



SHAPING GREAT COMMUNITIES

January 12, 2023

File No. 22279

City Hall
1 Carden Street
Guelph, ON
N1H 3A1

Attn: Committee of Adjustment

**Re: 265 Edinburgh Road South, City of Guelph
Application under subs. 45 (2) of *Planning Act***

Dear Committee Members:

GSP Group is pleased to submit this application on behalf of our client, I.T. Enterprises Inc., the legal owners of the property known by the municipal address of 265 Edinburgh Road South in the City of Guelph and described legally as Registered Plan 434, Lot 2 (the "Subject Property"). The application asks the Committee of Adjustment for permission under s. 45 (2)(a)(ii) of the *Planning Act* to use the Subject Property for a purpose that is similar to or more compatible than the existing legal non-conforming use.

The Subject Property contains a single one-storey commercial building that is used as office, retail, and service commercial space for a telecommunications company. The building is occupied on a rental basis by a single tenant, the aforementioned telecommunications company, whose tenancy began in 1997. At present, the building contains a single commercial unit, although it has the potential to provide more than one unit for commercial tenants should the demand arise. The building was built in 1962 and has been occupied for a variety of commercial uses since it was constructed. Both the building and the existing use pre-date the City of Guelph's current in-force Zoning By-law, No. 1995-14864, which places the Subject Property in the "C.1" ("Convenience Commercial") zone.

The applicant is asking the Committee of Adjustment to permit the Subject Property to be used for a purpose that can be categorized as one of the following: Medical Office, Office, Service Establishment, Laboratory, Repair Service, Rental Outlet, or Veterinary Service. The range of proposed uses is purposefully broad and is meant to provide for some flexibility in the identification of prospective tenants for the Subject Property. As this letter establishes, all of the proposed uses satisfy the test set out in s. 45 (2)(a)(ii) in the *Planning Act* and may therefore be permitted as uses that are similar to the existing use or more compatible than the existing use with the uses that are permitted by the Zoning By-law.

PLANNING | URBAN DESIGN | LANDSCAPE ARCHITECTURE

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Subject Property

The Subject Property, known by the municipal address of 265 Edinburgh Road South, is a rectangular parcel of land with an area of approximately 826 m² situated on the westerly corner of the T-shaped intersection where Oriole Crescent meets Edinburgh Road South. The front lot line, along Edinburgh Road South, is approximately 16.7 metres long, while the exterior side lot line along Oriole Crescent is approximately 50.4 metres long. (As shown on the Site Plan Drawing attached to this letter, the parcel is not perfectly rectangular: the rear lot line is slightly shorter than the front lot line, and the interior side lot line slightly longer than the exterior side lot line.)

Edinburgh Road South is identified as an Arterial Road on Schedule 5 to the City of Guelph's Official Plan. The segment abutting the Subject Property has a right-of-way width of about 24 metres and features four traffic lanes as well as sidewalks on both sides of the street. Oriole Crescent is a Local Street that begins at Edinburgh Road South and ends in a cul-de-sac approximately 160 metres southwest of Edinburgh Road. The travelled portion of Oriole Crescent is approximately 9 metres wide and consists of two traffic lanes with no sidewalks. The entire right-of-way of Oriole Crescent is about 20 metres wide.

The existing building on the Subject Property is a one-storey, four-metre-tall brick building with a flat roof, divided into two commercial units. The main portion of the building is approximately 11 metres wide and approximately 26 metres long. There is a small, two-metre-wide entranceway that extends approximately 4 metres from the rear face of the building, as well as an entrance at the front of the building. The building has a total floor area of approximately 298 m². The remainder of the Subject Property is occupied by a paved area that serves primarily as a parking area, consisting of 20 spaces. Access to this parking area is provided in the form of two curb cuts, one along Oriole Crescent and the other along Edinburgh Road South; the latter curb cut extends beyond the Subject Property to provide access to the driveway on the neighbouring property at 261 Edinburgh Road South.

The attached Site Plan Drawing provides the following information, in accordance with the City of Guelph's requirements for an application for a minor variance:

- the boundaries and accurate dimensions of the Subject Property;
- the size and location of the existing building on the Subject Property, as measured from the front, rear, and side lot lines;
- the locations of the two curb cuts that provide driveway access to the Subject Property, as well as the approximate locations of the parking spaces on the Subject Property;
- the locations, widths, and names of the two public travelled roads that abut the Subject Property; and
- the locations of natural and artificial features on the Subject Property and on the two properties that abut it.

The abutting property at 261 Edinburgh Road South is located in the same "C.1" zone as the Subject Property and contains a former residence that has been converted into a denture clinic. The abutting property southeast of the Subject Property, known by the address 9 Oriole Crescent, is zoned "R1.B"

("Residential Single Detached") and contains a small detached dwelling. The locations of the buildings on these two abutting properties are identified on the attached Site Plan Drawing.

The natural features shown on the Site Plan Drawing consist of a row of trees along the rear lot line of 261 Edinburgh Road South and two trees on the property at 9 Oriole Crescent (one in the rear yard and the other in the front). According to the City's online Street Tree Ownership map, the tree in front of the dwelling at 9 Oriole Crescent is owned by the City. There are no easements affecting the Subject Property.

The parking area surrounding the building on the Subject Property provides a total of 20 parking spaces: two along the front face of the building, eight along the exterior side face of the building, six along the rear lot line, two along the rear building face between the rear entryway and the interior side lot line, and two more between the entryway and the exterior side lot line. One of the parking spaces directly behind the building is occupied by a metal storage container.

The property directly opposite to the Subject Property across Edinburgh Road South (260 Edinburgh Road South), which is similarly zoned "C.1", contains a retail commercial use within a converted one-storey dwelling that has since been expanded. The properties along Oriole Crescent beyond the Subject Property are all occupied by detached dwellings and zoned "R.1B". This includes No. 2 Oriole Crescent, a corner lot with frontage on Edinburgh Road South, as well as No. 4 Oriole Crescent, both of which are located directly opposite the Subject Property across Oriole Crescent.

Application to the Committee of Adjustment

The present application is being made under s. 45 (2)(a)(ii) of the *Planning Act* (R.S.O. 1990, c. P.13, as amended), which authorizes the Committee of Adjustment to permit a land use that is similar to an existing legal non-conforming use or that is "more compatible" with the uses permitted by the Zoning By-law than the existing legal non-conforming use is. Subsection 45 (2) of the *Planning Act* reads:

Other powers

- (2) In addition to its powers under subsection (1), the committee, upon any such application,
 - (a) where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,
 - (i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or
 - (ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the

purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; or

- (b) where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law.

As explained in the Local Planning Appeal Tribunal's decision in *Fraser v. South Bruce Peninsula (Town)* ("*South Bruce Peninsula*"), issued on January 15, 2019,¹ this subsection of the *Planning Act* imposes two "preconditions" for an application under s. 45 (2)(a)(ii): the property must contain a legal non-conforming ("LNC") use, as required by clause (a), and that LNC use must have continued to the day on which the application was made, as required by subclause (ii) (*South Bruce Peninsula*, at para. 20). If those preconditions are satisfied, the application must meet the test set out in subclause (a)(ii): that the proposed use must be similar in purpose to the LNC use, or that it must be more compatible with the uses permitted by the Zoning By-law than the original LNC use is. *South Bruce Peninsula* establishes (at para. 25) that an application does not need to satisfy both of these tests (i.e., "similar" or "more compatible"), but it must satisfy one or the other.

The City of Guelph's Zoning By-law No. 1995-14864 was passed on June 19, 1995. The Subject Property was transferred into its present ownership in 1997, at which time the building on the property as it exists today was already well established, as was the use of that building for commercial offices, sales, and service. The current tenant has occupied the building since 1997 and has continued the same combination of office, sales, and service commercial uses from that time. The change in ownership does not affect the status of the use as legal non-conforming, as the Ontario Superior Court of Justice has recently affirmed in *Forbes v. Caledon (Town of)*: "A legal non-conforming use runs with the land and not with the owner, and thus a legal non-conforming use may be continued from owner to successors" (at para. 11).² By similar reasoning, it seems logical to conclude that a legal non-conforming use may also be continued from owner to tenant, or from one tenant to another.

The applicant intends for the Subject Property to continue to be occupied on a rental basis, and, in order to maintain flexibility with respect to prospective tenants, is asking the Committee of Adjustment to permit a range of potential uses, each of which is either similar to the existing use or more compatible with the uses permitted by the "C.1" zoning. Nothing in the wording of s. 45 (2)(a)(ii) of the *Planning Act* prevents the Committee of Adjustment from doing so, provided that the test of "similar or more compatible" is satisfied for any potential uses thereby permitted. Furthermore, this application should not be considered "premature" simply because a specific tenant has not yet been identified: indeed, it is reasonable for prospective tenants to have some assurance that their use of the Subject Property will be permitted before signing any sort of lease agreement.

¹ LPAT Case No. PL180659 (Issue Date: January 15, 2019): *Fraser v South Bruce Peninsula (Town)*, 2019 CanLII 3403 (ON LPAT), <https://canlii.ca/t/hx4xt>.

² *Forbes v. Caledon (Town of)*, 2021 ONSC 1442, <https://canlii.ca/t/jdh4d>.

Existing Use of Subject Property

The basis for the protection of lawfully existing land uses is provided by the concept of “acquired rights,” which the Supreme Court of Canada addresses in *Saint-Romuald (City) v. Olivier* (“*Saint-Romuald*”).³ In setting out the Court’s approach towards the issue of limitations on a landowner’s acquired rights, Binnie J. writes (at para. 39.1) that “[I]t is firstly necessary to characterize the purpose of the pre-existing use” (emphasis in original), which “is a function of the activities actually carried on at the site prior to the new by-law restrictions” (at para. 39.1): “The resulting characterization of the acquired right (or legal non-conforming use) should not be so general as to liberate the owner from the constraints of what he actually did” — presumably referring to the constraints imposed by the nature of the pre-existing legal non-conforming use — “and not be so narrow as to rob him of some flexibility in the reasonable evolution of prior activities” (at para. 39.6).

With this in mind, we can characterize the applicant’s existing use of the Subject Property as providing tenants with office space for the day-to-day functioning of a commercial enterprise, whose operations on the site include offering sales and service to a customer base consisting primarily of business customers. This characterization is narrow enough to establish reasonable constraints on the types of activity that may be considered “legal non-conforming” uses, while nonetheless providing the landowner with flexibility with regard to the “reasonable evolution” of the use. In this case, “reasonable evolution” includes to the occasional need to change tenants, so long as the new tenant continues the same legal non-conforming use (or uses the property for a purpose that is either permitted by the Zoning By-law or permitted by the Committee of Adjustment under subs. 45 (2) of the *Planning Act*).

According to *South Bruce Peninsula*, there is “a line of reasoning, established by the legal jurisprudence around this section of the Act, that ‘similar’ and ‘more compatible’ are to be assessed according to the impacts, such as physical or social impacts, created by the proposed use as compared to the existing use” (at para. 30). In sum: “A new use may be permitted only where it results in similar or more compatible impacts in comparison to the existing use” (at para. 33). As mentioned in the previous paragraph, the current tenant of the Subject Property uses the building as office space, as well as for sales and service. Operations take place indoors during normal business hours, and thus the impacts of the current use are primarily related to traffic generated by employees and customers and by suppliers making deliveries.

Therefore, in order to meet the test of being either “similar” or “more compatible,” any new use of the Subject Property must have impacts from traffic and hours of operation that are similar to the existing combination of office, sales, and service uses on the site or that are more compatible with the impacts that can be reasonably expected from the uses permitted by the Zoning By-law.

³ *Saint-Romuald (City) v. Olivier*, 2001 SCC 57 (CanLII), [2001] 2 SCR 898, <https://canlii.ca/t/51z2>.

Uses Permitted by Zoning

According to Section 6.1.1 of Zoning By-law No. 1995-14864, the commercial uses permitted by the current “C.1” zoning of the Subject Property include an artisan studio, a convenience store, a food vehicle, a personal service establishment, and a take-out restaurant. The “C.1” zone also permits a day-care centre and a group home (both of which uses involve something of an “institutional” component), as well as dwelling units in the same building as a permitted commercial use, accessory uses, and “occasional” uses. Table 1 on p. 7 below provides an overview of how these permitted uses are defined in Section 3 of the Zoning By-law, along with a summary of the potential impacts associated with each permitted use. (The table focuses on primary permitted uses and does not include dwelling units, accessory uses, and occasional uses.)

All six uses listed in Table 1 are expected to have some sort of impact resulting from traffic, the greatest of which can be expected from a convenience store, a personal service establishment, or a take-out restaurant, all of which can expect frequent visits from customers throughout the day. Certain uses can also reasonably be expected to have hours of operation that extend beyond the normal business hours of the current use of the Subject Property, particularly in the case of a convenience store or a take-out restaurant, which often operate late into the night and on weekends.

Indeed, most of the permitted commercial uses listed in the table above can reasonably be expected to have greater impacts on surrounding land uses than the impacts from the current use of the Subject Property. It is important to emphasize here that the test for “compatibility” set out in s. 45 (2)(a)(ii) states that the proposed use must be “more compatible *with the uses permitted by the by-law* than the purpose for which it was used on the day the by-law was passed” (emphasis added). Being compatible with the uses permitted by the Zoning By-law means that the proposed use must not prevent adjacent or nearby properties in the same zone from being used for a permitted use — for instance, introducing a use with fewer impacts, such as a residential use, into a commercial zone would introduce a sensitive receptor that could interfere with the ability of adjacent permitted uses to operate effectively. Those adjacent uses have a right to expect that their on-site operations, as permitted by the Zoning By-law, will not lead to nuisance complaints from the owners of neighbouring sensitive land uses. In other words, “more compatible” does not necessarily mean “less impactful.”

This is not to say that potential impacts on permitted uses on other adjacent zones should be ignored. However, it is reasonable to presume that the potential for such impacts has been addressed through the initial establishment of zones in the Zoning By-law — that, for example, the by-law already incorporates adequate measures to ensure that a permitted use in the “C.1” zone will not unduly impact a more sensitive permitted use in an abutting “R.1B” zone. The fact that the test set out in s. 45 (2)(a)(ii) refers to compatibility with permitted uses in the same zone and not with uses permitted in abutting zones would seem to support this supposition.

Table 1 – Definitions & Potential Impacts of Permitted Uses

Permitted Use	Definition	Potential Impacts
Artisan Studio	A place used as the workplace of a photographer, artist, craftsperson, sculptor or potter (not including a repair service or a manufacturing use).	Potential noise impacts from on-site operations. Traffic impacts from delivery of raw materials and from customers, if the use includes accessory retail. Potential for odour impacts, depending on the nature of the specific use.
Convenience Store	A retail establishment with a maximum gross floor area of 400 m ² that is used for retailing daily household or grocery needs of neighbourhood consumers; includes a variety store, confectionery, pharmacy or tobacco shop, (but not a supermarket, hardware store, or the like).	Traffic impacts from flow of customers and delivery of goods. Likely impacts from extended hours of operation, which could include impacts from outdoor illumination. Potential security concerns.
Day-Care Centre	A place in which temporary care or guidance is provided for more than five children who are not of common parentage, for a continuous period not exceeding 24 hours.	Traffic impacts, especially associated with drop-off and pick-up times at start and end of weekdays. Noise impacts from outdoor play areas.
Group Home	A place used for specialized or group accommodation for 4 to 8 residents under 24-hour supervision consistent with the requirements of its residents.	Traffic impacts from employees, including those working overnight and weekend shifts. Possible noise impacts from outdoor amenity areas. Potential security considerations, depending on the specific needs of the group home's residents.
Personal Service Establishment	A place where persons are employed in furnishing services and administering to the individual and personal needs of persons (including a barber, hairdresser, beautician, aesthetician, tailor, dressmaker, shoemaker, or tanning salon).	Traffic impacts from flow of customers, from employees, and from delivery of goods. Potential impacts from hours of operation if evening or weekend service is offered.
Restaurant (Take-out)	A restaurant that provides less than 10% of its gross floor area for the consumption of food by patrons using the restaurant. (Restaurant: a place in which food is prepared and offered for retail sale to the public.)	Traffic impacts from flow of customers, from employees, and from delivery of goods. Potential impacts from hours of operation if late-night or weekend service is offered. Odours from on-site operations or waste materials may be noticeable at times.

The sensitive uses to consider in this case consist of the residential uses along Oriole Crescent to the southwest of the Subject Property. As mentioned above, Oriole Crescent is a cul-de-sac that extends approximately 160 metres from Edinburgh Road South, which is classified as an “Arterial Road” in the City of Guelph’s Official Plan. According to Section 5.7.2 of the Official Plan, Arterial Roads “are intended to move moderate to large volumes of traffic” (Policy No. 5.7.2.1) and are “designed for medium speed” (No. 5.7.2.2). Thus, their proximity to Edinburgh Road South means that it is not possible to entirely insulate the residential uses along Oriole Crescent from traffic impacts, including traffic-generated noise. On the other hand, the fact that the Subject Property is situated at the intersection of Edinburgh Road and Oriole Crescent, combined with the fact that Oriole Crescent is a cul-de-sac, means that commercial uses of the Subject Property will generate minimal impacts from traffic on those more “interior” properties.

Thus, in determining whether a proposed use can be permitted under s. 45 (2)(a)(ii), the tests to consider are the following:

- Does the proposed use maintain the overall commercial nature of the use of the Subject Property?
- Will the impacts of the proposed use either be similar to those generated by the existing use of the Subject Property or be more compatible with the commercial uses permitted by the “C.1” zoning? In this case, “more compatible” means that the potential impacts can be greater than those generated by the existing use, so long as they do not exceed impacts that can be reasonably be expected from a use that is permitted “as-of-right.”

Proposed Uses of Subject Property

The applicant is seeking permission to change the existing use of the property to one or more of the following uses:

- an office for two or fewer medical or other health-care practitioners (such as a physician, dentist, physiotherapist, optometrist, audiologist, etc.), which according to the definitions in the City of Guelph’s Zoning By-law would constitute a “Medical Office”;
- a “Veterinary Service” for the provision of medical and/or surgical treatment of domesticated animals by a licensed veterinarian;
- an outlet for the sale or rental of small medical equipment (such as at-home respiratory care, sleep therapy/CPAP, at-home monitoring devices, etc.), which would constitute a “Rental Outlet”;
- an outlet for the sale or repair of small appliances, electronics, or other similar equipment (e.g., hearing aids or eye-wear), which would constitute a “Repair Service”;
- a medical laboratory providing diagnostic testing and similar services, which would constitute a “Laboratory”;
- an “Office” for the provision of business or professional services; or
- a “Service Establishment” that provides any of a variety of services, such as property maintenance, cleaning services, pet grooming, or the cleaning and maintenance of personal articles and household items.

Table 2 – Expected Impacts from Proposed Uses

Proposed Use	Definition	Potential Impacts	Similar or More Compatible?
Laboratory	A building, or part thereof, used for scientific, medical and/or dental testing, experimentation and/or research.	Traffic impacts from employees and deliveries of specimens. Possible traffic from patients if on-site testing services are offered.	Similar to existing use.
Medical Office	A place in which two or fewer medical practitioners provide consultative, diagnostic, and treatment services for humans.	Traffic impacts from patients and employees, as well as from occasional deliveries.	More compatible with permitted uses.
Office	A place in which a business is conducted or a profession is practiced, including associated clerical, administrative, consulting, advisory, or training services.	Traffic impacts from employees and clients, and possibly from occasional deliveries.	Similar to existing use.
Rental Outlet	A place used for the rental of tools, appliances, office machines, or the like.	Traffic impacts from customers, employees, and deliveries. Hours of operation could include evenings or weekends, depending on the specific nature of the items rented.	More compatible with permitted uses.
Repair Service	A place in which the maintenance or repair of goods or equipment is conducted.	Traffic impacts for customers and employees, as well as from occasional deliveries. Hours of operation could include evenings or weekends.	More compatible with permitted uses.
Service Establishment	A place providing services related to the grooming of persons; a place providing the cleaning, maintenance, and repair of personal articles and accessories, small appliances or electronics; or a place providing services related to the maintenance of a residence or business.	Traffic impacts from customers, employees, and deliveries. Hours of operation could include evenings or weekends, depending on the nature of the service provided.	More compatible with permitted uses.
Veterinary Service	A building, or part thereof, where domesticated animals, excluding livestock, are given medical and/or surgical treatment, grooming, or care by a veterinarian licensed by the Province of Ontario.	Traffic impacts from customers and employees, as well as from occasional deliveries.	More compatible with permitted uses.

Table 2 above presents the potential impacts that each of the uses listed above can reasonably be expected to have. All of the uses listed in the table can be expected to generate some impacts from traffic that are similar to the impacts generated by the existing use of the Subject Property. Some of the uses (namely, a rental outlet, repair service, or service establishment) could have hours of operation that extend beyond the standard business hours during which the existing use operates (i.e., 9 a.m. to 5 p.m. on weekdays), depending on the specific nature of the use. These extended hours would in turn mean additional traffic impacts during those hours. However, none of the uses would have operating hours in excess of what could reasonably be expected from a permitted use, such as a convenience store or a take-out restaurant.

As shown in Table 2, the proposed Laboratory and Office uses would have impacts that are very similar to the impacts of the existing combination of office space, sales and service commercial uses. A Medical Office or Veterinary Service could reasonably be expected to generate slightly more traffic than the existing use, depending on the number of patients, but such impacts would be compatible with those that can be expected from a personal service establishment, which is a permitted use. Similarly, the other three uses (Rental Outlet, Repair Service, and Service Establishment) can all be expected to generate traffic levels similar to those generated by a personal service establishment. These uses can therefore also be considered as “more compatible” with the uses permitted by the Zoning By-law than the existing use of the Subject Property.

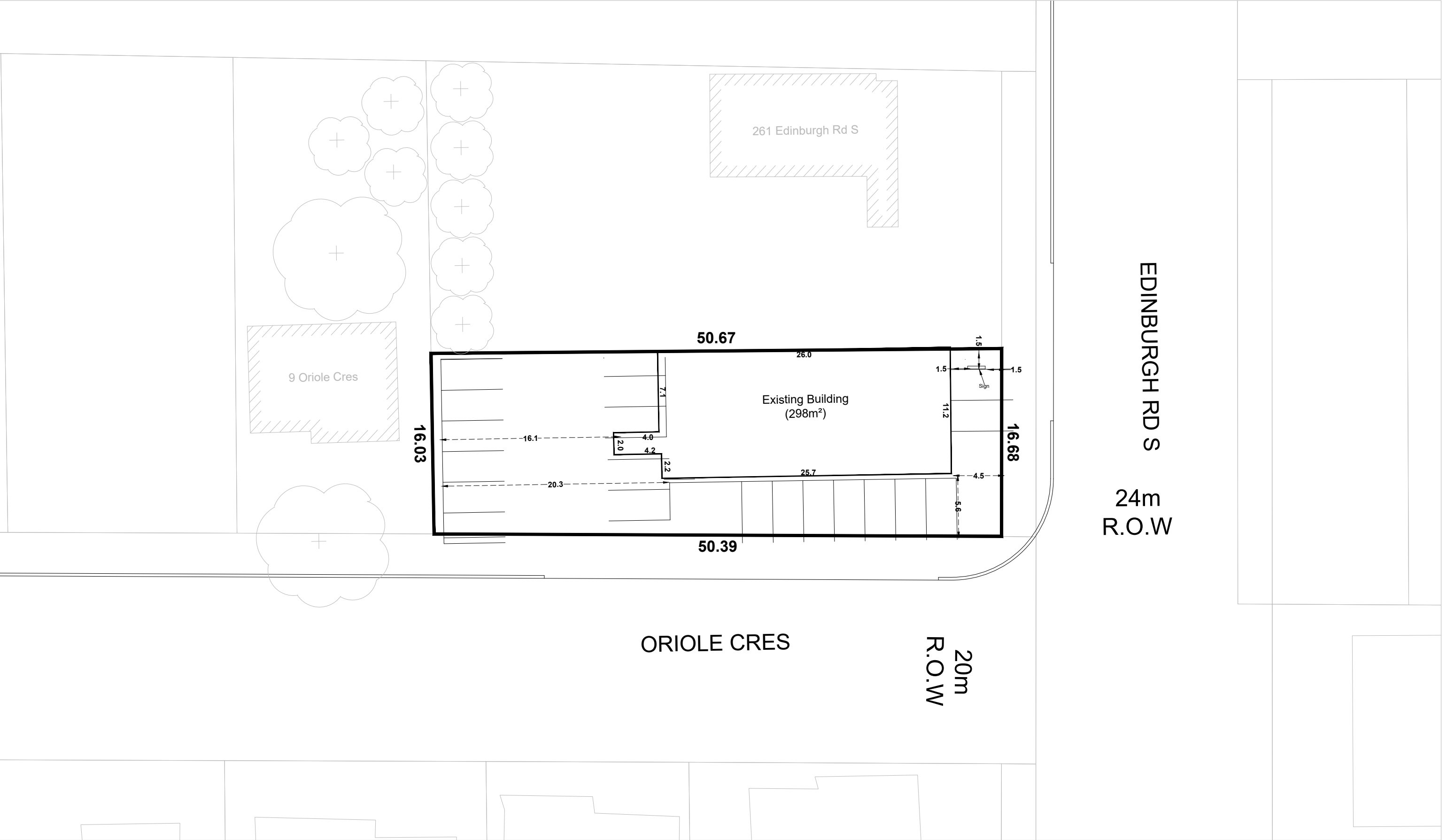
Although the applicant’s request to permit a range of potential uses may be atypical for an application of this nature, each of the proposed uses can be permitted under s. 45 (2)(a)(ii) of the *Planning Act*: the proposed “Laboratory” and “Office” uses are similar to the existing legal non-conforming use of the Subject Property, while the proposed “Medical Office”, “Rental Outlet”, “Repair Service”, “Service Establishment”, and “Veterinary Service” uses are all more compatible with the uses permitted by the Zoning By-law in the “C.1” zone. In this case, “more compatible” does not necessarily mean “less impactful” than the existing use, but rather that the proposed use will have impacts similar to what would be expected from a permitted use, thereby allowing adjacent permitted uses in the same zone to continue operating while avoiding the imposition of undue impacts on neighbouring residential properties.

Please do not hesitate to contact me should any further information or materials be required in order for this application to the Committee of Adjustment to be considered complete.

Sincerely,
GSP Group Inc.

A handwritten signature in dark ink, appearing to read 'Patrick Casey', written in a cursive style.

Patrick Casey, Planner



Minor Variance Sketch
265 Edinburgh Road S, Guelph

Site Area - 826m²



NOTE: Concept for discussion purposes only
Scale 1:800 | November 24, 2022 | Project No.: 22279 | Drawn By: EF