

Staff Report



Development Services Department

www.kitchener.ca

REPORT TO: Committee of Adjustment

DATE OF MEETING: November 19, 2024

SUBMITTED BY: Tina Malone-Wright, Manager, Development Approvals
519-783-8913

PREPARED BY: Eric Schneider, Senior Planner, 519-783-8918

WARD(S) INVOLVED: Ward 9

DATE OF REPORT: November 6, 2024

REPORT NO.: DSD-2024-494

SUBJECT: Minor Variance Application A2024-099 –
165 Courtland Avenue East

RECOMMENDATION:

A. Zoning By-law 85-1

That Minor Variance Application A2024-099 for 165 Courtland Avenue East requesting relief from Section 44.3.1 of Zoning By-law 85-1 to permit a Floor Space Ratio (FSR) of 1.2 instead of the maximum permitted 1.0, generally in accordance with drawings prepared by SRM Architects, dated October 2, 2024, BE APPROVED.

B. Zoning By-law 2019-051

That Minor Variance Application A2024-099 for 165 Courtland Avenue East requesting relief from Section 6.3.2, Table 6-3, of Zoning By-law 2019-051 to permit a building length of 70.7 metres instead of the maximum permitted 36 metres, BE REFUSED; and

That Minor Variance Application A2024-099 for 165 Courtland Avenue East requesting relief from Section 6.3.2, Table 6-3, of Zoning By-law 2019-051 to:

- i) Permit a building height of 17.5 metres instead of the maximum permitted 11 metres; and
- ii) Permit a rear yard landscaped area of 30.8% instead of the minimum required 40%;

generally, in accordance with drawings prepared by SRM Architects, dated October 2, 2024, BE APPROVED.

REPORT HIGHLIGHTS:

- The purpose of this report is to review a Minor Variance Application to facilitate the development of the subject lands with a multiple residential building with 36 dwelling units.
- The key finding of this report is that 3 of the requested variances meet the 4 tests of the Planning Act, but one of the requested variances does not.
- 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 Courtland Avenue East between Cedar Street South and Madison Avenue South.

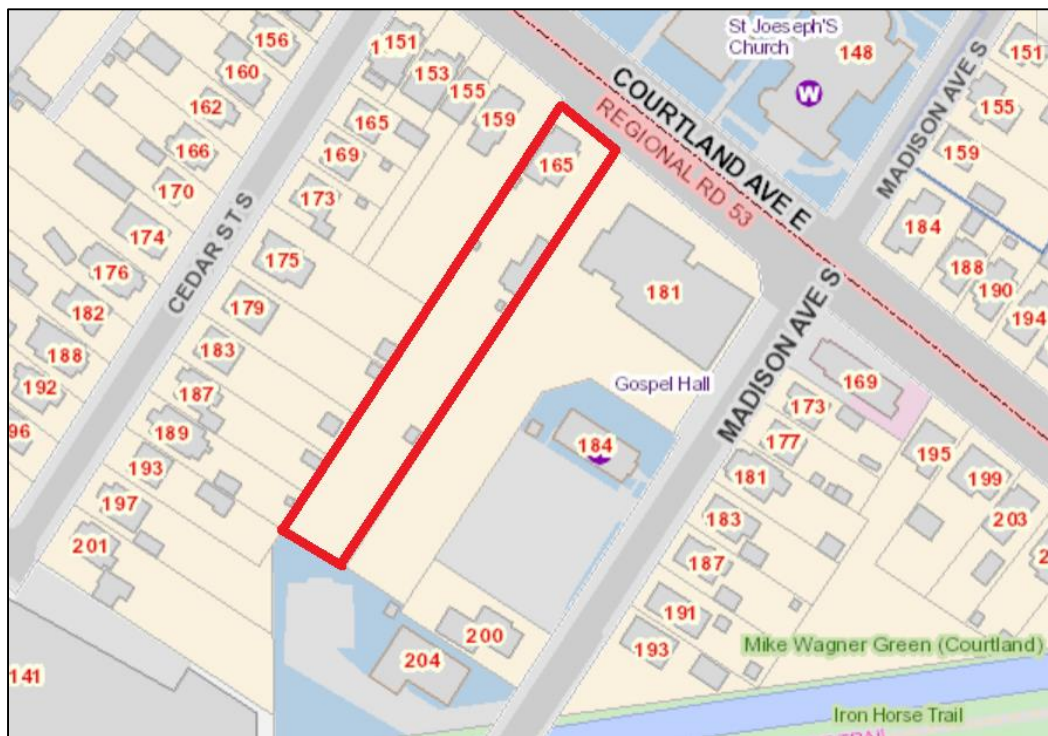


Figure 1: Location Map: 165 Courtland Avenue East

The subject property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure and is designated 'SGA-A' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'Commercial Residential Zone One (CR-1)' in Zoning By-law 85-1.

The property is zoned 'Low Rise Growth Zone (SGA-1)' in Zoning By-law 2019-051.

The purpose of the application is to facilitate the development of the lands by constructing a new multiple residential building with 36 dwelling units.

The subject lands received 'Conditional Approval' of Site Plan Application SP20/064/C/ES in January 2021 for a development concept with 30 dwelling units. At that time, only Zoning By-law 85-1 was in effect. To facilitate that Site Plan Application, Minor Variance application A2021-089 was approved on August 17, 2021, for a reduction in parking (Report DSD-2021-155). Through detailed design, the applicant requested to remove more parking spaces and made Minor Variance Application A2022-095 for a further reduction in parking that was approved on July 8, 2022 (Report DSD-2022-351). On January 17, 2023, the Committee of Adjustment approved an application for consent to create an easement for stormwater servicing over the abutting lands to the rear at 204 Madison Avenue South in application B2023-001 (Report DSD-2023-039).

On June 6, 2024, Bill 185 introduced changes to the Planning Act that prohibit parking minimums in Protected Major Transit Station Area (PMTSA). The applicant is now seeking to reduce parking further by removing the parking spaces under the building and changing that space to livable space for 6 more dwelling units (total of 36 dwelling units). Eleven (11) surface parking spaces would remain. Currently, both Zoning By-law 85-1 and Zoning By-law 2019-051 are in effect and Planning Staff are dual testing for both by-laws. Variances to both Zoning By-laws are required as a result of the requested changes to the building.



Figure 2: View of Subject Lands from Courtland Avenue East (October 30, 2024)

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:

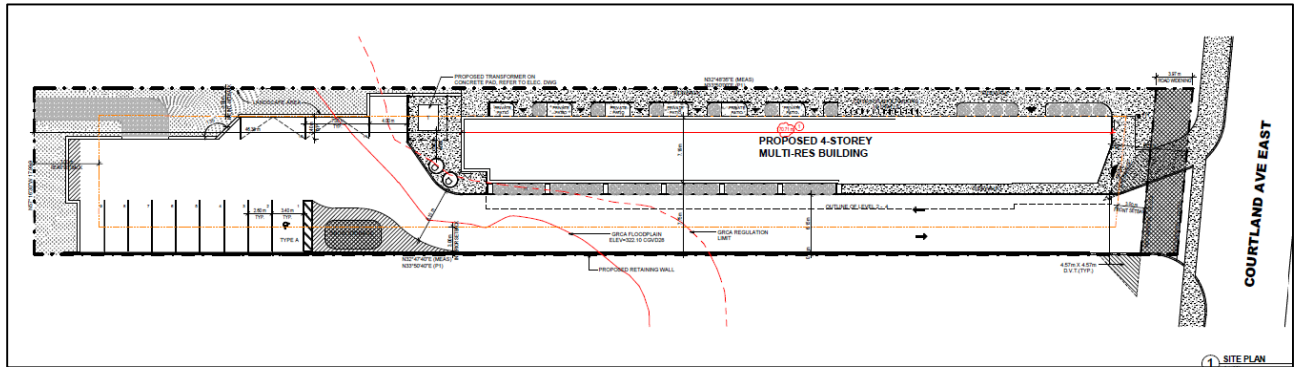


Figure 3: Proposed Concept Site Plan

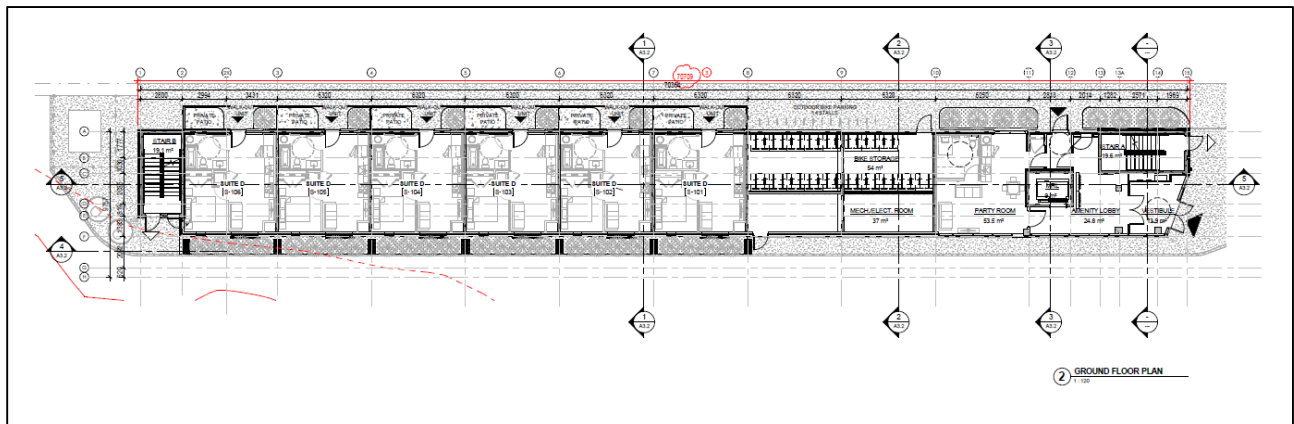


Figure 4: Ground Floor Plan - Dwelling Units (6) replacing Parking Spaces (12)

Floor Space Ratio (Zoning By-law 85-1)

General Intent of the Official Plan

The 'Strategic Growth Area A' land use designation is generally intended to accommodate intensification within existing predominantly low-rise residential neighbourhoods, lands further away from Rapid Transit station stops, and where existing lots are generally too small to support high rise buildings. The Official Plan encourages residential intensification and providing opportunities for increasing density within existing neighbourhoods with access to services. The Strategic Growth Areas do not contain maximum Floor Space Ratio provisions, but regulate building height, length, and physical separations from interior lot lines that are based on building height. In the opinion of Planning Staff, the request for an increase in Floor Space Ratio meets the general intent of the Official Plan.

General Intent of the Zoning By-law

The intent of the regulation that requires a maximum of 1.0 Floor Space Ratio is to control the overall density on the lands. The lot is irregular in shape and is a deep, narrow lot. The

building has been brought to the front of the site to address the public right of way at Courtland Avenue East. The maximum building height and yard setbacks are compliant with Zoning By-law 85-1. The applicant has demonstrated that the proposed density is compatible with the surrounding lands and is not expected to create adverse impacts based on Floor Space Ratio. In the opinion of Planning Staff, the request for an increase to a Floor Space Ratio of 1.2 meets the general intent of the Zoning By-law.

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

The overall density and Floor Space Ratio of 1.2 is not expected to generate adverse impacts. Depending on building design, typology, and building separation, potential development at a variety of Floor Space Ratio figures could function appropriately. Therefore, Staff are of the opinion that the effects of the requested variance are minor.

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

The subject lands are within a Protected Major Transit Station Area (PMTSA) and are identified for intensification. The surrounding neighbourhood contains a range of building forms, uses, heights, and typologies. The requested variance for Floor Space Ratio is considered desirable and appropriate for the use of the lands.

Building Height (Zoning By-law 2019-051)

General Intent of the Official Plan

The 'Strategic Growth Area A' land use designation is generally intended to accommodate low rise intensification within existing predominantly low-rise residential neighbourhoods, lands further away from Rapid Transit station stops, and where existing lots are generally too small to support high rise buildings. Policy 15.D.2.67 allows for site specific increases to the permitted building height up to 4 storeys without a Zoning By-law Amendment. Staff are of the opinion that the requested variance meets the general intent of the Official Plan.

General Intent of the Zoning By-law

The regulation that permits a maximum of 11 metres in building height is to maintain a generally low-rise building form, in order to be compatible with the surrounding neighbourhood. The subject lands are adjacent to St. Joseph's Place, a 4-storey multiple dwelling with rear yard surface parking. Planning Staff are of the opinion that the proposed 4 storey building maintains a low rise form of building and is compatible for with the surrounding lands. In the opinion of Planning Staff, the request for an increase in building height to 17.5 metres meets the general intent of the Zoning By-law.

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

The subject lands are located on a Regional Road (Courtland Avenue East) and are adjacent to existing 4 storey dwellings. The proposed building height is expected to be compatible with the surrounding lands and no adverse impacts are expected as a result of the proposed building height. Staff are of the opinion that the effects of the requested variance are minor.

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

The subject lands are within a Protected Major Transit Station Area (PMTSA) and are identified for intensification. The proposed development of a multiple dwelling 4 storeys in height is consistent with the surrounding developed area, and in the opinion of staff is appropriate for the use of the lands.

Rear Yard Landscaped Area (Zoning By-law 2019-051)

General Intent of the Official Plan

The 'Strategic Growth Area A' land use designation is generally intended to accommodate low rise intensification within existing predominantly low-rise residential neighbourhoods, lands further away from Rapid Transit station stops, and where existing lots are generally too small to support high rise buildings. The Official Plan encourages residential intensification and providing opportunities for increasing density within existing neighbourhoods with access to services. In the opinion of Planning Staff, the request for reduction in rear yard landscape area enables residential intensification and meets the general intent of the Official Plan.

General Intent of the Zoning By-law

The intent of the regulation that requires the rear yard landscaped area to be 40% is to encourage soft landscaped spaces that provide vegetative buffers, to not dominate the lot with parking and hard surface areas, and to provide for adequate outdoor amenity space. The width of the subject lands constrains the parking to a single loaded drive aisle, which is generally less efficient and makes it difficult to provide soft landscaping as much of the space is allocated for the drive aisle, parking spaces, turn around areas for garbage collection, and snow storage areas. However, the site has been designed to include a 3-5 metre soft landscape buffer on the North side property line which abuts rear yards of detached homes on Cedar Street. The parking area directly abuts the South side property line, which contains the surface parking area for the adjacent 4-storey multiple dwelling. In regards to outdoor amenity, the applicant is proposing a rooftop amenity space to provide for outdoor amenity space to make up for the lack of landscaped area in the rear. In the opinion of Planning Staff, the request for a decrease in rear yard landscaped area meets the general intent of the Zoning By-law.

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

The applicant has provided design considerations to mitigate the lack of rear yard landscaped area, that address potential impacts that may arise from the shortfall. Therefore, Staff are of the opinion that the effects of the requested variance are minor.

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

The surrounding neighbourhood is characterized by deep, narrow lots. The variance for reduction in rear yard landscaped area addresses the surrounding neighbourhood by providing vegetative buffers to sensitive adjacent rear yards, aligns the surface parking area with adjacent existing surface parking, and represents a development layout and typology that is compatible with the surrounding lands and is considered appropriate for the use of the lands.

Building Length (Zoning By-law 2019-051)

General Intent of the Official Plan

The 'Strategic Growth Area A' land use designation is generally intended to accommodate low rise intensification within existing predominantly low-rise residential neighbourhoods, lands further away from Rapid Transit station stops, and where existing lots are generally too small to support high rise buildings. The Official Plan encourages residential intensification and providing opportunities for increasing density within existing neighbourhoods with access to services. In the opinion of Planning Staff, the request for reduction in rear yard landscape area enables residential intensification and meets the general intent of the Official Plan.

General Intent of the Zoning By-law

The intent of the regulation that requires a maximum building length of 36 metres is to deter narrow building typologies, encourage lot consolidation, to control massing, and avoid orienting the majority of units towards the internal side lot lines. The proposed building length of 70.7 metres with a width of just 7.2 metres creates a narrow typology that follows the narrow shape of the lot. The majority of units are oriented toward the internal side property line to the North. The request to increase the maximum permitted building length does not meet the general intent of the Zoning By-law.

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

The requested variance will facilitate an internal side yard condition that will have a greater impact as it will be 70.7 metres of continuous building wall along the side yard lot line abutting the lands to the north. The impacts of the continuous building wall could have impacts to the privacy and the development potential of the abutting lands. The effects of the variance are not considered minor in the opinion of Planning Staff.

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

The subject lands are within a Protected Major Transit Station Area (PMTSA) and are identified for intensification. The surrounding neighbourhood contains a range of building forms, uses, heights, and typologies. The requested variance for building length is considered desirable for the appropriate development and the use of the lands.

Environmental Planning Comments:

No Environmental Concerns. There is an Environmental Restoration Area in the rear of the site. Tree management will be addressed as part of the site plan application.

Heritage Planning Comments:

No Heritage Planning comments or concerns.

Building Division Comments:

The Building Division has no objections to the proposed variance. An application has been made for the new 4-storey apartment building.

Engineering Division Comments:

No Engineering comments.

Parks/Operations Division Comments:

Park planning concerns including required park dedication as cash in lieu of land will be addressed through a site plan application.

Transportation Planning Comments:

Transportation Services have no concerns with this application.

Region of Waterloo Comments:

The Region of Waterloo has no concerns.

GRCA Comments:

GRCA has reviewed this application under the Mandatory Programs and Services Regulation (Ontario Regulation 686/21), including acting on behalf of the Province regarding natural hazards identified in Section 5.2 of the Provincial Planning Statement (PPS, 2024), as a regulatory authority under Ontario Regulation 41/24, and as a public body under the Planning Act as per our CA Board approved policies.

Information currently available at this office indicates that a portion of the subject property is within the floodplain and regulated allowance adjacent to the floodplain. This reach of floodplain is within a Two-Zone Floodplain Policy Area identified in the City of Kitchener Official Plan. A copy of GRCA's resource mapping is attached.

Due to the presence of the above-noted features, a portion of the subject property is regulated by the GRCA under Ontario Regulation 41/24 – Prohibited Activities, Exemptions and Permits Regulation. Any future development or other alteration within the regulated area will require prior written approval from GRCA in the form of a permit pursuant to Ontario Regulation 41/24. Any development within the regulated area on the subject lands must also conform to the GRCA and City of Kitchener Two-Zone Floodplain Policies.

The proposed minor variance application requests relief from multiple provisions of the Zoning By-law to facilitate development of a multiple residential building on the property. GRCA recently issued Permit #473-23 for the proposed development and the plans circulated with this application are consistent with the plans approved under the GRCA permit noted above. As such, the GRCA has no objection to the approval of this minor variance application.

The applicant is advised that GRCA Permit #473-23 expires on July 11, 2025. A new GRCA permit will be required if the development is not complete prior to July 11, 2025.

We wish to acknowledge receipt of the applicable plan review fee associated with B2023-001. As such, an additional plan review fee for this application is not required.

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 Planning Statement (PPS 2024)*
- *Regional Official Plan*
- *Official Plan (2014)*
- *Zoning By-law 85-1*
- *Zoning By-law 2019-051*
- *DSD-2021-155*
- *DSD-2022-351*
- *DSD-2023-039*

ATTACHMENTS:

Attachment A – Concept Site Plan