

REPORT TO: Committee of Adjustment

DATE OF MEETING: October 17, 2023

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

PREPARED BY: Raida Chowdhury, Student Planner, 519-741-2200 ext. 7078

WARD(S) INVOLVED: Ward 10

DATE OF REPORT: September 27, 2023

REPORT NO.: DSD-2023-438

SUBJECT: Consent Application B2023-036 – 45 Duke Street West

RECOMMENDATION:

That Consent Application B2023-036 requesting consent to create an easement for maintenance over Part 1 on Reference Plan 58R-21469, BE APPROVED subject to the following conditions:

1. That the property 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 property 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 property 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 Transfer Easement document(s) required to create the Easement(s) being approved herein shall include the following, and shall be approved by the City Solicitor in consultation with the City's Supervisor, Development Applications:
 - a) a clear and specific description of the purpose of the Easement(s) and of the rights and privileges being granted therein (including detailed terms

and/or conditions of any required maintenance, liability and/or cost sharing provisions related thereto); and

- b) a clause/statement/wording confirming that the Easement(s) being granted shall be maintained and registered on title in perpetuity and shall not be amended, released or otherwise dealt with without the express written consent of the City.**

- 5. That a satisfactory Solicitor's Undertaking to register the approved Transfer Easement(s) and to immediately thereafter provide copies thereof to the City Solicitor be provided to the City Solicitor.**
- 6. That, prior to final approval, the property owner shall make financial arrangements for the Consent Application Review Fee of \$350.00 to the Region of Waterloo.**

REPORT HIGHLIGHTS:

- The purpose of this report is to review an application for consent to create an easement to facilitate the maintenance of lands municipally known as 48 Ontario North, which is a Part IV designated heritage property owned by 48 Ontario Kitchener Incorporated.
- The key finding of this report is that the request for consent to create an easement meets the criteria for the subdivision of land listed in the Planning Act and aligns with the City's Official Plan policies.
- 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 on Duke Street West between Young Street and Ontario Street North. It is currently occupied by a retail establishment. In December 2019, the subject property received Approval in Principle for a 23-storey multiple dwelling containing 139 residential units (Site Application SP19/051/D/JVW). Further, a Minor Variance Application (A2021-003) to facilitate a reduction in parking spaces, reduction in ground floor façade openings, and an increase in Floor Space Ratio for the proposed development was approved in 2021.



Figure 1 – Ariel Photo of the Subject Property

The purpose of this easement is to facilitate access for the maintenance of the lands municipally known as 48 Ontario Street North, a heritage property designated under Part IV of the Ontario Heritage Act. The easement is proposed to have a width of 1 metre and a depth of 15 metres, totaling 15 square meters over Part 1 on Reference Plan 58R-21469, as shown by Figure 2.

The subject property is identified as 'Urban Growth Centre (Downtown)' on Map 2 – Urban Structure and is designated 'City Centre District' on Map 4 – Urban Growth Centre (Downtown) in the City's 2014 Official Plan.

The property is zoned 'Retail Core Zone (D-1)' in Zoning By-law 85-1.

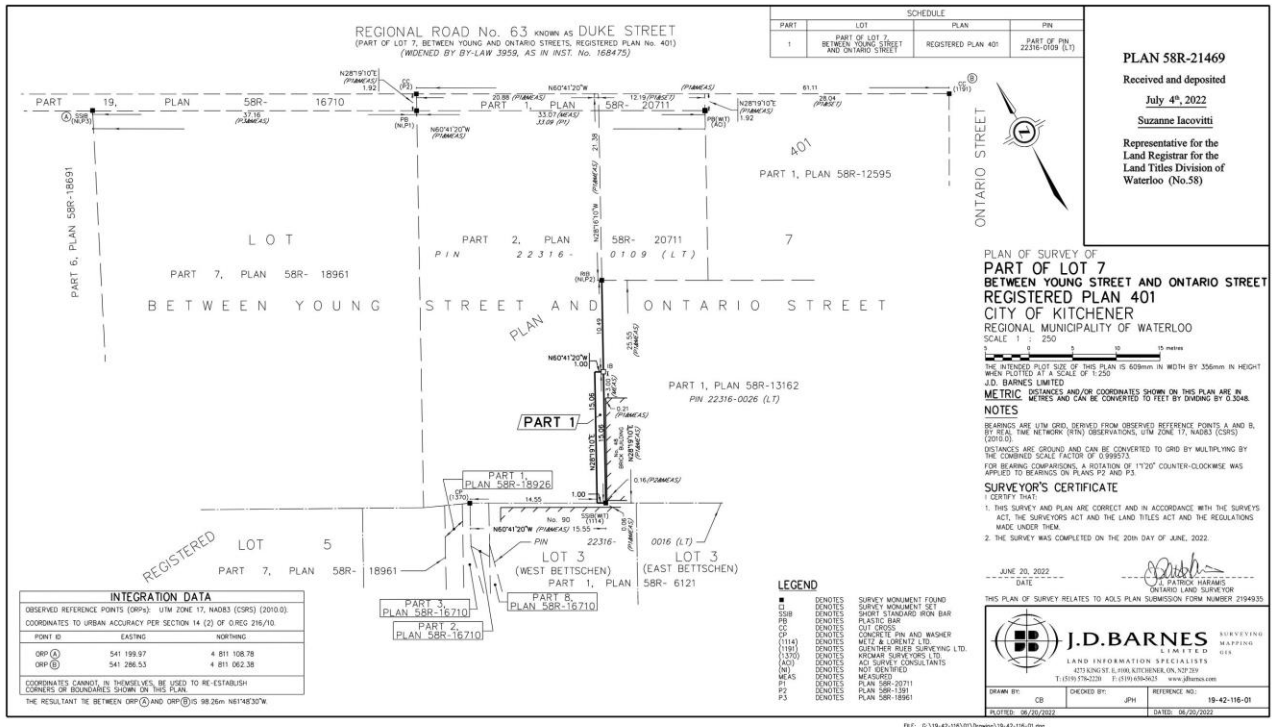


Figure 2 – Reference Plan 58R-21469

Staff conducted a site visit to the subject property on September 28, 2023.



Figure 3 – Photo of Subject Property



Figure 4 – Photo of Subject Property



Figure 5 – Photo of 48 Ontario Street North

REPORT:

Planning Comments:

In considering all the relevant Provincial legislation, Regional and City policies and regulations, Planning staff offer the following comments:

City's Official Plan (2014)

Maintenance objectives, with specific regard to heritage properties, outlined in the City's Official Plan are as follows:

- 12.C.1.19. In addition to listing and designating properties under the Ontario Heritage Act, the City may use and adopt further measures to encourage the protection, maintenance and conservation of the city's cultural heritage resources including built heritage and significant cultural heritage landscapes and implement Cultural Heritage Resource Conservation Measures Policies in this Plan. These may include but are not limited to covenants and easements pursuant to the Ontario Heritage Act; by-laws and agreements pursuant to the Planning Act (Zoning By-law, demolition control, site plan control, community improvement provisions, provisions in a subdivision agreement); and by-laws and

agreements pursuant to the Municipal Act (Property Standards Bylaw, tree by-law, sign by-law).

The creation of the easement will assist in the maintenance of the heritage property.

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 creation of the easement is desirable and appropriate.

In addition, the requested easement allows for the maintenance of a designated heritage property on the benefitting lands, which aligns with the City's objectives regarding protecting cultural heritage resources.

Environmental Planning Comments:

No comments.

Heritage Planning Comments:

45 Duke Street West is adjacent to a property municipally addressed as 48 Ontario Street North, which is designated under Part IV of the Ontario Heritage Act. A legal access easement was to be obtained over the subject land per the conditions of approval for a site plan submitted in 2019 (SP19/051/D/JVW). The intent of this easement is to provide access for maintenance of the adjacent heritage resource. Confirmation was obtained from a qualified mason in an Appendix to a Cultural Heritage Protection Plan, dated April 18, 2022, that the space provided would be sufficient for maintenance. The owners of the adjacent property further confirmed that the proposed easement is sufficient to meet this intent. There are no further heritage concerns.

Building Division Comments:

The Building Division has no objections to the proposed consent.

Engineering Division Comments:

Engineering Division has no concerns.

Parks/Operations Division Comments:

Parks/Operations Division has no concerns.

Transportation Planning Comments:

Transportation Services has no concerns.

Region of Waterloo Comments:

The applicant is proposing to create an easement on 45 Duke Street West to allow access to the adjacent property at 48 Ontario Street North. The proposed easement is 1 metre wide by 15 metres deep at the rear of 45 Duke Street West to allow for access to the façade of 48 Ontario Street North for maintenance and repairs.

The subject property is located within the 'Built Up Area' as designated in the Regional Official Plan. The subject property is located within the Kitchener City Hall Major Transit Station Area (MTSA).

Regional Fee:

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

Archaeological Assessment (advisory comments):

An archaeological assessment is not required. However, the applicant is advised that if archaeological resources are discovered during future development or site alteration of the subject property, the applicant will need to immediately cease alteration/development and contact the Ministry of Citizenship and Multiculturalism. If it is determined that additional investigation and reporting of the archaeological resources is needed, a licensed archaeologist will be required to conduct this field work in compliance with S. 48(a) of the Ontario Heritage Act; and/or, if human remains/or a grave site is discovered during development or site alteration of the subject property, the applicant will need to immediately cease alteration and must contact the proper authorities (police or coroner) and the Registrar at the Bereavement Authority of Ontario in Compliance with the Funeral, Burial and Cremation Services Act, 2002 S. 96 and associated Regulations.

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

- 1) That prior to final approval, the owner/applicant submit the Regional consent review fee of \$350.00.

Hydro One:

Hydro One has no concerns. 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.

Grand River Conservation Authority:

The Grand River Conservation Authority has no concerns.

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)*
- *Zoning By-law 85-1*
- *DSD-21-013*

ATTACHMENTS:

Attachment A – Reference Plan 58R-21469