

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: Sheryl Rice Menezes, Planning Technician (Zoning),
519-741-2200 ext 7844

WARD(S) INVOLVED: 10

DATE OF REPORT: August 1, 2023

REPORT NO.: DSD-2023-335

SUBJECT: Minor Variance Application A2023-099 – 195 Victoria St. N.

RECOMMENDATION:

That Minor Variance Application A2023-099 for 195 Victoria Street North requesting relief from Sections 5.22 b) and c) of Zoning By-law 85-1 to permit a lot width of 12.9 metres instead of the minimum required 13.1 metres and a lot area of 241.8 square metres instead of the minimum required 395 square metres, to recognize the use of the property as a Single Detached Dwelling with two Additional Dwelling Units (ADU) (Attached) (3 dwelling units in total), generally in accordance with the drawing prepared by Steven Parker and attached to Minor Variance Application A2023-099, BE APPROVED subject to the following conditions.

1. That the Owner shall grant Metrolinx an environmental easement, for operational emissions, to the satisfaction of Metrolinx.
2. That the Owner shall provide confirmation to Metrolinx, for the property municipally known as 195 Victoria Street North, 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 a minor variance application to legalize an existing building having 3 dwelling units having a lot width of 12.9 metres and a lot area of 241.8 square metres.
- The key finding of this report is that the requested minor variances 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.



Image 1 - Aerial photo (2022)

BACKGROUND:

The subject property is located on the south side of Victoria Street north and west of Margaret Avenue.

The property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure and has an Official Plan designation of 'Mixed Use Corridor' in the Civic Centre Neighbourhood Plan. It is zoned 'Low Intensity Mixed Use Corridor (MU-1)' in Zoning Bylaw 85-1.

It was brought to the City's attention that a third dwelling unit existed in the basement of the two-storey building and the owner wishes to legalize the use. The owner is aware that Fire and Building Code regulations also have to be met, which may require a Building Permit Application.

Staff note that in the past, vehicles have parked in front yard which is not permitted. The owner plans to install fencing or landscaping barriers to prevent this occurring in the future. It is noted that any structures/objects in the 4.57 metres driveway visibility triangle are limited to a maximum height of 0.9 metres.

Staff visited the site on July 29, 2023.



Image 2 - Top photo: view from left side of property

Image 3 - Bottom photo: view from left side of property

REPORT:

Planning Comments:

In considering the four tests for the minor variance 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

One intention of the Mixed Use Corridor designation is to provide for residential opportunities. Over time it is intended that the Mixed Use Corridors shall intensify and provide a balanced distribution of commercial, multiple residential and institutional uses. The use of the property for 3 dwelling units meets the general intent of the Official Plan.

General Intent of the Zoning By-law

The intent of the lot area and width regulations is to ensure that the property can adequately support the use and provide amenity area and sufficient parking spaces. These variances are to legalize an existing 3 unit building. There exists a rear yard patio which serves as an amenity area for the tenants. As well, there are three parking spaces available in the driveway. They are arranged in tandem which is permitted for the use. There has been no complaints from neighbours on the use of the property. The variances meet the intent of the Zoning By-law.

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

As noted above, general intent of the by-law is met and the use supports appropriate housing intensification which is supported by the City. The variances can be considered minor.

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

The property is located in a central part of the City and has residential use beside and behind it. Legalizing the existing third dwelling unit is appropriate for the building and property as it supports a gentle intensification of a building in a Major Transit Station Area.

Heritage Comments:

No Heritage Planning concerns.

Environmental Planning Comments:

No Environmental Planning concerns.

Building Division Comments:

The Building Division has no objections to the proposed variance provided building permits for the change of use to a triplex is obtained prior to construction. Please contact the Building Division at building@kitchener.ca with any questions.

Engineering Division Comments:

No comment.

Transportation Planning Division Comments:

Transportation Services have no concerns with this application.

Parks and Cemeteries Division Comments:

No concerns or comments.

Region of Waterloo Comments:

There are no requirements for this application. However, the owners are advised that: a) The proposed development will have transportation noise impacts from Metrolinx/CN Railway Line (approximately 88 and the abutting Victoria Street North (RR #55), and any potential stationary noise sources in the vicinity. The owners are responsible for ensuring that the proposed development does not have any environmental noise impacts (both on-site and off-site). b) A development application, e.g., Site Plan/ Consent on these lands, would require approximately 3.05m of road dedication along the frontage on Victoria Street.

Metrolinx Comments:

Metrolinx is in receipt of the minor variance application for 195 Victoria Street North, Kitchener, to facilitate a triplex unit on the subject property, currently operating as a duplex. Metrolinx's comments on the subject Application are noted below:

- The subject property is located within 300m 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 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 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*
- *Civic Centre Neighbourhood Secondary Plan*
- *Official Plan (2014)*
- *Zoning By-law 85-1*