

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: March 21, 2023

SUBMITTED BY: Tina Malone-Wright, Interim Manager, Development Review
519-741-2200 ext. 7765

PREPARED BY: Brian Bateman, Senior Planner, 519-741-2200 x7869

WARD(S) INVOLVED: Ward 9

DATE OF REPORT: March 13, 2023

REPORT NO.: DSD-2023-123

SUBJECT: Minor Variance Application A2023-039
Consent Applications B2023-013, B2023-014 and B2023-015
137 and 149 Queen Street South

RECOMMENDATION:

- A. That Minor Variance Application A2023-039 for 149 Queen Street South requesting relief from Section 6.1.2 of Zoning By-law 85-1 to provide 0 parking spaces instead of the minimum required 37 parking spaces to facilitate the severance of lands for an affordable housing development BE APPROVED.
- B. That Consent Application B2023-013 requesting consent to sever a parcel of land having a lot width of 16.3 metres along Queen Street South, a lot depth of 27 metres and a lot area of 440.6 square metres that will contain an existing dwelling municipally addressed as 149 Queen Street South BE APPROVED subject to the following conditions:
1. That the owner's solicitor shall provide draft transfer documents and associated fees for the Certificate of Official to the satisfaction of the Secretary-Treasurer and City Solicitor if required.
 2. That the Owner shall obtain a tax certificate from the City of Kitchener to verify that there are no outstanding taxes on the subject property to the satisfaction of the City's Revenue Division.
 3. That the owner shall provide a digital file of the deposited reference plan(s) prepared by an Ontario Land Surveyor in PDF and either .dwg (AutoCAD) or .dgn (Microstation) format, as well as two full sized paper copies of the plan(s). The digital file needs to be submitted according to the City of Kitchener's Digital Submission Standards to the satisfaction of the City's Mapping Technologist.
 4. That the owner shall:
 - a) complete a Building Code Assessment for the existing dwelling proposed to be retained on the retained parcel of land, prepared by a qualified person, to confirm

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that the proposed property line and any of the building adjacent to this new property line complies with the Ontario Building Code, to the satisfaction of the City's Chief Building Official. The assessment shall address items such as, but not limited to, spatial separation of existing buildings' wall face, and shall include recommendations such as closing in of openings pending spatial separation calculation results.

- b) A Building Permit shall be obtained for any remedial work/ upgrades required by the Building Code Assessment.
- C. That Consent Application B2023-015 requesting consent to sever a parcel of land having a lot width of 7.4 metres along Queen Street South, a lot depth of 60 metres and a lot area of 1,663.5 square metres proposed for a future affordable housing development and to create 2 easements over the severed lands; the first in favour of 137 Queen Street South for parking and access having a width of 12 metres and a length of 36.7 metres and an area of 440 square metres and the second in favour of 137 and 149 Queen Street South for parking and access having a width of 7.5 metres and a length of 27 metres and an area of 203 square metres, BE APPROVED subject to the following conditions:
1. That Minor Variance Application A2023-039 receives final approval.
 2. That a Site Plan Application for the affordable housing project be submitted and receives conditional approval to the satisfaction of the Director of Planning.
 3. That the owner's solicitor shall provide draft transfer documents and associated fees for the Certificate of Official to the satisfaction of the Secretary-Treasurer and City Solicitor if required.
 4. That the Owner shall obtain a tax certificate from the City of Kitchener to verify that there are no outstanding taxes on the subject property(ies) to the satisfaction of the City's Revenue Division.
 5. That the owner shall provide a digital file of the deposited reference plan(s) prepared by an Ontario Land Surveyor in PDF and either .dwg (AutoCAD) or .dgn (Microstation) format, as well as two full sized paper copies of the plan(s). The digital file needs to be submitted according to the City of Kitchener's Digital Submission Standards to the satisfaction of the City's Mapping Technologist
 6. That the owner make financial arrangements to the satisfaction of the City's Engineering Services, for the installation of all new service connections to the (severed lands and/or retained) lands.
 7. That the owner make financial arrangements to the satisfaction of the City's Engineering Services for the installation, to City standards, of boulevard landscaping including street trees, and a paved driveway ramp, on the (severed lands and/or retained) lands.
 8. That a servicing plan be submitted to the satisfaction of the City's Director of Engineering.
 9. A Development Asset Drawing (digital AutoCAD) be submitted for the new site infrastructure with corresponding layer names and asset information to the satisfaction of Director of Engineering.

10. That the Transfer Easement document(s) required to create the Easement(s) being approved herein shall include the following and shall be approved by the City Solicitor:
 - a) A clear and specific description of the purpose of the Easement(s) and of the rights and privileges being granted therein (including detailed terms and/or conditions of any required maintenance, liability and/or cost sharing provisions related thereto).
 - b) A clause/statement/wording confirming that the Easement(s) being granted shall be maintained and registered on title in perpetuity and shall not be amended, released or otherwise dealt with without the express written consent of the City.
 - c) That a satisfactory Solicitor's Undertaking to register the approved Transfer Easement(s) and to immediately thereafter provide copies thereof to the City Solicitor be provided to the City Solicitor.
 11. That a consultant Archaeologist shall carry out an Archaeological Survey and Rescue Excavation on the retained lands of any significant archaeological remains found on the site, at the expense of the owner. A copy of the completed assessment and Ministry approval letter must be forwarded to the Regional Commissioner of Planning, Housing and Community Services for clearance of this condition.
 12. That the Owner/Applicant enter into a registered development agreement to prepare a final Transportation and Stationary noise study to indicate to the Regional Municipality of Waterloo methods to be used to abate traffic and stationary noise levels for the subject lands and if necessary, shall enter into a registered development agreement with the Regional Municipality of Waterloo to provide for implementation of the accepted noise study attenuation measures.
 13. That the owner/applicant submit the Regional Consent fee of \$350.00.
- D. That Consent Application B2023-015 requesting consent to create an easement over the retained lands, 137 Queen Street South, having a width of 3.2 metres and a length of 24.4 metres and an area of 78 square metres in favour of the severed parcel proposed to be created through Consent Application B2023-014 for parking and access, BE APPROVED subject to the following conditions:
1. That the Transfer Easement document(s) required to create the Easement(s) being approved herein shall include the following and shall be approved by the City Solicitor:
 - a) A clear and specific description of the purpose of the Easement(s) and of the rights and privileges being granted therein (including detailed terms and/or conditions of any required maintenance, liability and/or cost sharing provisions related thereto).
 - b) A clause/statement/wording confirming that the Easement(s) being granted shall be maintained and registered on title in perpetuity and shall not be amended, released or otherwise dealt with without the express written consent of the City.
 - c) That a satisfactory Solicitor's Undertaking to register the approved Transfer Easement(s) and to immediately thereafter provide copies thereof to the City Solicitor be provided to the City Solicitor.

REPORT HIGHLIGHTS:

- The purpose of this report is to recommend approval of the proposed consent applications for lot additions and associated minor variances applications to permit the creation of a new affordable housing project.
- There are no financial implications.
- Community engagement included a notice sign being placed on the property advising that a Committee of Adjustment application has been received, notice of the application was mailed to all property owners within 30 metres of the subject property and this report was posted to the City's website with the agenda in advance of the Committee of Adjustment meeting.
- This report supports the delivery of core services.

BACKGROUND:

The subject properties, 137 and 149 Queen Street South are located at the intersection of Queen Street South and Church Street in downtown Kitchener. The subject properties contain a church and detached dwelling and have considerable frontage onto both Queen and Church Streets. The existing development of the neighbourhood consists of commercial buildings, multiple dwellings, detached dwellings, institutional buildings, and retail buildings. Lot sizes vary in width, depth, and area in this neighborhood.

City Planning staff conducted a site inspection of the property on March 3, 2023.



Image 1 - Location Map: 137 and 149 Queen Street South



Image 2 – Historic St. Paul's Church

St. Paul's Not for Profit Corporation is proposing to build an affordable housing project on the southwest portion of their lands. The development includes the construction of a new 6-storey residential building containing 57 residential units and one level of underground parking (with 16 parking spaces) for residents and 11 surface parking spaces for visitors, intended to be shared with the adjacent church. In December 2022 the owner received approval from the Region of Waterloo for Federal funding (administered through the Region of Waterloo) for the development of the proposed affordable housing project. The funding agreement requires that the development break ground by April 2023. It also requires that the affordable housing building be on its own parcel of land.

The subject properties are currently occupied by a church and single detached house, which both front onto Queen Street South. To facilitate the affordable housing project consent applications are required to isolate the new development area from the two existing buildings to facilitate the proposed development and to meet the terms of the funding agreement that the new development be on its own lot. The consent applications will result in three lots as shown below in Image 4. Parcel C will be severed for development. Parcel A and B will be retained by the church. A minor variance application accompanies the consent application for 137 Queen Street South requesting 0 parking spaces for the church but will be subject to proposed easements for shared parking/access.



Image 4 – Proposed Severance Sketch

A Site Plan application is being prepared and is anticipated to be received shortly.

The subject properties are identified as 'Urban Growth Centre' on Map 2 – Urban Structure and are designated 'City Center District' on Map 4 – Urban Growth Centre in the City's 2014 Official Plan.

The properties are zoned 'Commercial Residential Zone (D-5)' in Zoning By-law 85-1. The existing uses and proposed use of a multiple dwelling are permitted subject to meeting the zoning regulations. The applicant advises the development proposal does not require any variances and a site plan application is forthcoming. This is due to very tight timeframes imposed by the Region to secure funding for affordable housing projects and hence an urgent need to move forward with the consents and minor variance at this time. Staff wish to note however, that this affordable housing proposal has created some concerns among members of the neighbourhood and with residents of the Sandhill condominiums located next door. Staff was contacted by a spokesperson for Sandhill's advising that they will be attending the Committee of Adjustment hearing. To address their concerns, it is staff's understanding that a meeting had occurred between St. Paul's Not for Profit Corporation and Sandhill residents. As a result, changes have been made to the site plan and these are reflected in Attachment 'A' of this report. Staff will work through any additional concerns heard at the Committee of Adjustment meeting through the site plan process as appropriate.

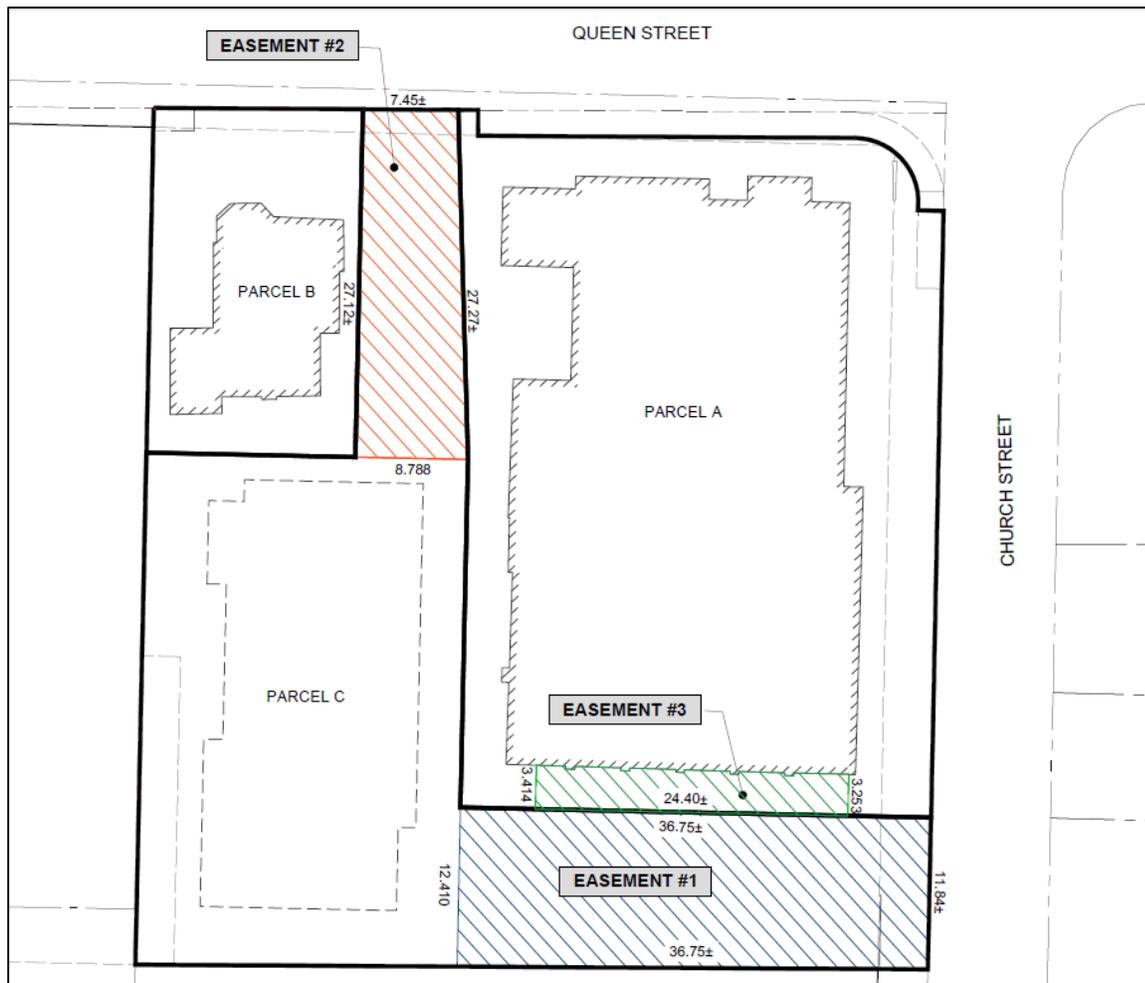


Image 5 – Proposed Easement Sketch

REPORT:

Planning Comments Minor Variance Application A2023-039

In considering the four tests for the minor variances as outlined in Section 45(1) of the Planning Act, R.S.O, 1990 Chap. P 13, as amended, Planning staff offers the following comments:

General Intent of the Official Plan

The subject lands are designated 'City Center District' (Map 4, Urban Growth Centre) in the City of Kitchener Official Plan. The Site is also designated City Centre District. The intent of this designation is to maintain the pedestrian-oriented feel of the area while evolving into a compact, contemporary urban setting, with taller buildings, lively street activity and a stylish mix of shops, restaurants and bars and cultural and entertainment uses. This area is well connected to a primary road network and public transportation making it a suitable location for redevelopment opportunities to help contribute to achieving the intensification target for the Urban Growth Centre (Downtown). The City also recognizes the need for special needs housing in our community and supports the integration of these housing types at appropriate locations, subject to any locational criteria. The City will encourage and support special needs housing to locate in close proximity to public transit, commercial uses and other compatible non-residential land uses, parks and community facilities and have convenient access to community, social and health services.

The subject property is located in the downtown where higher order transit, including within walking distance to several transit station area stops and support services, are available. As such, transportation policies are aimed at reducing parking space demand in support of active transportation and transit and potential redevelopment of surface parking lots especially in intensification areas. Moreover, the City may consider adjustments to parking requirements for properties within an area or areas, where the City is satisfied that adequate alternative parking facilities are available, where developments adopt transportation demand management (TDM) measures or where sufficient transit exists or is to be provided.

Since the proposal is to develop the lands for an affordable housing project within the Urban Growth Centre and currently used for surface parking, is close to the LRT and a City owned parking garage, staff is of the opinion that the intent of the Official Plan is maintained.

General Intent of the Zoning By-law

The subject lands are zoned Commercial Residential Zone (D-5). The existing D-6 zone and special provisions permit the use of the subject lands for a multiple dwelling.

The intent of the required parking regulation is to provide for adequate vehicle storage on site. The subject lands are within walking distance of a LRT station stop and bus routes. The preference in the Urban Growth Centre is to give pedestrian, cycling, and rapid transit modes of transportation the priority over vehicular circulation within the overall transportation system. Should users of the church require vehicular parking, they will have access to parking created through an easement over the retained lands in addition to off site parking at the city-operated parking garages and surface lots located in proximity to the subject lands. Furthermore, the subject properties, which are in the City's downtown, contains an established network of 2-hour temporary on street parking for visitors and short term site users. Staff is of the opinion that the provision of a transit and active transportation oriented development within the Urban Growth Centre induces a reduced demand for vehicle storage and that any additional parking required parking storage can be provided in nearby city operated downtown parking garages and on street short term parking. Staff is of the opinion that the requested variance meets the general intent of the Zoning By-law.

Are the Effects of the Variances Minor?

Staff is of the opinion that the effects of the variances are minor. Given location and proximity to the LRT as well as City-owned parking garages and shared on-site parking, Planning staff do not expect any adverse impacts, and therefore the effects are considered minor.

Are the Variances Desirable for the Appropriate Development or Use of the Land, Building and/or Structure?

Staff is of the opinion that the variances are desirable for the appropriate development and use of the lands, building and/or structure. The proposed variance support the creation of an affordable housing project that utilizes existing servicing and shared infrastructure as well as to intensify underutilized surface parking.

Planning Comments Consent Applications B2023-013, B2022-014 and B2023-015:

In considering all the relevant Provincial legislation, Regional and City policies and regulations, Planning staff offer the following comments:

Provincial Policy Statement, 2020:

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Section 1.4.3(b) of the PPS promotes all types of residential intensification, and sets out a policy framework for sustainable healthy, liveable and safe communities. The PPS promotes efficient development and land use patterns, as well as accommodating an appropriate mix of affordable and market-based residential dwelling types with

other land uses, while supporting the environment, public health and safety. Provincial policies promote the integration of land use planning, growth management, transit-supportive development, intensification, affordable housing and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs.

Planning staff is of the opinion that this proposal is consistent with the PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020

The Growth Plan supports the development of complete and compact communities that are designed to support healthy and active living, make efficient use of land and infrastructure, provide for a range and mix of housing types, jobs, and services, at densities and in locations which support transit viability and active transportation.

The subject lands are located within the City's delineated Urban Growth Centre (UGC), and within a Major Transit Station Area (MTSA) in the 2014 Kitchener Official Plan. In the City's OP on Map 2 – Urban Structure the lands appear within the MTSA circle for the Central Station. Urban Growth Centres plan to accommodate significant population and employment growth. and the severance applications will help make efficient use of existing infrastructure, parks, roads, trails and transit. Planning staff is of the opinion that the development proposal conforms to the Growth Plan.

Regional Official Plan (ROP):

Urban Area policies of the ROP identify that the focus of the Region's future growth will be within the Urban Area. The subject lands are designated Urban Growth Centre in the ROP. Regional policies require Area Municipalities to plan for a range of housing in terms of form, tenure, density and affordability to satisfy the various physical, social, economic and personal support needs of current and future residents. The Region has indicated that they have no objections to the proposed lot additions and provide additional ROP commentary with respect to natural heritage, servicing and noise in the attached Region of Waterloo comments. Planning staff are of the opinion that the severance applications conform to the Regional Official Plan.

City's Official Plan (2014)

The Site is within the 'Urban Growth Centre (Downtown)' area in the City of Kitchener Official Plan. The planned function of the Urban Growth Centre (Downtown) is to accommodate a significant share of the Region's and City's future population and employment growth.

The subject property is also designated City Centre District. The intent of this designation is to maintain the pedestrian-oriented feel of the area while evolving into a compact, contemporary urban setting, with taller buildings, lively street activity and a stylish mix of shops, restaurants and bars and cultural and entertainment uses. This area is well connected to a primary road network and public transportation making it a suitable location for redevelopment opportunities to help contribute to achieving the intensification target for the Urban Growth Centre (Downtown).

The City Centre District is the predominant location in the Downtown for uses such as multiple residential. Objectives are to increase residential development within the Urban Growth Centre (Downtown) and to conserve our cultural heritage resources ensuring that new development and redevelopment is sensitive to, enhances and reflects our past. A minimum Floor Space Ratio of 1.0 and a maximum Floor Space Ratio of 3.0 apply to all new developments and redevelopments.

Sections 17.E.20.4 and 17.E.20.5 of the Official Plan implements Section 51 of the Planning Act and contains policies regarding lot creation and easements. The proposed severance is in accordance with this aspect of the plan and maintains the land use designation.

Planning staff is of the opinion that the size, dimension and shape of the lots are suitable for the use of the lands and compatible with the surrounding neighbourhood, which is developed with commercial buildings, institutional buildings, single detached, semi detached and multiple dwellings all with lots sizes that vary in width, depth, and area. The lands front onto a public street and full services are available. The proposed easements are necessary for orderly development and functionality of the site including rights of access and shared parking arrangements. Planning staff is of the opinion that the proposed severances conform with the City of Kitchener Official Plan.

Zoning By-law

The properties are currently zoned 'Commercial Residential Zone (D-5) in Zoning By-law 85-1.

Planning staff is of the opinion that the size, dimensions and shape of the proposed lots are suitable for the use of the lands and compatible with the surrounding neighbourhood. The subject lands all front onto a public street and full services are available for the lands.

Planning Conclusions/Comments:

With respect to the criteria for the subdivision of land listed in Section 51(24) of the Planning Act, R.S.O. 1990, c.P.13, staff is satisfied that the creation of the severed lots are desirable and appropriate. The future use of both the severed and retained parcels and easements are in conformity with the City's Official Plan and Zoning By-law. Planning staff is of the opinion that the size, dimension and shape of the proposed lots are suitable for the use of the lands and compatible with the surrounding community, that natural resources are conserved and that there are adequate services for the lands. Staff is further of the opinion that the proposal is consistent with the Region of Waterloo Official Plan, the Provincial Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe, and is good planning and in the public interest.

Environmental Planning Comments:

Environmental Planning staff have no concerns.

Heritage Planning Comments:

The subject property municipally addressed as 137 Queen Street South is located within the Victoria Park Area Heritage Conservation District and is designated under Part V of the Ontario Heritage Act. The existing building has been classified as a Group 'A' building – meaning it is of high significance. The existing building is located adjacent to 149 Queen Street South, which is also located within the Victoria Park Area Heritage Conservation District and is designated under Part V of the Ontario Heritage Act. It is not anticipated that the proposed minor variances will have an adverse impact on the existing heritage resources. As such, there are no heritage concerns.

Building Division Comments:

- 1) A qualified designer is retained to complete a Building Code Assessment as it relates to the new proposed property line and any of the building adjacent to this new property line and shall address such items as: spatial separation of existing buildings' wall face to the satisfaction of the Chief Building Official. Closing in of openings may be required, pending spatial separation calculation results.
- 2) A building permit shall be obtained for any remedial work/ upgrades that may be required by the Building Code Assessment.

Engineering Division Comments:

B2023-013 – 137 Queen Street South

No comments.

B2023-014 – 137 Queen Street South

- 1) Severance of any blocks within the subject lands will require separate, individual service connections for sanitary, storm, and water, in accordance with City policies.
- 2) The owner is required to make satisfactory financial arrangements with the Engineering Division for the installation of new service connections that may be required to service this property, all prior to severance approval. Our records indicate sanitary and water municipal services are currently available to service this property. Any further enquiries in this regard should be directed to eric.riek@kitchener.ca
- 3) Any new driveways are to be built to City of Kitchener. All works are at the owner's expense and all work needs to be completed prior to occupancy of the building.
- 4) A servicing plan showing outlets to the municipal servicing system will be required to the satisfaction of the Engineering Division prior to severance approval.
- 5) A Development Asset Drawing (digital AutoCAD) is required for the new site infrastructure with corresponding layer names and asset information to the satisfaction of the Engineering Division prior to severance approval.
- 6) The owner must ensure that the basement elevation of the building can be drained by gravity to the street sewers. If this is not the case, then the owner would have to pump the sewage via a pump and forcemain to the property line and have a gravity sewer from the property line to the street.

B2023-015 – 137 Queen Street South

No comments.

Parks/Operations Division Comments:

Parks and Operations staff have no concerns with the minor variance and consent. Parkland dedication will be deferred to the site plan application.

Transportation Planning Comments:

Based on the parking study submitted by Paradigm Transportation Solutions Ltd. in February 2023, Transportation Services can support the total proposed parking supply of 31 spaces for both the affordable housing development and the existing church combined.

The parking study noted several recommendations regarding Transportation Demand Management measures that can be included in the development to help mitigate the demand for vehicle parking. The applicant is to confirm which, if any, measures will be included in the proposed development through a Letter of Understanding that should be submitted as part of a complete Site Plan Application (or prior to full site plan approval).

It should also be noted that the free public parking options noted in the parking study do exist at this time but cannot be counted on to provide free options in perpetuity.

No concerns with the consent applications.

Region of Waterloo Comments:

The Region has no objection to the proposed application, subject to the following conditions:

- 1) That prior to final approval, the owner/applicant submit the Regional consent review fee of \$350.00;
- 2) That prior to final approval, a licensed Archaeologist prepares an Archaeological Assessment on the lands to be severed and a copy of the Ministry of Heritage, Sport, Tourism and Culture Industries Acknowledgement letter(s) and the Assessment Report must be provided to Regional Staff to the satisfaction of the Region's Planning, Development and Legislative Services Department;

- 3) That prior to final approval, the Owner/Applicant enter into a registered development agreement to prepare a final Transportation and Stationary noise study to indicate to the Regional Municipality of Waterloo methods to be used to abate traffic and stationary noise levels for the subject lands and if necessary, shall enter into a registered development agreement with the Regional Municipality of Waterloo to provide for implementation of the accepted noise study attenuation measures

GRCA Comments:

No concerns.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City’s website with the agenda in advance of the Committee of Adjustment meeting. A notice sign was placed on the property advising that a Committee of Adjustment application has been received. The sign advises interested parties to find additional information on the City’s website or by emailing the Planning Division. A notice of the application was mailed to all property owners within 30 metres of the subject property.

PREVIOUS REPORTS/AUTHORITIES:

- *Planning Act*
- *Provincial Policy Statement (PPS 2020)*
- *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020*
- *Regional Official Plan (ROP)*
- *Official Plan (2014)*
- *Zoning By-law 85-1*

ATTACHMENTS:

Attachment A – Changes to Proposed Site Plan