

# Staff Report



Development Services Department

www.kitchener.ca

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** November 21, 2023

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

**PREPARED BY:** Katie Anderl, Project Manager - Planning, 519-741-2200 ext.  
7987

**WARD(S) INVOLVED:** Ward 9

**DATE OF REPORT:** November 8, 2023

**REPORT NO.:** DSD-2023-497

**SUBJECT:** Minor Variance Application A2023-125 – 787-851 King Street East, 432 Charles Street East, 5 Stirling Avenue South

---

## Zoning By-law 85-1

That Minor Variance Application A2023-125 for 787-851 King Street East, 432 Charles Street East, and 5 Stirling Avenue South requesting relief from the following sections of Zoning By-law 85-1:

- i) Section 6.1.2 a) to permit a residential parking rate of 0.64 parking spaces per dwelling unit, instead of the minimum required 1.0 parking space per dwelling unit, for units greater than 51 square metres in area, and 0.165 parking spaces per dwelling unit for dwelling units less than 51 square metres in area;
- ii) Section 6.1.2 a) to permit a retail parking rate of 1 parking space per 35 square metres of gross floor area instead of the minimum required 1 parking space per 20 square metres of gross floor area;
- iii) Section 6.1.2 b) vi) to permit visitor parking to be provided at a rate of 8% of required parking instead of the minimum 20% of required parking for multiple dwellings, containing 6 dwelling units or more within the area bounded by the Conestoga Parkway, Homer Watson Boulevard/Shoemaker Greenway/Belmont Avenue and the northerly boundary of the City of Kitchener;
- iv) Section 6.1.1.2 d) to permit up to 10% of angle parking spaces to have a minimum width of 2.4 metres and a minimum length of 4.8 metres, and where reduced, shall be clearly identified, demarcated, and reserved for compact motor vehicles, instead of the minimum width of 2.6 metres and a minimum length of 5.5 metres;
- v) Section 55.2.1 to permit a horizontal distance of 13 metres from the east building corner on the Charles Street façade with no display windows or entrances, instead of 4 metres;

\*\*\* This information is available in accessible formats upon request. \*\*\*  
Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

- vi) **Section 5.3 to permit obstructions within the Driveway Visibility Triangle (DVT), where no obstructions are permitted;**
- vii) **Special Regulation Provision 535R (b) to permit a building having a height greater than 0.9 metres within the area defined by Property Detail Schedule 31, whereas no building having a height greater than 0.9 metres is permitted; and**
- viii) **Section 5.18 i) to locate a Day Care Facility on lands affected by Special Regulation Provision 1R (regulatory floodplain) where the day care facility is located on the second floor, whereas a Day Care Facility is not a permitted use;**

**to facilitate the development of a mixed-use building in accordance with Site Plan Application SP23/012/K/KA, BE APPROVED.**

#### **REPORT HIGHLIGHTS:**

- The purpose of this report is to review a minor variance application to facilitate the construction of a mixed-use building.
- The key finding of this report is that the requested variances meet the 4 tests of the Planning Act.
- There are no financial implications.
- Community engagement included notice signs 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 at 787-851 King Street East, 432 Charles Street East and 5 Stirling Avenue South as shown on Figure 1: Location Map. The owner has proposed a mixed use development containing 932 residential units in two towers having heights of 33 and 37 storeys near Charles Street East, two buildings containing stacked townhouses fronting King Street East, and three commercial/non-residential units in the Charles Street East podium, having a combined total 1836 square metres of GFA. The proposed site plan has received conditional site plan approval, subject to approval of the requested minor variances.

The subject property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure in the City's 2014 Official Plan and is designated 'Mixed Use Corridor' on Map 10 – King Street East Neighbourhood Plan for Land Use in the City's 1994 Official Plan.

The property is zoned 'High Intensity Mixed Use Corridor Zone (MU-3) in Zoning By-law 85-1. Special Regulation Provisions 1R, 534R, 535R, 545R apply to certain portions of the lands.

The proposed development has been considered by the Site Plan Review Committee and Conditional Red Line Site Plan Approval was granted in June 2023 and full Conditional Approval in November 2023, subject to conditions including approval of the requested variances. The proposed minor variances seek to permit a reduced parking rate for residential, retail and visitors, to permit compact car parking spaces, to permit obstructions in DVT's, to permit a building within the area defined by Property Detail Schedule 31, to permit a day care to be located on the second floor of lands impacted by the regulatory

flood plain and to permit an area 13 metres from the east corner of the Charles Street façade to have no display windows or entrances.

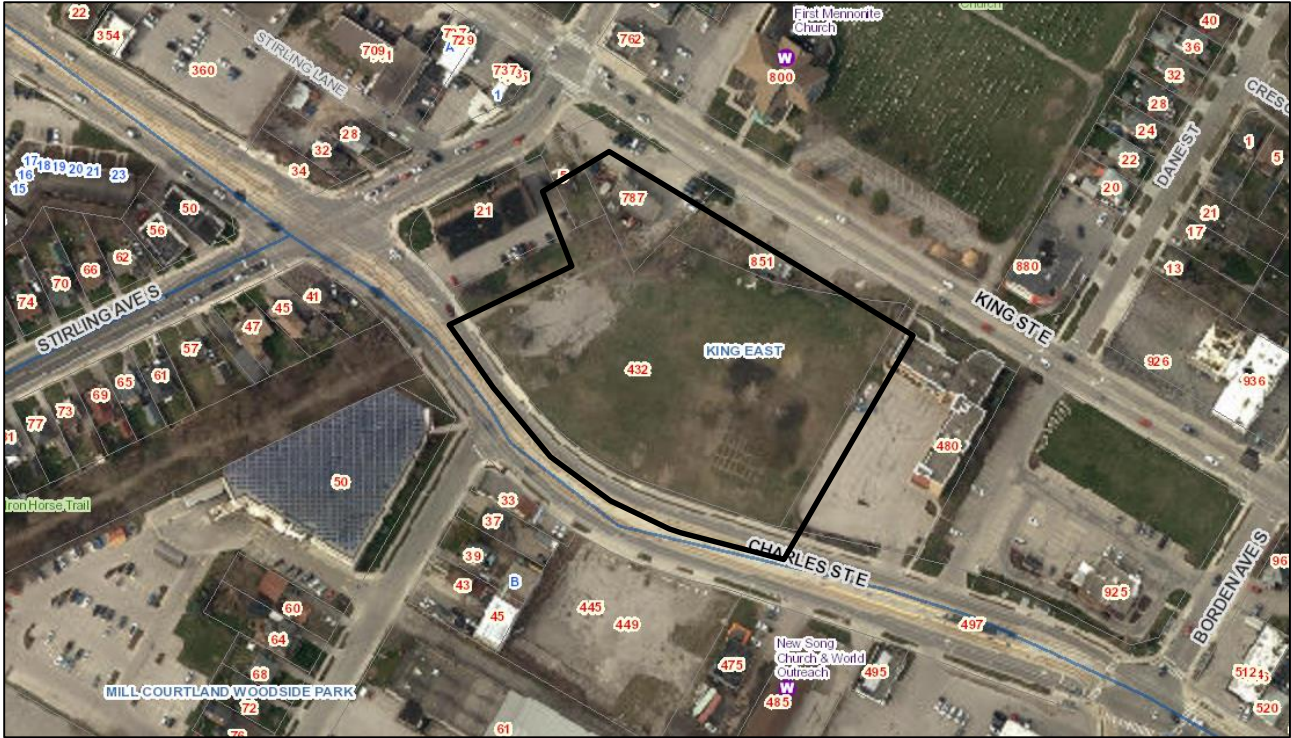


Figure 1: Location Map



Figure 2: Photo of subject lands from Charles St E (November 3, 2023)





**Figure 3: Preliminary Rendering of Charles St E Elevation**



**Figure 4: Preliminary Rendering of King St E Elevation**

## 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 lands are designated 'Mixed Use Corridor' in the King Street East Neighbourhood Secondary Plan for Land Use under the 1994 Official Plan (OP). Mixed Use Corridors are intended to support a mix of uses and to intensify overtime. Development should be compatible with and of an appropriate height and density in relation to nearby low rise residential neighbourhoods. A maximum Floor Space Ratio of 5.0 is permitted, when a grocery store is included and the proposal complies with the policies and by-law in this regard. The subject lands are also located in a Major Transit Station Area (MTSA) in the 2014 OP. MTSA's provide a focus for accommodating growth through development to support existing and planned transit and rapid transit service levels. Developments within MTSA's provide connectivity of various modes of transportation to the transit system and have streetscapes and a built form that is pedestrian-friendly and transit oriented. The requested variances support a high-density mixed use development that will provide for housing and growth in an MTSA.

#### Variances 1 to 5:

Variances 1 to 5 all relate to the provision of parking and parking garage design. The applicant is requesting a reduction to parking, a variance to include compact parking spaces, and a variance for a 13 metre section of the garage façade without windows or entrances at the east corner of the Charles St frontage. OP Policy 4.C.1.8 requires that when minor variances are requested to facilitate residential intensification or redevelopment, the variances will be reviewed to ensure that the lands can function appropriately and not create unacceptable adverse impacts by providing an appropriate number of parking spaces and appropriate landscape/amenity areas.

The general intent of OP policies is to permit development that will support intensification at a density and with a mix of uses that are transit supportive and provide housing, while also providing for an appropriate transition to nearby stable neighbourhoods, and to provide parking at a rate which is appropriate. Staff is of the opinion that the proposed variances, support a development that maintains the general intent of Official Plan policies. The buildings are well separated from low-rise residential uses and have been designed to transition and step down towards the neighbourhood north of King Street East. Parking is located below grade and as discussed in detail in the Zoning By-law discussion the proposed parking rates represent a modest reduction. Staff is of the opinion that given the close proximity of transit (including ION and bus transit), the proposed parking rates are appropriate, that it is an efficient use of space to permit parking for compact vehicles, and that appropriate mitigation can be provided to screen the section of blank wall along Charles Street East. Staff is of the opinion that the intent of the Official Plan is maintained.

### Variances 6 and 7:

Variances 6 and 7 relate to obstructions to visibility for motorists. The intent of Official Plan policies for mixed use areas is to allow buildings to be located close to the street line in order to activate the public realm, slow traffic and create a defined street edge. As is further discussed in the sections that follow, the requested obstruction in the DVT's and variance to permit a building within the sightlines as provided in the property detail schedule are no longer relevant to the site with the shift to a high-intensity mixed use area, and redevelopment of the roadway. New Zoning By-law 2019-051 does not require DVT's in areas with a Mixed Use zoning, and the sightlines have been evaluated and revised through a site specific study based on the current development proposal and roadway configuration. Staff is of the opinion that safety is not compromised as a result of the variances, and therefore the general intent of the Official Plan is maintained.

### Variance 8:

The intent of Public Health and Safety Policies contained in section 6 of the Official Plan is to prevent injury and to control development of hazardous lands. These policies translate into zoning by-law regulations which limit sensitive uses (day care) where there is a flooding hazard. The subject lands are impacted by the floodplain of Schneider Creek, Special Regulation 1R is applied to the entirety of all parcels of land (in Zoning By-law 85-1) which are impacted by a flooding hazard, notwithstanding the extent of the flooding hazard on the site. General Regulation 5.18 further restricts permitted uses within the floodplain, and variances are being sought to this regulation. Official Plan Policy 6.C.2.5 permits development within the flood fringe, however policy 6.C.2.6 prohibits certain sensitive uses (including a day care) where there is a threat to safe evacuation during a flooding emergency. The Regional floodline only affects the very most south-easterly part of the property and the GRCA will require certain floodproofing measures through the site and building design. Further, the proposed day care use is located on the King Street East elevation, which is the second storey above Charles Street East. The second storey is accessed via a separate driveway from King Street East, which is approximately 5 metres above the flooding hazard, and safe access for evacuation is available at this elevation. The Grand River Conservation Authority is satisfied that the sensitive use will not be impacted by the flooding hazard and is supportive of the proposed minor variance to Regulation 5.18. Staff is of the opinion that subject to the daycare being located on the King Street East elevation, the intent of the Official Plan is maintained.

### General Intent of the Zoning By-law:

The intent of parking regulations is to provide an appropriate amount of parking for proposed uses. The Conditionally Approved Site Plan provides for a total of 651 parking spaces: 610 parking spaces for residential parking (including 51 visitor parking spaces), and 41 parking spaces provided for commercial/retail use.

Variance 1 proposes a residential parking rate of 0.64 parking spaces per dwelling unit, rather than 1.0 parking space per dwelling unit for dwelling units greater than 51 square metres in size and 0.165 parking spaces per dwelling unit for dwelling units less than 51 square metres in size.

The City of Kitchener Zoning By-law 85-1 permits a parking rate of 0.165 parking spaces/dwelling unit for small residential units with an area less than 51 square metres. This rate may be applied to a maximum of 40% of the proposed units within the

development. A rate of 1 parking space per dwelling unit would be applied to the remaining units. The development proposes a total of 372 dwelling units with an area less than 51 square metres (62 parking spaces) and 560 dwelling units greater than 51 square metres in area (560 parking spaces) – this represents a ratio 0.667 parking spaces/dwelling unit (622 ps / 932 u). The proposed parking rate of 0.64 represents a very small reduction to the overall amount of parking, however, provides flexibility should the size of units change, or if there is a small change to the overall number of units as the project proceeds through detailed design (staff note that such changes would require a minor change to the approved site plan as well.)

Variance 2 proposes a retail parking rate of 1 parking space per 35 square metres of gross floor area rather than 1 parking space per 20 square metres of gross floor area. Staff note that in Zoning By-law 85-1 the parking rates for non-residential uses are permitted to be reduced by 30% for uses within a MU-3 zone. This would continue to apply to the proposed rate of 1 parking space per 35 square metres of gross floor area.

Variance 3 proposes that 8% of required residential spaces to be reserved for visitors rather than 20%.

With respect to Variances 2 and 3, Zoning By-law 2019-051 contemplates parking reductions for mixed use buildings containing commercial units together with dwelling units (and having both a visitor and commercial parking requirement). In such circumstances visitor parking is not required, and parking spaces may be shared between uses. By-law 2019-051 requires 1 parking space per 40 square metres of commercial space ( $1835/40 = 46$ ) and no visitor parking. The applicant is proposing a commercial ratio which will provide for 38 parking spaces for commercial uses, and 48 visitor parking spaces (86 visitor parking and commercial parking spaces combined). This is substantially more than would be required if Zoning By-law 2019-051 was applied.

A Traffic Impact Study (TIS) was completed by TYLin in support of the Site Plan application and revised August 2023 and has been reviewed by Transportation Services staff. The study concluded that the proposed parking is sufficient and that Transportation Demand Measures (TDM) measures include indoor bicycle parking, car share, unbundled parking, TDM promotion, provision of educational materials about transit options and provision of pre-loaded GRT passes. The reduction in parking is supported by the availability of existing transit, with a Rapid Transit Stop (Borden Station) located within 100 metres of the subject lands, the provision of bicycle parking with a total of 464 secure Class 'A' and 38 Class 'B' spaces provided, proximity to both on-street and off-street cycling options, and a future micro-mobility (currently Neuron e-bikes/e-scooters) station identified on King Street East. Staff is of the opinion that the proposed change in the approach to the parking calculation and reductions are supportable, and maintain the general intent of the current by-law and future by-law.

Transportation Services staff have reviewed the Traffic Impact Study and Parking Justification and as noted in their comments they have no concerns with the proposed variances.

Staff further note that the subject site is contemplated to be brought into Zoning By-law 2019-051 in the coming months through the Growing Together Project. The Growing Together Project contemplates introducing a new zoning category in MTSA's: Strategic

Growth Areas (SGA). The subject lands are proposed to be rezoned to SGA-4 zone which would include no minimum parking requirement due to the proximity to transit, cycling, and other modes of transportation being readily available.

Based on the foregoing, staff is of the opinion that the proposed parking reduction meets the intent of the by-law, which is to provide an appropriate amount of parking for the proposed uses.

Variance 4 proposes to permit up to 10% of parking stalls to have a minimum width of 2.4 metres and a minimum length of 4.8 metres.

The intent of zoning by-law regulations which require a minimum parking stall size is to ensure that the largest personal vehicle can be accommodated in any parking space. Contemporary zoning by-law regulations often allow a certain percentage of parking stalls to have reduced dimensions which will only accommodate compact vehicles. Such regulations are included in the new Zoning By-law 2019-051, where up to 10% of spaces may be 2.4 metres wide and 4.8 metres long. Such spaces make efficient use of space in parking garages and other settings where space is limited, while also supporting drivers who choose to drive smaller vehicles. Planning and Transportation Services staff is of the opinion that it is appropriate to permit a proportion of spaces to be compact, provided such spaces are signed to advise drivers that they are for compact vehicles only. This is a requirement in Zoning By-law 2019-051. Based on the foregoing staff is of the opinion that the general intent of the by-law is maintained.

Variance 5 proposed to permit a horizontal distance of 13 metres from the east building corner on the Charles St façade with no entrances or display windows. Regulations of the 'MU-3' Zone typically require display windows or entrances every 4 metres along a façade. The intent of this regulation is to promote active uses along the street to improve the pedestrian experience and enhance the streetscape. The subject lands have more than 150 metres frontage along Charles Street East and the majority of the building's façade contains glazing/windows and entrances. The subject area is proposed to be recessed from the street and through the detailed site design, the applicant will include an architectural façade treatment to improve the elevation. Staff is of the opinion that the intent of the by-law is maintained.

Variance 6 proposes to permit obstructions within the driveway visibility triangles. The purpose of a driveway visibility triangle is to preserve visibility of oncoming traffic and pedestrians for drivers exiting driveways. Zoning By-law 85-1 requires a 4.57 x 4.57 metre DVT at all driveways in all zones except certain downtown zones. Staff note that new Zoning By-law 2019-051 recognizes the planned intensity and desire to locate buildings near the street in Mixed Use Zones is similar to that of a downtown and does not require that driveway visibility triangles are provided in mixed use areas in order to facilitate positive streetscape design – this is not included in Zoning By-law 85-1. Transportation staff have reviewed the site design and have no concerns with the proposed variance. Further, staff note that a road widening is required along Charles Street East and the sidewalk is setback beyond the future road widening, increasing the separation between the parking garage access and the sidewalk and edge of pavement preserving the view of pedestrian, cyclist and vehicular traffic. Staff is of the opinion that the intent of the by-law is maintained.



Variance 7 proposes to permit a building within the area defined by Property Detail Schedule 31. The purpose of this regulation is to preserve the sightlines of vehicles on Charles Street East and were developed as a result of a development proposal in 2007 that did not proceed. Since the time of the previous application Charles Street East has undergone significant changes with the introduction of the centre running ION, reducing in the number of travel lanes from 4 lanes (2 eastbound and 2 westbound) pre-ION, to 1 one-way lane of west bound traffic adjacent to the site today. The previous regulations protected for a 175 metre visibility distance in both directions based on the roadway design and speeds at that time. The applicant has worked with Regional staff to update the requirements for the sightlines required to achieve safe access based on the new roadway design and design speeds. The visibility distance has been reduced to 110 metres, and only extends to the east, in the direction traffic approaches. Therefore, the angle of the sightline (and where it intersects with the road) has changed and this is shown on the site plan. Buildings are setback to protect the updated sightlines and as indicated on the site plan, and there are no obstructions to visibility permitted between the 110 metre sightline and Charles Street East. The Region is satisfied with this solution, and staff is of the opinion that the intent of the by-law is maintained.

Variance 8 proposes to permit a daycare facility on lands affected by the regulatory floodplain where the daycare is located on the second floor. Zoning By-law regulation 5.18 does not permit a day care facility located on lands identified with Special Regulation 1R which indicates the lands are regulated by the Grand River Conservation Authority. Regulation 1R is applied to the entirety of the lands despite the fact the Regulatory flood line only encroaches a small distance past the southern lot line. As outlined in the discussion related to the OP policy, the intent of regulation 5.18 is to ensure that there is a safe and dry evacuation route for the sensitive use in the case of a flooding emergency. The subject site is affected by a substantial grade change between King Street East (approximately elevation of 325 masl) and Charles Street East (approximate elevation of 320 masl). The proposed day care use is proposed to be located at the King Street East elevation, which is the second storey above Charles Street East and safe evacuation can be provided to King Street East in a flooding emergency. The GRCA has indicated that they are supportive of the proposed variance, and based on the foregoing, staff is of the opinion that the intent of the by-law is maintained.

#### Are the Effects of the Variances Minor?

Staff is of the opinion that the effects of the variances are minor. The proposed parking rate continues to provide for an appropriate amount of resident, visitor and commercial parking given the excellent access to other modes of transportation including ION, bus transit, cycling networks and micro-mobility network and is consistent with future by-law direction. Inclusion of compact parking stalls provides for efficient use of space within the parking structure and supports drivers with smaller vehicles. The proposed increase to permit 13 metres with no openings is mitigated by the proposed façade treatment. Transportation Services staff are of the opinion that the obstruction in the DVT will not be a safety concern and is consistent with the future by-law direction. Regional staff are supportive of the updated sightlines protecting visibility of oncoming traffic on the Regional Road. The location of the day care use on the King Street elevation provides for safe evacuation during a flooding emergency and is supported by the GRCA.

Are the Variances Desirable for The Appropriate Development or Use of the Land, Building and/or Structure?

The proposed variances will permit a high-rise, high-density mixed use development with 932 residential units. The development is located in an MTSA and in close proximity to ION rapid transit and several bus routes. The site is conveniently located to the cycling and micro-mobility network, and in a pedestrian friendly area. The proposed development provides for a development that is appropriate in a MTSA and will contribute the City's Housing Pledge. Staff is of the opinion that the variances are desirable for the appropriate development and use of the lands.

**Environmental Planning Comments:**

No concerns.

**Heritage Planning Comments:**

The subject properties municipally addressed as 787-851 King Street East, 432 Charles Street East, and 5 Stirling Avenue South do not hold any heritage status under the Ontario Heritage Act. However, the subject property is located adjacent to a Part IV designated property, First Mennonite Church Cemetery, which is municipally addressed as 800 King Street East. It is also located adjacent to the Central Frederick Neighborhood Cultural Heritage Landscape (CHL), First Mennonite Church Cemetery CHL, and the Iron Horse Trail CHL as per the 2014 CHL Study, prepared by The Landplan Collaborative Ltd. and approved by Council in 2015. There are no heritage concerns with the requested variances for reduced parking requirements, encroachments into the Driveway Visibility Triangle, or the variation to façade opening requirements.

**Building Division Comments:**

The Building Division has no objections to the proposed variances.

**Engineering Division Comments:**

No concerns. Engineering comments/conditions provided through Site Plan Application SP23/035/S/KA.

**Parks/Operations Division Comments:**

No Concerns. Parks and Cemeteries requirements will be addressed through Site Plan Application SP23/035/K/KA.

**Transportation Planning Comments:**

Transportation Services staff have worked with the applicant closely on this proposed development and through the proposed site plan and the provided parking justification, staff can support the following proposed minor variances:

- Requesting relief from Section 6.1.2.a) of Zoning By-law 85-1 to permit an overall residential parking rate of 0.64 spaces per unit inclusive of visitor parking, rather than the required 1.0 space per unit for units greater than 51 square metres, and 0.165 spaces/unit for units less than 51 square metres;
- Requesting relief from Section 6.1.2 b) vi) of Zoning By-law 85-1 to permit visitor parking to be provided at a rate of 8% of required residential parking spaces, rather than the required rate of 20% of the required parking spaces;
- Requesting relief from Section 6.1.2.a) of Zoning By-law 85-1 to permit a commercial parking rate of 1 space per 35 metres squared, rather than the required 1 space per 20

metres squared. It is requested that the 30 % reduction for the MU-3 zone be maintained;

- Requesting relief from Section 5.3 of Zoning By-law 85-1 to permit encroachment into the Driveway Visibility Triangle, whereas no encroachments are permitted. This request reflects the provisions of the new Zoning By-law 2019-051 where a Driveway Visibility Triangle is not required for Mixed Use Zones.
- Requesting relief from Section 6.1.1.2 d) of Zoning By-law 85-1 to permit up to 10% of angle parking spaces have a minimum width of 2.4 metres and a minimum length of 4.8 metres rather than a minimum width of 2.6 metres and a minimum length of 5.5 metres.

#### **Region of Waterloo Comments:**

Regional Comments (dated October 31, 2023) indicate that they have no concerns with the proposed variances provided the areas between the 110 metre sightlines (touching the building line of westerly Tower B) and the Charles Street roadside curb are hardscaped only and labelled on the Detailed Plans at the Site Plan stage accordingly. Planning Staff confirm that this notation is included on the Conditionally Approved Site Plan. The Region further advises that a sensitive day care use will need to be evaluated through any future noise study that may be required.

#### **Grand River Conservation Authority:**

The GRCA has no concerns with the application.

#### **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*
- *King Street East Secondary Plan (1994)*
- *Official Plan (2014)*
- *Zoning By-law 85-1*