

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: Brian Bateman, Senior Planner, 519-741-2200 ext. 7869

WARD(S) INVOLVED: Ward 5

DATE OF REPORT: August 2, 2023

REPORT NO.: DSD-2023-351

SUBJECT: Consent Application B2023-034 – 685 Fischer Hallman Road

RECOMMENDATION:

That Consent Application B2023-034 for 685 Fischer Hallman Road, Building 'D' and Drive Through, to facilitate a Lease Agreement in excess of 21 years in favour of Tim Horton's, for an existing restaurant with a drive-through, 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 verify, in writing, whether the Lease Agreement, is affected by any required or existing easements and/or restricted covenants, to confirm the necessary arrangements for servicing, shared parking and access are in place.
5. That the Owner verify, in writing, that the subject property has been developed in accordance with the Approved Site Plan Agreement, and if necessary, the Site Plan

Agreement is to be amended to include any required revisions and/or updates.

- 6. That the Owner verify, in writing, that the Lease Agreement complies with and fulfils all pertinent provisions of the Ontario Planning Act.**
- 7. That, prior to final approval, the Owner submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.**
- 8. That the Owner submit a valid Notice of Source Protection Plan Compliance (Section 59 Notice) as per the Clean Water Act, 2006.**

REPORT HIGHLIGHTS:

- The purpose of this report is to review an application requesting consent to enter into a long-term lease exceeding 21 years for a restaurant and drive-through located on the lands addressed as 685 Fischer Hallman Road. The building is existing, and no new development is proposed.
- 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 located within a commercial plaza at the southwest corner of Fisher Hallman Road and Ottawa Street South.

The subject property is designated as Commercial in the City's Official Plan and identified as an 'City Node' on the City's Urban Structure – Map 2.

The property is zoned 'Commercial Two Zone (COM-2)' with Site-Specific Provision (35) in Zoning By-law 2019-051.

The owner of a commercial plaza located at 685 Fischer-Hallman Road is requesting consent, as per Section 50 (3) of the Ontario Planning Act, to permit the execution of a long-term lease (agreement) with Tim Horton's for a period exceeding 21 years in duration. The building is existing and no new Gross Floor Area (GFA) is proposed.

The applicant has requested that the lease agreement apply to the area shown in grey outlined in red on the lease sketch, shown as Figure 1 below, submitted with the application. This area is 793 square metres in size and includes Building 'D' and the drive-through.

Site Plan Application SP01/06/FGR to permit the development of the commercial plaza, having 4 buildings and 209 parking spaces was approved, and a Section 41 Agreement registered on July 11, 2002. The site has been fully developed and, according to City records, there are no outstanding site matters to address. The site was planned and developed comprehensively as a plaza complex with all the buildings utilizing and sharing the parking areas, walkways and two approved accesses for the site via Ottawa Street South

and Fischer Hallman Road. Easements documents attached to the application indicate that there is shared access for entry, parking, and servicing; however, as a condition of approval, staff is requesting confirmation of this.

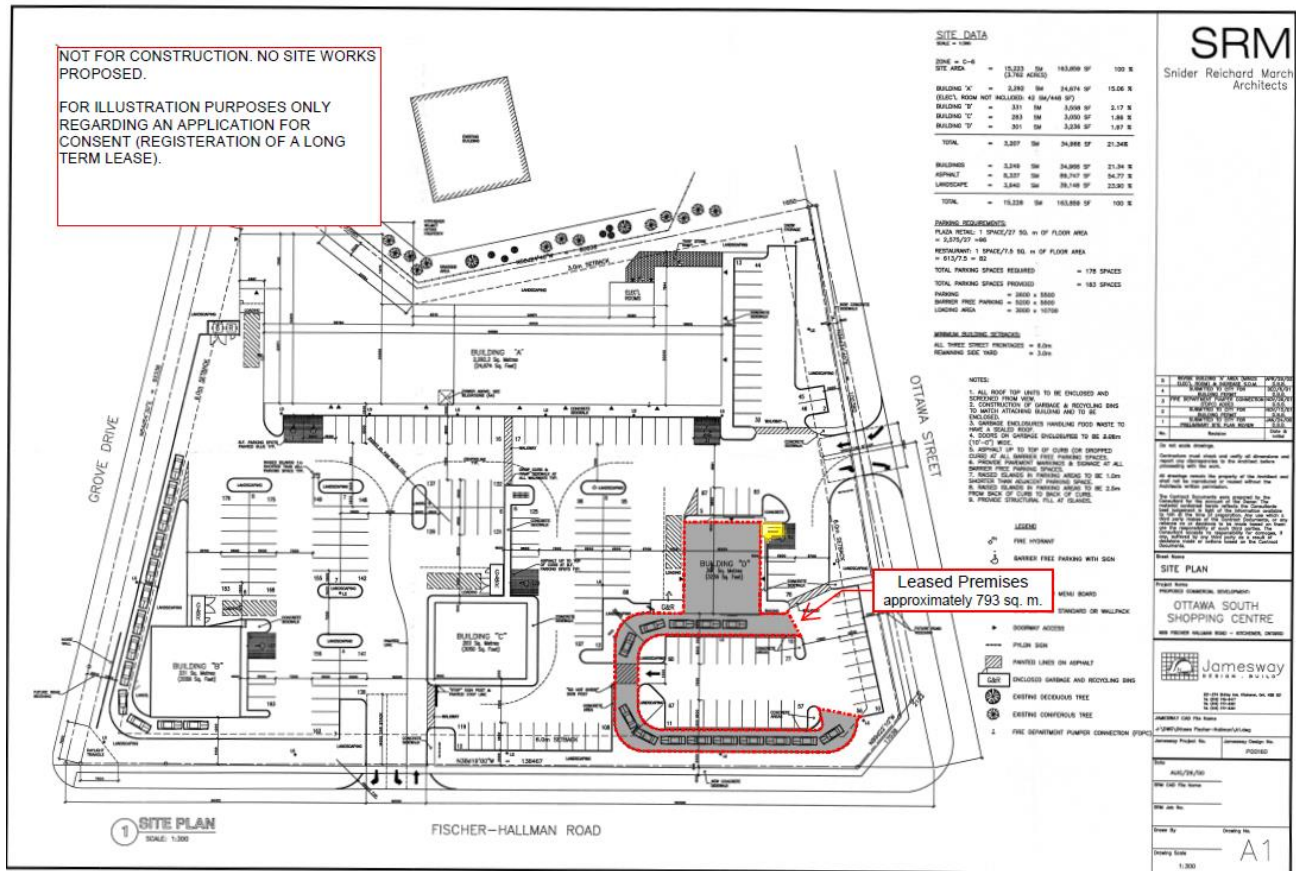


Figure 1: Proposed Lease of Tim Horton's and Drive-through

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)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020

Regional Official Plan (ROP):

As the proposal is to facilitate a long-term lease of existing Building 'D' and drive through for a period greater than 21 years, no lots are being created or lot lines being adjusted, and no physical changes to the existing commercial development are proposed, it is Planning staff's opinion that no sections of the PPS, Growth Plan or Regional Official Plan are specifically relevant, and that the application would conform to these plans and policies.

City's Official Plan (2014)

With respect to the Official Plan, no new parcels will be created through this application. The consent will not frustrate the planned function or ability of the site to operate (with shared access and parking) or appear to impede the outcome of any future planning processes. The use of property is in conformity with the City's Urban Structure and land use designation. In considering that the intent of the proposal is to facilitate an administrative consent required by the Planning Act and that no changes are proposed to the existing, permitted commercial development on the lands, it is Planning staff's opinion that the proposed consent does not adversely impact any policies of the Official Plan.

Zoning By-law 2019-051

With respect to the City's Zoning By-law the use of the subject lands for a commercial plaza is a permitted use in the 'COM-2' Zone and the site as developed comprehensively complies with the Zoning By-law with respect to setbacks and parking. The long-term lease would not negatively impact the remainder of the commercial plaza and no minor variances are required as a result of the long-term lease.



Figure 2: Photo of Subject Property

Planning Conclusions/Comments:

The long-term lease will not impact or restrict the existing and ultimate development of the subject lands and is considered to be appropriate and in accordance with the policies of the Official Plan and the criteria set out in Section 51 (24) of the Planning Act.

Planning staff recommend approval of the application.

Environmental Planning Comments:

No natural heritage concerns or tree management concerns.

Heritage Planning Comments:

No heritage planning concerns.

Building Division Comments:

The Building Division has no objections to the proposed consent.

Engineering Division Comments:

No Engineering comments or concerns.

Parks/Operations Division Comments:

No concerns, Parkland Dedication is not required for permission to extend lease beyond 21 years.

Transportation Planning Comments:

Transportation Services does not have any concerns with the proposed application.

Region of Waterloo Comments:

The purpose of the application is to seek permission to extend the lease (21 years or greater) for the Tim Horton's site at 685 Fischer-Hallman Road at Ottawa Street S.

Source Water Protection

For information, the property is designated a Wellhead Protection Sensitivity Area 8 on Map 6a in the Regional Official Plan (ROP). The purpose of this designation and the corresponding policies in Chapter 8 of the ROP is to protect long term municipal groundwater supplies.

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.

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)*
- *ROPA 6*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*