

# Staff Report



Development Services Department

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**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** August 15, 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 9

**DATE OF REPORT:** August 2, 2023

**REPORT NO.:** DSD-2023-355

**SUBJECT:** Consent Application B2023-029 - 15 Ellen Street West

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## RECOMMENDATION:

That Consent Application B2023-029 requesting consent to sever an irregular shaped parcel of land having a lot width of 9.2 metres on Ellen Street West, a lot depth of 40.4, metres and a lot area of 352.9 square metres from the property municipally addressed as 15 Ellen Street West, to be conveyed as a lot addition to the property municipally addressed as 11 Ellen Street West, 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 lands to be severed be added to the abutting lands and title be taken into identical ownership as the abutting lands. The deed for endorsement shall include that any subsequent conveyance of the parcel to be severed shall comply with Sections 50(3) and/or (5) of the *Planning Act*, R.S.O. 1990, c. P.13,

\*\*\* This information is available in accessible formats upon request. \*\*\*  
Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

as amended.

5. That the owner's Solicitor shall provide a Solicitor's Undertaking to register an Application Consolidation Parcels immediately following the registration of the Severance Deed and prior to any new applicable mortgages, and to provide a copy of the registered Application Consolidation Parcels to the City Solicitor within a reasonable time following registration.
6. That the owner shall receive approval of a Heritage Permit to the satisfaction of the Director of Planning.
7. That the existing detached garage located on 15 Ellen Street West, which will be located on the new property line between 15 and 11 Ellen Street West, be modified, removed and/or relocated to the Retained Lands to the satisfaction of the City's Director of Planning.
8. That the owner shall:
  - a) complete a Building Code Assessment for the existing dwellings proposed to be retained on both the severed and retained parcels of land, prepared by a qualified person, to confirm 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.
9. That, prior to final approval, the applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.
10. That the owner must submit a valid Notice of Source Protection Plan Compliance (Section 59 Notice) as per the Clean Water Act, 2006.
11. That the Owner shall grant Metrolinx an environmental easement over the Retained Lands for operational emissions, to the satisfaction of Metrolinx.
12. That the Owner shall provide confirmation to Metrolinx for the Retained Lands, that the following warning clause has been inserted into all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the Railway Corridor, to the satisfaction of Metrolinx:

***“Warning: The Applicant is advised that the subject land is located within Metrolinx’s 300 metres railway corridor zone of influence and as such is advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant***

*is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration may affect the environment of the occupants in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual lots, blocks or units.”*

#### **REPORT HIGHLIGHTS:**

- The purpose of this report is to review an application for consent to facilitate a transfer of land from a residential lot to the adjacent residential lot, both containing existing detached dwellings.
- 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 are located on the South side of Ellen Street West between Queen Street North and Victoria Street North.



**Figure 1: Location of Subject Property**



The subject property is identified as 'Community Area' on Map 2 – Urban Structure and is designated 'Low Rise Residential Preservation' on Map 9 – Secondary Plan for Land Use in the Civic Centre Neighbourhood in the City's Official Plan.

The property is zoned 'Residential Five Zone (R-5) with Special Use Provision 127U' in Zoning By-law 85-1.

The purpose of the application is to facilitate the conveyance of a portion of the side yard of an existing residential detached dwelling at 15 Ellen Street West to the neighbouring property at 11 Ellen Street West. An existing detached garage will be partially demolished and reduced to one bay to remain on the retained lands at 15 Ellen Street West.



**Figure 2: View of 15 Ellen Street West (July 27, 2023)**





**Figure 3: View of 11 Ellen Street West (July 27, 2023)**

## **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. The subject application does not propose any development, rather it is an adjustment of lot lines. Planning Staff is of the opinion that the application 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 and make efficient use of land. Planning Staff is of the opinion that the application conforms to the Growth Plan.

#### Regional Official Plan (ROP)

Regional policies in the ROP 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 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 Preservation' on Map 9 – Secondary Plan for Land Use in the Civic Centre Neighbourhood in the City's Official Plan.

The Low Rise Residential Preservation land use designation is intended to retain the existing detached dwelling character of the neighbourhood. Existing houses and streetscapes are to be preserved wherever possible.

The subject application achieves this intent by keeping both existing detached dwellings in situ, and simply realigning the side property line to allow more land on one property. No new development is proposed and the size and placement of existing dwellings is to be unchanged. Therefore, Staff are of the opinion that the proposed application for Consent conforms to the City's Official Plan.

### Zoning By-law 85-1

The subject properties are zoned as 'Residential Five Zone (R-5)' with Special Use Provision 127U in Zoning By-law 85-1. Both before and after the proposed lot addition, both parcels would meet the minimum lot width and lot area requirements.

#### R-5 Requirements:

Lot width: Minimum 9 metres

Lot area: Minimum 235 m<sup>2</sup>

#### 15 Ellen Street West

Lot width before lot addition: 27.4 metres

Lot width after lot addition: 18.2 metres

Lot area before lot addition: 1150 m<sup>2</sup>

Lot area after lot addition: 797 m<sup>2</sup>

#### 11 Ellen Street West

Lot width before lot addition: 15 metres

Lot width after lot addition: 24.2 metres

Lot area before lot addition: 616 m<sup>2</sup>

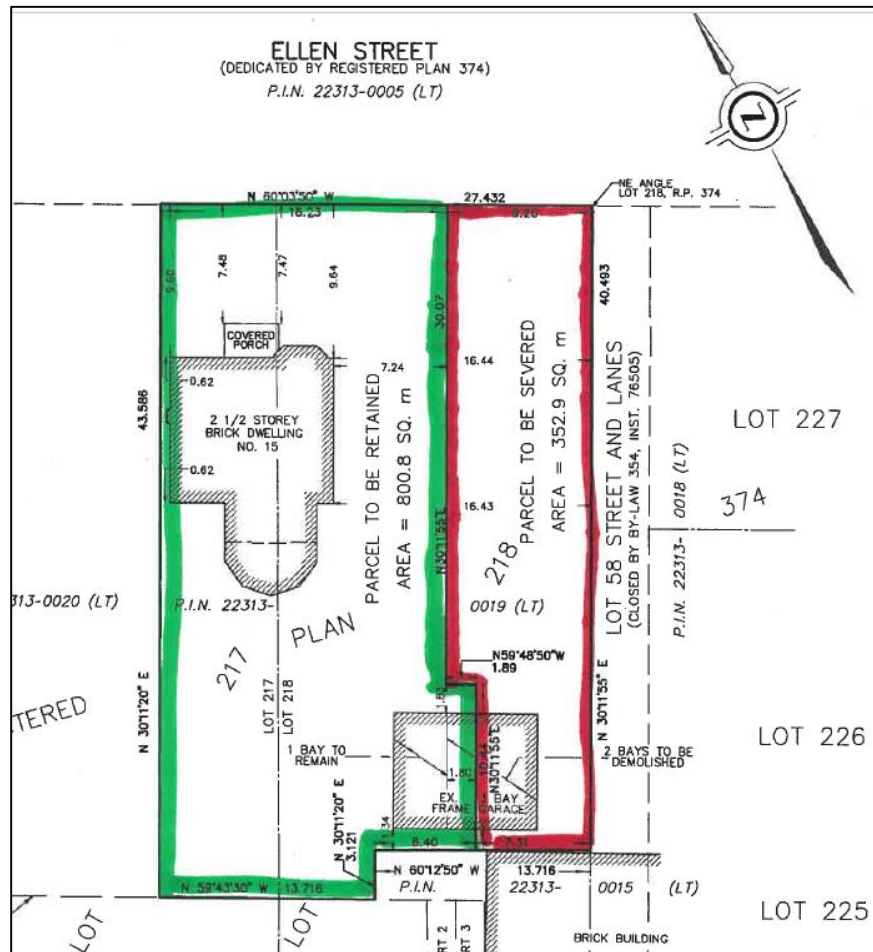
Lot area after lot addition: 969 m<sup>2</sup>

All yard setback and other regulations will comply with the minimum requirements post lot addition. A detached garage will be partially demolished to remain within the retained lands. The garage will meet yard setback and other regulations for accessory buildings in the Zoning By-law post lot addition.

Planning Staff can confirm that the proposed lot addition complies with the existing Zoning By-law.

#### **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 proposed boundary adjustment is desirable and appropriate.



**Figure 4: Severance Sketch**

**Environmental Planning Comments:**

No Natural Heritage issues. No tree management concerns as no site development is proposed.

**Heritage Planning Comments:**

The subject property is designated under Part V of the Ontario Heritage Act and is located within the Civic Centre Neighbourhood Heritage Conservation District (CCNHCD). Per the policy of the CCNHCD Plan, the proposed severance will not result in the creation of a new lot. The portion of land to be severed is approximately 9.2 metres wide; the severance will result in the subject property having a frontage of approximately 18.23 metres, while the adjacent property receiving the land will have a new frontage of approximately 24.4 metres. The resulting properties will be of a similar size. There are no anticipated negative impacts as a result of the proposed severance to the identified heritage attributes or value of either the subject property, the adjacent property, the Ellen Street West Streetscape, or the character of the CCNHCD as a whole.

A Heritage Permit Application has been submitted for the severance and related proposed work and is currently under review.

**Building Division Comments:**

The Building Division has no objections to the proposed consent provided:

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 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:**

Transfer of land does not affect servicing; therefore, Engineering has no comments.

**Parks/Operations Division Comments:**

Parkland dedication is not required as this is an addition to an existing lot and no new lot is created.

There are existing City-owned street trees located on the boulevard on Ellen Street West. These trees should be protected to City standards throughout all construction or demolition as per Chapter 690 of the current Property Maintenance By-law. If trees cannot be protected in place, full compensation is expected. A Tree Protection and Enhancement Plan (TPEP), Arborist Report and ISA assessment and valuation of City trees will be required as part of a Demolition Permit or Building Permit application, please see Urban Design Manual Part C, Section 13 and [www.kitchener.ca/treemanagement](http://www.kitchener.ca/treemanagement)

**Transportation Planning Comments:**

Transportation Services have no concerns with this application.

**Region of Waterloo Comments:**Environmental Noise

The subject lots are within close proximity of Queen Street North (a municipal street). However, there are intervening buildings which minimize the exposure to road traffic; therefore, transportation noise is not expected to be of concern. Considering the extent of the application just for adding a lot addition to the adjacent property without any proposed development, there are no requirements for the above application regarding the transportation noise.

Notice of Source Protection Plan Compliance (Section 59 Notice)

As the subject lands are also located in a Source Protection Area where Grand River Source Protection Plan policies implemented by the Region of Waterloo apply. Per s. 59 of the Clean Water Act, 2006 a Notice of Source Protection Plan Compliance is required as part of a complete application submission.

To apply for a Notice of Source Protection Plan Compliance (Section 59 Notice) the owner/applicant must complete the questionnaire at <https://taps.regionofwaterloo.ca/> listing all applicable activities prescribed under the Clean Water Act related to the application. A Notice will only be considered valid if the following criteria are met;



- Applicant has signed the Notice;
- Address and application type on the Notice match the rest of the application; and
- All activities related to the proposed application are listed in Schedule 1.

Invalid Notices will not be accepted and may result in delayed approvals.

### Regional Fee

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

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

1. The owner/applicant is required to submit the Regional consent review fee of \$350.00 prior to final approval of the consent.
2. The owner/applicant must submit a valid Notice of Source Protection Plan Compliance (Section 59 Notice) as per the Clean Water Act, 2006.

### **Hydro One Comments:**

We are in receipt of your Application for Consent, B-2023-029 dated July 20<sup>th</sup>, 2023. We have reviewed the documents concerning the noted Application and have no comments or concerns at this time. Our preliminary review considers issues affecting Hydro One's 'High Voltage Facilities and Corridor Lands' only.

For proposals affecting 'Low Voltage Distribution Facilities' please consult your local area Distribution Supplier.

### **GRCA Comments:**

GRCA has no objection to the approval of the above applications. The subject properties do not contain any natural hazards such as watercourses, floodplains, shorelines, wetlands, or valley slopes. The properties are not subject to Ontario Regulation 150/06 and, therefore, a permission from GRCA is not required.

### **Metrolinx Comments:**

Metrolinx is in receipt of the consent application for 15 Ellen Street West, Kitchener, to permit the severance of the lot to facilitate a lot addition to the property at 11 Ellen Street West. Metrolinx's comments on the subject Application are noted below:

- The subject property is located within 300 metres of Metrolinx's Guelph Subdivision which carries Metrolinx's Kitchener GO Train service.
- As per section 3.9 of the Federation of Canadian Municipalities and Railway Association of Canada's Guidelines for New Development in Proximity to Railway Operations, the Owner shall grant Metrolinx an environmental easement for operational emissions. The environmental easement provides clear notification to those who may acquire an interest in the subject property and reduces the potential for future land use conflicts. The environmental easement shall be registered on title of

the subject property. A copy of the form of easement is included for the Owner's information. The applicant may contact [Farah.Faroque@metrolinx.com](mailto:Farah.Faroque@metrolinx.com) with questions and to initiate the registration process. (It should be noted that the registration process can take up to 6 weeks).

- The Proponent shall provide confirmation to Metrolinx, that the following warning clause has been inserted into all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the Railway Corridor

*Warning: The Applicant is advised that the subject land is located within Metrolinx's 300 metres railway corridor zone of influence and as such is advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration may affect the environment of the occupants in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual lots, blocks or units.*

#### **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)*
- *Civic Centre Neighbourhood Secondary Plan*
- *Zoning By-law 85-1*