

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: Brian Bateman, Senior Planner 519-741-2200 ext. 7869

WARD(S) INVOLVED: 2

DATE OF REPORT: September 4, 2024

REPORT NO.: DSD-2024-410

SUBJECT: Minor Variance Applications A2024-078 and A2024-079
Consent Application B2024-025 – 15 Dellroy Avenue

RECOMMENDATION:

Minor Variance Application A2024-079 (Severed Parcel – 1055 Weber Street East)

- A. That Minor Variance Application A2024-079 requesting relief from Section 7.3, Table 7-6, of Zoning By-law 2019-051 to permit the following:
- i) a lot width of 19.2 metres instead of the minimum required 30 metres;
 - ii) a rear yard setback of 6 metres instead of the minimum of 7.5 metres; and
 - iii) to permit a Floor Space Ratio of 4.2 instead of the maximum permitted 4.0;

to allow the division of land to secure financing and to facilitate the construction of an 18-storey building, having 238 dwelling units on the Severed Parcel, generally in accordance with drawings prepared by Patterson Planning Consultants, BE APPROVED.

Minor Variance Application A2024-078 (Retained Parcel – 15 Dellroy Avenue)

- B. That Minor Variance Application A2024-078 requesting relief from Section 7.3, Table 7-6, of Zoning By-law 2019-051 to permit the following:
- i) an interior side yard setback of 1 metre instead of the minimum required 4.5 metres;
 - ii) a rear yard setback of 1 metre instead of the minimum required 7.5 metres;

to allow the division of land to secure financing and to recognize the location of the existing 6 storey building on the Retained Parcel, generally in accordance with drawings prepared by Patterson Planning Consultants, BE APPROVED.

Consent Application B2024-025

- C. That Consent Application B2024-025 requesting consent to sever a parcel of land having a lot width of 19.2 metres on Dellroy Avenue, a lot depth of 73.1 metres and an area of 41,351.2 square metres, proposed for a new 18 storey residential building having 238 dwelling units, municipally known as 1055 Weber Street East, BE APPROVED subject to the following conditions:**
- 1. That Minor Variance Applications A2024-078 and A2024-079 receive final approval.**
 - 2. That Site Plan Application SP22/158/D/BB receive final approval.**
 - 3. That Draft Plan of Condominium Application 30CDM-24010 be closed to the satisfaction of the Director of Development and Housing Approvals.**
 - 4. 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.**
 - 5. 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.**
 - 6. 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.**
 - 7. That the Owner provides a servicing plan showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.**
 - 8. 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.**
 - 9. 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.**
 - 10. That any new driveways 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.**
 - 11. That the Owner provides confirmation that the basement elevation 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.

12. That the Owner pays to the City of Kitchener a cash-in-lieu contribution for park dedication of \$339,253.00.

13. That the Owner shall:

- a) Complete a Building Code Assessment for the existing building on the Retained Parcel 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) Obtain a Building Permit for any remedial work/ upgrades required by the Building Code Assessment.

14. That prior to approval the Owner submits the consent review fee of \$350 to the Regional Municipality of Waterloo.

15. That prior to final approval, the Owner submits a Notice of Source Water Protection Plan Compliance, to the satisfaction of the Region.

16. That prior to final approval the Owner shall submit a Stormwater Management Report for the site to the satisfaction of the Regional Municipality of Waterloo.

17. That prior to final approval the Owner enter into a registered development agreement with the City of Kitchener, to complete a Record of Site Condition prior to building occupancy, to the satisfaction of the Regional Municipality of Waterloo.

18. That prior to final approval the Owner shall enter into a registered development agreement with the Regional Municipality of Waterloo:

- a) to submit a satisfactory Salt Management Plan prior to Site Plan approval, to the satisfaction of the Regional Municipality of Waterloo;
- b) to complete an Environmental Noise Study to assess transportation and stationary noise prior to final Site Plan Approval, and to enter into a Registered Development Agreement with the Regional Municipality of Waterloo and/or the City of Kitchener (if required) to implement the recommendations of the study, all to the satisfaction of the Regional Municipality of Waterloo; and
- c) to secure the prohibition of geothermal energy and private wells on site to the satisfaction of the Regional Municipality of Waterloo.

REPORT HIGHLIGHTS:

- The purpose of this report is to review applications to sever the subject lands into two (2) parcels to facilitate financing for the construction of a second multiple dwelling. Minor variances are required to facilitate the proposed consent.
- The key finding of this report is that the consent and associated variances are technical in nature and are required to secure financing. The site will still function as a comprehensive development as Site Plan Approved. Staff is recommending approval.
- 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, municipally known as 15 Dellroy Avenue, is located at the intersection of Dellroy Avenue and Weber Street East. The subject property is 5,720 square metres or 0.572 hectares, square in shape with 73.1 metres of frontage along Weber Street East and 76.7 metres of frontage along Dellroy Avenue (see Image 1 below).

The subject property is identified as an 'Urban Corridor' on Map 2 and designated 'High Rise Residential' on Map 3 of the City of Kitchener Official Plan. The property is zoned 'High Rise Residential Seven Zone (RES-7)' in Zoning By-law 2019-051.

The owner, Savic Homes, is proposing to intensify the site by constructing a second multiple dwelling, 18 storeys in height, on the vacant portion shown in Image 1. The existing 6 storey building is to remain and both buildings will share parking, access, and amenity space through blanket easements. Site Plan Application SP22/158/D/BB was received in 2022, Conditionally Approved in 2023 and minor variances were granted in 2023. To date, the owner has been actively clearing conditions of site plan approval. Staff is close to issuing Final Site Plan Approval so that a building permit can be issued. Construction is expected to commence the Fall of 2024

A Vacant Land Condominium (File 30CDM-24010) was submitted in May 2024 to create two (2) unit areas and common elements for the subject property. It was approved by Council in August 2024. This plan/approval is still active pending the approval of the consent application before Committee. Staff is recommending that VLC File 30CDM-24010 is closed prior to finalizing the consent application as a condition of approval.



Image 1 – 15 Dellroy Avenue



Image 2 – Street View Photo

The purpose of the consent application is to split the property into two (2) parcels of land to obtain CMHC financing for the building proposed to be constructed on 1055 Weber Street East. To do so however requires the submission of two minor variance applications. One is for the retained parcel and a second for the severed parcel of land. These variances are to recognize setback deficiencies created for both parcels along with an increase in Floor Space Ratio on the severed parcel only. The severance sketch showing the retained lands in red and the severed lands in green along with minor variances are identified in Image 3 below.

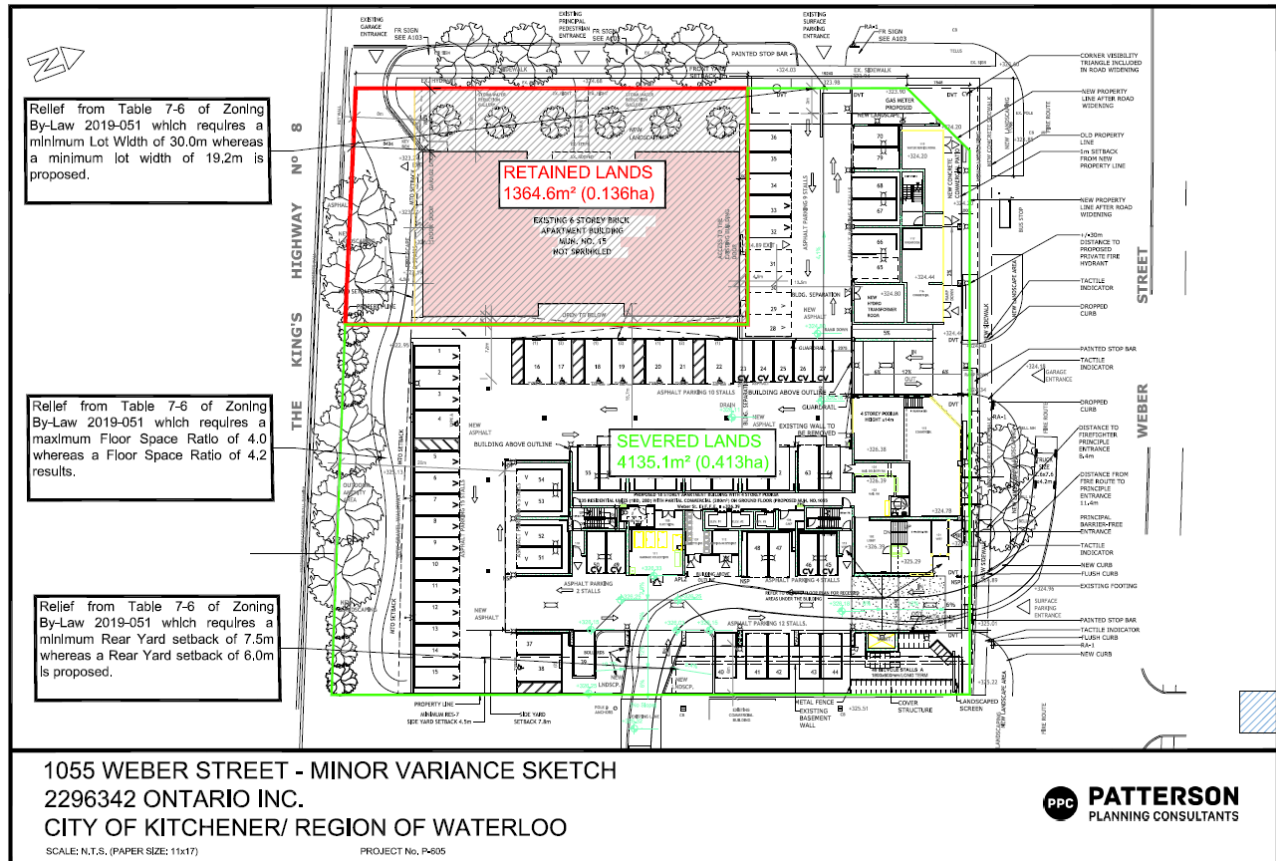


Image 3 – Plan Showing Consent and Minor Variances

REPORT:

Planning Comments Minor Variance Application A2024-078 (Retained Parcel - 15 Dellroy Avenue):

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

Lands shown within 'Urban Corridors' are 'Intensification Areas' intended to have strong pedestrian linkages and be integrated with neighbouring residential, and employment uses as well as to provide for a range of retail and commercial uses and intensification opportunities that should be transit supportive. Lands designated 'High Rise Residential'

will primarily accommodate high density multiple dwellings...to achieve a high intensity of residential use. All development and redevelopment and have a Floor Space Ratio between 2.0 and 4.0. As the proposal is to intensify the land for residential purposes, the minor variances to facilitate this form of development meet the general intent of the Official Plan.

General Intent of the Zoning By-law

The subject property is zoned 'RES-7 High Rise Residential Seven Zone', under Zoning By-law 2019-051, which permits 'Multiple Dwellings' and a range of non-residential uses. Due to the consent application, variances are needed for the rear yard and interior side yard setbacks. Staff is of the opinion the intent of the by-law is being maintained. These variances are technical in nature to seek financing for the development. The consent will not alter the form or function of the plan as the site will still operate as one comprehensive development. Parking (surface and underground), access and amenity space will be shared amongst the building's tenants. Blanket easements will secure those rights of access and shared usage of facilities.

Are the Effects of the Variance(s) Minor?

The effects of these variances are minor and technical in nature. No changes to the approved site plan are proposed and the site will function as one comprehensive development.

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

The variances are both desirable and appropriate for the use of land. The variances will facilitate the consent. The consent is required to create separate parcels so that financing can be secured for new construction to provide rental accommodation which will support the City's Housing Pledge.

Planning Comments Minor Variance Application A2024-079 (Severed Parcel – 1055 Weber Street East):

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

Lands shown within 'Urban Corridors' are 'Intensification Areas' intended to have strong pedestrian linkages and be integrated with neighbouring residential, and employment uses as well as to provide for a range of retail and commercial uses and intensification opportunities that should be transit supportive. Lands designated 'High Rise Residential' will primarily accommodate high density multiple dwellings...to achieve a high intensity of residential use. All development and redevelopment shall have a Floor Space Ratio between 2.0 and 4.0. The minor variances to facilitate a new residential high-rise building meet the general intent of the Official Plan.

General Intent of the Zoning By-law

The subject property is zoned 'High Rise Residential Seven Zone (RES-7)', under Zoning By-law 2019-051, which permits a 'Multiple Dwelling' and a range of non-residential uses. Due to

the consent application, what was originally an exterior side yard is now the front yard and what was an interior side yard is now the rear yard. Consequently, the lot width and rear yard which originally complied is now affected. Additionally, the consent creates an overage in Floor Space Ratio. The maximum is 4.0 whereas 4.2 is proposed. Staff is of the opinion the intent of the by-law is being maintained. These variances are technical in nature to reflect a need to create separate parcels to secure financing for construction. The consent will not alter the form or function of the plan as the site will operate as one comprehensive development. Parking (surface and underground), access and amenity space will be shared amongst the building's tenants. Blanket easements will secure those rights of access and shared usage of facilities.

Is/Are the Effects of the Variance(s) Minor?

The effects of these variances are minor and technical in nature. No changes to the approved site plan are proposed and the site will function as one comprehensive development.

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

The variances are both desirable and appropriate for the use of land. The variances will facilitate a consent. The consent is required to create separate parcels so that financing can be secured for the new construction. New rental accommodation will be provided which will support the City's Housing Pledge.

Planning Comments Consent Application B2024-025:

In considering all the relevant Provincial legislation, Regional and City policies and regulations, Planning staff offer the following comments:

Provincial Policy Statement (PPS 2020)

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 proposed application will accommodate an appropriate mix of residential dwelling types by providing a high-rise multiple dwelling building typology zoned for the use. This type of development is compatible with the surrounding area and will make use of the existing infrastructure. No new public roads would be required for the proposed development. Planning staff is of the opinion that this proposal 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 in close proximity to transit and the subject lands are in closer proximity to trails and parks.

Policy 2.2.6.1(a) Municipalities will support housing choice through the achievement of the minimum intensification and targets in this plan by identifying a diverse range and mix of housing options and densities, including additional residential units and affordable housing to meet projected needs of current and future residents.

The subject lands are located within the City's delineated built-up area. The proposed development represents intensification and will contribute towards achieving the City's intensification density targets. The severance application will help make efficient use of existing infrastructure, parks, roads, trails, and transit. 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. The proposed development conforms to Policy 2.D.1 of the ROP as this neighbourhood provides for the physical infrastructure and community infrastructure to support the proposed residential development, including transportation networks, municipal drinking-water supply and wastewater systems, and a broad range of social and public health services. 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. Planning staff are of the opinion that the severance application conforms to the Regional Official Plan.

City's Official Plan (2014)

The subject property is identified within an 'Urban Corridor' on Map 2 and designated 'High Rise Residential' on Map 3 of the City of Kitchener Official Plan. The zoning is 'High Rise Residential Seven Zone (RES-7)' in Zoning By-law 2019-051.

According to Policy 17.E.20.4. of the Official Plan, consents may be permitted for the creation of a new lot, boundary adjustments, rights-of-way, easements, long-term leases and to convey additional lands to an abutting lot provided an undersized lot is not created.

Policy 17. E.20.5 of the Official Plan implements Section 51 of the Planning Act and contains policies regarding infill development and lot creation (Consent Policies). This policy states 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.

Staff is of the opinion a consent application to create a new parcel would comply with Policies 17.E.20.4. and 17.E.20.5. The consent conforms to the City's Official Plan and staff are recommending approval of minor variances; a plan of subdivision is not required; the lots are appropriate in size and reflect the character of the area; the lots will not compromise the ability to provide a comprehensive high density development; both parcels of land front onto public streets; will enable separate service connections to be provided; and despite the severance, the development will integrate the existing building and function as a whole as there are shared parking, access and amenity space for both existing and future tenants.

Zoning By-law 2019-051

The subject property is zoned as 'High Rise Residential Zone (RES-7) in Zoning By-law 2019-051. The use of a multiple dwelling is permitted subject to meeting the regulations outlined in Table 7.6. As discussed previously, the consent requires minor variances, which staff opine are technical in nature.

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 lots are desirable and appropriate.

Environmental Planning Comments:

No concerns.

Heritage Planning Comments:

No concerns.

Engineering Division Comments:

- 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, storm and water municipal services are currently available to service this property. Any further enquiries in this regard should be directed to katie.wood@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.

Parks/Operations Division Comments:

Parkland Dedication, paid as cash in lieu of land, in the amount of \$339,253.00 as per Site Plan application SP22/158/D/BB is required prior to deed endorsement.

No concerns with the variances.

Building Division Comments:

The Building Division has no objections to the proposed consent provided for the retained land:

- 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.

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

Transportation Planning Comments:

No concerns.

Region of Waterloo Comments:

No concerns with the variances.

Regional Staff has no objection to the consent application subject to the following condition(s):

1. That prior to approval the Owner/Applicant submit the consent review fee of \$350 to the Regional Municipality of Waterloo.
2. That prior to final approval, the Owner/Developer submit a Notice of Source Water Protection Plan Compliance, to the satisfaction of the Region.
3. That the Owner/Developer enter into a registered development agreement with the City of Kitchener, to complete a Record of Site Condition prior to building occupancy, to the satisfaction of the Regional Municipality of Waterloo.
4. That prior to final approval the Owner/Developer shall enter into a registered development agreement with the Regional Municipality of Waterloo to submit a satisfactory Salt Management Plan prior to Site Plan approval, to the satisfaction of the Regional Municipality of Waterloo.
5. That prior to final approval the Owner/Developer shall submit a Stormwater Management Report for the site to the satisfaction of the Regional Municipality of Waterloo.
6. That the Owner/Developer is required to enter into a registered development agreement with the Regional Municipality of Waterloo, to secure the prohibition of geothermal energy and private wells on site to the satisfaction of the Regional Municipality of Waterloo.
7. That the Owner/Developer enters into a registered development agreement with the Regional Municipality of Waterloo to complete an Environmental Noise Study to assess transportation and stationary noise prior to final site plan approval, and to enter into a Registered Development Agreement with the Regional Municipality of Waterloo and/or the City of Kitchener (if required) to implement the recommendations of the study, all to the satisfaction of the Regional Municipality of Waterloo.

GRCA

No concerns.

Hydro One

No concerns.

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)*
- *Zoning By-law 2019-051*
- *DSD-2023-314*
- *SP22/158/D/BB*