

# Staff Report



Development Services Department

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**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** May 16, 2023

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

**PREPARED BY:** Sheryl Rice Menezes, Planning Technician, 519-741-2200 ext. 7844

**WARD(S) INVOLVED:** 8

**DATE OF REPORT:** May 8, 2023

**REPORT NO.:** DSD-2023-218

**SUBJECT:** Minor Variance Application A2023-057 - 84 Maple Hill Drive

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## RECOMMENDATION:

### Zoning By-law 2019-051

- A. That Minor Variance Application A2023-057 for 84 Maple Hill Drive requesting relief from Section 5.4 f) of Zoning By-law 2019-051 to permit a driveway to have a width of 25.8 metres instead of the maximum permitted 8 metres to legalize an existing driveway, generally in accordance with the drawings prepared by MacKinnon & Associates, dated August 28, 2013, BE REFUSED.
- B. That Minor Variance Application A2023-057 for 84 Maple Hill Drive requesting relief from Section 5.4 f) of Zoning By-law 2019-051 to permit a driveway to have a width of 18.3 metres instead of the maximum permitted 8 metres to legalize an existing driveway, generally in accordance with the drawings prepared by MacKinnon & Associates, dated August 28, 2013, BE APPROVED.

## REPORT HIGHLIGHTS:

- The purpose of this report is to review a minor variance application to legalize the width of an existing driveway.
- The key finding of this report is that the requested minor variance does not meet all the four tests of the Planning Act.
- 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 on the City's website with the agenda in advance of the Committee of Adjustment meeting.
- This report supports the delivery of core services.



**Photo 1: Aerial view of property (2022)**

**BACKGROUND:**

The subject property is located at the end of a cul-de-sac on Maple Hill Drive. It is identified as Community Area on Map 2 – Urban Structure and is designated as ‘Low Rise Residential’ on Map 3 – Land Use in the City’s 2014 Official Plan. The property is zoned ‘Low Rise Residential One Zone (RES-1)’ in Zoning By-law 2019-051.

In the Autumn of 2022, it was brought to staff’s attention that an existing fence, landscaping, concrete posts, and driveway for the subject property were located on City lands (see Photo 1 above and street view photos below).

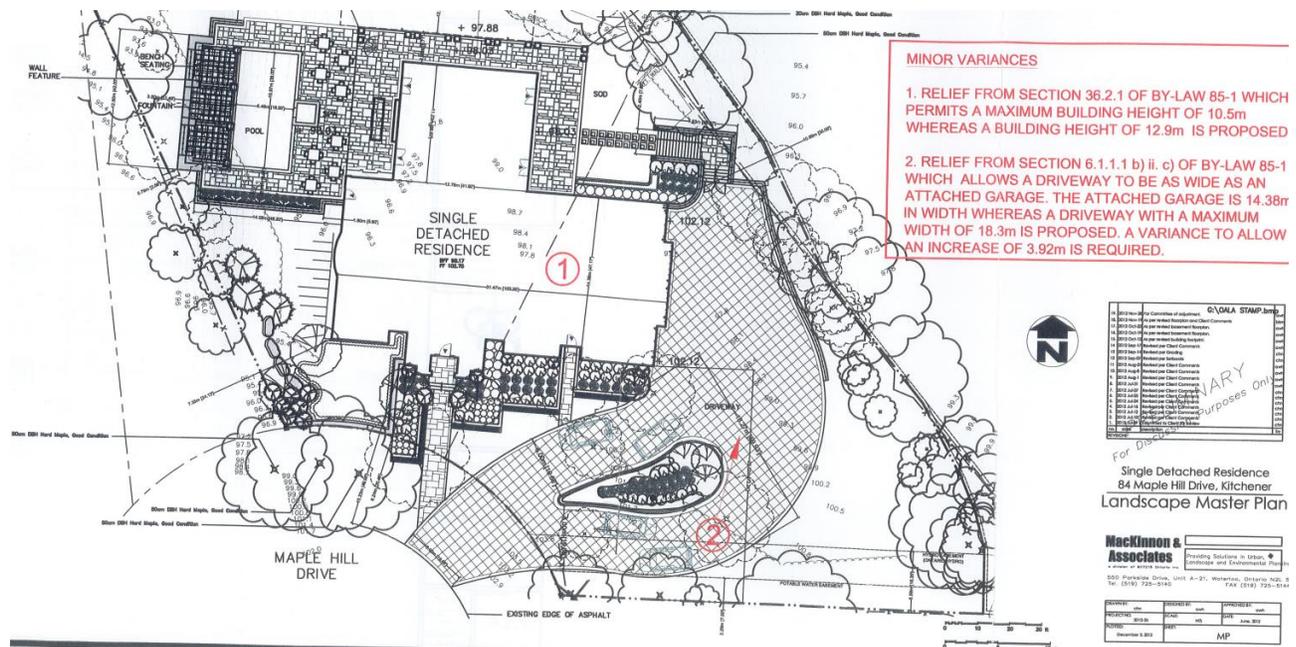
Upon further review, it was determined that the widest part of the driveway within the property is 25.8 metres which exceeds the maximum width permitted (see Photo 1). In addition, the driveway width along the front lot line is approximately 20 metres, which also exceeds the maximum permitted width.

Staff visited the site on April 28, 2023.

## History

In January 2013, the owner received approval of Minor Variance Application A2013-002 to permit an increase in the maximum permitted building height and to permit a proposed driveway to have a width of 18.3 metres instead of the maximum permitted (14.3 metres) which was as wide as the attached garage as permitted by previous Zoning By-law 85-1. (decision and drawing below).

That the application of Shirley Filiatrault requesting permission to construct a single residential dwelling having a maximum building height of 12.87m (42.23') rather than the permitted maximum of 10.5m (34.45') and having a driveway width that exceeds the width of an attached garage, at 18.30m (60.04') wide rather than the permitted maximum of 14.38m (47.18') wide, on Part Lots 10 and 11, Plan 877, 84 Maple Hill Drive, Kitchener, Ontario, **BE APPROVED**.



**Proposed plan for 2013 variance (A2013-002)**

Subsequently, the driveway was not developed in accordance with the drawings that were submitted and considered as part of Minor Variance Application A2013-002.

The property is now zoned in the City's new Zoning By-law, 2019-051, which permits a driveway to only be a maximum of 8 metres (Section 5.4 f), despite the width of the attached garage. Therefore, the current request for a driveway variance is to a different regulation than what was requested in 2013 under the previous by-law.

As Minor Variance A2013-002 was to Zoning By-law 85-1 and the driveway was not developed in accordance with that decision, a Minor Variance would also be required to Zoning By-law 2019-051 to permit the previously approved 18.3 metres.

## REPORT:

In considering the four tests for the minor variance 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 general intent of the Low Rise Residential designation places emphasis on compatibility of building form with respect to massing, scale, and design to successfully support integration of

different housing types. Also placing emphasis on the relationship of housing to adjacent buildings, streets, and exterior areas.

Most of the driveway is interior to the property and is not readily viewed from the street. Therefore, there is limited impact of that area of the property (see blue line on photo 1 above) on the streetscape view.

However, as noted above, the driveway width along the front lot line is visible from the street and is approximately 20 metres in width which also exceeds the maximum permitted width of 8 metres for the property. Staff are of the opinion that the driveway variance does not meet the intent of the Official Plan regarding the relationship of the property to the adjacent streetscape and surrounding neighbourhood.



***Photo 2: Street view from right side of property***

#### General Intent of the Zoning By-law

The general intent of the Zoning By-law regulation for the driveway width is to ensure that a driveway does not dominate the property nor the streetscape. For this property, the zoning by-law permits a maximum driveway width of 8 metres. The minor variance that was granted in 2013 permitted a driveway with of 14.3 metres which was deemed sufficient for accessing the 4-car garage. Exceeding both the 8-metre width and the width of 14.3 metres granted by A2013-002, results in a driveway that dominates the property and streetscape. Staff are of the opinion that the variance does not meet the intent of the Zoning By-law.

#### Is the Effect of the Variance Minor?

Although the 25.8 metre width is not entirely evident from the street, the 20 metres at the driveway entrance, property line, is visible from the street. As well, with the encroachment onto City lands, the driveway is divided by a landscaped island that in effect creates two driveway entrances for the

property. Combined with the encroachment of the landscaping, concrete pillars and fencing, the overall effect of the driveway variance is not minor.



***Photo 3: Street view from left side of property***

**Is the Variance Desirable For the Appropriate Development or Use of the Land, Building and/or Structure?**

The maximum permitted driveway width in Zoning By-law 2019-051 is 8 metres. Minor Variance A2013-002 which granted relief to Zoning By-law 85-1 to permit a driveway width of 18.3 metres instead of 14.3 metres contemplated a sufficient-sized driveway that would be able to provide access to a 4-car garage. Exceeding these maximums creates a driveway that dominates the front yard and a portion of the side yard. Staff are of the opinion that the variance is not desirable and appropriate for the development of the property.

Though staff are not in support of the variance to legalize the existing driveway width of 25.8 metres, should the committee consider legalizing the portion of the driveway as was originally approved in 2013, staff have no concerns. The original request to permit a driveway width of 18.3 metres met the four tests of the Planning Act at the time and continues to be supportable by staff. If considered, the variance under Zoning By-law 2019-051 would be to permit a driveway width of 18.3 metres instead of the maximum permitted 8 metres.

**Environmental Planning Comments:**

No natural heritage concerns or tree management concerns.

**Heritage Comments:**

There are no heritage concerns. The Kitchener Cultural Heritage Landscape Study (CHLS) dated December 2014 and prepared by The Landplan Collaborative Ltd. was approved by Council in 2015. The CHLS serves to establish an inventory and was the first step of a phased Cultural Heritage

Landscape (CHL) conservation process. The property municipally addressed as 84 Maple Hill Drive is located within Westmount Gold Course CHL. The owner and the public will be consulted as the City considers listing CHLs on the Municipal Heritage Register, identifying CHLs in the Official Plan, and preparing action plans for each CHL with specific conservation options.

**Building Division Comments:**

No objections to the proposed variance.

**Engineering Division Comments:**

No comments.

**Parks/Operation Division Comments:**

No concerns.

**Transportation Planning Comments:**

No concern with the proposed driveway width; however, Transportation Services does not support the proposed encroachments into the City's right-of-way as it could impact any future works within the right-of-way. Landscaping features such as pillars, columns, etc. should be kept within private property.

**GRCA**

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:**

- *A2013-002*
- *Planning Act*
- *Provincial Policy Statement (PPS 2020)*
- *A Place to Grow: Growth Plan for the Greater Horseshoe, 2020*
- *Regional Official Plan*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*