

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: September 19, 2023

SUBMITTED BY: Tina Malone-Wright, Supervisor, Development Applications
519-741-2200 ext. 7765

PREPARED BY: Joanne McCallum, Coordinator – Planning & Zoning Services,
519-741-2200 ext. 7075

WARD(S) INVOLVED: Ward 8

DATE OF REPORT: September 6, 2023

REPORT NO.: DSD-2023-407

SUBJECT: Minor Variance Application A2023-105 – 120 Rossford Cres.

RECOMMENDATION:

That Minor Variance Application A2023-105 for 120 Rossford Crescent, requesting relief from the following sections of Zoning By-law 2019-051:

- i) Section 4.12.2 e) to permit a lot width of 11 metres instead of the minimum required 13.1 metres; and
- ii) Section 4.16 a) i) to permit a building used for dwelling units to be setback 16 metres from the lot line of the active railway right-of-way for a Principal line instead of the minimum required 30 metres;

to facilitate the conversion of the existing Single Detached Dwelling with 1 Additional Dwelling Unit (ADU) (Attached) (Duplex) into a Single Detached Dwelling with 2 Additional Dwelling Units (ADUs) (Attached) (Triplex) generally in accordance with the Site Plan prepared by Michael Burgoyne and Tim Brenner, dated 11-02-2020, BE APPROVED, subject to the following condition:

1. The Owner enter into an agreement with the City of Kitchener, to the satisfaction of the City Solicitor, to include the following warning clause in all agreements of Offers of Purchase or Sale, Deeds or Rental/Lease Agreements of the building and/or dwelling units:

“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity,

notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way.”

REPORT HIGHLIGHTS:

- The purpose of this report is to review an application for minor variances to facilitate the conversion of a Single Detached Dwelling with 1 Additional Dwelling Unit (ADU) (Attached) (Duplex) to a Single Detached Dwelling with 2 Additional Dwelling Units (ADU) (Attached) (Triplex).
- The key finding of this report is that the requested minor variances satisfy 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 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 a pie-shaped interior lot, located on Rossford Crescent, west of Westmount Road West, between Victoria Street South and Glasgow Street. The subject property is within walking distance to Victoria Hills Community Centre and Hillside Public School.

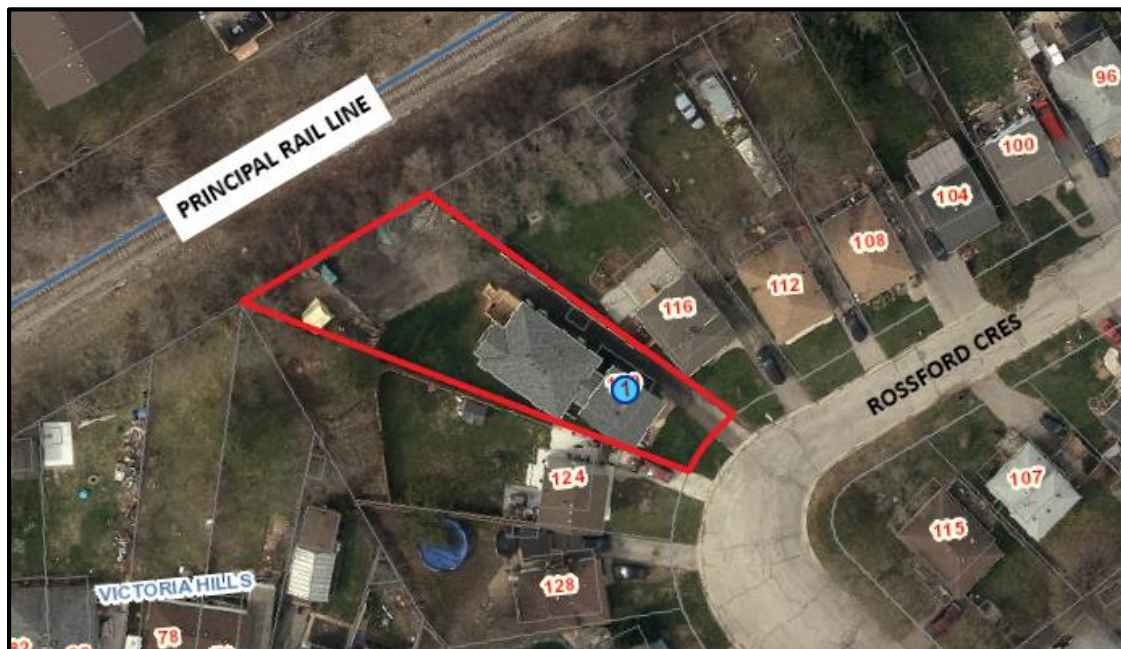


Figure 1: Location of Subject Property

The subject property is identified as 'Community Areas' on Map 2 – Urban Structure and is designated 'Low Rise Residential' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'Low Rise Residential Three Zone (RES-3)' in Zoning By-law 2019-051.

The purpose of the application is to facilitate the conversion of a Single Detached Dwelling with 1 Additional Dwelling Unit (ADU) (Attached) (Duplex) to a Single Detached Dwelling with 2 Additional Dwelling Units (ADU) (Attached) (Triplex).

The minor variances being requested are to permit a single detached dwelling with 2 Additional Dwelling Units (Attached) (triplex) on a lot with a lot width of 11 metres instead of 13.1 metres and to permit a building used for dwelling units to be setback 16 metres from the lot line of the active railway right-of-way for a Principal line instead of 30 metres.



Figure 2: Photo of Front of House at 120 Rossford Cres

The applicants reached out to CN in June 2023 to determine if CN would be supportive of their request to convert the existing duplex to a triplex and having the existing building be located within 30 metres of the required setback. CN provided a response to the applicant in July 2023 stating that they can accept a 15-metre setback with a condition that a registration of an environmental easement for operational noise and vibration emissions, in favor of CN be applied to the property.



Figure 5: Photo from Parking Lot Looking at Rear and Side Yard Amenity Space

REPORT:

Planning Comments:

In considering the four tests for the minor variances as outlined in Section 45(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 subject property is designated 'Low Rise Residential' in the 2014 Official Plan. Low Rise Residential areas place an emphasis on the importance of accommodating a full range of low-density housing types, including single detached dwellings with additional dwelling units (attached).

To facilitate a triplex, staff is of the opinion that the proposed variances requesting a reduction to the lot width, and requesting a reduction to the setback of a building containing dwelling units from a lot line of an active Principal railway right-of-way maintains the general intent of the Official Plan.

General Intent of the Zoning By-law

The subject property is zoned 'Low Rise Residential Three Zone (RES-3)' in Zoning By-law 2019-051. The intent of the minimum lot width of 13.1 metres for single detached dwellings with 2 additional dwelling units (attached) (triplex) is to ensure that the property can function adequately with proper building setbacks, provide sufficient amenity space and accommodate the required parking. The subject property exceeds the minimum required lot area for a triplex use, however, due to the nature of the pie-shaped lot, the lot width of 11 metres is slightly deficient and does not meet the requirement set out in the Zoning By-law. The building on the subject property complies with all required setbacks

and can accommodate the required parking spaces necessary for a triplex. As shown in Figure 5 above, there is amenity space provided in the rear and side yard, as well, the subject property is within walking distance to Victoria Hills Community Centre and Gzowski Park for additional amenity options.

The intent of the required setback for buildings containing dwelling units to be at least 30 metres from the lot line of the active railway right-of-way for a Principal line is to ensure the safety of the residents in the building in the event of a train derailment. The applicant understands the risk associated with a residential building being 16 metres from a CN rail line and reached out to CN to determine if their proposal for converting the existing duplex to a triplex would be supported prior to applying for this minor variance. CN provided positive feedback directly to the applicant regarding this proposal and provided conditions to ensure the continued safety of the residents at the subject property.

Staff is of the opinion that the requested variances maintain the general intent of the Zoning By-law.

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

To facilitate a triplex, the third dwelling unit being proposed on the subject property will be located within the existing building. The existing lot width is 2.1 metres less than the required lot width due to the pie-shaped nature of the lot. The setbacks for the building, and provided parking comply with the regulations in the Zoning By-law. Adequate amenity space is also provided in the rear and side yards of the subject property.

The reduced setback of the building containing dwelling units to the lot line of the active railway right-of-way for a Principal line could impact the safety of the residents of the subject property, however, CN has provided conditions to ensure the continued safety to residents in the event of a derailment.

Staff is of the opinion that the requested variances are minor.

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

Planning staff is of the opinion that the variances to reduce the lot width for a triplex and to reduce the setback of a building containing dwelling units to the lot line of the active railway right-of-way of the Principal line is desirable and appropriate as this will facilitate gentle intensification of the subject property.

Building Division Comments:

The Building Division has no objections to the proposed variance provided building permit for the attached additional dwelling is obtained prior to construction. Please contact the Building Division at building@kitchener.ca with any questions.

Transportation Planning Comments:

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

Engineering Division Comments:

Engineering has no comments.

Heritage Planning Comments:

The subject property is adjacent to the Canadian National Railway Line CHL. There are no anticipated impacts or other heritage concerns as a result of the proposed variance.

Environmental Planning Comments:

No concerns due to no site development.

Parks/Operations Division Comments:

No concerns, no comments.

Grand River Conservation Authority Comments:

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

Region of Waterloo Comments:

There are no conditions for this application. However, the applicants are advised that any residential dwellings (Existing and proposed) on the subject lands would have environmental noise and rail vibration impacts from the CN Railway mainline adjoining the subject property being located within 45m of the railway vibration influence zone as per railway proximity guidelines). The applicants are responsible for ensuring that the subject development does not have any environmental noise/vibration impacts.

MTO Comments:

MTO has no requirement for this application.

Metrolinx Comments:

Metrolinx is in receipt of the minor variance application for 120 Rossford Cres to facilitate a single detached dwelling with 2 additional attached dwellings. Metrolinx's comments on the subject application are noted below:

- The subject property is located adjacent to Canadian National Railway's (CN Rail) Guelph Subdivision which carries Metrolinx's Kitchener GO Train service.
- As CN Rail is the owner of the railway corridor, they are the authority to provide commentary on matters related to rail safety. Metrolinx suggests that CN Rail is circulated the application for review.
- The Proponent is advised the following:
 - Warning: Metrolinx and its assigns and successors in interest operate commuter transit service within 300 metres from the subject land. In addition to the current use of these lands, there may be alterations to or expansions of the rail and other facilities on such lands in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx or any railway assigns or successors as aforesaid may expand their operations, which expansion 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 units. Metrolinx will not be responsible for any complaints or claims

arising from use of such facilities and/or operations on, over or under these lands.

CN Comments:

CN comments are concerning application A2023-105 – 120 Rossford Crescent. Our understanding is that a new extension will be added or an existing accessory building will be converted into an ADU. CN does not recommend any safety setback lesser than 30 metres from CN right of way unless a crash barrier is constructed along the railway right of way.

CN also requests for following clause to be inserted in all offers of Sale or Lease of ADU:

“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way.”

Planning staff reached out to CN, in an email dated September 6, 2023, to clarify the requested variances, with respect to the requirement for the construction of a crash barrier, in that the applicant has an existing building on their property and that they are proposing interior alterations in order to convert the duplex to a triplex. They are not proposing any additional floor area or any detached dwellings on the lot.

In an email response from CN on September 8, 2023, CN thanked Planning Staff for providing these clarifications. CN indicated that they have no comments regarding the application mentioned in subject, since the proposal is concerning the existing building without any additional floor area or any detached dwellings on the lot.

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.

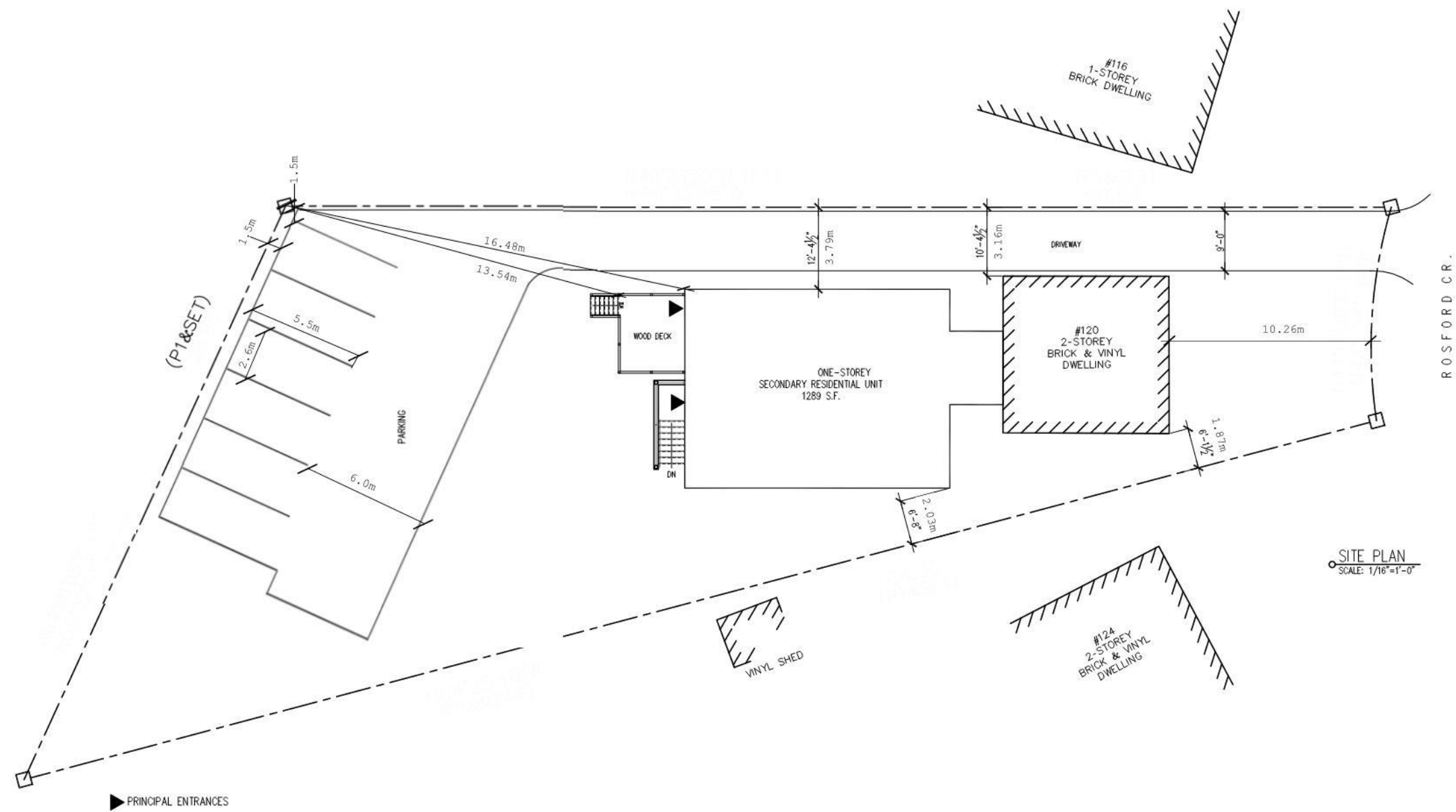
COMMUNITY ENGAGEMENT:

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

ATTACHMENT A – Site Plan:



<div>SITE PLAN</div> <div>120 ROSFORD CR., KITCHENER, ONTARIO</div>		SITE PLAN	
		Drawn By:	WCS
		Scale:	AS NOTED
		Date:	11-02-20
		Last Rev:	
		Rev. No.	Draw. No.
		1.0	A0