

VIA EMAIL

July 7, 2022

Guelph City Clerk
City of Guelph
City Hall, 1 Carden Street
Guelph, ON
N1H 3A1

Attention: Mr. Stephen O'Brien, General Manager / City Clerk

Dear Mr. O'Brien:

**Re: July 13, 2022 Public Meeting
City of Guelph – Comprehensive Zoning By-law Review
Second Draft of the Comprehensive Zoning By-law (July 2022)
Preliminary Comments on Behalf of Loblaw Companies Limited
Guelph, Ontario
Our File: LPL/GPH/21-01**

We are the planning consultants for the City of Guelph Comprehensive Zoning By-law Review for Loblaw Companies Limited ("Loblaw"), the land owner and/or lease holder of lands within the City of Guelph, including:

- The vacant lands at 115 Watson Parkway North (formerly 72 Watson Road North), which are currently split zoned CC-15(H), P.1 and FL, and are proposed to be split zoned CMUC-14(PA)(H11)(H13) and NHS, with a portion of the NHS zoned lands shown on Schedule B-8: Floodplain Overlay and a portion shown on Schedule B-11: Wellhead Protection Overlay. The lands are subject to a Zoning By-law Amendment application (File No. ZC0512);
- The existing Zehrs at 1750 Gordon Street, which is currently zoned CC-17 and proposed to be zoned CMUC-1(PA)(H13);
- The existing Zehrs store at 1045 Paisley Road, which is currently zoned CC-28 and proposed to be zoned CMUC-11(PA)(H13);
- The existing Zehrs store at 297-299 Eramosa Road, which is currently zoned CC-6 and proposed to be zoned MUC(PA)(H13) and shown on Schedule B-1: Older Built-up Area Overlay, which are subject to a number of minor variances;
- The existing No Frills store at 111-191 Silvercreek Parkway North, which is currently zoned CC-9 and proposed to be zoned MUC(PA)(H13)(CDA);
- The existing No Frills store at 35 Harvard Road, which is currently zoned CC and proposed to be zoned NCC-14(PA)(H13); and
- The existing Zehrs store at 160 and 170 Kortright Road West, which is currently zoned CC-4 and are proposed to be zoned NCC-11(PA)(H13).

On behalf of Loblaw, we have been monitoring the City of Guelph Comprehensive Zoning By-law Review. On January 12, 2022 we provided comments for the City's First Draft Comprehensive Zoning By-law dated November 2021 and discussed our comments with Staff at a meeting on February 1, 2022.

On June 16, 2022, we received Notice of a Public Meeting where a revised Draft Zoning By-law dated July 2022 (the "Draft By-law") will be considered at a July 13, 2022 Public Meeting. According to the Staff Report 2022-245 dated June 30, 2022 it is our understanding that Staff will review feedback received at the open house and statutory public meeting and make appropriate changes to the By-law. Staff anticipate bringing the final Zoning By-law to Council for approval in Q1 of 2023. Lastly, we note that the Staff Report included responses to our comments dated January 12, 2022.

On behalf of Loblaw, we have the following preliminary comments for the Draft By-law, and may provide further comments as required:

- In general, Loblaw wants to ensure that the development potential and existing zoning permissions for their stores and lands will not be compromised by the Draft By-law. In addition, Loblaw wants to ensure that the permissions previously secured through approved minor variances affecting their lands remain intact.
- Section 5.2.3 for the Location of Parking and Commercial, mixed-use, employment, institutional, utility uses states:
 - (a) No parking area or parking space shall be located within 3 metres of any street line or any other lot line.
 - (b) A parking area shall be screened from view from any street with suitable landscaping consisting of sod, trees, shrubbery or berms.
 - (c) In any commercial, mixed-use, or downtown zone, parking spaces and parking areas shall be located in interior side yards or rear yards.
 - (d) In any commercial or mixed-use zone, no parking area or parking space shall be located within 15 metres of the corner lot line of any intersections of a street, public.
 - (e) In any mixed-use zone, no parking area abutting an arterial road, identified in the City's Official Plan in force and effect on the effective date, shall be greater in length than 25% of the length of any lot line adjacent to an arterial road.

In our comments dated January 12, 2022, we submitted that in order to avoid rendering existing conforming developments as non-conforming under the new By-law, it would be appropriate to add a "Vacuum" clause to the Draft By-law, where notwithstanding any other provisions of the new By-law, any lot and the location thereon of any building or structure, existing on the effective date of the new By-law, would be deemed to comply and would be permitted by the new By-law. In addition, it would be appropriate to provide an allowance for additions and alterations to legally existing buildings without rendering the existing development as non-conforming as a result of the addition or alteration.

For Section 5.2.3(e) we submitted that the corresponding Official Plan Policy 8.12.9 states "The Zoning By-law may establish the maximum length of frontage along arterial roads that may be used for surface parking. This provision may provide different standards for various land uses". Based on Minutes of Settlement resulting from the OLT appeal of OPA 48, for the Loblaw lands the interpretation of Policy 8.12.9 "is intended to be implemented through site-

specific applications and shall be interpreted to include flexibility by allowing for the maximum length to be determined through the implementing zoning by-law.” Accordingly, further review is required for the Loblaw Lands, whereby site-specific exceptions may be appropriate.

In response, Staff advised “Official Plan policy 8.12.1 provides direction for building placement in combination with landscaping to be used to screen surface parking areas. In addition, the Commercial Built Form Standards provides direction to not locate surface parking along the front or exterior side yard of a commercial or mixed-use property. The location of parking should contribute to barrier-free and efficient circulation for people walking, cycling and driving, and appropriate transition between the public and private realm. The appearance of parking should not dominate the visible edges of a site and buildings entrances should align with the grade of adjacent sidewalks or public walkways. Section 1.4.3 provides appropriate protection for noncomplying buildings and lots. Any pre-existing legal building or structure, or lot that does not comply with the new by-law is deemed to conform with the new by-law. Also, this section provides appropriate permission for enlarging, repairing and reconstructing existing buildings and structure. Beyond this permission, either a minor variance application or rezoning application would be required.” In addition, Staff advised “The intent of the proposed zoning bylaw is to pre-zone lands to the maximum height and density of the Official Plan. This will limit the need for individual site-specific zoning bylaw amendments.”

Section 1.4.3 includes “repair” and “renovation” provided that the repair” or “renovation” complies with all other applicable provision of this by-law”, whereby we our concerned that the repair or renovation to the existing retail stores would trigger a minor variance or rezoning application. In addition, Staff Report 2022-245 notes that “Section 34 (10.0.0.1) of the Planning Act establishes a two-year moratorium for applications to amend the bylaw when Council repeals and replaces the zoning bylaw in effect ... A recommendation related to the two-year moratorium will be provided at the Council decision meeting.” (p. 8) Accordingly, we continue to suggest that it would be appropriate to include a provision that the location of parking legally existed on the effective date of the by-law are exempt from the new requirement and that further review is required for the Loblaw Lands, whereby site-specific exceptions may be appropriate.

- Section 5.4 for Loading space requirements states “(a) All loading spaces shall be located to the rear of the front wall of a building or to the rear of an exterior side wall of a building facing a street, public”.

In our comments dated January 12, 2022, we requested clarification as to the interpretation of “front wall” and “exterior side wall” that are not defined terms, particularly for sites where existing retail stores have frontage on the side of the building where loading is located (e.g., the No Frills at 191 Silvercreek Parkway North and the Zehrs at 1045 Paisley Road). We submitted that it would be appropriate to include existing loading within a vacuum clause as described above, in order to ensure that the existing condition remains conforming.

In response, Staff advised “‘Front wall’ and ‘Exterior side wall’ of a building aligns with the front lot line and exterior side lot line of a property. Section 1.4.3

provides appropriate protection for noncomplying buildings and structures. Any pre-existing legal building or structure, or lot that does not comply with the new by-law is deemed to conform with the new by-law. Also, this section provides appropriate permission for enlarging, repairing and reconstructing existing buildings and structure. Beyond this permission, either a minor variance application or rezoning application would be required.

As noted above, Section 1.4.3 includes “repair” and “renovation” provided that the “repair” or “renovation” complies with all other applicable provision of this by-law”, whereby we our concerned that a renovation to the existing retail stores would trigger a minor variance or rezoning application. Accordingly, we continue to suggest that it would be appropriate to include a provision that loading spaces legally existed on the effective date of the by-law are exempt from the new requirement.

- Section 5.4 for Loading space requirements states “(b) All loading spaces facing a street, public shall be screened with a minimum 3 metre wide buffer strip.”

In our comments dated January 12, 2022, we submitted that it would be appropriate to include existing loading within a vacuum clause in order to ensure that the existing condition remains conforming where a minimum 3 m wide buffer strip is not currently provided.

There was no response provided by Staff for the comment. Based on the Staff response to our comment for Section 5.4 as noted above, we continue to suggest that it would be appropriate to include a provision that loading spaces legally existed on the effective date of the by-law are exempt from the new requirement.

- Section 5.8 and Table 5.6 Required bicycle parking rates in all zones except downtown zones, provides for minimum short term and long term bicycle parking spaces requirements. The corresponding Official Plan Policy 8.12.6 states “Bicycle parking shall be provided and conveniently located in close proximity to building entrances. Sheltered bicycle parking should be integrated into the built form.”

Our comment dated January 12, 2022 submitted that as there are no bicycle parking requirements under the current By-law, the supply of parking existing on the effective date of passing of the new By-law should be deemed to comply with the By-law in order to ensure that existing development remains conforming.

In response, Staff advised “Section 1.4.3 of the proposed zoning bylaw provides the appropriate permission for any existing non-complying building or lot. This section provides appropriate protection for existing uses, lots and buildings/structures and it provides an appropriate permission for enlarging, repairing, and reconstructing existing buildings and structures.”

As noted above, Section 1.4.3 includes “repair” and “renovation” provided that the “repair” or “renovation” complies with all other applicable provision of this by-law”. We are concerned that the repair or renovation to existing retail stores will trigger the need for a minor variance or rezoning application. We continue to

suggest that it would be appropriate to include a provision that the supply of bicycle parking that legally existed on the effective date of the by-law is exempt from the new requirement.

- Section 5.9 Electric vehicle parking requirements states “(c) For any non-residential use, a minimum of 10% of required parking spaces shall be provided as electric vehicle parking spaces and a minimum of 20% of required parking spaces shall be provided as designed electric vehicle parking spaces”. Based on the definitions, “Designed electric vehicle parking space means a parking space designed and constructed to be electric vehicle ready, allowing for the future installation of electronic vehicle supply equipment that conforms to Section 86 of the Electrical Safety Code.”

Our comments dated January 12, 2022 submitted that the installation of electrical charging stations should be optional and not a requirement for all developments. The Guelph Commercial Built Form Standard 3.2.1.9 states “Electrical Vehicle Charging Stations should be provided on commercial and mixed-use sites”, whereby electric vehicle parking is currently encouraged.

In response to our comments, Staff advised “The Ontario Building Code does not provide electric vehicle parking requirements. In order to be future ready and have the infrastructure in place, the proposed zoning bylaw has maintained electric vehicle parking space requirements. These regulations will contribute to supporting the increased demand for electric vehicle parking and will help to reduce barriers to the use of electric vehicles and ensure that this option becomes increasingly practical for consumers. The City of Guelph’s Community Energy Initiative identifies increasing the share of electric passenger vehicles and commercial vehicles by 2030 as key actions in the “low carbon pathway” to becoming a Net Zero Community by 2050. This direction is also supported by the recently approved Transportation Master Plan.”

We reiterate our comment that the installation of electrical charging stations should be optional and not a requirement for all developments.

- For the proposed CMUC, MUC and NCC zones, we have the following comments:
 - For Section 7.31(a), the lands at 115 Watson Parkway at approximately 64,500 ha, exceed the maximum lot area of 50,000 sq. m, whereby it would be appropriate to include a site specific regulation under the proposed CMUC-14 zone;
 - Section 7.3.1(b): Under the existing CC zones for the Loblaw lands, a planting area comprised of a landscaped strip of land 3 m in width shall be maintained adjacent to the Street Line, except for those areas required for entry ramps, whereas the minimum buffer strip has been revised to require a 3 m wide buffer strip adjacent to interior side and rear lot lines, which could render existing developments non-conforming. In our submission, it would be appropriate to include a provision that existing

buffer strips that legally existed on the effective date of the by-law are exempt from the new requirement;

- Sections 7.3.1(b) and 7.3.3.(b): Under the existing CC zones for the Loblaw lands, the minimum landscaped open space is 9% of the lot area, whereas the proposed minimum landscaped open space is 20% of the lot area (30% of the required landscaped open space area can be in the form of a green roof or blue roof).

In our comments dated January 12, 2022, we submitted that a minimum landscaped open space of 20% is considerably higher and will render existing developments non-conforming. For new development, the minimum landscaped open space of 20% may be a barrier to redevelopment and could result in less intensive development and may preclude modest expansions and additions to existing buildings.

In response, Staff advised “Landscaped open space requirements have been developed for mixed-use zones in the new zoning bylaw. The current 9% requirement is for existing commercial zones. Landscaped open space regulations have been reviewed and revisions have been made”.

In our submission, we reiterate our comment that the existing minimum of 9% should be maintained.

- Sections 7.3.1(c) and 7.3.3.(c): the proposed minimum building height is “7.5 m for buildings located within 15 m of an existing and proposed arterial and/or collector road, as identified in the City's Official Plan in force and effect on the effective date.”

In our comments dated January 12, 2022, we noted that corresponding Official Plan Policy 8.6.13 states “Generally, a minimum building height of 2 storeys will be *encouraged* [emphasis added] to provide definition to streets and open spaces. Regulations for minimum building heights *may* [emphasis added] be incorporated into the Zoning By-law for nonresidential uses at key locations such as sites fronting onto arterial or collector roads, identified Main Streets and at intersections.” In our submission, as the Official Plan provides “encouragement” language, it is not appropriate to incorporate a minimum building height requirement in the implementing zoning on a comprehensive basis. The “may” under Policy 8.6.13 should be interpreted as not mandatory but rather optional or discretionary. In our submission, regulations for minimum building height should be considered on a site-specific basis under future zoning by-law amendments and not through the new comprehensive Zoning By-law.

In response, Staff advised “Once the new zoning bylaw is in effect, it is anticipated that many development projects would not be required to go through a full zoning bylaw amendment process to comply with the Official Plan designation. The purpose of the new zoning bylaw is to pre-zone lands for maximum permissions under the Official Plan. With pre-zoning lands, built form regulations have been applied on a city-wide

basis to ensure appropriate development and transitions are built into the bylaw. It is anticipated that minor variances will be the appropriate route to deal with site specific situations.”

We continue to be concerned with the required minimum building heights and note that for any “repair or “renovation” of existing buildings under Section 1.4.3 would require compliance. In addition, small building additions to existing commercial buildings such as the enclosure of cart corrals or loading facilities would need to have a minimum building height of 7.5 m under Section 1.4.3. Accordingly, we submit that minimum building height should not be included under the new comprehensive Zoning By-law.

- Sections 7.3.1(c) and 7.3.3.(c): the proposed maximum building length is “75 m for buildings located within 15 m of a street”.

In our comments dated January 12, 2022, we noted that the corresponding Official Plan Policy 8.6.8 states “Long building facades that are visible along a public street will incorporate recesses, projections, windows or awnings, colonnades and/or landscaping along the length of the facade to reduce the mass of such facades.” We note Official Plan Policy 8.8.1v) for Mid-rise buildings that states “where buildings are taller than four (4) storeys, building length may be restricted through the Zoning By-law to reduce impacts such as shadowing”.

In response, Staff advised “The Commercial Built Form Standards recommended limiting commercial building lengths to 75 metres for buildings that are located within 15 metres of the front or exterior side lot lines. This will allow for larger commercial buildings to be located on the interior of the site. This regulation ensures pedestrian scale buildings and reduces shadowing impacts. The proposed zoning bylaw has been updated to add flexibility by specifying that this regulation only applies to buildings within 15 metres of a street for the mixed-use zones and the residential RM.6 and RH.7 zones.”

In our submission, we reiterate that the maximum building length regulation should be removed since Official Plan policy 8.6.8 is not appropriately implemented and would be more appropriate as an urban design guideline.

- Sections 7.3.1(d) and 7.3.3.(c): the proposed minimum first storey transparency is “40 % of the surface area of the first storey facing a street, up to 4.5 m from the ground, be comprised of transparent windows and/or active entrances when a building is within 15 m of an existing and proposed arterial and/or collector road, as identified in the City's Official Plan in force and effect on the effective date.”

Our comments dated January 12, 2022 submitted that the corresponding OLT approved Official Plan Policy 8.6.1 states “New buildings shall address the street. Buildings will enhance the rhythm and frequency of the immediate vicinity, and where appropriate, will have entrances and windows that face the street” and OLT approved Policy 8.6.2 states “The

principal entrances of commercial and mixed-use buildings shall be oriented toward and/or visible from the street and provide direct user entrances from adjacent streets and walkways. Blank facades facing a street, open space or park shall not be permitted.” Under minutes of settlement for the Loblaw appeal of OPA 48, with respect to Policy 8.6.2 the term “blank facades”, which is not defined, shall not be defined to exclude or preclude the use of glazed windows or alternatively a combination of glazed display windows together with façade articulation and/or spandrel windows in order to facilitate operational requirements. In our submission, the regulations for transparency would be appropriate as guidelines (the Guelph Commercial Built Form Standard 4.2.6 states “Include transparent windows and/or active entrances along the ground floor façades of corner buildings that face a public street or urban square. Do not use highly reflective or mirrored glass”) and should be removed.

In response, Staff advised “The Commercial Built Form Guidelines reviewed appropriate transparency requirements to promote active uses along a street and contribute to a vibrant public realm by recommending that where commercial uses abut an arterial or collector road, a minimum of 40% of the surface area of the first Storey façade measured from the finished grade up to a height of 4.5 metres, should be comprised of a transparent window and/or active entrances. The proposed zoning bylaw has been revised to add clarity and flexibility to the regulation. The proposed zoning bylaw requires a minimum 40% transparency when abutting an arterial or collector road.”

While we recognize that Staff adjusted the requirement, we continue to submit that the regulation should be removed as outlined in our previous comment.

- Section 7.3.2(b) for the CMUC zone and Section 7.3.4.(e) for the MUC and NCC zones state that the minimum commercial gross floor area is “(i) Not less than 25% of the commercial gross floor area (GFA) existing on the date of the passing of this bylaw. (ii) Where no commercial gross floor area (GFA) exists, as of the date of the passing of this by-law, the minimum commercial gross floor area (GFA) shall be 0.15 floor space index (FSI)”.

The corresponding Official Plan Policy 9.4.3.10 states “Proposals to decrease the existing commercial gross floor area by more than 25 per cent or to provide commercial gross floor area at less than .15 FSI will require a Commercial Function Study in accordance with the policies of this Plan” and Policy 9.4.5.11 states “Development proposals that would decrease the existing commercial gross floor area within a Neighbourhood Commercial Centre by more than 25 per cent or that would provide commercial gross floor area at less than .15 FSI will require a Commercial Function Study in accordance with the policies of this Plan.”

Our comments dated January 12, 2022 submitted that since Policies 8.6.10 and 9.4.5.11 provide for tests related to the requirement for a

Commercial Function Study and do not provide for prescriptive implementation through minimum gross floor area under the implementing zoning, the regulations are not appropriate and should be removed.

In response to our comments, Staff advised “The Commercial Policy Review recommended that minimum commercial gross floor area zoning regulations be applied to commercially zoned properties within Commercial Mixed Use Centres ... on a property basis that requires a commercial density of 0.15 FSI, or 25% less gross floor area than existed on the date of the passing of the bylaw, whichever is the greater amount of gross floor area. The implementation of these policies will allow the City to determine if the commercial vision and principles will continue to be met and how a reduction in commercial floor space will affect the needs of the community. The potential loss of commercial space is a concern given the long-term need for additional commercial land supply and the evolution commercial areas into mixed use developments that allow for additional uses to complement the commercial space.”

While we recognize the recommendations of the Commercial Policy Review, we reiterate our comment that since the Council adopted Official Plan Policies 8.6.10 and 9.4.5.11 provide for tests related to the requirement for a Commercial Function Study and do not provide for prescriptive implementation through minimum gross floor area under the implementing zoning, the regulations are not appropriate and should be removed.

- For the lands located at 297-299 Eramosa Road, which are currently zoned CC-6 and proposed to be zoned MUC(PA)(H13), as it is our understanding that existing minor variances will not be pulled through into the Draft By-law, we request that the minor variance File Number A-2/12 to permit a 2.25 m landscape strip adjacent to Stevenson Street, except for those areas required for entry ramps, be pulled through as a site specific exception.

We would welcome the opportunity to meet with Staff to discuss our comments further.

Please kindly ensure that the undersigned is notified of any further meetings with respect to this matter as well as Notice of the approval of the Zoning By-law.

Should you have any questions, or require further information, please do not hesitate to call.

Yours very truly,

ZELINKA PRIAMO LTD.



Jonathan Rodger, MScPI, MCIP, RPP
Senior Associate

cc. Loblaw Companies Limited (via email)
Aird & Berlis LLP (via email)
Abby Watts, City of Guelph (via email)