

# Staff Report



Development Services Department

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**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** July 18, 2023

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

**PREPARED BY:** Sheryl Rice Menezes, Planning Technician (Zoning)  
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**WARD(S) INVOLVED:** 3

**DATE OF REPORT:** July 6, 2023

**REPORT NO.:** DSD-2023-313

**SUBJECT:** Minor Variance Application A2023-078 – 35 Fifth Avenue

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## RECOMMENDATION:

That Minor Variance Application A2023-078 for 35 Fifth Avenue requesting relief from Section 4.12.2 e) of Zoning By-law 2019-051 to permit a lot width of 12.2 metres instead of the minimum required 13.1 metres and relief from Section 5.4, Table 5-3, of Zoning By-law 2019-051 to permit a garage width of 66% (6.5 metres) instead of the maximum permitted 40% (4.8 metres), to facilitate the demolition of an existing dwelling and the construction of a new single detached dwelling with two attached Additional Dwelling Units (ADUs) (Attached), for a total of 3 dwelling units, generally in accordance with the drawings prepared by AH+ Architects, dated August 1, 2019, BE REFUSED.

## REPORT HIGHLIGHTS:

- The purpose of this report is to review a minor variance application to construct a new building containing three dwelling units with a lot width of 12.2 metres and a garage width of 6.5 metres.
- The key finding of this report is that the requested minor variances do 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.

## BACKGROUND:

The subject property is located on the east side of Fifth Avenue, south of Kingsway Drive.



**Figure 1: Aerial photo with subject property highlighted**

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

It is noted that the property is within Appendix 'C' and 'D' areas of Zoning By-law 2019-051 which contains more restrictive regulations, for front yard setbacks, garage width and building heights, than areas outside the subject Appendices. This is to maintain the existing built form so that new developments are compatible and do not dominate the streetscape.

The applicant proposes to demolish an existing single detached dwelling and construct a new single detached dwelling with two attached Additional Dwelling Units (ADU) (Attached) for a total of 3 dwelling units, to have a lot with of 12.2 metres rather than the required 13.1 metres and to have a garage width of 6.5 metres (65%) rather than the permitted 4.8 metres (40%).

It is noted that the mail out to abutting property owners and the advertisement in The Record mentioned that the existing building was proposed to remain. However, the application indicated that the existing dwelling was proposed to be demolished and a new building to be constructed in its place. The notice placed on the on the lawn sign correctly noted that the removal of the existing building.

There has been much consultation with the applicant over the built form and its layout. Changes were made to the roof line, to flatten it, in order that it would comply with the maximum permitted building height in the established neighbourhood.

The applicant has also been made aware, that despite the walkout and basement area, that the maximum number of dwelling units permitted in the proposed building is three (3). The applicant has advised, as indicated on the submitted drawings, that the unfinished basement level is for storage and service space only. Staff have advised that four dwelling units would require different variances which would not be supported by staff.

Staff visited the site on June 30, 2023.



Existing dwelling at 35 Fifth Ave

**Figure 2: Street view of Subject Property – 35 Fifth Ave**





**Figure 3: Street view and Relationship to Adjacent Properties**



**Figure 4: Side elevation of proposed 3-storey building with walk out basement (garage to the right).**

## **REPORT:**

### **Planning Comments:**

In considering the four tests for the minor variances as outlined in Section 46(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 intent of the Low-Rise Residential designation is to accommodate a full range of low-density housing types which may include single detached dwellings with additional dwelling units. The mixing and integrating of innovative and different forms of housing to achieve and maintain a low-rise built form is supported. The variances meet the intent of the Official Plan.

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

The intent of the regulation regarding lot width is to ensure that dwellings with three units have sufficient lot width for the structure setbacks, for parking and for amenity area. The proposed variance is for a lot width of 12.2 metres rather than the required 13.1 metres. By itself, the lot width is considered a minor variance of 0.9 metre and staff are of the opinion that the intent of the lot width variance is met. Staff are of the opinion that a lot width could support a building with 3 dwelling units, however, it is not of an appropriate width to accommodate the proposed built form.

The intent of the regulation regarding a maximum of 40% garage width of the building façade is to ensure that garages do not dominate the property or the streetscape. The applicant is requesting a garage width of 65% (6.5 metres) of the building façade where only a maximum of 40% (4.8 metres) garage width is permitted in the Appendix 'C' area of Zoning By-law 2019-051. This regulation has been in place since last year, March 21, 2022. Staff must consider the intent of this newer regulation to ensure the changes in the by-law are consistent going forward. Staff are of the opinion that the general intent of this regulation as it applies to properties in Appendix 'C' – Central Neighbourhood is not met.

#### Is/Are the Effects of the Variance(s) Minor?

The effect of the reduced lot width to permit 3 dwelling units on one(1) lot impacts the façade width which in turn affects the maximum garage width permitted in order to provide 2 parking spaces with unobstructed access. The variance's impacts, to permit an increased garage width and consequently a driveway width which is the same with as the garage width, are not considered minor and overall appear to be an overdevelopment of the property. The requested garage/driveway width of 6.5 metres exceeds the width of two (2) side by side parking spaces of 5.2 metres and contribute to excessive driveway width which would negatively impact the vision for an enhanced streetscape.

#### Is/Are the Variance(s) Desirable For The Appropriate Development or Use of the Land, Building and/or Structure?

As noted above, the combined variances create a garage/driveway/parking layout that does not meet the intent of the new zoning by-law for this Appendix 'C' - Central Neighbourhood area. Staff are of the opinion that the variances together create a development that is not appropriate and desirable for the use of this property in the subject area.



**Figure 5: Proposed front façade with Garage Width of 65%**

In summary, it is staff's opinion that the proposed dwelling, with an increased garage width, is an over development of the subject property. It has not been demonstrated why it is not possible to construct a more compatible building, with 3 dwelling units, on a lot of 12.2 metres instead of 13.1 metres and comply with all other regulations of the Zoning By-law. Planning staff recommends that the variances be 'Refused'.

**Heritage Planning Comments:**

No concerns.

**Environmental Planning Comments:**

No concerns.

**Building Division Comments:**

No objections to the proposed variance provided building permit for the new residential is obtained prior to construction. Please contact the Building Division at [building@kitchener.ca](mailto:building@kitchener.ca) with any questions.

**Engineering Division Comments:**

No Comments.

**Transportation Planning Division Comments:**

Transportation Services have no concerns with the proposed application.

**Parks and Cemeteries Division Comments:**

There is an existing City-owned street tree that will be impacted by the proposed driveway widening associated with the development and this tree should be protected to City standards throughout construction as per Chapter 690 of the current Property Maintenance



By-law. Suitable arrangements including the submission and approval of a Tree Protection and Enhancement Plan showing full protection for existing trees; an ISA valuation of City-owned trees and any required securities or compensation for removed trees will be required to the satisfaction of Parks and Cemeteries prior to the issuance of a Building Permit or curb cut permit. Please see Urban Design Manual Part C, Section 13 and [www.kitchener.ca/treemanagement](http://www.kitchener.ca/treemanagement)

**Region of Waterloo Comments:**

There are no conditions for this application. However, the owners are advised that the proposed and existing dwelling(s) on the subject lands would have impacts from the transportation noise in the vicinity. The owners are responsible for ensuring that the subject development does not have any environmental noise impacts. In the absence of a detailed noise study, the staff strongly recommend that all dwelling units be installed with air-ducted heating and ventilation system, suitably sized and designed for the provision of central air conditioning. This will avoid retrofit at any later application stage, e.g., Consent/Condo.

**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 advised 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*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*