

# Staff Report



Development Services Department

www.kitchener.ca

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** January 16, 2024

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

**PREPARED BY:** Sheryl Rice Menezes, Senior Planning Technician,  
519-741-2200 ext. 7844

**WARD(S) INVOLVED:** Ward 2

**DATE OF REPORT:** January 6, 2024

**REPORT NO.:** DSD-2024-039

**SUBJECT:** Minor Variance Application A2024-001 - 3273 King St. E.

---

## RECOMMENDATION:

That Minor Variance Application A 2024-001 for 3273 King Street East requesting permission to permit a legal non-conforming single detached dwelling in a RES-7 zone to be used for a Single Detached Dwelling and a Personal Services Use (Hair Salon); to permit a parking space to be located 0.5 metres from the street line instead of the minimum required 3 metres, to permit a parking space to be located in a Driveway Visibility Triangle (DVT), whereas the By-law does not permit encroachments into the DVT; and, to permit one barrier-free parking space to be 2.4 m in width instead of the required 3.4 metres, to facilitate the use of the existing building for a Single Detached Dwelling and a Personal Services Use (Hair Salon), generally in accordance with the drawings attached to Minor Variance Application A2024-001, and in this report, BE APPROVED, subject to the following conditions:

1. That the required parking spaces be demarcated on-site, as shown on the drawing in this staff report, and barrier-free signage is to be installed and provided in accordance with the City of Kitchener Urban Design Manual,
2. That the property owner shall complete the work, identified in Condition No. 1 above by July 1, 2024. Any request for a time extension must be approved in writing by the Manager, Development Approvals prior to completion date set out in this decision. Failure to complete the condition will result in this approval becoming null and void.

## REPORT HIGHLIGHTS:

- The purpose of this report is to review and make recommendations with respect to the requested application for permission for 3273 King Street East.

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

- The key finding of this report is that the application be approved.
- 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 south side of King Street East, between Fairway Road South and Hofstetter Avenue, and is currently being used as a non-complying personal service (hair salon) use and one legal non-complying dwelling unit. The property is surrounded by high rise residential uses with parking lots on immediately adjacent to it on either side. And on the opposite side of King Street to the north of the property exist various COM-2 (Commercial) uses.

The property is identified as 'Community Area' on Map 2 – Urban Structure and is designated as 'High Rise Residential Seven (RES-7)' in Zoning By-law 2019-051. The land use designation is 'High Rise Residential' in the 2014 Official Plan.

The purpose of the application is to legalize a non-complying personal service (hair salon) use and recognize the existing legal non-conforming single detached dwelling.



**Figure 1 - Aerial photo (2022)**



**Figure 2 - View from left side of property.**



**Figure 3 - View from right side of property.**

## **History**

The original single detached dwelling on the property was constructed approximately 1925 when the land was zoned Agricultural in Township By-law 878-A. It was annexed into the City of Kitchener in 1958.

A detached garage in the rear yard was constructed in 2006 accessory to a single detached dwelling which was approved as an expansion of a legal non-conforming use by Committee of Adjustment in Decision A2006-044.

The current owner purchased the property in December 2019. At that time, the property was already being used, without City permission, for a personal service (hair salon) on the main floor by the previous owner since approximately 2018. The current owner would like to legally establish the personal service (hair salon) in the legal non-conforming single detached dwelling.

Given that the use of the property is a legal non-conforming single detached dwelling and the applicant would like to continue to use the existing building for residential purposes, the owner is making application for Permission for the Committee to consider a use of the land that is similar for the purposes it was used on the day the by-law was passed or which is more compatible with the uses permitted in the 'RES-7' zone.

Section 45(2)(a)(ii) of the Planning Act:

- ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application of the committee.

The applicant has attached a parking plan to the application to show how the existing property has been developed with parking. See 'Parking Plan' below.

## **REPORT:**

Case law sets out the tests to be applied by the Committee of Adjustment in considering applications under Section 45(2)(a)(ii). It should be noted that the test to be applied is not the four-part test for minor variances under Section 45(1) but rather whether the approval of the application:

1. Is in the public interest; and,
2. Creates unacceptable or adverse impact upon abutting properties.

### **Is the Approval in the Public Interest?**

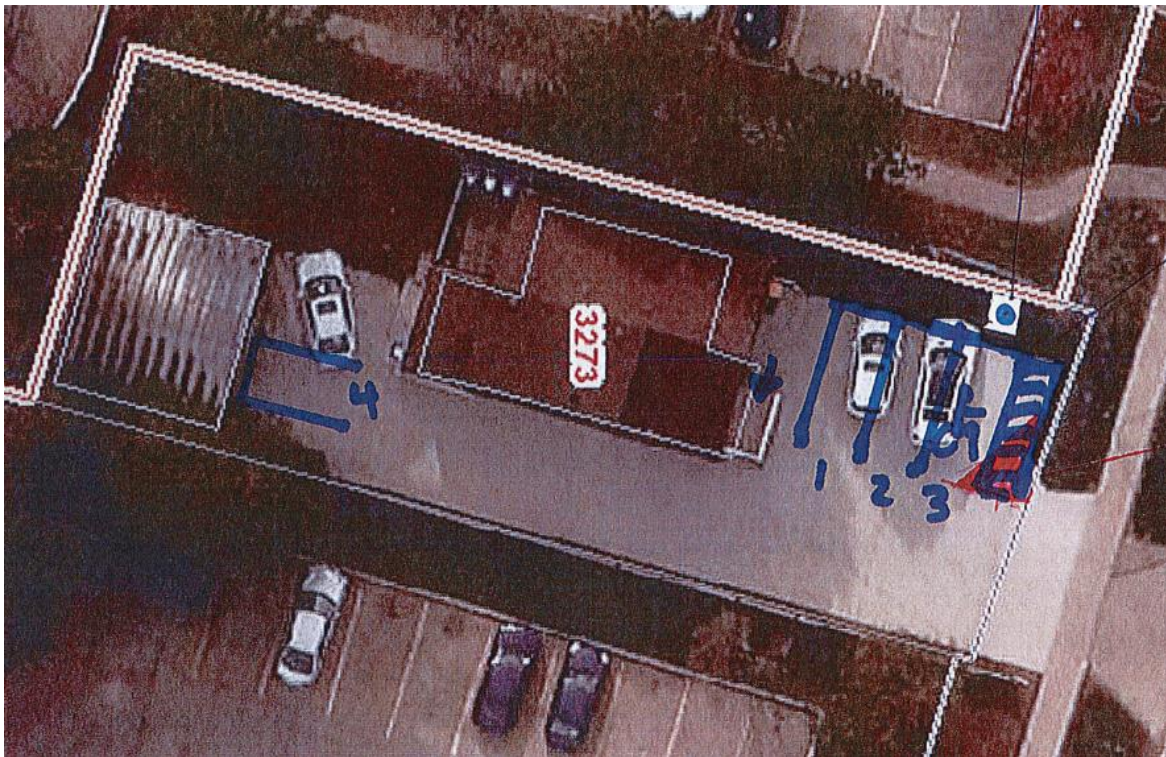
Staff are of the opinion that the approval of this application is in the public interest as it would allow for the continuation of the existing use of the single detached dwelling (SDD) while introducing a personal service use (hair salon). The personal service (hair salon) use will introduce a non-residential use without requiring major renovations for existing the 1 ½ - storey building. It is noted that the owner has submitted a building permit for the personal

service use in a Single Detached Dwelling (SDD). Staff note that subject land is a small parcel surrounded by larger 'RES-7' lots which have developed and/or consolidated with high density multiple dwellings. There is limited uses for this piece of land in the High Rise Residential designation.

The SDD and Personal Service (hair salon) use offers the community with service that is in line with the intent of the 'RES-7' zone which permits personal services in larger buildings. Given that the uses and parking area have existed since approximately 2018, there would not be a discernable impact on the streetscape or neighbourhood.

#### And Adverse or Unacceptable Impacts?

Staff are of the opinion that permitting the personal service (hair salon) use in the legal non-conforming SDD will not create any adverse or unacceptable impacts. The property contains sufficient parking for both uses. One (1) parking space for the dwelling unit and three (3) parking spaces for the personal service (hair salon) use. It is noted that the properties on both sides have their parking areas in the front yard and therefore the property does not have a negative impact on the streetscape. Lastly, Transportation Planning staff have advised that they have no concerns (see comments below).



**Figure 4 - Parking plan – Parking spaces # 1, 2 and 4 are 2.6 m x 5.5 m in size. Parking space # 3, barrier-free space is 2.4 m x 5.5 m. Drive aisle beside barrier-free space is 1.5 m wide. Barrier-free signage to be placed on pavement and sign on post. Walkway to porch beside space # 1 is 0.9 m wide.**

**Environmental Planning Comments:** No concerns.

**Heritage Planning Comments:** No concerns.

**Building Division Comments:**

The Building Division has no objections to the proposed variance. A Building Permit Application has been submitted and is currently under review.

**Engineering Division Comments:** No concerns.

**Parks/Operations Division Comments:** No concerns.

**Transportation Planning Comments:**

Transportation Services staff can support the proposed variances given that the existing building and business have been operating as is for years with no adverse impacts on traffic safety.

The proposed encroachment into the Driveway Visibility Triangle should not impose any impacts on vehicle sightlines and driveway visibility given how far set back the property line is from the municipal sidewalk, and also King Street East.

**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 council / committee meeting. A notice sign was placed on the property advising that a Committee of Adjustment meeting 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 property. As well, notice of the application was posted in the local newspaper, The Record.

**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*
- *Minor Variance Decision A2006-044*