

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: January 16, 2024

SUBMITTED BY: Tina Malone-Wright, Manager, Development Approvals
519-741-2200 ext. 7765

PREPARED BY: Andrew Pinnell, Senior Planner, 519-741-2200 ext. 7668

WARD INVOLVED: Ward 10

DATE OF REPORT: January 4, 2024

REPORT NO.: DSD-2024-025

SUBJECT: Consent Application B2024-001 (Severed Lot)
Consent Application B2024-002 (Retained Lot)
46 Shanley Street

RECOMMENDATION:

Consent Application B2024-001 (Severed Lot)

- A. That Consent Application B2024-001 requesting consent to create a parcel (“Severed Lot”) of land having an approximate lot width of 8.9 metres, a lot depth of 45.4 metres, and a lot area of 385 square metres and to establish an access and maintenance easement having an approximate width of 1.5 metres and a depth of 3.0 metres in favour of the “Retained Lot”, as generally shown on the “Severance Sketch” and “Easement Sketch” attached to Report DSD-2024-025, BE APPROVED, subject to the following conditions:
1. 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.
 2. That the 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 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.

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

4. That the Owner provides a servicing plan, for the Severed and Retained Lands, showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.
5. That the Owner submit a Development Asset Drawing (digital AutoCAD) for the site (servicing, SWM etc.) with corresponding layer names and asset information to the satisfaction of the City's Director of Engineering Services, prior to deed endorsement.
6. That the Owner makes financial arrangements for the installation of any new service connections to the Severed and/or Retained Lands to the satisfaction of the City's Director of Engineering Services.
7. That any new driveways, on the Severed and/or Retained Lands, are to be built to City of Kitchener standards at the Owner's expense prior to occupancy of the building to the satisfaction of the City's Director of Engineering Services.
8. That the Owner provides confirmation that the basement elevation, on the Severed and/or Retained Lands, can be drained by gravity to the street sewers to the satisfaction of the City's Director of Engineering Services. If this is not the case, then the owner will need to pump the sewage via a pump and forcemain to the property line and have a gravity sewer from the property line to the street to the satisfaction of the City's Director of Engineering Services.
9. That the Owner provides design drawings to implement suitable design solutions for sump pump outlets, to the satisfaction of the City's Director of Engineering Services.
10. That the owner shall:
 - a) complete a Building Code Assessment for the existing dwelling proposed to be retained on the severed and retained parcels of land, prepared by a qualified person, to confirm that the proposed property line and any of the building adjacent to this new property line complies with the Ontario Building Code, to the satisfaction of the City's Chief Building Official. The assessment shall address items such as, but not limited to, spatial separation of existing buildings' wall face, and shall include recommendations such as closing in of openings pending spatial separation calculation results.
 - b) A Building Permit shall be obtained for any remedial work/ upgrades required by the Building Code Assessment.
11. 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 Director of Planning:

- 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.
12. 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.
 13. That, prior to final approval, the applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.

Consent Application B2024-001 (Retained Lot)

- B. That Consent Application B2024-002 requesting consent to establish an access and maintenance easement having an approximate width of 1.5 metres and a depth of 4.0 metres in favour of the "Severed Lot", as generally shown in the "Easement Sketch" attached to Report DSD-2024-025, BE APPROVED, subject to the following conditions:
 1. 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.
 2. That the 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 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 Director of Planning:
 - 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 applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.

REPORT HIGHLIGHTS:

- The purpose of this report is to recommend approval of the requested Consent Applications to create a new lot, to allow separate conveyance of each existing semi-detached unit, and to establish access and maintenance easements for each resultant lot.
- 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.



Figure 1: Photo of existing dwelling, taken from Shanley Street.

BACKGROUND:

The subject property is located on the north side of Shanley Street, between Braun Street and Moore Avenue, in the KW Hospital Planning Community. The property is presently developed with a semi-detached dwelling on one lot. The existing dwelling was constructed in approximately 1887.

The lands to the west, east, and south are developed with low density residential land uses. The lands to the north are developed with the complex of buildings associated with Sacred Heart Church and the former Sacred Heart School, which are owned by the Roman Catholic Episcopal Corporation of the Diocese of Hamilton.

The subject property has approximately 19.2 metres of frontage on Shanley Street and is approximately 870 square metres in area. The subject property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure and is designated 'Low Rise Conservation' within the KW Hospital Secondary Plan (1994 Official Plan). The property is zoned 'Residential Five Zone' (R-5) in Zoning By-law 85-1.

It should be noted that the subject property is within the Growing Together study area and is proposed to be identified as 'Protected Major Transit Station Area' on Map 2 – Urban Structure, proposed to be designated Strategic Growth Area A, and proposed to be zoned Strategic Growth Area One (SGA-1). It is anticipated that the Growing Together report will be considered by the City's Planning and Strategic Initiatives Committee on January 29, 2024, after a decision is rendered regarding the subject application.

The applicant is requesting Consent to create a new lot by severing the existing lot into two parcels, so as to establish a new lot line along the common wall of the existing semi-detached dwelling. This would allow separate conveyance of each semi-detached unit. The Severed Lot would have an approximate frontage of 8.9 metres on Shanley Street, a depth of 45.4 metres, and an area of 385 square metres. The Retained Lot would have an approximate frontage of 10.2 metres on Shanley Street, a depth of 45.5 metres, and an area of 485 square metres.

It should be noted that proposed lots comply with Zoning By-law 85-1 and no minor variances are necessary to facilitate the subject proposal.

In addition, access and maintenance easements are proposed over each resultant lot in favour of the other, as follows:

- Application B2024-001 – an easement of approximately 1.5 metres x 3.0 metres over the Severed Lot in favour of the Retained Lot; and
- Application B2024-002 – an easement of approximately 1.5 metres x 4.0 metres over the Retained Lot in favour of the Severed Lot.

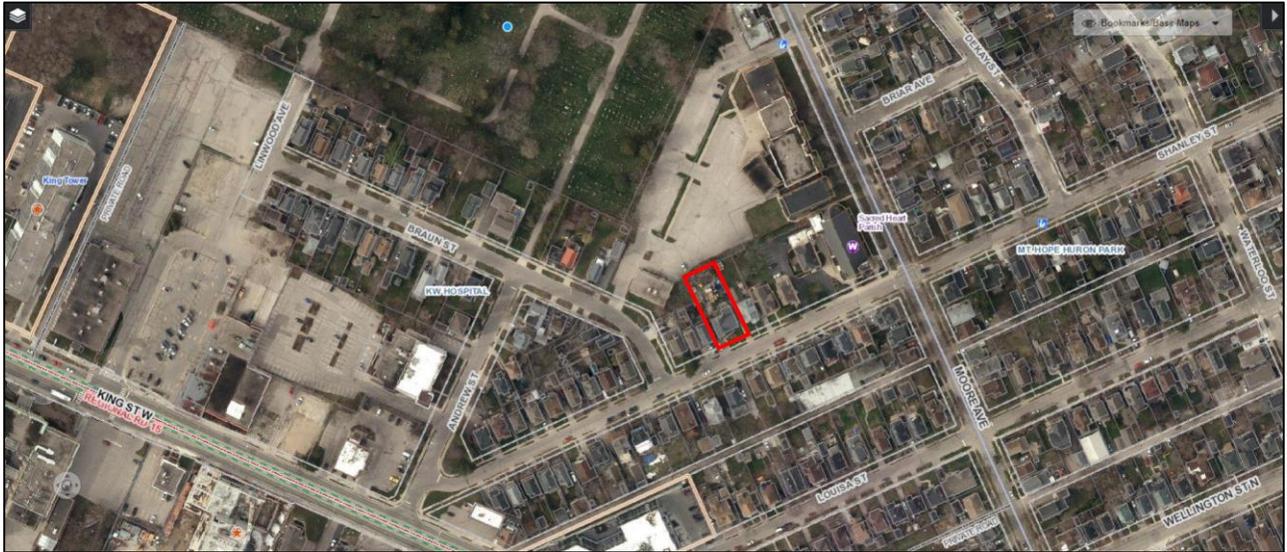


Figure 2: Location of Subject Property (Outlined in Red).

REPORT:

Planning Comments:

In considering the relevant Provincial legislation, Regional and City policies and regulations, Planning staff offers the following comments, noting that:

- No physical development is contemplated through the subject applications,
- The use of the property will not change as result of the requested Consents, and
- The land use will continue to be semi-detached dwelling.

The requested Consent to create a new lot simply would allow for separate conveyance of each semi-detached unit.

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 requested Consent is consistent with the PPS.

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 located within the City's Built-Up Area, as noted on Map 1 – City Urban Area and Countryside of the Official Plan. 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 Built-Up Area in the ROP. 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. The Region has indicated that it has no objections to the proposed consent. Planning staff is of the opinion that the Consent application conforms to the Regional Official Plan.

City Official Plan (2014):

There are many Official Plan policies that apply to the subject proposal. The subject property is designated 'Low Rise Conservation' within the KW Hospital Secondary Plan (1994 Official Plan). The Low Rise Conservation designation contains Policy 13.7.3.1, which states (emphasis added):

The Low Rise Conservation designation has been applied to areas where it is the aim of this Plan to retain the existing low rise, low density residential character of the neighbourhood. Preservation of the built scale of development shall be encouraged through the retention of the existing housing stock, subdivision of the existing housing stock to create multiple unit dwellings, and the creation of new housing through redevelopment at no greater than the existing scale and intensity of development occurring as of July 16, 1987.

Permitted uses are restricted to single detached dwellings, duplex dwellings, semi-detached dwellings, multiple dwellings to a maximum of three units, small lodging houses, small residential care facilities, home businesses, and private home day care...

In addition, Section 17.E.20.5 of the 2014 Official Plan implements Section 51 of the Planning Act and contains policies regarding 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.

With respect to the Official Plan, the requested Consent would ensure the existing low rise, low density residential character of the neighbourhood is retained. The built scale of development would be preserved through retention of the existing semi-detached dwelling and the existing dwelling would be subdivided to allow separate conveyance of each semi-detached unit. Furthermore, no physical development is contemplated and the use of the property will not change as result of the applications. Engineering Services has not identified any servicing concerns, noting that each unit would be separately serviced with full municipal services. The subject property has frontage on a municipal street with sidewalk facilities.

Zoning By-law 85-1

As aforementioned, the subject property is zoned 'Residential Five Zone (R-5)' in Zoning By-law 85-1. It must be reiterated that the proposal complies with the current zoning and no variances are necessary to facilitate the proposal.

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 Lot and establishment of access and maintenance easements is desirable and appropriate.

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 Severed and Retained lots and requested easements are desirable and appropriate. The lots reflect the general scale and character of the established development pattern of surrounding lands and comply with the current zoning. Each unit would be separately serviced with full municipal services. The subject property has frontage on a municipal street with sidewalk facilities. Planning staff is further of the opinion that the proposal is consistent with the Provincial Policy Statement, and the Region of Waterloo Official Plan, conforms to the Growth Plan for the Greater Golden Horseshoe, and represents good planning.

Environmental Planning Comments:

No Comments.

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 46 Shanley Street is located within the Mount Hope/Breithaupt Neighbourhood CHL. The owner and the public will be consulted as the City considers listing CHLs on the Municipal Heritage Register, 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 consent provided:

- 1) A qualified designer is retained to complete a building code assessment as it relates to the new proposed property line and any of the building adjacent to this new property line shall address such items as: Spatial separation of existing buildings' wall face to the satisfaction of the Chief Building Official. Closing in of openings may be required, pending spatial separation calculation results.
- 2) A building permit shall be obtained for any remedial work/ upgrades that may be required by the building code assessment.

Engineering Division Comments:

B2024-001 - 46 Shanley Street (Severed):

- Severance of any blocks within the subject lands will require separate, individual service connections for sanitary, storm, and water, in accordance with City policies.
- The owner is required to make satisfactory financial arrangements with the Engineering Division for the installation of any new service connections that may be required to service this property, all prior to severance approval. Our records indicate sanitary and water municipal services are currently available to service this property. Any further enquiries in this regard should be directed to jason.brule@kitchener.ca.
- Any new driveways are to be built to City of Kitchener standards. All works are at the owner's expense and all work needs to be completed prior to occupancy of the building.
- A servicing plan showing outlets to the municipal servicing system will be required to the satisfaction of the Engineering Division prior to severance approval.
- A Development Asset Drawing (digital AutoCAD) is required for the new site infrastructure with corresponding layer names and asset information to the satisfaction of the Engineering Division prior to severance approval.
- The owner must ensure that the basement elevation of the building can be drained by gravity to the municipal sanitary sewer. If basement finished floor elevations do not allow for gravity drainage to the existing municipal sanitary system, the owner will have to pump the sewage to achieve gravity drainage from the property line to the municipal sanitary sewer in the right of way.
- The Owner shall implement a suitable design solution for a sump pump outlet to the satisfaction of the Director of Engineering.

B2024-002 - 46 Shanley Street (Retained):

- Severance of any blocks within the subject lands will require separate, individual service connections for sanitary, storm, and water, in accordance with City policies.
- The owner is required to make satisfactory financial arrangements with the Engineering Division for the installation of new service connections that may be

required to service this property, all prior to severance approval. Our records indicate sanitary and water municipal services are currently available to service this property. Any further enquiries in this regard should be directed to jason.brule@kitchener.ca.

- Any new driveways are to be built to City of Kitchener standards. All works are at the owner's expense and all work needs to be completed prior to occupancy of the building.
- A servicing plan showing outlets to the municipal servicing system will be required to the satisfaction of the Engineering Division prior to severance approval.
- A Development Asset Drawing (digital AutoCAD) is required for the new site infrastructure with corresponding layer names and asset information to the satisfaction of the Engineering Division prior to severance approval.
- The owner must ensure that the basement elevation of the building can be drained by gravity to the municipal sanitary sewer. If basement finished floor elevations do not allow for gravity drainage to the existing municipal sanitary system, the owner will have to pump the sewage to achieve gravity drainage from the property line to the municipal sanitary sewer in the right of way.
- The Owner shall implement a suitable design solution for a sump pump outlet to the satisfaction of the Director of Engineering.

Parks/Operations Division Comments:

B2024-001 - 46 Shanley Street (Severed):

Planning and Legal have advised that parkland dedication is not required as the uses are existing.

B2024-002 - 46 Shanley Street (Retained):

An easement is proposed over the Retained Lot in favour of the Severed Lot for access purposes (approx. 1.5 metres by 4.0 metres) – No requirements.

Transportation Planning Comments:

B2024-001 - 46 Shanley Street (Severed):

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

B2024-002 - 46 Shanley Street (Retained):

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

Region of Waterloo Comments:

The lands are proposed to be severed to create an additional lot for the purpose of facilitating separate conveyance of each existing semi-detached unit. The proposed severed land will have an area of approximately 385 sq.m. and the retained land will have an area of approximately 485 sq.m.

Regional Fee:

Regional Staff have not received the required consent review fee, which \$350 per application.

General Comments:

Regional Staff has no objections to the proposed consent application subject to the following condition:

1. That prior to final approval, the owner/applicant submits the consent review fee of \$350 per application to the Regional Municipality of Waterloo.

Grand River Conservation Authority Comments:

No objections.

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)*
- *KW Hospital Secondary Plan (1994 Official Plan)*
- *Zoning By-law 85-1*
- *Growing Together Study*

ATTACHMENTS:

- Attachment A – Severance Sketch provided with Application Forms
- Attachment B – Easement Sketch provided with Application Forms

