

REPORT TO: Committee of Adjustment

DATE OF MEETING: December 12, 2023

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

PREPARED BY: Adam Zufferli, Student Planner, 519-741-2200 ext. 7074

WARD(S) INVOLVED: Ward 9

DATE OF REPORT: November 29, 2023

REPORT NO.: DSD-2023-530

SUBJECT: Minor Variance Application A2023-141 – 24 Cherry Street

RECOMMENDATION:

That Minor Variance Application A2023-141 for 24 Cherry Street requesting relief from the following sections of Zoning By-law 2019-051:

- i) Section 4.12.3 e) to permit a lot to have a width of 12.1 metres instead of the minimum required 13.1 metres; and
- ii) Section 4.12.3 n) to allow an unobstructed walkway that is 1.05 metres in width, for a small portion of the walkway adjacent to a bay window, instead of the minimum required 1.1 metres;

to facilitate the development of an Additional Dwelling Unit (ADU) (Detached) in the rear yard of the subject property, generally in accordance with drawings prepared by Andy Tran, dated October 26, 2023, BE APPROVED subject to the following conditions:

1. That the Owner shall grant Metrolinx an Environmental Easement for Operational Emissions. The Environmental Easement provides clear notification to those who may acquire an interest in the subject property and reduces the potential for future land use conflicts. The environmental easement shall be registered on title of the subject property.
2. That the Owner shall provide confirmation to Metrolinx, that the following warning clause has been inserted into all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the Railway Corridor:

“Warning: The Applicant is advised that the subject land is located within Metrolinx’s 300 metres railway corridor zone of influence and as such is

advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration 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 lots, blocks or units.”

REPORT HIGHLIGHTS:

- The purpose of this report is to review an application for minor variances to facilitate the development of the subject property with an Additional Dwelling Unit (ADU) (Detached).
- The key finding of this report is that the requested minor variances meet 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 located on Cherry Street in between Park Street and Walnut Street. The rear yard of the subject property abuts Cherry Park. The existing use of the subject property is a single detached dwelling.

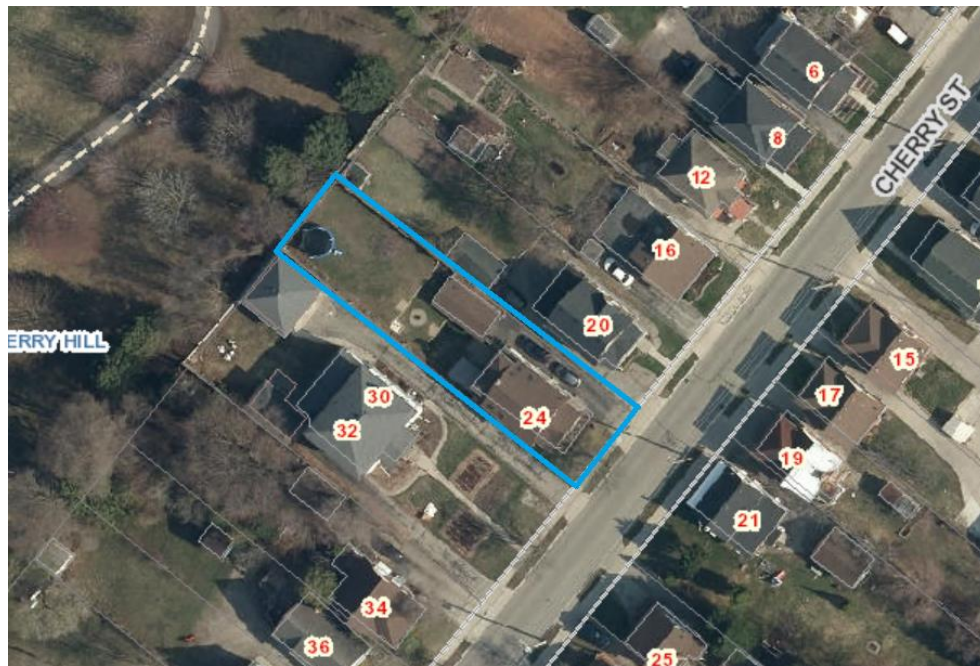


Figure 1 – Location of Subject Property

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 Four Zone (RES-4)' in Zoning By-law 2019-051.

The purpose of the application is to request minor variances to facilitate the development of the subject property with an ADU (Detached) in the rear yard. The requested variance to Section 4.12.3 e) is necessary to accommodate for the existing lot dimensions. The requested variance to Section 4.12.3 k) is necessary to accommodate for the existing bay window, which would protrude slightly into the proposed access to the ADU (Detached) in the rear yard. As illustrated in 'Figure 3', the proposed access would run parallel to the side of the lot.



Figure 2 – Photograph of Subject Property



Figure 3 – Location of Proposed Access

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 as 'Low-Rise Residential' on Map 3 of the Official Plan. This designation permits a full range of low density housing types including duplexes, additional dwelling units, and other forms of low-rise housing. The intent of this designation is to ensure compatibility of building form, with respect to massing, scale and design in order to support the successful integration of a range of building types. It also places emphasis on the relationship of buildings to adjacent properties, streets, and exterior areas. As the existing dwelling with an ADU (Detached) is permitted within the land use designation, Staff is of the opinion that the requested variances meet the general intent of the Official Plan.

General Intent of the Zoning By-law

Width of a Lot: The requested variance to Section 4.12.3 e) of Zoning By-law 2019-051 would permit a lot to have a width of 12.1 metres instead of the minimum required 13.1 metres, to facilitate the development of an ADU (Detached) in the rear yard of the subject property. The intent of this regulation is to ensure that the lot is an adequate size to be able to accommodate the ADU (Detached), have sufficient amenity space and is able to accommodate the necessary access and required parking. In this instance, the lot is quite

deep and despite the 1 metre deficiency in lot width the lot is 611 square metres in area and well exceeds the minimum required 395 square metres. The proposed ADU will meet and exceed the minimum required setbacks, the rear yard will provide a more than adequate amenity space and parking and access can be provided. Staff is of the opinion that the requested variance meets the general intent of the Zoning By-law.

Width of an Unobstructed Walkway: The requested variance to Section 4.12.3 n) of Zoning By-law 2019-051 would permit an unobstructed walkway to have a width of 1.05 metres for a small portion of a walkway adjacent to an existing bay window instead of the minimum required 1.1 metres. The intent of this regulation is to ensure that access to the proposed ADU (Detached) in the rear yard is suitable for future residents. The proposed access will only be less than the minimum required 1.1 metres for a small portion adjacent to the existing bay window. The fence line does not extend past the bay window, meaning that the proposed access to the rear yard would not be physically impeded in the area surrounding the bay window. 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?

Staff is of the opinion that the effects of the variances are minor. The minimum required side yard and rear yard setbacks are exceeded, mitigating the potential for overlook from the proposed ADU (Detached). Additionally, the proposed access will be reduced only by several centimeters and only for a small portion of the distance.

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

Staff is of the opinion that the variances are desirable and appropriate for the use of the land as it will support a gentle intensification of the property, will make use of existing infrastructure, and support the City's Housing Pledge.

Environmental Planning Comments:

No trees will be affected by ADU. No natural heritage or tree management policy issues.

Grand River Conservation Authority Comments:

GRCA has no objection to the approval of the application.

Heritage Planning Comments:

The Kitchener Cultural Heritage Landscape Study (CHLS) dated December 2014 and prepared by The Landplan Collaborative Ltd. was approved by Council in 2015. The CHLS serves to establish an inventory and was the first step of a phased Cultural Heritage Landscape (CHL) conservation process. The property municipally addressed as 24 Cherry Street is located within the Warehouse District High Priority CHL. The owner and the public will be consulted as the City considers identifying CHLs in the Official Plan and preparing action plans for each CHL with specific conservation options.

Building Division Comments:

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

Engineering Division Comments:

The side yard currently accommodates overland stormwater flows from the rear yard. A sidewalk is required to the rear yard in accordance with the Zoning By-law. The final grading of this property shall not adversely affect the drainage of adjacent properties or the overall grading control plan. The Owner is responsible to address storm water drainage at the Building Permit stage.

Parks/Operations Division Comments:

The property is adjacent to Cherry Park where there are numerous City-owned trees and construction of the detached ADU is proposed near the shared property line. There is an existing wooden fence along the property line that will offer necessary tree protection and no further submissions or tree protection fencing is required.

Transportation Planning Comments:

Transportation Services have no concerns with this application.

Region of Waterloo Comments:

There are no concerns/requirements for the application. However, the owners are advised that the proposed and the existing dwellings may have impacts from the environmental noise (railway noise), and the owners are responsible for ensuring that the proposed development does not have any impacts from the environmental noise in the vicinity.

Metrolinx Comments:

The subject property is located within 300m of the Metrolinx Guelph Subdivision which carries Metrolinx's Kitchener GO Train service.

Conditions of Approval:

- As per section 3.9 of the Federation of Canadian Municipalities and Railway Association of Canada's Guidelines for New Development in Proximity to Railway Operations, the Owner shall grant Metrolinx an environmental easement for operational emissions. The environmental easement provides clear notification to those who may acquire an interest in the subject property and reduces the potential for future land use conflicts. The environmental easement shall be registered on title of the subject property. A copy of the form of easement is included for the Owner's information. The applicant may contact Farah.Faroque@metrolinx.com with questions and to initiate the registration process. (It should be noted that the registration process can take up to 6 weeks).
- The Proponent shall provide confirmation to Metrolinx, that the following warning clause has been inserted into all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the Railway Corridor:
 - Warning: The Applicant is advised that the subject land is located within Metrolinx's 300 metres railway corridor zone of influence and as such is advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns

or successors as aforesaid may expand or alter their operations, which expansion or alteration 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 lots, blocks or units.

Should you have any questions or concerns, please do not hesitate to contact me.

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:

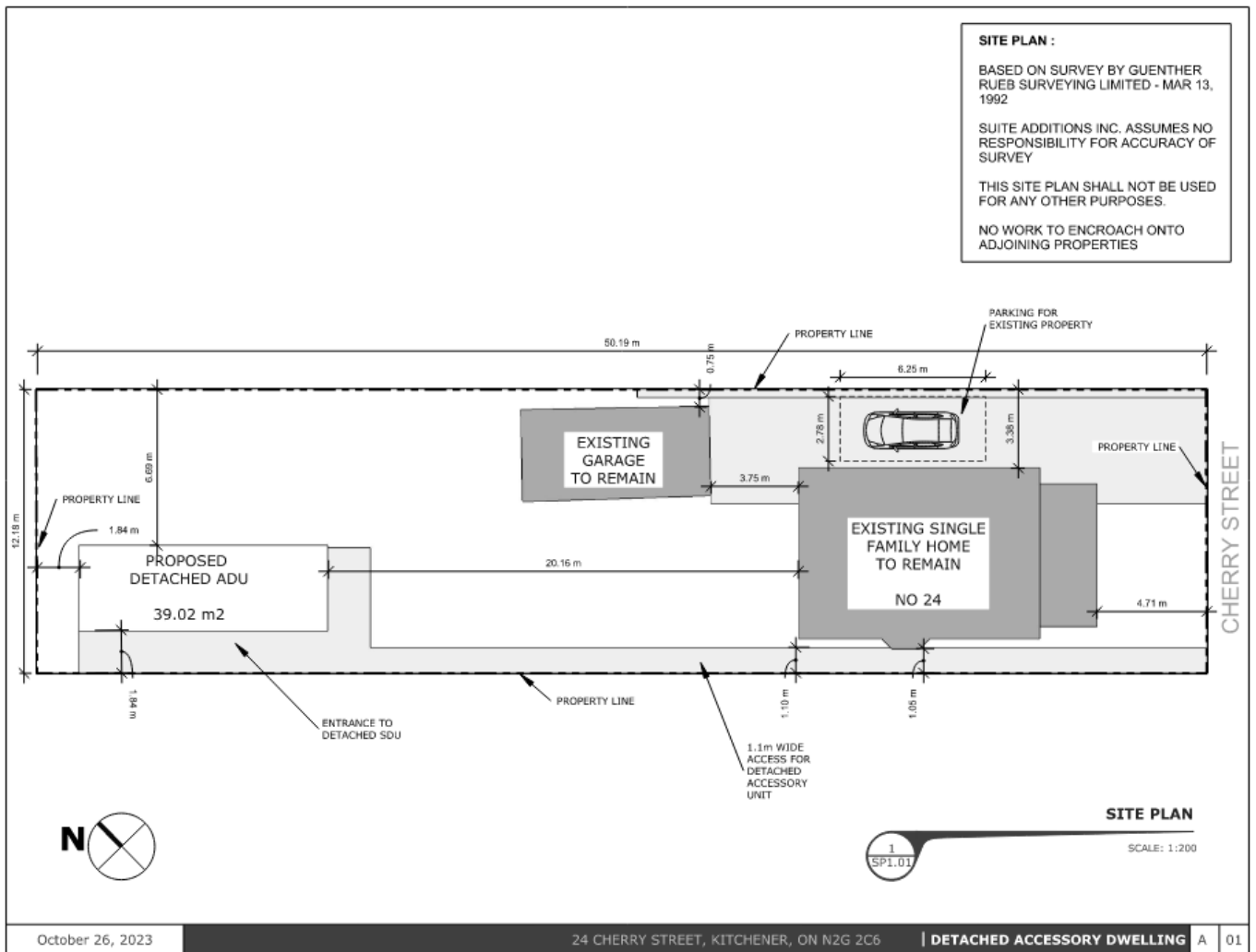
INFORM – This report has been posted to the City's website with the agenda in advance of the Committee of Adjustment meeting. A notice sign was placed on the property advising that a Committee of Adjustment application has been received. The sign advises interested parties to find additional information 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*

ATTACHMENTS:

Attachment A – Site Plan



October 26, 2023

24 CHERRY STREET, KITCHENER, ON N2G 2C6

DETACHED ACCESSORY DWELLING A

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Attachment A – Site Plan