

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: April 18, 2023

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

PREPARED BY: Eric Schneider, Senior Planner, 519-741-2200 ext. 7843

WARD(S) INVOLVED: Ward 3

DATE OF REPORT: April 5, 2023

REPORT NO.: DSD-2023-185

SUBJECT: Consent Application B2023-016 – 73 Second Avenue

RECOMMENDATION:

That Consent Application B2023-016 requesting consent to sever a parcel of land having a lot width of 10.1 metres on Second Avenue, a lot depth of 40.2 metres and a lot area of 404.7 square metres, 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(ies) to the satisfaction of the City's Revenue Division.
3. That the owner provides 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 size 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 provides a servicing plan showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.
5. That the Owner submit a Development Asset Drawing (digital AutoCAD) for the site (servicing, SWM etc.) with corresponding layer names and asset information to the satisfaction of the City's Director of Engineering Services, prior to deed endorsement.
6. That the Owner makes financial arrangements for the installation of any new service connections to the severed and/or retained lands to the satisfaction of the City's Director of Engineering Services.
7. That any new driveways are to be built to City of Kitchener standards at the Owner's

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Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

expense prior to occupancy of the building to the satisfaction of the City's Director of Engineering Services.

8. That the Owner provides confirmation that the basement elevation can be drained by gravity to the street sewers to the satisfaction of the City's Director of Engineering Services. If this is not the case, then the owner will need 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 to the satisfaction of the City's Director of Engineering Services.
9. That the owner pay to the City of Kitchener a cash-in-lieu contribution for park dedication of \$11,862.00.
10. That the Owner obtains Demolition Control Approval, in accordance with the City's Demolition Control By-law, to the satisfaction of the City's Director of Planning.
11. That the Owner obtains a Demolition Permit for the existing dwelling proposed to be demolished, to the satisfaction of the Chief Building Official.
12. That at the sole option of the City's Director of Planning, the Owner shall enter into an agreement with the City of Kitchener, to be prepared by the City Solicitor, to the satisfaction of the City Solicitor and the City's Director of Planning, which shall include the following:
 - a) That the owner shall prepare a Tree Preservation Plan for the severed and retained lands, in accordance with the City's Tree Management Policy, to be approved by the City's Supervisor, Site Plans, and where necessary, implemented prior to any grading, servicing, tree removal or the issuance of building permits. Such plans shall include, among other matters, the identification of a proposed building envelope/work zone, a landscaped area and the vegetation to be preserved. If necessary, the plan shall include required mitigation and or compensation measures.
 - b) The owner further agrees to implement the approved plan. No changes to the said plan shall be granted except with the prior approval of the City's Supervisor, Site Plans.
13. That, prior to final approval, the applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.
14. That the Owner enter into a registered agreement with the Region of Waterloo on both retained and severed lots:
 - a) The dwelling will be fitted with a forced air-ducted heating system suitably sized and designed with provision for the installation of central air conditioning in future at the occupant's discretion.
 - b) The following noise warning clause will be included in all offers of purchase, deeds and rental agreements:

"The purchasers/tenants are advised that sound levels due to increasing road traffic Highway 7/8 may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the sound level limits of the Waterloo Region and the Ministry of the Environment Conservation and Parks (MECP). This dwelling has been fitted with a forced air-ducted heating system and has been designed with the provision of adding central air conditioning at the occupant's

discretion. Installation of central air conditioning by the occupant in low and medium-density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Waterloo Region and the Ministry of the Environment Conservation and Parks (MECP)".

Alternatively, the applicant may choose to undertake a detailed environmental noise study to assess the environmental noise impacts on the proposed residential dwellings on retained and severed lots. The recommendations of the detailed noise study will be implemented through a registered agreement with the City of Kitchener. The recommendations of the detailed noise study will be implemented through a registered agreement with the Region of Waterloo.

c) The Owner shall ensure that all noise attenuation measures required pursuant to this Agreement are implemented and completed to the satisfaction of The Regional Municipality of Waterloo and where applicable, incorporated in the building plans for the dwelling units on the Severed Lands and the Retained Lands prior to the Owner requesting the issuance of any building permits. The Owner further agrees to construct the dwelling units on the Severed Lands and the Retained Lands in accordance with approved plan(s) which incorporate all such required noise attenuation measures.

REPORT HIGHLIGHTS:

- The purpose of this report is to review an application for consent to create 2 new lots for a new duplex dwelling on each of the severed and retained parcels of land.
- 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 property is an interior lot located on the East side of Second Avenue between Kingsway Drive and Connaught Street.



Figure 1: Location of Subject Property

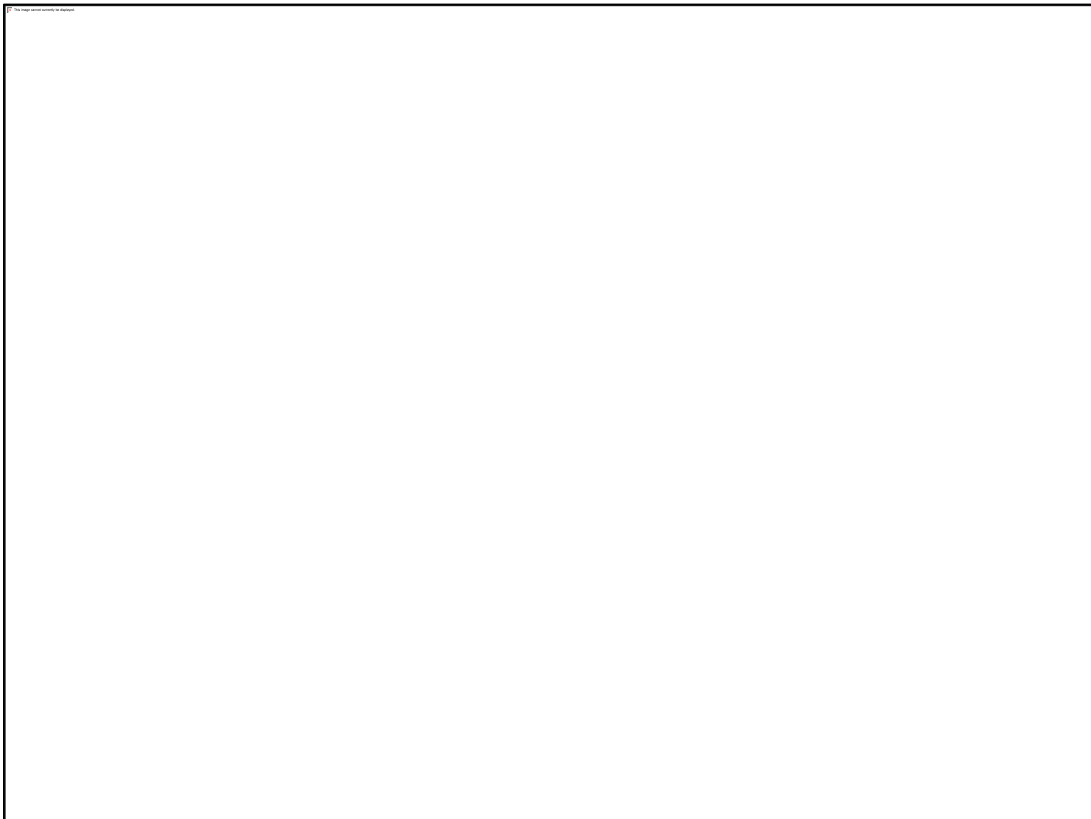


Figure 2: View of Existing Detached Dwelling

The subject property is identified as 'Community Area' on Map 2 – Urban Structure and is designated 'Low Rise Residential' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'Low Rise Residential Four Zone (RES-4)' in Zoning By-law 2019-051.

The purpose of the application is to create a new lot to construct a new detached duplex dwelling on the severed lands. A duplex dwelling would also be built on the retained lands. The existing detached dwelling is proposed to be demolished.

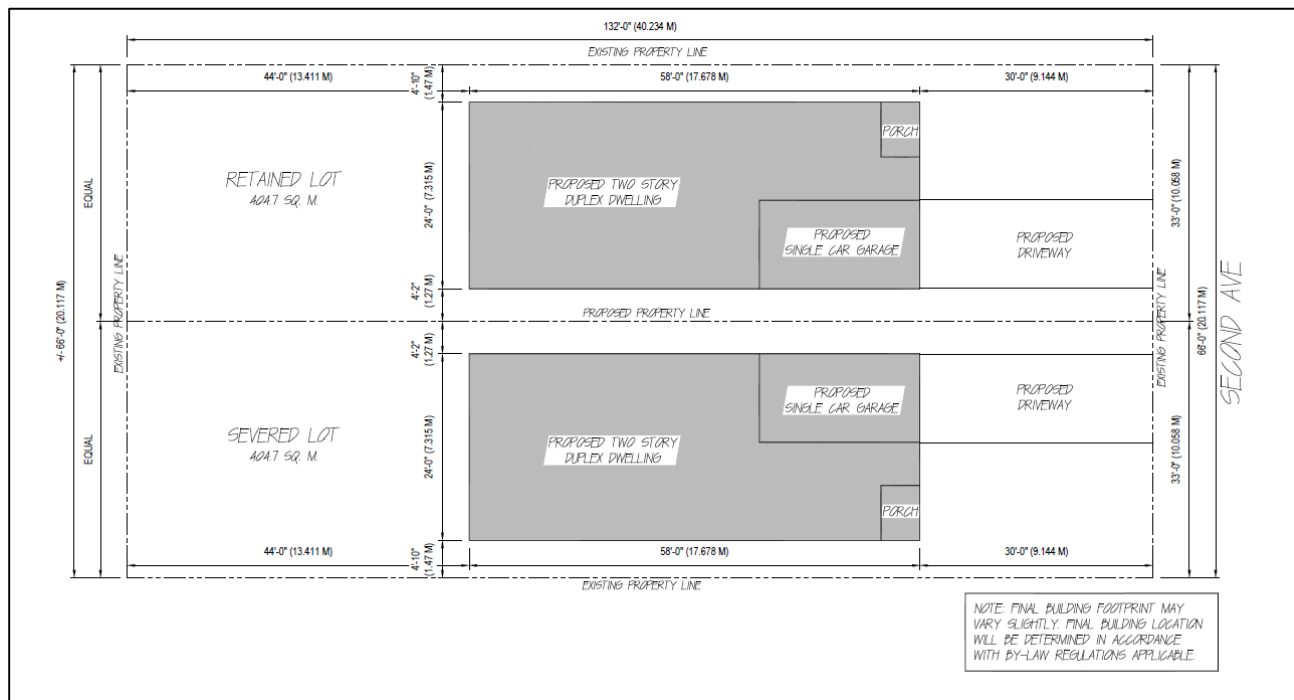


Figure 3: Severance Sketch

REPORT:

Planning Comments:

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

Provincial Policy Statement (PPS 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, 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 the proposed application will facilitate a form of gentle intensification of the subject property with the creation of new lot for a future duplex dwelling that is compatible with the surrounding community and will make use of the existing infrastructure. No new public roads would be required for the proposed development. 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 in close proximity to transit and the subject lands are in closer proximity to trails and parks.

Policy 2.2.6.1(a) Municipalities will support housing choice through the achievement of the minimum intensification and targets in this plan by identifying a diverse range and mix of housing options and densities, including additional residential units and affordable housing to meet projected needs of current and future residents.

The subject lands are located within the City's delineated built up area. The proposed development represents gentle intensification and will contribute towards achieving the City's intensification density targets. The severance application 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 Built-Up Area in the ROP. The proposed development conforms to Policy 2.D.1 of the ROP as this neighbourhood provides for the physical infrastructure and community infrastructure to support the proposed residential development, including transportation networks, municipal drinking-water supply and wastewater systems, and a broad range of social and public health services. 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. Planning staff are of the opinion that the severance application conforms to the Regional Official Plan.

City's Official Plan (2014)

The subject property is identified as 'Community Area' on Map 2 – Urban Structure and is designated 'Low Rise Residential' on Map 3 – Land Use in the City's Official Plan.

Section 17.E.20.5 of the Official Plan implements Section 51 of the Planning Act and contains policies regarding infill development and lot creation (Consent Policies). These policies state the following:

"17.E.20.5 Applications for consent to create new lots will only be granted where:

- a) the lots comply with the policies of this Plan, any Community Plan and/or Secondary Plan, and that the lots are in conformity with the Zoning By-law, or a minor variance has been granted to correct any deficiencies;
- b) the lots reflect the general scale and character of the established development pattern of surrounding lands by taking into consideration lot frontages, areas, and configurations;
- c) all of the criteria for plan of subdivision are given due consideration;
- d) the lot will have frontage on a public street;
- e) municipal water services are available;

- f) municipal sanitary services are available except in accordance with Policy 14.C.1.19;
- g) a Plan of Subdivision or Condominium has been deemed not to be necessary for proper and orderly development; and,
- h) the lot(s) will not restrict the ultimate development of adjacent properties.”

The proposed lot widths and lot areas of the proposed severed and retained lots will meet the minimum ‘RES-4’ zone lot width and lot area requirements and minor variances are not required. 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 neighbourhood which is developed with single detached, semi detached and multiple dwellings with lots sizes that vary in width, depth, and area. The lands front onto a public street and full services are available. There are no natural heritage features that would be impacted by the proposed consent application. Planning staff is of the opinion that the proposed severance conforms with the City of Kitchener Official Plan.

Zoning By-law 2019-051

The subject property is zoned as ‘Low Rise Residential Four Zone (RES-4)’ in Zoning By-law 2019-051. The ‘RES-4’ zone permits a range of low density dwelling types such as duplex dwellings. The ‘RES-4’ Zone requires a minimum lot width of 9 metres (internal lots) and 12.8 metres (corner lots) and minimum lot area of 235 square metres for duplex dwellings. The proposed lot widths and lot areas of the proposed severed and retained lots meet the minimum ‘RES-4’ zone lot width and lot area requirements.

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.

[insert comments]

Environmental Planning Comments:

The following conditions should be applied:

That at the sole option of the City’s Director of Planning, the Owner shall enter into an agreement with the City of Kitchener, to be prepared by the City Solicitor, to the satisfaction of the City Solicitor and the City’s Director of Planning, which shall include the following:

- a) That the owner shall prepare a Tree Preservation Plan for the severed and retained lands, in accordance with the City’s Tree Management Policy, to be approved by the City’s Supervisor, Site Plans, and where necessary, implemented prior to any grading, servicing, tree removal or the issuance of building permits. Such plans shall include, among other matters, the identification of a proposed building envelope/work zone, a landscaped area and the vegetation to be preserved. If necessary, the plan shall include required mitigation and or compensation measures.
- b) The owner further agrees to implement the approved plan. No changes to the said plan shall be granted except with the prior approval of the City’s Supervisor, Site Plans.

Heritage Planning Comments:

No heritage concerns.

Building Division Comments:

The Building Division has no objections to the proposed consent. Region of Waterloo and Area Municipalities' Design Guidelines and Supplemental Specifications for Municipal Services (DGSSMS) allows only one service per lot. Separate building permit(s) will be required for the demolition of the existing building, as well as construction of the new residential buildings.

Engineering Division Comments:

- Severance of any blocks within the subject lands will require separate, individual service connections for sanitary, storm, and water, in accordance with City policies.
- 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, storm and water municipal services are currently available to service this property. Any further enquiries in this regard should be directed to nolan.beatty@kitchener.ca
- Any new driveways are to be built to City of Kitchener/Region of Waterloo standards. All works are at the owner's expense and all work needs to be completed prior to occupancy of the building.
- A servicing plan showing outlets to the municipal servicing system will be required to the satisfaction of the Engineering Division prior to severance approval.
- 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.
- 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.

Parks/Operations Division Comments:

Cash-in-lieu of park land dedication will be required on the severed parcel as 1 new development lot will be created. The cash-in-lieu dedication required is \$11,862.00.

Transportation Planning Comments:

Transportation Services have no concerns with the proposed application.

Region of Waterloo Comments:

The purpose of the application is to demolish the existing dwelling on the property and to create two lots for a duplex on each of the severed and retained lots.

Environmental Noise Study

Both severed and retained residential lots may have impacts from road noise from traffic on Conestoga Parkway (Highway 7/8).

The following conditions should be secured through a registered agreement with the City of Kitchener for ALL DWELLING UNITS on both retained and severed lots:

- a) The dwelling will be fitted with a forced air-ducted heating system suitably sized and designed with provision for the installation of central air conditioning in future at the occupant's discretion.
- b) The following noise warning clause will be included in all offers of purchase, deeds and rental agreements:

"The purchasers/tenants are advised that sound levels due to increasing road traffic Highway 7/8 may occasionally interfere with some activities of the dwelling occupants as the sound

levels may exceed the sound level limits of the Waterloo Region and the Ministry of the Environment Conservation and Parks (MECP). This dwelling has been fitted with a forced air-ducted heating system and has been designed with the provision of adding central air conditioning at the occupant's discretion. Installation of central air conditioning by the occupant in low and medium-density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Waterloo Region and the Ministry of the Environment Conservation and Parks (MECP)".

Alternatively, the applicant may choose to undertake a detailed environmental noise study to assess the environmental noise impacts on the proposed residential dwellings on retained and severed lots. The recommendations of the detailed noise study will be implemented through a registered agreement with the City of Kitchener.

Source Water Protection

For information, the property is designated Wellhead Protection Sensitivity Area 8 on Map 6a of the Regional Official Plan (ROP). The purpose of this designation and corresponding policies in Chapter 8 of the ROP, is to protect the Region's long term municipal groundwater supplies. No action is required by the applicant.

Regional Fee

The owner/applicant is required to submit the Regional consent review fee of \$350.00 prior to final approval of the consent.

*City Planning Comments:

The issue with requiring noise mitigation measures through construction and requiring this mitigation to be contained in an agreement registered on title is that noise attenuation matters are not addressed in the Building Code Act. The agreement is not applicable law for building permit issuance so the City's Building Inspectors (or divisional staff) have no authority to withhold issuance of Building Permits if these measures are not incorporated in the building plans (there is no applicable law). As such, monitoring noise attenuation matters in building plans is not a practice employed by the City's Building Inspectors (or dept. staff) as part of the Building Permit or Inspection processes. Accordingly, City Staff cannot ensure that the dwelling/building has been constructed accordingly and as referenced in the noise warning clause.

Planning staff are suggesting the additional wording below be added to the Regional Conditions as 'c)'. The responsibility of ensuring all required noise attenuation measures have been incorporated in building plans, and as noted in the noise warning clause, is the responsibility of the Owner.

"The Owner shall ensure that all noise attenuation measures required pursuant to this Agreement are implemented and completed to the satisfaction of The Regional Municipality of Waterloo and where applicable, incorporated in the building plans for the dwelling units on the Severed Lands and the Retained Lands prior to the Owner requesting the issuance of any building permits. The Owner further agrees to construct the dwelling units on the Severed Lands and the Retained Lands in accordance with approved plan(s) which incorporate all such required noise attenuation measures."

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 2019-051*