

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: Eric Schneider, Senior Planner, 519-741-2200 ext. 7843

WARD(S) INVOLVED: Ward 1

DATE OF REPORT: October 4, 2023

REPORT NO.: DSD-2023-455

SUBJECT: Minor Variance Application A2023-124 – 75 Otterbein Road
Consent Applications B2023-039 and B2023-040 – 75
Otterbein Road

RECOMMENDATION:

Minor Variance Application A2023-124

A. That Minor Variance Application A2023-124 for 75 Otterbein Road requesting relief from Section 7.3, Table 7-6 of Zoning By-law 2019-051 to permit a rear yard setback of 6 metres instead of the minimum required 7.5 metres, generally in accordance with drawings prepared by MHBC Planning, dated April 26, 2023, BE APPROVED.

Consent Application B2023-039

B. That Consent Application B2023-039 requesting consent to establish an access easement having a width of 6.7 metres, a depth of 107.3 metres and a lot area of 760 square metres, BE APPROVED subject to the following conditions:

1. That Minor Variance Application A2023-124 receive final approval.
2. 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.
3. 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.
4. That, prior to final approval, the applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.

Consent Application B2023-040

C. That Consent Application B2023-040 requesting consent to sever a parcel of land having a lot width of 113 metres along Otterbein Road, a lot depth of 90 metres and a lot area of 6,790 square metres, and requesting consent to establish an access easement on the severed lands with a width of 7.3 metres, a depth of 72.6 metres, and an area of 550 square metres, BE APPROVED subject to the following conditions:

1. That Minor Variance Application A2023-124 receive final approval.
2. 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.
3. 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.
4. 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.
5. 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.

- 6. That the Owner/applicant must submit a valid Section 59 Notice to the satisfaction of the Region of Waterloo.**
- 7. That the Owner submits a Salt Management Plan to the satisfaction of the Region of Waterloo.**
- 8. That the Owner complete a road traffic and stationary noise study for the severed and retained lands and enter into a registered development agreement with the Regional Municipality of Waterloo and/or the City of Kitchener to secure implementation of the noise study recommendations, to the satisfaction of the Region of Waterloo.**
- 9. That the owner shall enter into an agreement with the City of Kitchener, to be prepared by the City Solicitor, to the satisfaction of the City Solicitor and the City's Supervisor, Site Plans, and registered on title to the retained lands, which shall include the following:**
 - a) That prior to initiation of any site development works, grading or issuance of a building permit the Owner agrees to submit and receive approval of a Site Plan to the satisfaction of the City's Supervisor, Site Plans, which reflects, at minimum, the proposed changes to the lot size and any associated changes to the operation and/or functioning of the site.**

Should a Site Plan Application be approved, to the satisfaction of the City's Supervisor, Site Plans, in accordance with the condition above prior to endorsement of the deed, the above noted condition shall not be required to be registered on title.

REPORT HIGHLIGHTS:

- The purpose of this report is to review an application for consent for the creation of a new lot and to establish access easements on both the severed and retained lands. The applicant is looking to separate two phases of a development site, with 3 stacked townhouse buildings on the severed lands and 2 apartment buildings on the retained lands.
- 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 the corner of Otterbein Road and Lackner Boulevard. The subject lands are a greenfield block of a new subdivision (Block 1, 58M-654) registered on June 4, 2020. The subject property is irregular shaped with a curvilinear property line along Otterbein Road.



Figure 1: Location of Subject Property

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

The property is zoned 'Medium Rise Residential Six Zone (RES-6)' in Zoning By-law 2019-051.

The purpose of the application is to sever the lot in two and establish reciprocating access easements so that all future users of the site have legal access. Site Plan Application SP22/078/O/ES received Conditional Approval on August 9th, 2022. The site is proposed to be developed with two different building typologies (3-storey stacked towns, 6-storey apartment) and in two phases of construction. For the benefit of the efficient administration of the two phases, the applicant desires to sever the subject lands into two separate parcels. The proposed severance would result in a change in how yard setbacks are determined, resulting in the requirement for a minor variance for a minor reduction in rear yard setback based on the new lot configuration.



Figure 2: View of Vacant Site (September 29, 2023)

REPORT:

Planning Comments Minor Variance Application A2023-124:

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 Medium Rise Residential in the Official Plan. The intent of this designation is to encourage a range of medium density housing to achieve and maintain a medium rise-built form. The requested variance for reduction in rear yard setback maintains the general intent of the Official Plan.

General Intent of the Zoning By-law

The intent of the regulation that requires a 7.5 metre rear yard setback is to provide for adequate building separation and to provide for adequate outdoor amenity space. With regard to building separation, the site abuts another large multiple dwelling block in an adjacent subdivision that is currently vacant and has no formal application for construction. The provided 6 metre setback is unchanged to what is approved to be built; rather, it is the proposed severance that would change this yard setback from an interior side yard to a rear yard. Therefore, the building separation is the same and can be considered adequate. With regards to outdoor amenity space, the site has been designed to include two large outdoor amenity spaces (one to serve the retained lands and one to serve the severed lands). The Amenity area has been reviewed by Urban Design staff through the site plan application and has been determined to be adequate. Therefore, Staff is of the opinion that the requested variance meets the general intent of the Zoning By-law.

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

The building location is approved through Site Plan Application SP22/078/O/ES. No effects of the variance are expected as it is a technical change in the way the yard setbacks are determined. No physical changes are proposed as a result of the minor variance request. Therefore, Staff consider the request to be minor.

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

The requested variance does not affect the ability to develop the subject lands, or adjacent lands with appropriate low to medium-rise development. Planning Staff are of the opinion that the requested variance is appropriate for the use of the lands.

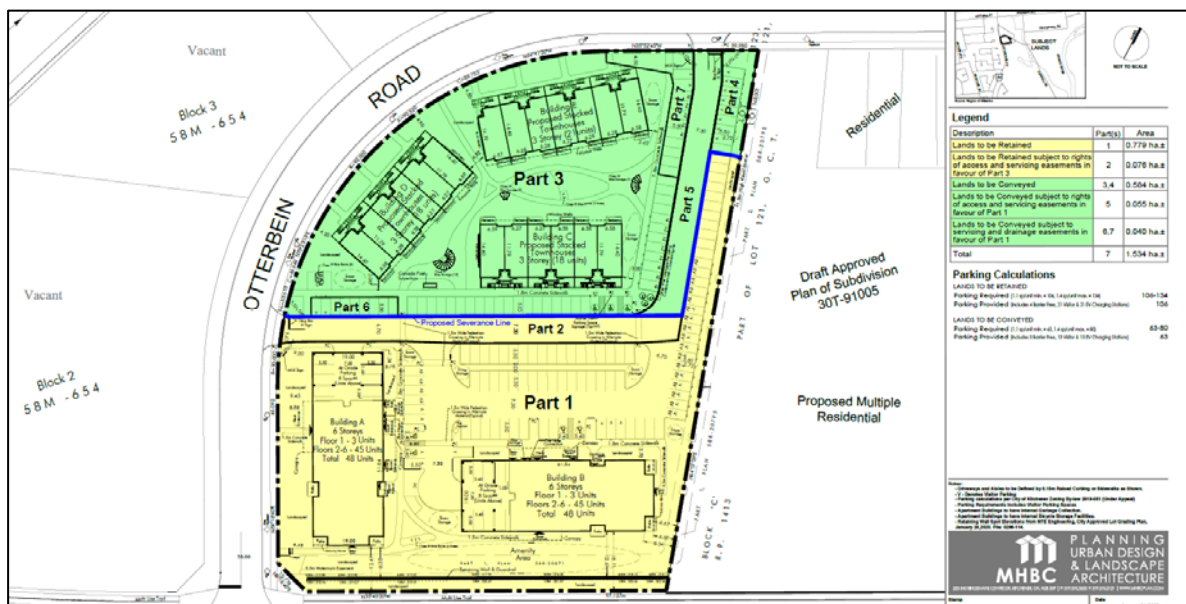


Figure 3: Severance Sketch

Planning Comments Consent Application B2023-039 & B2023-040:

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

Provincial Policy Statement (PPS 2014)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Section 1.4.3 (b) of the PPS promotes all types of residential intensification, and sets out a policy framework for sustainable healthy, liveable and safe communities. The PPS promotes efficient development and land use patterns, as well as accommodating an appropriate mix of affordable and market-based residential dwelling types with other land uses, while supporting the environment, public health and safety. Provincial policies promote the integration of land use planning, growth management, transit-supportive development, intensification, and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs.

Planning staff is of the opinion that the proposed application will facilitate an efficient development pattern by allowing separate function and operation of the two proposed

phases of the development plan. No new public roads would be required for the proposed development. Planning staff is of the opinion that this proposal is consistent with the PPS.

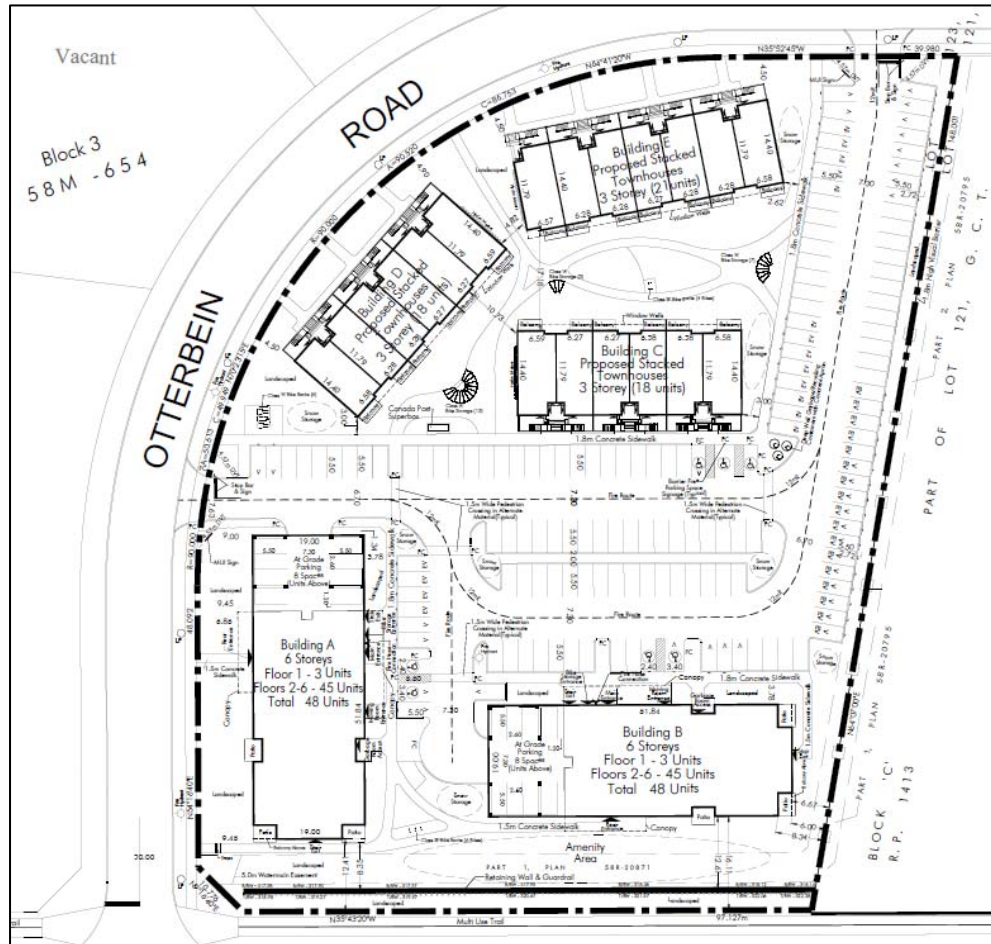


Figure 4: Site Plan (Conditionally Approved)

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

The Growth Plan supports the development of complete and compact communities that are designed to support healthy and active living, make efficient use of land and infrastructure, provide for a range and mix of housing types, jobs, and services, at densities and in locations which support transit viability and active transportation. The subject lands are in close proximity to transit and the subject lands are in close proximity to trails and parks.

Policy 2.2.6.1(a) Municipalities will support housing choice through the achievement of the minimum intensification and targets in this plan by identifying a diverse range and mix of housing options and densities, including additional residential units and affordable housing to meet projected needs of current and future residents.

The subject lands are located within the City's delineated built up area. The severance application will help make efficient use of existing infrastructure, parks, roads, trails and transit. Planning staff is of the opinion that the development proposal conforms to the Growth Plan.

Regional Official Plan (ROP):

Urban Area policies of the ROP identify that the focus of the Region's future growth will be within the Urban Area. The subject lands are designated Greenfield in the ROP. The proposed development conforms to Policy 2.D.17 of the ROP as this neighbourhood provides for the physical infrastructure and community infrastructure to support the proposed residential development, including transportation networks, municipal drinking-water supply and wastewater systems, and a broad range of social and public health services. Regional policies require Area Municipalities to plan for a range of housing in terms of form, tenure, density and affordability to satisfy the various physical, social, economic and personal support needs of current and future residents. Planning staff are of the opinion that the severance application conforms to the Regional Official Plan.

City's Official Plan (2014)

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

Section 17.E.20.5 of the Official Plan implements Section 51 of the Planning Act and contains policies regarding infill development and lot creation (Consent Policies). These policies state the following:

"17.E.20.5 Applications for consent to create new lots will only be granted where:

- a) the lots comply with the policies of this Plan, any Community Plan and/or Secondary Plan, and that the lots are in conformity with the Zoning By-law, or a minor variance has been granted to correct any deficiencies;
- b) the lots reflect the general scale and character of the established development pattern of surrounding lands by taking into consideration lot frontages, areas, and configurations;
- c) all of the criteria for plan of subdivision are given due consideration;
- d) the lot will have frontage on a public street;
- e) municipal water services are available;
- f) municipal sanitary services are available except in accordance with Policy 14.C.1.19;
- g) a Plan of Subdivision or Condominium has been deemed not to be necessary for proper and orderly development; and,
- h) the lot(s) will not restrict the ultimate development of adjacent properties."

Zoning By-law 2019-051

The subject property is zoned as 'Medium Rise Residential Two Zone (RES-6)' in Zoning By-law 2019-051. The 'RES-6' zone permits a range of medium density dwelling types

such as townhouses and multiple dwellings. The proposed development of both the severed and retained parcels will meet the regulations of Zoning By-law 2019-051.

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 severed lots are desirable and appropriate. Planning staff is of the opinion that the size, dimension and shape of the proposed lots are suitable for the use of the lands and compatible with the surrounding community. There are existing schools within the neighbourhood. Staff is further of the opinion that the proposal is consistent with the Region of Waterloo Official Plan, the Provincial Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe and is good planning and in the public interest.

Environmental Planning Comments:

No natural heritage concerns.

Heritage Planning Comments:

No heritage planning concerns.

Building Division Comments:

The Building Division has no objections to the proposed variance.

Engineering Division Comments:

Engineering requirements for servicing and off-site works will be completed through the site plan applications for the retained and severed lands.

Parks/Operations Division Comments:

Parks and Cemeteries requirements including Parkland Dedication have been satisfied through Kitchener Draft Agreement (KDA) 30T-02206 and Site Plan Application SP22/078/O/ES.

Transportation Planning Comments:

Transportation Services have no concerns with this application.

Region of Waterloo Comments:

The subject lands are located within the Designated Greenfield Area as identified in the Regional Official Plan (ROP).

Regional Fee (Advisory Comments):

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

Source Protection Plan Compliance (Section 59 Notice):

The subject lands are located in a Source Protection Area where Risk Management Plan policies implemented by the Region of Waterloo may apply. The owner/applicant must complete the questionnaire on <https://taps.regionofwaterloo.ca/> to obtain a valid Section 59 Notice.

Salt Management Plan:

A Salt Management Plan (SMP) will be required for review and approval by the Region, prior to final approval of the consent.

As part of the plan, Regional staff would encourage the proponent to incorporate design considerations with respect to salt management, including:

- Ensure that cold weather stormwater flows are considered in the site design. Consideration should be given to minimize the transport of meltwater across the parking lots or driveway. This also has the potential to decrease the formation of ice and thereby the need for de-icing.
- Directing downspouts towards pervious (i.e. grassy) surfaces to prevent runoff from freezing on parking lots and walkways
- Locating snow storage areas on impervious (i.e. paved) surfaces in close proximity to catch basins.
- Using winter maintenance contractors that are Smart About Salt™ certified.
- Using alternative de-icers (e.g. pickled sand) in favour of road salt.
- The proponent is eligible for certification under the Smart About Salt™ program for this property. Completion of the Salt Management Plan is one part of the program. To learn more about the program and to find accredited contractors please refer to: <http://www.smartaboutsalt.com/>. Benefits of designation under the program include cost savings through more efficient use of salt, safe winter conditions by preventing the formation of ice, and potential reductions in insurance premiums.

Environmental Noise:

The subject lands are located adjacent to Lackner Blvd, a Regional Road, it is anticipated that the proposed dwellings, may require special building components (special walls, windows etc.) and the installation of air-conditioning to attenuate noise impacts. Staff also note that there may be potential stationary noise sources in the vicinity.

As a condition of the consent, the owner shall complete a road traffic and stationary noise study for the severed and retained lands and enter into an agreement with the Regional Municipality of Waterloo and/or the City of Kitchener to secure implementation of the noise study recommendations, to the satisfaction of the Regional Commissioner of Planning, Development and Legislative Services.

Airport Zoning (Advisory comments):

Please be advised that the proposed low-rise buildings falls within the Region of Waterloo International Airport Aeronautical Zoning Regulated area, specifically the Outer Surface and is subject to all restrictions outlined in the Airports Aeronautical Zoning Regulations. The building and subsequent cranes will need to be assessed by Nav Canada through their Land Use office and may be further subject to review by Transport Canada for obstacle assessment.

At the appropriate time, prior to Building permit issuance, Airport staff would request more detail plans on the construction building – including crane information to ensure no impacts to Airport Operations.

The applicant must complete and submit the necessary Form(s) as required for the proposed buildings and cranes, and furnish the necessary information as required by NAV Canada as provided at the link below:

<https://www.navcanada.ca/en/products-and-services/Pages/land-use-program.aspx>

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

1. That prior to final approval, the owner/applicant submit the Regional consent review fee of \$350.00.
2. That prior to final approval, the owner/applicant must submit a valid Section 59 Notice.
3. That prior to final approval, a Salt Management Plan is submitted to the satisfaction of the Region of Waterloo.
4. That prior to final approval, the owner/applicant complete a road traffic and stationary noise study for the severed and retained lands and enter into a registered development agreement with the Regional Municipality of Waterloo and/or the City of Kitchener to secure implementation of the noise study recommendations, to the satisfaction of the Regional Commissioner of Planning, Development and Legislative Services.

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 2019-051*
- *Draft Plan of Subdivision 30T-02206*