

November 24, 2016

Via email: mayor@guelph.ca

His Worship Mayor Cam Guthrie
and Members of Council
City of Guelph
Guelph City Hall
1 Carden Street
Guelph, Ontario
N1H 3A1

Your Worship and Members of Council

Re: 75 Dublin Street North
Re: Downtown Zoning Bylaw Amendment and Applications OP1603 and ZC1612
Re: City of Guelph Council Meeting November 28, 2016

Please be advised that we have been retained by the Upper Grand District School Board with respect to the above referenced development proposal and proposed planning instruments.

Our client owns and operates the Central Public School, located at 97 Dublin Street North immediately to the north of the above referenced property. Central Public School is one of the oldest school sites in the City of Guelph and a public school has operated on the same site for approximately 140 years. The current school building was constructed in 1968 to replace the original structure. Central PS is the only operating school remaining in Guelph's downtown. It is the Board's view that Central PS will be on Dublin Street North for many generations to come.

The Upper Grand District School Board's mission and vision includes fostering achievement and well-being and creating positive and inclusive learning environments. The Board is concerned with the access of its students to natural sunlight on school playgrounds throughout the school year and the safety and privacy of the Central PS school community. It is this lens which informs the Board's position with respect to the proposal for the development of 75 Dublin Street North.

Our client is of the opinion that both the proposed 5 storey development and the four storey alternative recommended by City Staff constitute an overbuilding of the site, with unacceptable massing and overlook, inadequate setbacks and landscaping and unacceptable shadow impacts.

Bob Dragicevic a well-regarded land use planner with significant experience advising school boards was retained to provide his comments concerning this development proposal. A copy

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of Mr. Dragicevic's comments was forwarded to City Planning Staff November 8 and is attached for Council's information.

Notwithstanding the changes to the development proposal by the owner of 75 Dublin Street North and staff's recommendations as described in Report Number 16-85 "Decision Report, City-initiated Official Plan Amendment (OP1603), Proposed revision to the Downtown Zoning By-law Amendment (ZC1612) as it pertains to 75 Dublin Street North" our client still has serious concerns with the development proposed for this site and cannot support the City-initiated amendments.

The location of the main entrance of the proposed building on Dublin and its close proximity to the Dublin Street parking layby will create conflicts between apartment and school users, and raises safety concerns that the Board does not feel have been adequately addressed. The two guest parking spaces located in or adjacent the underground parking garage, which has its driveway off of Cork Street, are questionably functional, inconveniently located to the main entrance, and will not be an attractive parking option for guests of this building.

Amendments to the Proposed Downtown Zoning Bylaw or a Site Specific Bylaw Amendment

The Board agrees with City staff that site specific zoning is required to address this property's unique characteristics and its relationship to adjacent land uses.

City staff places considerable reliance on the "as of right" Institutional zoning for this property in assessing the development proposal and making recommendations for amendments to the proposed Downtown Zoning Bylaw.

We are perplexed how an "as of right condition" analysis has applicability when there is before Council proposed changes in use in the Official Plan, maximum height limit in the Official Plan and in the site regulations.

It is our position that the current Institutional zoning is not in conformity with the recently adopted Downtown Secondary Plan and that although the performance standards for the Institutional zoning might assist in informing a land use planning analysis for this site, site specific zoning must be informed first by, and be in conformity with, the approved official plan.

The Official Plan for this site designates the property as Mixed Use 2 area, which permits low-rise buildings a minimum of 2 to a maximum 4 stories in height that are residential in character. Individual circumstances of each application need to be addressed to determine the appropriate height of a building in order to demonstrate compatibility as set out in the City's Official Plan.

The Official Plan designation for this property does not guarantee a 4 storey building within this property's land use designation.

Even under the shadow generated by City Staff's 4 storey proposal, with the recommended setbacks and stepbacks, the Central PS main playground will be mostly in shadow during the morning hours in the late fall/winter and there will be a significant increase in shadow cast on the Full Day Kindergarten play yard at the front of the school during those months as well.

The shadows cast on the Central PS playgrounds by City Staff's 4 storey proposal will be considerably greater than that generated by a 2 storey building on the site and it is our opinion that the proponent or Staff should be required to demonstrate, through additional shadow analysis, the impact of that alternative in order to provide Council the complete picture, before it makes final decisions as to site specific zoning amendments for this property.

The need to examine the lower height range as permitted by the Official Plan is also suggested by the significant grade difference between the school playground and the property which increases the impact of the height of any building on this site. Effectively a 2 storey building on this property, as viewed from the School playground or from the south on Cork Street will be experienced as a nearly 4 – 5 storey building. A 4 storey building will be experienced as a 6 – 7 storey building from the same vantage points. Contrary to the Official Plan, the 4 storey proposal does not respond appropriately to the conditions of the site and surroundings.

We would request that site specific zoning by-law amendments adopted by Council for this property to the proposed Downtown Zoning Bylaw should include the following matters:

1. An absolute height limit for this property, including mechanical penthouses and telecommunication facilities and antennae, based on geodetic elevation datum, needs to be enshrined.
2. A maximum Floor Space Index (FSI).
3. Increased minimum front yard, in keeping with the average setback of buildings along the same block face of the east side of Dublin Street North, increased side yard setbacks and the 10 metre minimum rear yard setback required in the Downtown Zoning Bylaw.
4. Prohibition of balconies or main room windows on the northerly face of the building, overlooking the school site.

5. The location of the main entrance of any new building on the property should be located on Cork Street. Issues such as main building entrance location and other site specific matters are often addressed in zoning bylaws. The Board has no rights of appeal from a site plan decision and this issue is of sufficient importance to the public interest that it should be addressed now in the site specific zoning.

Further, consideration needs to be given to expanding the 45 degree plane required for new Downtown Zones abutting R1, R2 or R3 zones to include sensitive Institutional uses like the Central Public School property and its associated playfields, play areas and student gathering areas.

Please acknowledge receipt of this letter in writing.

Please provide the author with notice of the passing of any site specific zoning bylaw amendment affecting this property, the Downtown Zoning Bylaw or any part of it, notice of passing of any zoning bylaw amendment pursuant to application ZC1612 and notice of adoption of any official plan amendment application pursuant to application OP1603.

Yours very truly,



A. Milliken Heisey, Q.C.
AMH/cmb

Attachment

cc: Martha Rogers, Director of Education, Upper Grand District School Board
Mark Bailey, Chair, Upper Grand District School Board
Linda Busuttil, Trustee, Upper Grand District School Board
Susan Moziar, Trustee, Upper Grand District School Board
Glen Regier, Superintendent of Finance, Upper Grand District School Board
Jennifer Passy, Manager of Planning, Upper Grand District School Board
Clerk of the City of Guelph (clerk@guelph.ca)
Councillor Phil Allt Ward 3
Councillor June Hofland Ward 3

7 November 2016

Papazian | Heisey | Myers, Barristers & Solicitors
Standard Life Centre, Suite 510,
121 King St. W., P.O. Box 105
Toronto, ON M5H 3T9

Attention: Mr. Alan M. Milliken Heisey Q.C.

Dear Mr. Heisey,

**RE: 75 Dublin Street North
Development Application
Central Public School
City of Guelph**

WND File No. 16.665

As requested, we have reviewed various files and reports prepared by the consultants for the residential apartment building proposed for the lands located at 75 Dublin Street North, which is adjacent to the Central Public School located at 97 Dublin Street North, at the southwest corner of Dublin Street North and Cork Street, in the downtown area of the City of Guelph ("the subject site").

We have visited the subject site and attended at a meeting with the proponent and their planning and architectural advisors at the Upper Grand District School Board offices on October 21, 2016. At that time we were advised that changes would be made to the plans submitted to the City. Amended plans were to be filed with the City on October 24, 2016.

The Central Public School has been in operation at this location for decades. A school has been located on the site since 1876.

It is the only public elementary school in the Downtown area of the City and we have been advised that this school is expected to remain as an operating school in the long term. Full day kindergarten (FDK) programming is provided at the school, and the associated play yard is located in the western portion of the school site. The area between the school building and the subject site has been improved as a Peace Garden, used by the school for quiet times and passive activity.

The Central Public School has on its rooftop an array of solar energy panels, which are operated under a 20 year contract, and provides for some financial return to the School Board. The School Board's policies

on sustainability make the continued availability of uninterrupted sunlight to these panels an important consideration for our client.

The Central Public School enjoys a pick up and drop off location in the form of a lay by on Dublin Street North, towards the southern end of the subject site and extending north along a portion of the Dublin Street North frontage of 75 Dublin Street North. A pedestrian cross walk supervised by an Adult School Crossing Guard is located on Dublin Street North at Cambridge Street.

The Proposed Development

The development application filed for 75 Dublin Street North (“the property”) involves a 37-unit, 5-storey apartment building, with an underground parking garage accessed from Cork Street.

The building will be developed as a condominium with 17 market units and 20 units of affordable rental housing to be operated under contract with Rykur Holdings Inc. for a guaranteed period of twenty to twenty five years, after which the units could be available as market units.

The market units will consist of one and two bedroom condominium apartment units, and the affordable units will be primarily one bedroom rental apartments. The market units will be located on floors three to five, with the affordable units on the first and second floors.

The primary pedestrian entrance to the building is to be located on the Dublin Street frontage, with a secondary access/exit on Cork Street. Balconies will be provided on the west and east faces of the building and the north face of the apartment building (the latter occurring as a result of the amended plans).

All vehicular access will occur from the Cork Street frontage leading to the underground parking garage.

A total of 37 parking spaces will be provided. The parking will be provided in a mechanical parking stacker, and in standard underground parking spaces. No surface parking is proposed to be provided on the site. The parking supply will allow for one (1) space per market unit, and 0.85 spaces per affordable unit. Two (2) visitor parking spaces will be provided in the underground parking garage near the entry to the parking garage on Cork Street.

The parking provided by the applicant in the revised application is consistent with recent parking standards for condominium buildings in the Downtown area of the City.

Development Approvals Required

The development proposal requires an amendment to the City of Guelph Official Plan to allow for a 5-storey building, whereas city policy in the Downtown Secondary Plan would limit the height of the building to two to four storeys. The height limits in the Official Plan are intended to protect for views of the cultural heritage landscape features of Catholic Hill, and specifically the Basilica of Our Lady, which is a federally designated heritage site.

The proposed use of the property is otherwise consistent with the City’s Official Plan.

The development proposal also seeks to amend the City of Guelph Zoning Bylaw to allow for the residential use of the property, an increase in the height allowance for the building, and to provide for site specific regulations, which would be expected to be tailored to the building placement on the site, including allowable gross floor area as well as parking. A notable change to the bylaw includes a reduction in the east portion of the property, which is technically a rear yard of the property according to the City's zoning bylaw. The development proposal seeks a reduction in the required rear yard from 10 metres to 3 metres. It should be noted that the current allowance permits a 4-storey building and the rear yard requirement applies only to a non-residential building on an as-of-right basis.

An application for site plan approval and a draft plan of condominium would also be required and have not been submitted to the City at this time.

The property was formerly developed with tennis courts and there is little in the way of trees or significant vegetation. The property is located in an area with considerable change in grade, necessitating the use of retaining wall on the east side of the property adjacent to a commercial property and along the northern property line shared with Central Public School. The elevation change along the subject site has been estimated to be 4.5 to 5m in height (from the base of the school building to the top of the property formerly occupied by the tennis courts). This elevation difference is the equivalent of one and half to two storeys in height of a typical residential apartment development.

Issues

In our review of the proposed amendment, we have identified the following matters which may be of concern or issue:

Official Plan Conformity

As indicated above the proposed development requires an amendment to the Official Plan in respect to height of the building. This policy was developed largely in response to the federally designated heritage site of the church property to the west and its prominence on the skyline of the downtown. This policy was also developed for the entire downtown area and requires consideration of adjacent buildings (likely due to the extent of existing development within the Downtown and the expectation for infill type development). In the context of the proposed development for the property and its relationship to the school site the change in elevation between the property and the adjacent school building would require careful consideration to the impact of the proposed massing and placement on the school building and the areas around the school itself.

From our review of the proposed development, there is an issue with Official Plan policy which speaks to general building heights of two to four storeys. The elevation change alone account for a one and half storey differential in height, which would effectively establish the height of the proposed building as an equivalent of approximately 7-storeys in height (excluding the mechanical penthouse) to the facing condition with the Central Public School.

The proposed development also requires substantial reduction in the rear yard allowance from 10m to 3m. This reduction also introduces a substantial increase in the building massing which in turns affects the shadow cast onto the school site, particularly the Peace Garden which will be in shade much of the day as a result of the proposed building.

As the development requires an Official Plan Amendment, the onus should be on the proponent to provide an analysis of the additional height sought to allow an evaluation on the basis of the overall impact on the subject site.

Impact of Height on the School Site

Particularly to the FDK play area on the Dublin Street North frontage, to the Peace Garden along the south limit of the school site, and the hard surface play areas along to the east of the school building, the height and massing of the proposed residential building will create:

Loss of sunlight to the play areas in the typical operating months of operation of the school

In regards to the shadow impact of the proposed development, as there are no City of Guelph terms of reference or policies available to determine whether the potential shadows created by the proposed building will be provided at an acceptable level on the subject site, we have taken a practical approach in our review of the shadow studies prepared by the applicant. Typically, loss of sunlight is addressed in the context of the March, September and June time periods (taking into account Daylight Saving Time) and, occasionally, winter conditions are considered for public spaces.

In the context of the development application for the property, the applicant has provided sun shadow studies to demonstrate the impact of the proposed building to the subject site. At this time, we can advise that the shadow of the proposed building in the morning and early afternoon hours extend over the FDK play area, the Peace Garden, and into the southern extent of the easterly play area of the school (created by the proposed increased building height and width), beyond the shadow created by a building built as-of-right under the current zoning by-law. This condition is most pronounced in the winter months rendering those areas without sunlight for the bulk of the school day.

As outlined in our memorandum dated October 17, 2016, a number of concerns pertaining to the shadow studies were identified and recommendations were provided to assist in our review of the proposed residential development.

Loss of sunlight to the roof mounted solar panels

The solar panels will be subject to shadow such that there could be a loss of power generation capacity in the morning hours and this would have a financial impact to the school board. This is a matter which could be eliminated by a reduction in the building height or the relocation of the panels to the north. If the latter option is pursued this should be accomplished by a binding agreement prior to any amendment to the zoning bylaw.

Overlook to school's play areas from proposed main residential rooms windows, balconies and terrace

The orientation of the proposed main residential window, balconies and terraces could create an overlook condition to the kindergarten play area at the front of the school building, to the Peace Garden, and the rear yard school playground to the north. This is a matter of balancing the benefit of "eyes" on the publicly accessible area of the Peace Garden and the potential disbenefit or loss of privacy and overlook into these areas of the school site. The revised plans now present terraces on the northern facing levels

of the proposed building at the fourth and fifth floors. The terrace condition is now proposed to result in a 3m deep condition and this will be usable area for future residents. To mitigate concerns with direct overlook, features such as opaque/frosted panels, and/or planters/balcony guards can be required to prevent people on the terrace from being immediately at the edge of the terrace creating a condition of a longer view vs an immediate overlook to the Peace Garden and play areas.

Impact of Building Massing to Heritage Property Considerations

Given the importance of the heritage considerations to Church Hill, we note that the heritage impact study for the proposal was not submitted to the City or made available to the School Board until October 21, 2016. With the modifications to the proposal submitted on October 24th, this report will need to be updated and reviewed by the City. We have not provided any commentary on this report and have had insufficient time to do so but would anticipate this to be a significant document in the assessment of the overall proposal by the City.

Impact of Location of Main Entrance to the Building

The transportation report filed on October 14, 2016 for the subject site states:

“There is existing on-street parking spaces along the Dublin Street North frontage of the subject property. These parking spaces function as a Kiss N’ Ride zone for the Central Public School with a time limit of 5 minutes between 08:00 and 16:30 from Monday to Friday. Outside these hours, on-street parking is permitted at all times. These spaces and the other on-street parking areas along the adjacent roadways will serve as visitor parking for the subject site. Visitor parking is used predominately in the evenings and on weekends and is not expected to conflict with typical school operating hours.”

In our view, the location of the main entrance to the proposed apartment building on Dublin Street North will create a potential conflict with the day-to-day operations of the school which has the exclusive use of the existing lay by on the street.

The proposed building makes no provision for a lay by on either Dublin Street North or Cork Street West for pick-up and drop-off of residents by others, including cabs and handicapped accessible vehicles, and general deliveries. This conflict would be unavoidable given the extent of the hours the lay by would be used by the school and the normal day-to-day needs of residents of the apartment building particularly a building oriented to seniors. The location of the underground visitor parking spaces is not likely to be convenient for most deliveries or pick-up of residents, and is not designed to accommodate larger handicapped accessible type vehicles which may be needed by residents.

Parking

Given the proposed increase in the parking supply, this should not be a matter of issue. As discussed above, the more significant issue is the location of the parking and the lack of a proper pick up and drop off for the proposed building in order to avoid the conflicts anticipated in the lay by area on Dublin Street North as programmed and limited to allow continued and effective use by the Central Public School.

Inadequate Setbacks

The proposed setbacks of 3 metres from the front , northerly and rear side yard setbacks are inadequate and create an incompatible relationship with the adjacent school.

Some guidance as to more appropriate minimum building setback distances for this development can be obtained by looking at the setbacks for development currently permitted for development on this site under the existing Institutional zoning.

Under the existing I.1 zoning a minimum front yard and side yard setback of 6 metres are required. The front yard and side yard standard from the I.1 zoning if applied to the proposed development would reduce the overlook and loss of indirect light to the Kindergarten Play area at the southwest corner of the School and the Peace Garden.

The I.1 zoning requires a minimum rear yard setback of 7.5 metres and the proposed D.2 zoning under the Downtown Zoning Bylaw proposes to require 10 metres. Given the impact of the reduced setback proposed on shadow on the asphalt playground during the morning months in the winter maintenance of the 10 metre rear yard setback from the Downtown Zoning Bylaw would be more appropriate.

Conclusion

In our view, the proposed development should be required to address matters of fencing, landscape and lighting along the common property limit with the subject site. These details are typically advanced at a site plan approval stage and the Board technically would not have a right to review or materially affect those matters.

In our view, the application should be amended as follows to address the identified impacts to the school property:

- Relocate the main entrance to the building from Dublin Street North to Cork Street West or to the southwest corner of the building to be secured by the new zoning bylaw
 - Increase the front yard and north side yard setbacks to 6 metres and incorporate a landscape plan to improve and enlarge the area of the Peace Garden (by design and not ownership)
 - Increase the rear yard setback to 10 metres
 - Limit the height of the development to 2-4 stories and express it in an actual measured height above grade
 - Prohibit any protrusions above the height limit unless expressly permitted including prohibition of any telecommunications/wireless antennae
 - Provide further setbacks at the upper levels on the east, west and north sides of the building to mitigate sun shadow loss and reduce the impact of the buildings massing on adjacent school activity areas and playgrounds
 - Define the location , height and size of any proposed mechanical penthouse in the zoning bylaw
 - Develop a building envelope in the zoning bylaw reflecting these performance standards
 - Consider an approach to resolve loss of sunlight to the roof top panels on the school building
-

Should an amendment to the zoning bylaw be approved for the proposed development of the property, we would recommend specific regulations to limit the location, size and number of balconies, or terraces; and stepbacks and setbacks should be prescribed to ensure building placement and the light conditions demonstrated to be acceptable to the school board.

Given the unique characteristics and conditions of the school property, we would recommend the City amend the Downtown Zoning Bylaw as it affects this property to incorporate the recommendations contained in this letter to guide future development applications.

I trust this is satisfactory to your needs at this time. Should you have any questions or wish to discuss this please contact me.

Yours truly,

WND associates
planning + urban design

A handwritten signature in black ink, reading "Robert A. Dragicevic". The signature is fluid and cursive, with a large initial "R" and "D".

Robert A. Dragicevic, MCIP, RPP
Senior Principal