

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 12, 2016

CASE NO(S): PL140715

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Antony Ajayi
Subject:	Request to amend the Official Plan – Refusal of request by the Town of Orangeville
Existing Designation:	Low Density Residential
Proposed Designation:	Medium Density Residential
Purpose:	To permit a converted dwelling containing four dwelling units
Property Address/Description:	45 Church Street
Municipality:	Town of Orangeville
Approval Authority File No.:	OPZ 1/12
OMB Case No.:	PL140715
OMB File No.:	PL140715
OMB Case Name:	Ajayi v. Orangeville (Town)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Antony Ajayi
Subject:	Application to amend Zoning By-law No. 22-90, as amended – Refusal of application by the Town of Orangeville
Existing Zoning:	Residential Second Density (R2)
Proposed Zoning:	Multiple Residential Medium Density (RM1)
Purpose:	To permit a converted dwelling containing four dwelling units
Property Address/Description:	45 Church Street
Municipality:	Town of Orangeville
Municipal File No.:	OPZ 1/12
OMB Case No.:	PL140715
OMB File No.:	PL140716

Heard: August 27, 28, 2015 in Orangeville, Ontario

APPEARANCES:

Parties

Counsel

Antony Ajayi

C. Tonks

Town of Orangeville

E. Lidakis

DECISION DELIVERED BY H. JACKSON AND INTERIM ORDER OF THE BOARD

BACKGROUND

[1] Antony Ajayi (the “Applicant”) applied for an official plan amendment and zoning by-law amendment for his property at 45 Church Street (the “subject property”) to allow for a converted dwelling containing four dwelling units. The current official plan designation and zoning permits two unit dwellings, however a minor variance approved in 1992 permitted a third dwelling unit, and at some point a fourth unit was introduced. As the current official plan and zoning by-law does not allow for a converted dwelling containing four units, the Applicant is seeking the amendments to allow the current use to continue.

[2] The official plan amendment is to redesignate the land from “Low Density Residential” to “Medium Density Residential”. The zoning by-law amendment is to amend the Zoning By-law 22-90 and rezone the lands from “Residential Second Density (R2)” Zone to “Multiple Residential Medium Density (RM1)” Zone. Special provisions are requested to permit two driveways, to allow for obstructed parking, and to reduce the minimum required interior side and rear yard setbacks.

[3] The Town of Orangeville (the “Town”) Council denied the application despite the support from town planning staff. The Applicant has appealed the decision of Council.

[4] At the previous prehearing conference for this matter, held on February 18, 2015,

William Theeuwen, Jason Bourne, Shelagh Roberts, and Pam Beatson were granted participant status. At the hearing Ms. Roberts provided evidence in opposition to the proposal.

[5] Ted Davidson was retained by the Applicant to provide expert land use planning opinion evidence. Kevin Bechard, a Senior Associate Planner with Weston Consulting, provided land use planning opinion evidence for the Town in support of Council's decision to deny the application.

Subject Property

[6] The subject property is about 20.14 metres ("m") wide, has a depth of about 34.29 m, and an area of 690 square metres ("m²"). On the lot is a two storey brick building constructed in the mid to late 1950s. It appears to have been constructed as a duplex or triplex, according to Mr. Davidson. There are three units in the house, a two bedroom unit on the main floor, a three bedroom unit on the second floor (or vice versa) and a two bedroom unit in the basement of about 67 m². Both the main and second floor units are about 86 m² gross floor area ("GFA"). There is a one-storey concrete block building at the side and rear of the house that is connected to the house by a carport. This building is used as a one bedroom dwelling unit and is about 64 m² GFA. It was previously used as a photo studio. For the purposes of this decision it will be referred to as the "studio apartment".

[7] Access to the main floor and basement apartment is from a side entrance beneath the carport. Access to the upper apartment is from the front door and the studio apartment is accessed directly at grade through the carport.

[8] There are two driveways. The northeast driveway is a double drive that leads to the carport and thence the studio apartment. There is room for four cars parked on the northeast driveway and carport, and two cars in single file on the southwest gravel driveway. The evidence shows that two driveways have existed since at least 2004 on the basis of a historical Google air photograph (Exhibit 6).

[9] Mr. Davidson described this property as a well maintained building providing rental accommodation near the commercial core with tenants who are quiet and responsible. Recent inspections by fire and hydro indicate no outstanding issues.

Surrounding Area

[10] The subject property is located on the south side of Church Street, between Bythia Street and William Street, about a ten minute walk from the downtown area on Broadway Avenue. There is a bus stop at the corner of Bythia Street and Church Street, and GO Service is about three to four blocks away.

[11] The neighbourhood consists of a mix of old and new homes, and a variety of housing forms. Numerous photographs of the subject property and the interior of the units, as well as the surrounding neighbourhood, are provided in Exhibit 2. The area is a mix of row houses, semi-detached homes that may have basement apartments, older houses that may be converted, apartment buildings, and single family homes. Other buildings in the area and on Church Street provide rental housing as well.

[12] The adjacent home to the west at 49 Church Street has a very similar appearance to the subject property, with the exception that it has a slightly smaller detached garage in the same relative location as the studio apartment on the subject property. There is no carport at 49 Church Street. The evidence at the hearing was that there are three mailboxes at this home and that it is a converted dwelling.

[13] The adjacent home to the east at 41 Church Street has a widened driveway for additional parking, adjacent to the northeast driveway of the subject property. On the opposite side of the street at 54A and 54B Church Street there are two semi-detached homes with a driveway on either side. At 52 Church Street is an older home with two driveways, one on the north and one on the south side. Mr. Bechard described 56 Church Street as a building with multiple residences, and it is zoned R3. At 44 Church Street is a four unit row house oriented lengthwise with the appearance of a motel, and it is zoned RM1. At 16 William Street is a two storey apartment building, and another at

56 Bythia Street. At 43 Bythia Street is a six storey apartment complex, and at 45 Bythia Street is a single storey row house of about three units, zoned RM1.

Residents' Concerns

[14] At the statutory public meeting of May 12, 2014, numerous concerns of the local residents were provided either by deputation or by letter. These concerns relate to the jockeying of vehicles due to obstructed parking, the presence of two driveways, the over intensification resulting from four units on the one property, the precedence that approval may set, particularly for the adjacent property at 49 Church Street, and the after-the-fact approval of an illegal condition. Similar concerns were raised at the Council meeting of June 23, 2014, where the decision of Council was made to refuse the application.

[15] The tenants of the subject property also made submissions at the public meeting and indicated that they were pleased and grateful for the affordable rental accommodation that they have, and indicated that up until this point there had been no complaints from neighbours regarding the tenancy of the property, or the parking situation. The tenants indicated that the property is well maintained, and should someone be forced out, that would lead to hardship.

[16] At this hearing Ms. Roberts testified that she and many of the neighbours are opposed to the application, due to the planning process undertaken and public safety. She said that this situation was “a secret” and only came to light when there was a sewer backup on the property. She is concerned that to legalize the existing condition will set a precedent throughout the Town. She expressed a concern about “papering over a lapse in the Town’s process – it is illegal and approving it allows additional units into play”.

[17] She stated that Church Street is used as an east-west bypass and is concerned that if there is more traffic on the street it could be a hazard to school children.

[18] Ms. Roberts said the area has already transitioned into a mix of housing types and a change of zoning could be applied to heritage sections of the Town that have large lots and old homes. She is concerned that this approval could lead to the potential conversion of numerous homes.

[19] The tenant of the studio apartment, Susan Little, provided evidence at the hearing for the Applicant. She indicated that she is over 60 years old, and has lived in the studio apartment for five and a half years and in the Town all her life. She recalled that in her teenage years, the studio apartment was a photographic studio. She indicated that she earns \$11 per hour and is able to afford the rent of this apartment. She said that when she moved in, there were two driveways at the property.

Prior Minor Variance Application

[20] Mr. Bechard testified in regards to the 1992 minor variance application and decision by the Committee of Adjustment that permitted three residential units at the property. Under the 'Purpose' of the application it states: "Minor variance to extend a legal non-conforming duplex to permit an additional residential unit". The 'Conditions' for the approval are:

1. Should any upgrading or replacement of services be required, they will be the responsibility of the owner.
2. All commercial usage of the property (including existing signage) shall cease to exist within three (3) months of this approval.

[21] The 'Reasons for Decision' state: "The Committee felt that the extension of the legal non-conforming use to permit an additional dwelling unit within an existing duplex is a "more compatible use" given the residential character of the neighbourhood then was the photo studio."

[22] Mr. Bechard's position is that the reading of this decision at face value is that the

variance does not apply to the studio. He said that if it were for habitation of the studio, then under the 'Purpose' of the application, relief for the prohibition of an accessory building should have been given, and relief for the rear and side yard setbacks of the studio apartment should also have been given. He believes that the relief provided by the minor variance approval was for the existing duplex.

[23] By contrast, the Town planning staff position is that the 1992 minor variance application applies to the accessory building and the application was to convert the photo studio into a residential dwelling. Mr. Davidson agrees with the Town staff position. His interpretation is that the statements in the decision are meant to indicate that the "photo studio" is more compatible as a dwelling unit. The Board agrees with the interpretation of Mr. Davidson that this commercial operation of a photographic studio ceased and subsequently the unit was converted to a dwelling unit.

[24] Additionally, there is confusion about when the fourth dwelling unit was established. Exhibit 7, a memo from the Town dated March 2, 2009, indicates that the fourth unit was in place prior to 2001.

Housing Study

[25] Mr. Davidson referenced the Orangeville Housing Needs Analysis Study, January 2010 Report (the "Housing Study") prepared by SHJE Consulting (Exhibit 1 Tab 5). This report was endorsed by Town Council and indicates that there is deterioration in the supply of rental units in Orangeville, due to the trend of conversions to condominium units. Mr. Davidson said the current proposal assists by providing for additional rental housing.

[26] However, Mr. Bechard states that the addition or reduction of one rental housing unit will not have any appreciable effect on the supply of rental accommodation in the Town, and the need for additional rental units will likely continue. He said Council's decision with respect to this application does not have a significant impact on the supply of rental housing.

Planning Merits – Appellant’s Position

[27] Mr. Davidson states that he concurs with the findings of the Town’s planning report that recommended approval of the application, as provided in Exhibit 1. He said that this proposal is consistent with the Provincial Policy Statement (“PPS”). It provides the addition of one unit to a building that already has three units, and it provides affordable rental housing in a location close to transit. Similarly, the proposal conforms to the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”), as it provides for intensification. He said that the Growth Plan encourages intensification in all the built up area, not just the areas targeted for intensification.

[28] With respect to the County of Dufferin (the “County”) official plan, he testified that this meets s. 1.1.5 Goals; by: b) directing population growth to settlement areas and making efficient use of existing and planned infrastructure; and k) encouraging the provision of a range of housing opportunities of varying densities and tenures, including the construction of affordable housing.

[29] Similarly, the proposal meets the County’s growth management objectives under s. 3.1 c), d) and e) as follows:

- c) Promote a settlement structure which directs the majority of urban development on full municipal services to the County’s three urban settlement areas which include the: Town of Orangeville, Town of Shelburne and Town of Grand Valley urban area, and to a lesser extent to the community settlement areas, which are to accommodate additional growth.
- d) Promote development patterns in settlement areas that efficiently use land, resources, infrastructure, and public service facilities, through compact urban forms, a mix of land uses and appropriate densities.
- e) Encourage opportunities for redevelopment, revitalization and

intensification in appropriate locations and of a scale and character of development that is compatible with the community.

[30] Mr. Davidson said this proposal provides for intensification in a building that has existed for many years and is compatible with the area.

[31] He pointed to the County policy under s. 3.4.2 that indicates that Orangeville is intended to provide a significant amount of new development in the County. This policy states that local official plans are to identify appropriate locations for intensification and provides a number of criteria to consider in the evaluation for applications for intensification. Mr. Davidson also referred to policies under s. 3.7.3 e) and f) that encourage the provision of housing for aging-in-place seniors, and a diverse range of housing to encourage age-friendly communities.

[32] Mr. Davidson's opinion is that the proposal conforms to the County official plan as it represents an appropriate level of intensification, it is compatible with the community, and provides a diverse range of housing near public services. In fact, the studio apartment is currently being rented to a low income senior.

[33] Mr. Davidson went through the Town's official plan to support the Applicant's position that the proposal conforms, as it provides rental accommodation to lower income households. He referenced s. B2.2 Housing, that states:

To provide an adequate supply of good quality living accommodations with a full range of sizes, types, densities, architectural forms, ownership, rental option, and prices in order to ensure that all members of the community are able to find suitable and affordable accommodation regardless of their age, household composition or income.

[34] The Town has policies under s. D2. Growth Management, to ensure that Orangeville is a "complete community" as defined by the province. This proposal meets those policies, under s. D9.2.4 a) and e) as the new growth is directed to the built up area and a mix of land use and housing types is provided.

[35] He stated that the proposal meets the goals and objectives under s. E Land Use Policies of the official plan. The Goals under s. E1.1 are:

To provide an adequate supply of good quality living accommodations with a full range of sizes, types, densities, architectural forms, ownership, rental options, and prices in order to ensure that all members of the community are able to find suitable and affordable accommodation regardless of their age, household composition or income.

[36] Mr. Davidson described the objectives that support that goal, in particular s. E1.2.4 “Council supports the provision of a broad range of housing types and forms suitable to both owners and renters of varying household size and income level”, and s. E1.2.5 “Council supports the intensification of previously developed areas where appropriate in order to maximize the use of the Town’s limited land and infrastructure resources.”

[37] Section E1.4.4 states that a proposal to redesignate lands to Medium Density Residential may be considered relative to the following general location criteria:

- a) Proximity to open space and public facilities;
- b) Proximity to commercial facilities;
- c) Convenient access to collector or arterial roads; and
- d) Inclusion of the lands in a designated intensification area.

[38] Mr. Davidson testified that Bythia Street is an arterial road. He also stated that the lands are not within an intensification area, however this does not mean that intensification cannot occur in all areas of the Town, and as directed by the Growth Plan.

[39] Section E1.5.1 provides that residential conversions shall be considered within older residential areas in proximity to the Downtown, subject to zoning provisions and compatibility. He testified that the proposal does not detrimentally affect the

surrounding area.

[40] Section E1.11 sets out policies and the criteria for “Intensification and Change”. Mr. Davidson states that the proposal meets these requirements, as what is being asked for is a legalization and conversion of an existing building. The conversion of the four unit dwelling is compatible with the adjacent area that is a mix of uses. There will be no change to the existing urban design or scale and no shadowing impacts that arise.

[41] Mr. Davidson testified that the proposal conforms to the Town’s official plan policies. It meets the affordability objectives and provides for greater choice in housing accommodation.

Planning Merits – Town’s Position

[42] Mr. Bechard stated that the PPS definition of “intensification” is what he used to guide his planning interpretation:

Intensification: means the development of a property, site or area at a higher density than currently exists through:

- a) redevelopment, including the reuse of brownfield sites;
- b) the development of vacant and/or underutilized lots within previously developed areas;
- c) infill development; and
- d) The expansion or conversion of existing buildings.

[43] He further goes on to reference s. 1.1.3.3 of the PPS:

Planning authorities shall identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

Intensification and redevelopment shall be directed in accordance with the policies of Section 2: Wise Use and Management of Resources and Section 3: Protecting Public Health and Safety.

[44] Section 1.1.3.4 states: “Appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety.”

[45] His opinion is that the Town has specific policies and schedules in the official plan to guide intensification and Zoning By-law 22-90 has prescribed standards to meet the intensification policies.

[46] In regards to the Growth Plan, Mr. Bechard referenced s. 2.2.2 Managing Growth and s. 2.2.3 General Intensification that outline the strategies and policies for this topic.

[47] In order to assess the proposal, Mr. Bechard looked to the Land Use Policies in s. E of the Town’s official plan. Section E1.2.5 states: “Council supports the intensification of previously developed areas where appropriate in order to maximize the use of the Town’s limited land and infrastructure resources.”

[48] Further, s. E1.11.2 states the criteria for the selection of intensification areas may include: a) Vacant and/or underutilized lots within previously developed areas; b) the potential on a property for infill development; or, c) the potential on a property for the expansion or conversion of existing buildings. Should the identification of new intensification areas be proposed, Council may evaluate the respective merits of each area in light of these or other site-specific criteria, as appropriate.

[49] His opinion is that these policies provide the strategic approach to define the areas for intensification. He then took the Board to Schedule B1 of the official plan that outlines the areas that have been identified by Council for intensification. He said these specific sites have been identified to the exclusion of others for intensification by the Town through official plan designation. In the vicinity of the subject property, the two locations identified for intensification are 27 Margaret Street, which is currently vacant; and 76 John Street, which currently is occupied by a greenhouse and parking area for a flower shop. He said that the subject property is not identified as an intensification area in the official plan. Mr. Bechard contends that intensification is limited to “appropriate”

locations, as directed by the PPS and provided for in the Town's official plan. He said the Town has specifically turned its mind to intensification areas, and has identified two in the neighbourhood.

[50] Mr. Bechard said the evidence provided by Official Plan Amendment 84 shows a clear and deliberate intention by the Town to lower the density in this area and to preserve this area from overdevelopment and overuse. The building is already intensified by the minor variance that allows three units, but a fourth unit is over-intensification.

[51] Mr. Bechard also noted that s. E1.11.4 states that when considering intensification developments, Council shall take into account a) compatibility with adjacent buildings and adjacent residential areas; b) shadowing and access to sunlight... c) urban design impacts and alternative design options, including scale and the relationship to adjacent street widths; and d) energy use and green building performance. In regards to compatibility, he looks to s. D7.2.4 that states "Infill development will respect and reinforce the general physical patterns and character of established neighbourhoods, with particular regard to: a) patterns of streets, blocks and lanes, parks and public building sites; b) general size and configuration of lots; c) heights, massing, scale and type of dwelling unit compatible with that permitted by the Zoning By-law for nearby residential properties; ...". He states that the scale and building type is bringing in change, because the garage alters the scale and results in a more intense scale. The spot redesignation of the property sets a precedent and encourages other properties to develop. He states that the prevailing building typology is not consistent with the types of buildings in the area as identified in his photographic survey in Exhibit 12.

Density and Planned Function

[52] The subject property is designated Residential in the Town official plan Schedule A and on Schedule C it is Low Density Residential with a maximum of 25 units per net residential hectare ("uph"). The density calculated for the proposal is 58 uph.

[53] Mr. Bechard testified that the requested Medium Density Residential designation that allows a maximum density of 99 uph is a significant departure from the existing Low Density Residential designation that permits 25 uph. He said the requested density is greater than two times what is permitted in the Low Density designation.

[54] Mr. Bechard said that s. E1.4.4 provides locational criteria for Medium Density Residential that include; proximity to open space and public facilities; proximity to commercial facilities; convenient access to collector or arterial roads; and inclusion of the lands in a designated intensification area. He said that the Town did not consider these locational criteria in its assessment of the Medium Density designation. He said that the distance to open space and public facilities is 165 m, and to John Street, an arterial road, is 148 m, however, the distance to downtown commercial area is 540 m; whereas he said 500 m is a more appropriate distance to be from downtown.

[55] Mr. Davidson stated that the Town has policies for specific areas under s. E.8. A special provision could be provided to allow the density at this site to be “at a density not to exceed 58 uph”. The property could be designated either medium density or low density with a site specific exception.

[56] Mr. Bechard said that the planned function for this area is for low density single detached and semi-detached homes as is provided for in the new Schedule C to the official plan. He testified that prior to OPA 84 adoption in February 2002, these lands were designated as Low Density Multiple in Schedule B. The new schedule that identifies these lands a Low Density Residential is based on Council’s consideration of these lands and reaffirming the low density of the area, and a deliberate and focussed strategy for the intensification of specific lands, in this case for 27 Margaret Street and 76 John Street. The proposed amendment that provides for a Medium Density Residential designation on a site specific basis causes problems with the planned function for the area, as Medium Density is not compatible with the low density character of the area and is not in keeping with the strategic approach of Council to identify specific sites for intensification.

[57] Mr. Bechard testified that the s. E.1.5.2 provides that “Second units will be permitted as-of-right in all detached and semi-detached dwellings, subject to the provisions of the Zoning By-law”. He says that this provincial directive as provided in the official plan provides an important method of providing intensification in a low density neighbourhood without changing the character of the area. He said Council would have considered this in their decision.

Use

[58] With respect to the zoning by-law, the current R2 provision does not allow converted houses. The application is seeking a Multiple Residential Medium Zone (RM1) zone, as recommended by the Planning Commissioner. The RM1 allows four units; however relief is also required for the interior and side yard setbacks, as the studio apartment encroaches into the required side yards.

[59] The RM1 uses permitted are either “converted dwelling house” or “multiple dwelling”. Mr. Bechard said the property has more than one freestanding building and no common entrance therefore it does not fit the definition of “dwelling, multiple”. He said the garage is a free standing structure and therefore does not comply with the definition of a free standing structure containing four units and cannot be called a converted house.

[60] By contrast, Mr. Davidson said a building is the sum of its parts, in this case, a carport, a “studio” and a house. When buildings become attached through a breezeway or a screened in porch, it becomes one building. The operative definition is provided in the zoning by-law is: “Building means any structure or part of a structure other than a fence, sign, trailer, mobile home or vehicle,” and, “Structure” is defined as “anything constructed or erected, the use of which requires location on the ground, or attached to something having location on the ground.”

[61] The amendment requested is to convert a converted dwelling house. Mr. Davidson said the setback requirements should have been considered when the original

building permit would have been issued for the photo studio. He noted that the studio was previously a commercial operation; it was not accessory to the main use.

Regard for the Decision of Council

[62] Mr. Davidson testified that he reviewed the video of the Council meeting and the minutes of the meeting and considered the concerns of the public in his planning analysis. He testified that the planning concerns that were brought forward were dealt with in the planning report. He testified that it seemed that no one wanted to condone the ongoing illegal use of the property; however, there is no planning rationale for the denial of the application.

[63] The Town submits that Council did consider the staff report and carefully weighed it along with the residents' concerns in their determination that the application should be refused, and that deference should be given to Council's decision.

Analysis and Findings

[64] The Board has carefully reviewed the evidence and submissions provided at the hearing. The residents are very concerned that the single family character of the neighbourhood is being eroded by an increase in intensification in the neighbourhood, and see approval of this request as setting a precedent for further conversions. They are concerned that approval somehow condones the prior illegal use. There is also the question of whether the converted dwelling with four units is compatible with the surrounding neighbourhood.

[65] The Board does not consider that approval of four units at this location will set a precedent for additional conversions. The Board is satisfied that this is a unique situation on the basis that the studio apartment was a commercial unit that became a dwelling unit in 1992 by way of minor variance permission. The Board accepts Mr. Davidson's opinion that this building is the sum of its parts, and can be considered one building that comprises the studio apartment, the home and the carport that connects

the two. The Board is not persuaded that this is not a “converted dwelling”.

[66] The review of the evidence indicates that though the neighbourhood is comprised predominately of single family homes, either detached or semi-detached, there are a number of other building types that speak to the mix of the neighbourhood. This is an older, mixed neighbourhood, with an eclectic mix of older homes and newer homes, of different sizes. There are also some higher density uses. There is no indication that these higher density uses destabilize the neighbourhood.

[67] The Board is satisfied that this existing converted building that contains four dwelling units is compatible with the neighbourhood. The land use is not inconsistent with the surrounding area that consists of semi-detached homes with two driveways, or single detached homes with two driveways. There are also other nearby properties with RM1 designation. This converted dwelling fits into the neighbourhood with no undue adverse impact. The building accommodates the three units, one on the main, the second and the basement, and the fourth unit is the studio apartment. There was ample evidence that the studio apartment was originally a commercial photographic studio, but has been a dwelling unit since 1992. Though it is an unusual situation to have a space such as this be a dwelling unit there has been no historical concern that this is not compatible. The Board finds that the provision of an additional rental unit that is affordable and accessible at ground level assists in alleviating the identified shortage of rental units. There have been no complaints and no incidents over the last many years.

[68] The Board finds it is appropriate to provide relief for the rear and side yard setbacks as requested. It appears that the variance application of 1992 did not appropriately request or provide this relief at the time, whereas it should have.

[69] The concerns that the residents have are not founded in sound planning issues. This will not set a precedent, as it is an unusual condition to have the studio apartment, as described. The approval of the proposal legalizes the existing condition, but there are no implications regarding the prior illegal condition. The approval of the proposal

does not condone the previous illegality.

[70] The Board is not persuaded that the identification of “intensification areas” such as 27 Margaret Street and 76 John Street means that intensification on a site specific basis cannot occur at other locations in the Town. To suggest intensification can only occur at the identified areas is not supportive of provincial policy or of the official plan policies that address change and intensification. The Board is not of the view that intensification should not occur at 45 Church Street because there are two other areas in the neighbourhood that have been identified for intensification. There was no evidence that there are any plans in the near future for either of these locations for new development. It simply does not follow that intensification can only occur at identified sites, with the exception of the second units that are permitted as of right due to provincial directive.

[71] The Board prefers the evidence of Mr. Davidson and finds that the proposal for a converted house with four dwelling units at this location is consistent with the PPS and conforms to the Growth Plan. This proposal provides for intensification, as directed by the PPS and the Growth Plan, to a location close to transit in an efficient manner. The proposal meets the goals in the County official plan as it promotes development in settlement areas, and provides a mix of land use in an appropriate density in an efficient manner. The proposal provides good quality living accommodation and a diverse mix of housing and land use types. It meets the land use objectives and policies in the Town’s official plan. The Board is satisfied that the policies and goals of the official plan are met by this proposal.

[72] The Board has had regard to the decision of Council when coming to these findings.

DECISION AND INTERIM ORDER

[73] The appeal is allowed. The Board orders that the Applicant and the Town come to an agreement on the language of an official plan amendment and zoning by-law

amendment that will permit the residential use of a four unit converted dwelling at 45 Church Street.

[74] The Board's final order will issue upon confirmation that such agreement has been reached, and being provided with such amendments.

[75] The Board may be spoken to.

"H. Jackson"

H. JACKSON
MEMBER

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Ontario Municipal Board

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