z1.0, with a height of 18.0 m. The R3 permitted apartment buildings. In Industrial Use Areas (I1), Residential uses were not permitted. The former Official Plan that was in force at the time of the Niagara Area Study provided a residential density of two times the lot area, and the Garrison Common North Part II Plan provided three times the lot area for Residential uses.

With the new Zoning By-law 461-2006, previously zoned Industrial Areas decreased in density from either three or two times the lot area to 1.5, and had heights reduced from 18 to 12 m. The subject property is located in an Interior precinct, with a maximum density of 1.5 times lot area for residential uses, and two times lot area for mixed-use. Mr. Swinton testified that the primary value of these changes in density and use is to grant as of right residential permissions for the currently industrial zoned properties, in keeping the Part II Plan.

In the background material for the Niagara Neighbourhood study, the City staff looked at the concept of the Interior and Edges precincts, as shown in Exhibit 7 and Exhibit 34. As shown in these figures, the concept was of the Interior, with a Transition Area to the Edges of the study area. The subject site is within the Interior, but the Transition Area is located nearby to the east, where the buildings of the Sorbara development occur (at 70 Niagara Street). Ultimately the zoning provides standards for the Interior and Edges precincts.

The City and the parties in opposition contend that this proposed development is not appropriate as it requires variances from the relatively new site-specific zoning by-law and therefore the proposal does not meet the general intent and purpose of that by-law.

The Applicant contends that the general intent and purpose of the zoning by-law is met by this proposal. The Applicant contends that this proposal is so well-designed that the performance standards that the zoning by-law intends are met by the good design of this building, particularly through the design features that mitigate impact to the adjacent neighbours and neighbourhood.

Mr. Gianone testified that the “tailor-made solution” results in the success of the application. He testified that the stepping of the building is a key component of the tailor-made solution; which starts with a three-storey fronting on Niagara Street to match the existing built form Victorian houses, with the fifth storey that sits back from lot line. The embedded mechanical penthouse is not visible from the street. In the rear, the building steps back to lower stories, including a one storey at the far end at the north side of the private lane. At the northeast corner are grade-related units that are slightly sunken because of the grade difference.

### **Do the variances meet the four tests?**

There are 13 variances requested for this proposed development. As described previously, the Board is required to determine whether the variances individually and collectively meet the statutory tests set out in subsection 45(1) of the *Planning Act* that

are: is the variance minor; is it desirable for the appropriate development or use of the land, building or structure; does it maintain the general intent and purpose of the Official Plan; and, does it maintain the general intent and purpose of the zoning by-law.

For ease of evaluating the variances in relation to the four tests, the variances are grouped into the following categories that relate to similar aspects of the development:

- Height, Angular Plane Penetration and Density Increase Variances
- Rear Yard Set-back and Building Depth Variances
- Front and Side Lot Line Set-back Variances
- Indoor Amenity Space and Soft Landscaping Variances
- Parking Variances

### **Height, angular plane penetration and density increase variances**

The zoning by-law contemplates the building of a multi-unit residential building to four storeys, with a density of 1.5 GFA and a height of 12 m. According to the Applicant, the requested variances are to permit a modest increase in the mass of the building.

As agreed by the parties, one of the purposes of the by-law is to control condominium development in the Niagara Neighbourhood so that future development is in keeping with the existing residential character of the neighbourhood. It is Mr. Gianone's opinion that the proposed development respects that character, and fits well into the existing context of the immediate vicinity. Mr. Gianone testified that the design of the building is a structural representation of the street, whereby the base of the building consists of two-storey, brick clad townhouse units that have stoops and provide a positive pedestrian realm. This is similar to the existing surrounding townhouses. The third floor

is transition space to the Victorian architecture to the east, and the fourth and fifth floors are more industrial looking, with strong piers and metal cladding to mirror the opposite buildings.

The variances related to the proposed building height and density cause the greatest concern to the neighbours and the City, who felt that the proposed development was too high and dense for the location.

## **Height**

Based on the building elevations provided in Exhibit 5, the fourth floor height is designed at 13.10 m, slightly greater than the 12 m standard. The height variance is from 12 to 17.85 m, however, the excess height is related primarily to the presence of the fifth floor (to 15.98 m) and the mechanical penthouse (to 17.85 m). The design of the building has the fifth floor set back slightly from the front of the building, and set back more significantly at the rear. The mechanical penthouse extends above the fifth floor about 1.7 m for a portion of the roof. The footprint of the fifth floor is significantly smaller than the floors below due to the step backs. The east side of the building is notched to reflect the height of the two-storey home adjacent to the east. The casket factory building, directly opposite the proposed building on the south side of Niagara Street, is an integral feature of the streetscape. The height of this building is 18.03 m (from Exhibit 6).

The Board recognizes that the height of the proposed building exceeds the reduced standards established in the site-specific by-law. However, the variance for height encompasses mainly the area of the fifth floor which is stepped back from the lower floors. The by-law establishes standards, but potential variances must always be a consideration in establishing any zoning standard. The Board notes that the height of the proposal in the context of the developments at the Edges will still maintain a lower profile for the interior of the neighbourhood.

The Board finds that the proposed building will complement the existing streetscape, both in terms of height and “fit” to the look of the streetscape, in part due to the presence of the casket factory on the opposite side of the street that is at a similar height. The Board finds that the requested variance to permit an increase in height to 17.85 m to allow a five-storey, multi-unit residential building is in line with the general intent and purpose of the zoning by-law and the Official Plan.

The test of whether the variance to permit an increase in height is minor relates both to the impact and the magnitude of the variance. The Board finds that the impact of the increase in height to permit the fifth floor is minor, due to the design of the building, with notching at the east side and the step backs at the front and back of the building. These mitigation measures result in minimizing the impact of the excess height to the residents at the rear of the building and Ms. Abel’s residence which is adjacent on the east side. It should be noted also that the fifth floor occupies only about 20 per cent of the footprint of the building. The Board has considered the magnitude of the height variance and finds that it does not compromise the maintenance of the characteristics of the interior of the neighbourhood.

### **Angular plane penetration**

A variance for the penetration of the angular plane on the south side of the building is required, as the design of the building has the fourth and fifth floors set back only somewhat from the front of the building. The angular plane penetration is meant to reduce impacts to opposite buildings when there is a discrepancy in height, however in this case the opposite building is the casket factory that is at a similar height. As a result, the impact of penetration of the angular plane is minor. The Board finds that this variance meets the intent and purpose of the Official Plan, the zoning by-law, and is minor in impact and magnitude.

## **Density**

The Applicant has requested a variance for an increase in density from 1.5 GFA to 2.68 GFA. The by-law establishes a density standard for a residential building in the interior of the neighbourhood of 1.5 GFA, however, if this development were a mixed-use development, the as of right density permitted would be 2.0 GFA. Mr. Swinton has testified that the increase in density remains in keeping and is still less than was in force in 2006.

The step-backs of the upper floors of the building, and the notching on the east side of the building reduce the visual impact of the mass of the building. In particular, the step backs in the rear serve to significantly reduce the perceived mass of the structure to those neighbours in the rear. In addition, the presence of the green roof strips that are proposed to extend along the outside edge of the back terraces will reduce the issues of overlook and loss of privacy to the rear neighbours. It should be noted that overlook would occur if an as of right proposal (e.g., four storeys) was built.

The Board finds that the design of the building that incorporates step back and vegetative privacy strips mitigates the impact of the increase in mass and density of the building, such that the increase is minor and will not cause adverse impact to the neighbours.

While the variance will permit a density greater than the standard for the interior, the design features which reduce the impact of the building's mass allows the Board to conclude that the variance for density maintains the general intent and purpose of the by-law, and the Official Plan. The resultant built form is in keeping with the interior of the neighbourhood.

As described previously, the Board finds that the general intent and purpose of the Official Plan and policies are maintained by the variances requested for the increase in height, the angular plane penetration, and the increase in density for the proposed building. Based on the testimony provided and the Board's evaluation of the impact of

the increase in density and height beyond the by-law standards at this location, the Board finds that the intent and purpose of the Zoning By-law 461-206 are maintained by the variances requested for the height, angular plane and density increase. These variances are minor and result in a desirable development of the land.

### **Rear yard setback and building depth variances**

#### **Rear yard setback**

The proposal requires a variance to the rear yard setback requirement of 7.5 m due to the access ramp to the underground parking that is to be enclosed in a one-storey structure. This structure will be built out to within 0.70 m of the northwest side of the lot and extend about one half to two thirds along the northerly extent of the building. The main wall of the proposed building above the first floor meets the rear yard setback requirement of 7.5 m, as does the northeasterly portion of the proposed building. There is currently no setback in the rear yard as the building that now occupies the lot is built to the northerly lot line.

The covered ramp that leads to the underground parking will provide mitigation for light and sound pollution. The surface of the access ramp will consist of a green roof, with vegetative screening along the edges. This surface will be used as outdoor amenity space and will function in a similar way as a rear yard amenity space. The presence of the vegetative screening will mitigate against overlook to the neighbours and presumably will be more attractive than the current wall of the vacant building. It should also be noted that the one-storey structure does not abut directly to the neighbours' rear yards, but abuts on to the private laneway.

The Board agrees with the opinions of both Mr. Gianone and Mr. Swinton and finds that the benefit of covering the ramp to reduce the noise and light pollution from cars and service vehicles outweighs the intrusion into the rear yard setback. The Board finds that the request for a variance for a rear yard setback meets the intent and purpose of the

zoning by-law and the official plan, it is desirable, and that the impact of the intrusion into the rear yard is minor, in this instance.

### **Depth of building**

The depth of the proposed building is 30.6 m, including the covered ramp. If the covered ramp is not included, the depth is 23.5 m. The zoning by-law permits a building of a depth of 17 m. As testified by Mr. Swinton, a building depth of 23.5 m is an appropriate size for a multi-unit building, which is permitted by the zoning by-law. Mr. Swinton testified that, in his opinion, a building depth of 17 m is less than what would be required by an apartment building. It should be noted that as the building gets higher the depth is reduced; so that on the 4<sup>th</sup> floor, the typical building depth is 19.7 m, and on the 5<sup>th</sup> floor the typical depth is 15.7 m.

The Board agrees with the interpretation that the intent of the zoning by-law is met by this request and that the variance to the increase in building length to permit a multi-unit building is minor.

The Board finds that the variances requested for the reduction in rear yard setback and increase in building depth maintain the general intent and purpose of the Official Plan and policies, particularly those that relate to the development of multi-unit buildings in this location. The Board finds that the variance for the rear yard setback and building depth are minor, result in a desirable development of the land, and that the intent and purpose of Zoning By-law 461-206 are maintained by these variances.

### **Front and side lot line setback variances**

The variances for front and side lot line setback were less of a concern to those in opposition to this proposal. The variance on the west side of the building is sufficient for access to the wall of the adjacent one-storey building, as agreed between the owners of that building (see agreement in Exhibit 2 Tab 20) and the Applicant. The Applicant has indicated that they are amenable to entering into a similar agreement with the owner to

the east, Ms. Abel. The variance request on the east side of the building is for 0.4 m setback, whereas 0.6 m is required. There is additional setback on the upper floors to provide a transition to Ms. Abel's adjacent two-storey Victorian home.

The front lot line setback is 1 m, and provides a streetscape similar to the adjacent Victorian homes, so is in keeping with the existing condition. The Board finds that the variances for these setbacks meet the intent and purpose of the zoning by-law.

The Board finds that the variances requested for the reduction in front and side lot line setbacks maintain the general intent and purpose of the Official Plan and policies, particularly those that relate to built form for new development. The Board finds that the variances for the front and side lot line setbacks are minor and result in a desirable development of the land.

### **Indoor amenity space and soft landscaping variances**

As for the front and side lot line setback variances, those in opposition to this proposed development were less concerned with the variances for indoor amenity space and soft landscaping. The variance requested for indoor amenity space is for 80.8 m<sup>2</sup>, whereas 90 m<sup>2</sup> is required. This is a relatively minor amount and is offset by the extra outdoor amenity space that is provided. The proposed development also has a large amount of private amenity space (about 350 m<sup>2</sup>). The Board finds that in this instance, the general intent and purpose of the Official Plan and policies in regard to indoor amenity space are met, as is the intent and purpose of the zoning by-law. The variance request for a slight reduction in indoor amenity space is minor and is desirable and appropriate for the development of the land.

The Board is less concerned with the variances that request relief for soft landscaping space, since the evidence indicates there is ample landscaped space proposed for in the terraces, patios, and green roof features. The Board finds that the variances required for reduced soft landscaping meet the general intent and purpose of the Official Plan and policies in this regard. The Board finds that the general intent and purpose of

the zoning by-law are met by the variances for reductions in soft landscaping, and that these variances are minor and result in a desirable and appropriate development of the land.

### **Parking variances**

The in force by-law requires a minimum of 39 parking spaces to be provided for residents and 12 parking spaces for visitors. There was some discussion regarding the method of calculation for the number of visitor spots, suggesting that the appropriate number was 11. In any event, the request is for variances to permit 27 resident spaces and six visitor spaces. All parking (for residents and visitors) is proposed to be located within the proposed building, on one level underground.

From the evidence, there are two standards for determining the amount of parking required, the “downtown” standard, and the “rest of the city” standard. The in force by-law for this location requires that the standard applied is the “rest of the city” standard. However, as was described in the evidence put forward by Mr. Hall, the boundary that designates the “downtown” area from the “rest of the city” is located only 150 m to the east, on Bathurst Street.

As was made evident by the testimony of the parking experts, the location is well served by public transit, including the King streetcar and the Bathurst bus nearby, that provide transit to the downtown and the subway system.

There was considerable evidence and testimony provided by parking and traffic experts regarding the appropriate number of parking spots required by this development. A key concern is that residents and visitors to the site would park on the street and make it even more difficult for existing residents to find a parking spot near their home, causing adverse impact to the neighbours and community. Many of the nearby residents who oppose this development spoke at length about the great difficulties in finding street parking in the vicinity of their homes.

It is clear and agreed by all parties that the parking needs of a new development in this area would require that the necessary parking be fully accommodated at the site. There was testimony that the City parking permit system could not provide any additional street parking permits. Mr. Hall indicated in his evidence that there were some parking spaces on arterial streets that were within reasonable walking distance of the site; however, Mr. Hall testified that no street parking was relied upon in his parking analysis. City transportation staff reviewed Mr. Hall's reports and analysis and did not express concern.

The City provided Exhibit 11, a previous Board decision for a condominium development at King and Shaw Streets, about 1 km farther away to the west. In that case, the applicant was requesting that the "downtown" standard be applied for the evaluation of the parking requirement. The Board in that case did not support the analysis that the "downtown" standard could be applied. The proposed development at 90 Niagara Street is located at a distance of 150 m from the boundary between the "downtown" area; whereas the site noted in the previous Board decision was at King and Shaw Streets, which is considerably farther to the west, about 1 km from the "downtown" area designation. For this reason, the Board finds that it is not directly comparable to the situation at 90 Niagara Street.

The parking requirements for this building, though not in the "downtown" area, would realistically be less than for an area that is not so well served by public transit, and is so close to the "downtown" area. Indeed, as testified by Mr. Hall, the site enjoys the same level of public transit as sites immediately to the east (at Bathurst Street and beyond where the standard is less). Mr. Hall testified that due to the site's proximity to the "downtown" area, there should be some accommodation for a parking rate that is transitional between the rate required in the "downtown" area and the rate required in the rest of the city.

In this case, the Board prefers the opinion of Mr. Hall as the proximity of the site to the "downtown" area, and the availability of public transit are indicative of a parking requirement that would be somewhat less than what would be required in areas that are not so well served by public transit. As testified by Mr. Hall, the proposed supply of 27

resident spaces and six visitor spaces would exceed the minimum “downtown” by-law requirement. It is Mr. Hall’s opinion that the variance is appropriate, as the site is located close to the “downtown” area. In addition, the “downtown” standards have been applied to areas near the site and to the west of the site in other development applications.

The Provincial Policy Statement through policies 1.1.3.3 to 1.1.3.7 promotes intensification in built-up areas and the efficient use of infrastructure and public service facilities (Exhibit 2, tab 2, p. 21). It is consistent with these policies that development within the areas well served by public transit should be intensified, and that the reliance on the car as a key mode of transportation is to be reduced in the urban core. This proposal meets that desire. On the basis of the testimony and evidence provided, the Board finds that the requested variances for reduced resident and visitor parking spots are in general conformity with the City of Toronto Official Plan and the zoning by-law, that the development is appropriate, and that the relief sought is minor in the circumstances.

### **Summary**

The Applicant has developed a proposal that takes into consideration the specific features of the site location and surrounding area. The proposal was prepared by a recognized urban design professional. While the proposal exceeds the by-law’s standards in a number of respects, it does represent a reduced height and massing from the buildings at the edge of the neighbourhood and therefore will be compatible with the structure of the neighbourhood interior. The Board finds that requested variances, individually and cumulatively, result in a structure and built form that meets the intent and purpose of the Official Plan and the zoning by-law, due in large part to the design features that mitigate the impact of the increase in density and mass.

The Board finds that this proposed development is a desirable use of the land. The City planner, Mr. Markowiak, has testified that he and the City’s urban designer worked with the Applicant to develop a plan with which the City staff was satisfied. It is important to note that Mr. Markowiak testified that city planning, urban design, and transportation

staffs were not opposed to the development. In the “without prejudice” discussions between the Applicant, the city planner, and the urban designer, there were requests for modifications made by the City, as shown in Exhibit 10. A key modification was the 44 degree angular plane at the back of the building that was significant in mitigating the impact of the building to the rear and side neighbours.

The Board finds that the Applicant has had the benefit of having the City staff collaborate in the design of the building, and this has resulted in a desirable development for this site. The Board agrees with Mr. Gianone’s opinion that this development complements the existing built form in the neighbourhood, and that the public realm is improved with this proposal.

The Board finds that the requested variances, individually and cumulatively, are minor, both in impact and magnitude. The Board finds that requested variances meet the criteria of subsection 45(1) of the *Planning Act* and should therefore be authorized.

The residents in opposition have testified that they wish for development of the site to consist of townhouses; however, these residents should be aware that the zoning permits residential and mixed use buildings, with as of right construction to four storeys, and therefore it is quite likely that the ultimate development will be as a multi-unit residential form, which is permitted as of right.

### **Consistency with Provincial Policies Statement (PPS) and Growth Plan (GP)**

The PPS and GP direct that growth and intensification occur within the urban core. The intensification in areas that are close to transit and the city services is an objective of the PPS, and this development is consistent with that Plan. The proposal is consistent with the PPS and it generally conforms with the GP.

**Order**

The Board Orders that the appeal is allowed and the variances to Zoning By-law 438-86 are authorized subject to the following conditions:

**Condition**

That the construction be substantially in accordance with the site plans submitted to the Board (and those stamped by City "Received February 10, 2011"). The interior layout of units is not part of this condition.

"H. Jackson"

H. JACKSON  
MEMBER

"C. Conti"

C. CONTI  
MEMBER