

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: September 17, 2024

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

PREPARED BY: Tim Seyler, Senior Planner, 519-741-2200 ext. 7860

WARD(S) INVOLVED: Ward 3

DATE OF REPORT: September 6, 2024

REPORT NO.: DSD-2024-420

SUBJECT: Consent Applications B2024-017 and B2024-018 –
135 Gateway Park Drive

RECOMMENDATION:

Consent Application B2024-018 – 135 Gateway Park Drive

That Consent Application B2024-018 for 135 Gateway Park Drive requesting consent to sever a parcel of land having a lot width of 237 metres, a lot depth of 140 metres and a lot area of 20,092 square metres, and to create an Easement over the 'Severed Parcel', in favour of the 'Retained Parcel' for access, generally in accordance with the severance sketch, prepared by MHBC Planning, dated March 2024, 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

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

Solicitor in consultation with the City's Director, Development and Housing Approvals:

- 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 the Owner provides a servicing plan showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.
 7. 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.
 8. 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.
 9. That the property owner shall convey to the City of Kitchener, without cost and free of encumbrance, an approximate 3-metre-wide road widening along the entire Gateway Park Drive frontage (retained and severed), as shown indicated on a reference plan by an Ontario Land Surveyor (OLS), to the satisfaction of the City's Director of Transportation Services.

Prior to conveyance, the property owner shall prepare, at their cost, a Phase I and if necessary, a Phase II Environmental Site Assessment (ESA) for the portion of the lands being dedicated for a road widening of Gateway Park Drive Avenue, to the satisfaction of the City's Director of Engineering Services.
 10. That the Owner shall complete a Building Code Assessment for the existing buildings 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.

The Owner shall obtain a Building Permit for any remedial work/ upgrades required by the Building Code Assessment.

Consent Application B2024-017 – 135 Gateway Park Drive

That Consent Application B2024-017 requesting consent to create an Easement over the ‘Retained Parcel’ in favour of the ‘Severed Parcel’ for access, generally in accordance with the severance sketch, prepared by MHBC Planning, dated May 2024, 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, Development and Housing Approvals:**
 - 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 the property owner shall convey to the City of Kitchener, without cost and free of encumbrance, an approximate 3-metre-wide road widening along the entire Gateway Park Drive frontage (retained and severed), as shown indicated on a reference plan by an Ontario Land Surveyor (OLS), to the satisfaction of the City’s Director of Transportation Services.**

Prior to conveyance, the property Owner shall prepare, at their cost, a Phase I and if necessary, a Phase II Environmental Site Assessment (ESA) for the portion of the lands being dedicated for a road widening of Gateway Park Drive, to the satisfaction of the City's Director of Engineering Services.

REPORT HIGHLIGHTS:

- The purpose of this report is to review severance applications to permit the creation of one new parcel of land. Further an access easement is being created over both parcels to maintain access to Tu Lane and Gateway Park Drive. No new development is currently proposed.
- The key finding of this report is staff is supportive of the changes to the conditions at the request of the applicant.
- 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.

REPORT:

Consent Applications B2024-017 and B2024-018 were heard at the August 20, 2024, meeting and were subsequently deferred by Committee at the request of the Applicant to, "allow an opportunity for the applicants' agents to have further conversations with Staff regarding the proposed Engineering conditions that were imposed by the Engineering Division."

As requested by the applicant, conversations were had with City Engineering staff after the August 20th committee meeting. Through those conversations two conditions formally indicated as Condition 9 and 10 in Consent Application B2024-018 (DSD-2024-358), were removed from the requested conditions. The two conditions were in relation to new driveways within the property, and basement elevation requirements to be drained by gravity to the street sewers. City staff agree that the two conditions were not required as part of this application. The remaining Engineering conditions are still requested and can be cleared with the help of Engineering staff at the time of clearance.

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 application was first heard at the August 20, 2024, meeting where it was deferred. As such notice is not required for unfinished business. This report has been posted to the City’s website with the agenda in advance of the Committee of Adjustment meeting. A notice sign remains posted 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.

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*
- *DSD-2024-358*