

Chantelle James and Ian Harrower

July 11, 2023

Committee of Adjustment  
City Of Kitchener  
200 King St W  
Kitchener, ON

Regarding: variance request A 2023-085 for 920 Keewatin Pl, requesting variance for accessory building (garden arbour) to be built in the front yard

We strongly object to the applicant's request for the already-installed front yard structure.

First, this structure is not a garden arbour but a fence. Garden arbours are lightweight, airy structures with open sides designed for plants to grow on. The structure the applicant has built is extremely large and is obviously designed as a privacy fence. From most angles, it looks like a fence. According to section 630.1.8 of the City of Kitchener Municipal Code, a fence is defined as:

a barrier, including one for noise attenuation, or any structure except a structural part of a building, that wholly or partially screens from view, encloses or divides a yard or other land or any portion thereof, prevents access by people or animals, or marks or substantially marks the boundary between adjoining land. A fence shall include:

- (a) every post, door, gate, or closure that adjoins, abuts, or attaches thereto;
- (b) a railing, guard, or structure joined to, or directly around or on a deck or porch provided that such material does not form a component of a fully enclosed deck or fully enclosed porch; and
- (c) any component or element that physically or visually combines with or appears to contribute to the use or purpose of the fence whether attached thereto or self-supported.

This structure meets the definition of subsection (c) and therefore should be subject to the fencing bylaw. Note that this structure cannot be considered a privacy screen, since according to section 630.1.21 of the City of Kitchener Municipal Code:

"privacy screen" means a visual barrier used to shield any part of a yard from view from any adjacent parcel of land or highway. Notwithstanding any other portion of this definition, a privacy screen shall not include:

- (a) self-supported hedges, trees, or other vegetation;
- (b) a building, trellis, arbor, pergola, arch, gazebo, or obelisk; or
- (c) anything 8 feet (2.44 metres) or less in height from grade unless such thing is a component or element that physically or visually combines with or appears to

contribute to the use or purposes of the privacy screen whether attached thereto or self-supported.

The applicant's structure appears to be constructed in a similar manner to the previously-constructed fence extending rearwards from the front of the house, and visually combines with it. Therefore, it is a fence.

This structure is also poorly constructed as it does not have proper footings. An eight foot tall by eight foot wide fence structure needs fence posts for stability and security. Not including them means that this structure has been constructed with poor workmanship, in contravention of subsection (b) of section 630.2.3 of the City of Kitchener Municipal Code, which states:

No person shall erect, construct, maintain, have, own, allow to remain, fail to remove, or permit or cause to be erected, maintained, or constructed any fence that has:

- (a) been constructed or partially constructed of materials that are not suitable or sufficient for the purpose for which they have been used;
- (b) been constructed with poor workmanship, or
- (c) not been maintained in a safe manner.

We recognize that the Committee of Adjustment could still issue a variance for this structure, possibly with conditions. However, we strongly object to such a variance especially with conditions.

If the structure were to remain, the applicant will be unable to tend to the lawn and weeds between the structure and the property line shared with 916 Keewatin Pl, in contravention of subsection (c) of City of Kitchener Municipal Code section 665.6.1, which states:

Exterior property areas shall be maintained in a safe condition and so as not detract from the neighbouring environment, including but not limited to the removal of:

- a) rubbish, garbage, waste, litter, and debris;
- b) trees, bushes, and hedges including any branches or limbs thereof which are dead, decayed or damaged, and brush;
- c) noxious weeds pursuant to the Weed Control Act, R. S. O. 1990, c. W.5 and any excessive growth of other weeds, grass, and bushes;
- d) wrecked, dismantled, inoperative, discarded, or unlicensed vehicles, trailers, machinery or parts thereof, except in an establishment licensed or authorized to conduct a salvage, wrecking, or repair business and then only if such establishment conforms with any relevant by-laws, statutes, or regulations; and
- e) dilapidated or collapsed buildings, structures or erections, and the filling in or protecting of any unprotected well.

The only way that portion of the applicant's property can be tended is if the applicant or their delegates trespass onto 916's property, 916 tends to that portion of 920's property, or the City of Kitchener tends to that part of the property. The applicant has been involved in conflicts with several neighbours on the street, including ourselves, and there is a long history of bylaw and police calls either from or about the applicant. The applicant has been in a particularly heated conflict with the neighbours at 916. The owners of 916 are under absolutely no obligation to either allow the applicant or their agents onto their property to tend to the applicant's property or

to tend to the property themselves. Any such activity by either side would result in either a police call or a lawsuit for trespassing. This has happened before: such incidents are detailed in judgement *Cecchin v Lander*, 2019 CanLII 131883 (ON SCSM), located at <https://canlii.ca/t/j5vm8>, against Marcel Bradbury (an occupant of 920). Having the City come and tend to this part of the applicant's property would be an extremely wasteful use of City resources.

Therefore, those grasses and weeds will grow to unsightly heights in full view of the street. This is unacceptable for the health and property values of everyone else on the street and is not in keeping with the character of the neighbourhood.

We would also like to remind the Committee of Adjustment of a previous request for variances by 920 (A 2019-062). One request, to park on the side yard next to the property line shared by 920 and us at 921 Keewatin Pl, was denied, but the applicant still parked there after the denial before a fence was built. When we contacted the city to complain about this and other problems, as we had been told to do during the CoA meeting of July 19, 2019, nothing changed and eventually a city employee told us not to contact them about the issues again. Another of the applicant's variance requests was approved with the condition that they provide a parking plan. The applicant did provide such a plan but did not and has not implemented it.

We were also harassed by the applicant: after we told them we would oppose their variance requests, they filed a police report falsely accusing one of us of vandalism. Other harassing incidents included calling the police to accuse us of spying when we took our dog out to the boulevard circle to pee and to play Pokémon Go; flashing vehicle lights and honking a vehicle horn at midnight when we did the same; and calling the police to accuse us of harassment when we took photos of parking violations to report the violations to the City. It was an awful time. We just wanted the applicant to follow the rules, and we were harassed and bullied in return.

We raise these issues because that entire experience is likely to be repeated if the structure is approved, especially if it is approved with conditions. The applicant may adhere to the letter and not the spirit of the conditions or may only give the appearance of adhering to the conditions. We are concerned that the applicant may seek to increase rather than attempt to lower tensions with their neighbours, and may bully and harass neighbours until the applicant gets their way. We have no reason to believe that the applicant will behave any differently than they did in 2019 with respect to this structure, if it is approved. The only difference would be which neighbour is on the receiving end of the applicant's bullying.

That experience also demonstrated that we cannot rely on the City to enforce rules and regulations related to this structure, and that we will have no recourse if the applicant does not follow bylaw or variance conditions.

In conclusion: good fences make good neighbours, but this structure is not a good fence. Please do not approve the variance request. Allowing that structure to remain will only increase

tensions on this street and result in a lowering of our property values. We hope that if the variance request is denied, the applicant will be required to remove the structure.

We understand that the applicant desires privacy from 916 and vice versa, but a fence, especially a fence structure like the one built by the applicant, is an inappropriate solution. The best solution to the privacy concerns would be a bush or shrubbery. Emerald cedars are the usual recommendation but they are notoriously difficult to grow. Perhaps a columnar oak, maple, or yew would be a good choice for that location.

Thank you for your consideration.