

# Staff Report



Development Services Department

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**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** September 19<sup>th</sup>, 2023

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

**PREPARED BY:** Arwa Alzoor, Planning Technician, 519-741-2200 ext. 7847

**WARD(S) INVOLVED:** Ward 1

**DATE OF REPORT:** August 29<sup>th</sup>, 2023

**REPORT NO.:** DSD-2023-388

**SUBJECT:** Minor Variance Application A2023-108– 540 Frederick Street

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## RECOMMENDATION:

That Minor Variance Application A2023-108 for 540 Frederick Street requesting Permission under section 45(2)(a)(ii) of the Planning Act to permit a legal non-conforming 'Single Detached Dwelling' in a 'Mixed Use Three Zone (MIX-3)' to be used as a 'Single Detached Dwelling with a Personal Services Home Occupation' generally in accordance with drawings attached to Report DSD-2023-388 as 'Attachments A and B', BE APPROVED.

## REPORT HIGHLIGHTS:

- The purpose of this report is to review and make recommendations with respect to the requested application for Permission for 540 Frederick Street.
- Staff recommends that the Minor Variance Application be approved.
- 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 in the Rosemount Neighbourhood on the east side of Highway 7 on Frederick Street. The subject lot currently contains a single detached dwelling with front parking and a driveway that leads to surface parking in the rear yard. The property is surrounded by retail, low-density offices, health clinics, personal service, and residential buildings. The property is also close to a low-rise residential zone.

The subject property is identified as a 'Community Node' on Map 2 – Urban Structure and is designated 'Mixed Use' on Map 3 – Land Use in the City's 2014 Official Plan.



**Figure 1: The proposed property on the Zoning map**

The property is zoned 'Mixed Use Three Zone (MIX-3)' in Zoning By-law 2019-051. The MIX-3 zone permits a variety of commercial uses, including a 'personal services use', and residential uses, to be developed on the same property. A Minor Variance application is not necessary for the subject property to be developed with personal services use on the main/ground floor and residential use on the upper floor. However, the MIX-3 zone does not permit residential uses on the main/ground floor and does not permit the use of the property for a Single Detached Dwelling. Significant changes would need to be required to the existing building to facilitate the use of the property contemplated by the MIX-3 zone.



Figure 2: Street view of the property

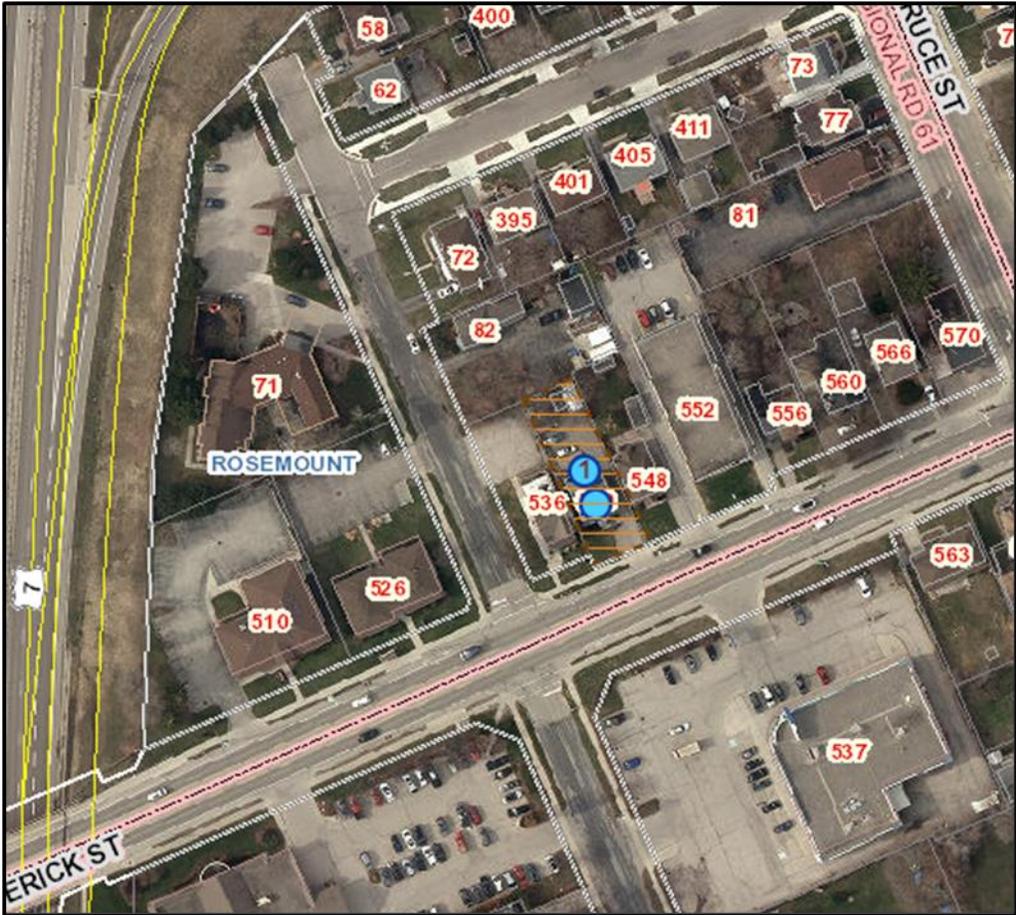
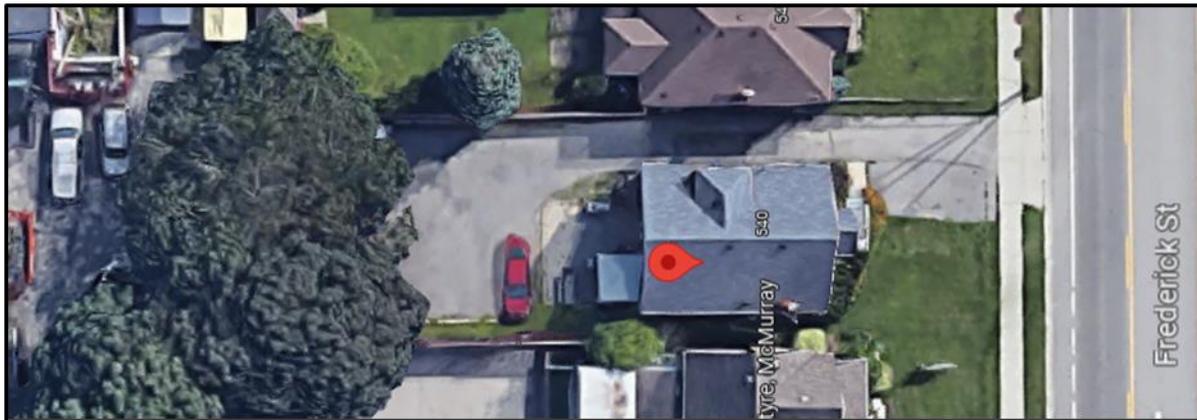


Figure 3: The proposed property on an aerial view

Minor variance applications were considered twice, in 2004 and again in 2008, when the property was zoned 'Residential Six Zone (R-6) in Zoning By-law 85-1,' to locate two (2)

off-street parking spaces in the rear yard for a home business rather than the permitted one (1) off-street parking in order to introduce a personal services home occupation in the single detached dwelling. Both minor variance applications were approved conditional on the parking areas being covered with asphalt and more landscaped area being provided in the rear. However, the conditions from the previous Decisions were not met within the required timeframe, as noted in the Decisions, and the Decisions became null and void.

Since that time, the property has been zoned 'Mixed Use Three Zone (MIX-3)' in Zoning By-law 2019-051, and the parking areas in the front and rear have been asphalted and some landscaping restored.



**Figure 4: Aerial view of the property showing the driveway and the hardscaped rear yard.**

The current tenant/owner would like to move forward with the proposal to establish a personal services home occupation in the legal non-conforming single detached dwelling.

Given that the use of the property is a legal non-conforming Single Detached Dwelling and the applicant would like to continue to use the existing building for residential purposes, the applicant is making application for Permission for the Committee to consider a use of the land that is similar for the purposes it was uses on the day the by-law was passed and which is more compatible with the uses permitted in the MIX-3 zone.

Section 45(2)(a)(ii) of the Planning Act:

- “ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee;”*

The applicant has prepared a Site Plan to show how the existing property has been developed with parking at the front and the rear.

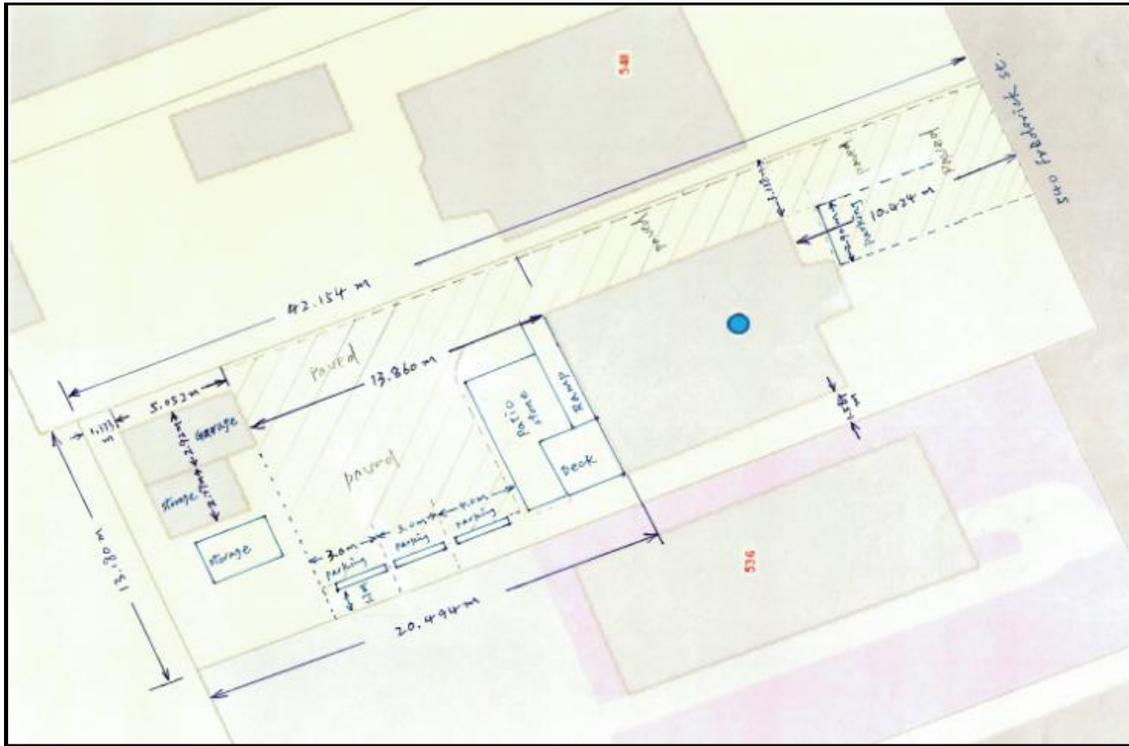


Figure 5: Site Plan sketch for the property

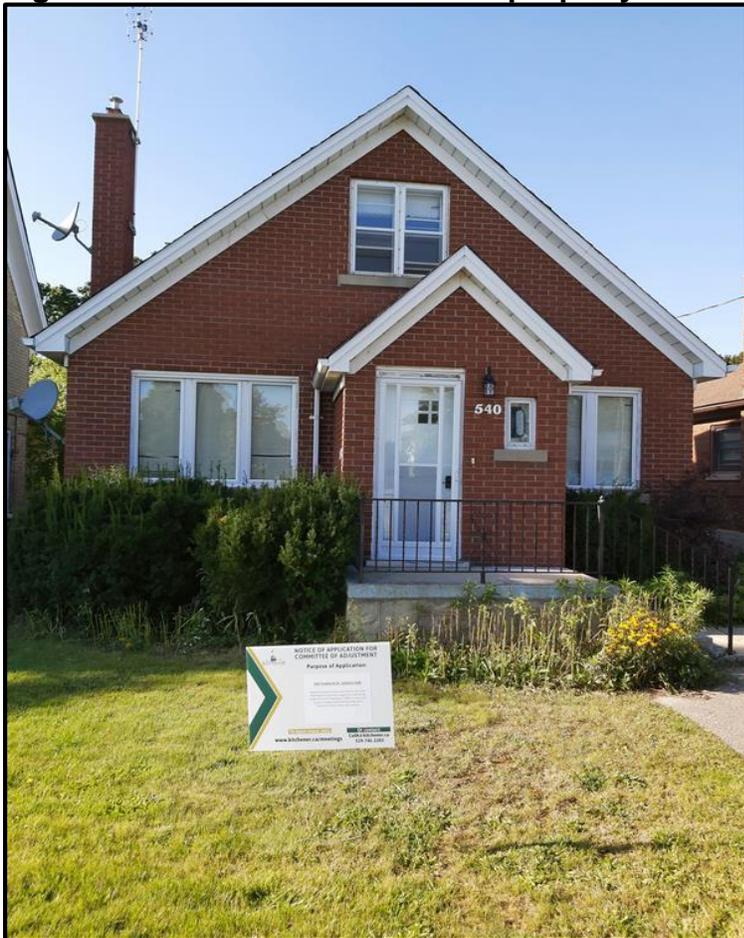


Figure 6: Front photo of the subject property

Staff conducted a site visit on August 30, 2023.

**REPORT:**

**Planning Comments:**

Case law sets out the tests to be applied by the Committee of Adjustment in considering applications under Section 45(2)(a)(ii). It should be noted that the test to be applied is not the four-part test for minor variances under Section 45(1) but rather whether the approval of the application:

1. Is in the public interest; and
2. Creates unacceptable or adverse impact upon abutting properties.

Is Approval in the Public Interest?

Staff are of the opinion that the approval of this application is in the public interest as it would allow for the continuation of the existing use of the Single Detached Dwelling (SDD) while introducing a home occupation. The proposed SDD and home occupation will introduce non-residential use in the form of home occupation without requiring major renovation for a one-and-a-half-storey building. This approach avoids the necessity of converting the building into a mixed-use building (personal service and a dwelling unit), which will result in adding a full second storey to accommodate the dwelling unit to be entirely on the second floor as per mixed-use zone requirements. The proposed SDD with home occupation will offer the community with service that will be in line with the intent of the zone change from a residential zone to a mixed-use under the 2019-051 Zoning By-law. Given that there are already existing residential uses along Frederick Street, there would not be a discernable impact on mixed-use zone uses in the area.

Any Adverse or Unacceptable Impacts?

Staff are of the opinion that permitting home occupation use in the legal non-conforming single detached dwelling on the subject property will not create any adverse or unacceptable impacts. The property contains enough parking to provide for the single detached dwelling and the home occupation. Staff note that the surrounding properties to the east of the subject property (along Frederick Street) are zoned 'RES-4' and 'RES-2', which permits the use of home occupation in a single-detached dwelling. Additionally, the front façade of the subject property and the abutting lots that contain different permitted uses in the mixed-use zone have the same residential/commercial character; therefore, no adverse or unacceptable impacts are anticipated.

**Environmental Planning Comments:**

No concerns.

**Heritage Planning Comments:**

No concerns.

**Building Division Comments:**

The Building Division has no objections to the proposed variance.

**Engineering Division Comments:**

No concerns

**Parks/Operations Division Comments:**

No concerns, no comments

**Transportation Planning Comments:**

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

**Region of Waterloo Comments:**

No concerns.

**Grand River Conservation Authority 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.

**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*
- *A2004-080 - 540 Frederick Street*
- *A2008-072 - 540 Frederick Street*

**ATTACHMENTS:**

Attachment A – Existing Survey of the Property

Attachment B – Proposed Site Plan



