

Staff Report



Development Services Department

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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 1

DATE OF REPORT: November 8, 2024

REPORT NO.: DSD-2024-501

SUBJECT: Consent Application B2024-032 - 75 Otterbein Road (Severed)
Consent Application B2024-033 - 75 Otterbein Road (Retained)

RECOMMENDATION:

A. Consent Application B2024-032 – 75 Otterbein Road (Severed Parcel)

That Consent Application B2024-032 requesting consent to establish the following easements:

- i) Part 5 - Easement for access and servicing;
- ii) Part 6 - Easement for access, servicing and drainage; and
- iii) Part 7 - Easement for servicing and drainage;

BE APPROVED, in accordance with the drawings prepared by MHBC Planning dated August 23, 2023, 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 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.
5. 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 Supervisor, Development Applications:
 - 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.
6. That, prior to final approval, the applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.

B. Consent Application B2024-033 - 75 Otterbein Road (Retained Parcel)

That Consent Application B2024-033 requesting consent to establish the following easement:

- i) Part 2 - Easement for access and servicing

BE APPROVED, in accordance with the drawings prepared by MHBC Planning dated August 23, 2023, 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 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.

5. **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 Supervisor, Development Applications:**
 - 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.**

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 review an applications for consent to establish easements on both the severed and retained lands. This would facilitate the previous severance application to split the subject lands into two phases of a development site, with 3 stacked townhouse buildings on the severed lands and 2 apartment buildings on the retained lands.
- 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 corner of Otterbein Road and Lackner Boulevard. The subject lands are a greenfield block of a new subdivision (Block 1, 58M-654) registered on June 4, 2020. The subject property is irregular in shape with a curvilinear property line along Otterbein Road.



Figure 1: Location of Subject Property

The subject property is identified as 'Community Areas' on Map 2 – Urban Structure and is designated 'Medium Rise Residential' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'Medium Rise Residential Six Zone (RES-6)' in Zoning By-law 2019-051.

On October 3, 2023, the applicant received approval from the Committee of Adjustment for applications A2023-124, B2023-039, and B2023-040 to sever the lands in two parcels to split the phasing of development between the townhouse buildings and the 6-storey apartment buildings. These applications permit the severance and established access easements, but further easements for servicing and stormwater are required through the subject applications.

The purpose of the applications is to establish servicing and stormwater easements on both the severed and the retained lands to establish shared services on the lands.



Figure 2: View of Vacant Site (October 30, 2024)

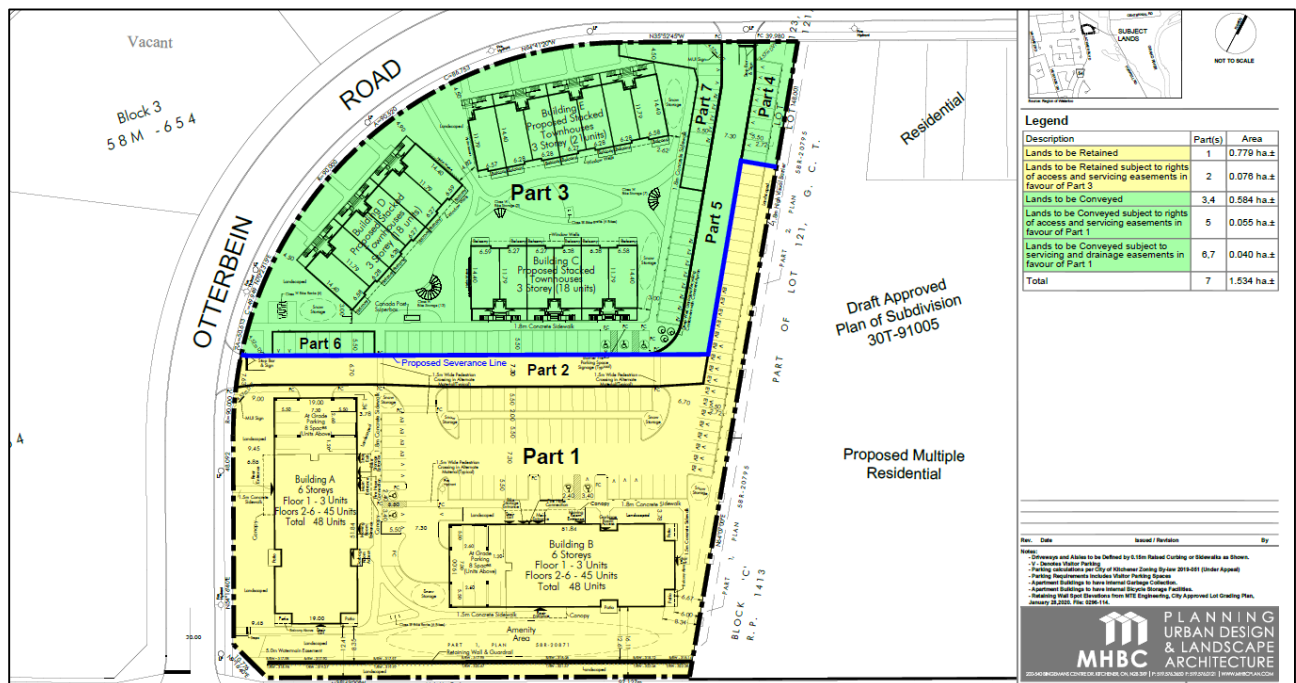


Figure 3: Severance Sketch showing Easements

REPORT:

Planning Comments:

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

Provincial Planning Statement (PPS 2024) and Regional Official Plan (ROP)

As the applications are to facilitate various easements, no lots are being created or lot lines being adjusted, and no physical changes to the existing development are proposed, it is Planning staff's opinion that no sections of the PPS or Regional Official Plan are specifically relevant, and that the applications would conform to these plans and policies.

City's Official Plan (2014)

The subject property is identified as a 'Community Areas' on Map 2 – Urban Structure and is designated 'Medium Rise Residential' on Map 3 – Land Use in the City's Official Plan.

Section 17.E.20.4 of the Official Plan speaks to consent applications for easements.

"17.E.20.4. 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."

No new lots are proposed to be created through the requested consent applications.

Zoning By-law 2019-051

The subject properties are zoned 'Low Rise Residential Six Zone (RES-6)' in Zoning By-law 2019-051. Requested easements for access will not have impacts upon the 'RES-6' zoning regulations.

Planning Conclusions/Comments:

With respect to the criteria for granting easements contained in Section 54(2) of the Planning Act, R.S.O. 1990, c.P.13, staff is satisfied that the creation of easements is desirable and appropriate.

Environmental Planning Comments:

No Environmental Planning comments or concerns.

Heritage Planning Comments:

No Heritage Planning comments or concerns.

Building Division Comments:

The Building Division has no objection to the proposed consent.

Engineering Division Comments:

Since the application is for the creation of an access and servicing easements, Engineering has no comment.

Parks/Operations Division Comments:

Parks and Cemeteries requirements including Parkland Dedication have been satisfied through Kitchener Draft Agreement (KDA) 30T-02206 and Site Plan application SP22/078/O/ES.

Transportation Planning Comments:

Transportation Services have no concerns.

Region of Waterloo Comments:

The applicant/owner is proposing consent to create a number of reciprocal easements for access, infrastructure and maintenance. The consent will facilitate redevelopment of the site in accordance with Site Plan SP22/078/O/ES (approved in principle). The proposed easements are as follows: Part 2 and 5 (access and servicing); Part 6 and 7 (servicing and drainage).

The applicant notes that the current consent applications represent a resubmission of B2023-039, the difference being that more information is provided on the applicable parts, while the severance plan remains the same. B2023-040 created the two parcels (conditionally approved with lapsing date of October 27, 2025), while B2023-039 had proposed associated easements.

The applicant states that the consent applications will facilitate the creation of two separate condominiums that function as a single cohesively planned development, while satisfying construction, phasing, and financing concerns. The site is planned to be developed with two 6-storey apartment buildings (48 units each) and three townhouse blocks (57 units), for a total of 153 units, including common amenity areas, private access roads, and surface parking (169 spaces).

The subject lands are within the 'Urban Area Boundary' and designated 'Greenfield Area' in the Regional Official Plan (Maps 1, 2). The subject lands are designated 'Medium Rise Residential' in the City's Official Plan (Map 3 – Land Use) and zoned 'RES-6'.

Salt Management Plan (Advisory)

The property is in a vulnerable area under the 2022 Grand River Source Protection Plan, but not within the area where Risk Management Plan or prohibition policies implemented by the Region of Waterloo apply.

The owner/applicant is advised that a Salt Management Plan (SMP) is required to be submitted for review and approval by the Region as through the related Site Plan application.

Airport Zoning Regulations (Advisory)

The parcel is within the Airport Zoning Regulations (AZR) with an allowable elevation of 356.5 metre ASL, which is roughly 37 metres above existing ground. Any cranes used onsite is expected to exceed this height limitation and would therefore require an exemption to the AZR. Note that an aeronautical assessment had previously been completed for 50 Otterbein Road, showing an allowable height of 393 metre ASL. Development height was below this elevation, and so the airport approved of the exemption.

The developer is required to submit a Land Use Assessment to Nav Canada for the building and any cranes, and obtain a letter of no objection to the satisfaction of the Region. <https://www.navcanada.ca/en/aeronautical-information/land-use-program.aspx>
If an AZR exemption is required (any obstacles above 356.5 metre ASL), then the developer will also need to submit an Aeronautical Assessment Form to Transport Canada and comply with all requirements. <https://tc.canada.ca/en/aviation/general-operating-flight-rules/marking-lighting-obstacles-air-navigation>

Regional Review Fees

Regional Staff are not in receipt of the required consent review fee of \$350 per application. The consent review fee is required as a condition of approval for the consent application. Fees must be submitted individually to the Region, in-person, by mail, or e-payment.

- Arrange EFT by emailing pwalter@regionofwaterloo.ca.
- Cheque or bank draft can be dropped off at Head Office lobby/security (main floor), located at 150 Frederick St, Kitchener. 15 min parking is available at the rear of the building, outside the Kitchener Public Library, at the intersection of Queen St N and Ahrens St E.
- Cheque or bank draft can be mailed as follows: Attention of Peggy Walter, Planning, Development and Legislative Services, Regional Municipality of Waterloo, 150 Frederick St, Kitchener, ON N2G 4J3.

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

1. That the Owner/Applicant submit the consent review fee of \$350 per application to the Regional Municipality of Waterloo.

Hydro One Comments:

We are in receipt of your Applications for Consent, B 2024-032 and B2024-033 dated October 25th, 2024. We have reviewed the documents concerning the noted Application and have no comments or concerns at this time. Our preliminary review considers issues affecting Hydro One's 'High Voltage Facilities and Corridor Lands' only.

For proposals affecting 'Low Voltage Distribution Facilities' please consult your local area Distribution Supplier.

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 (ROP)*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*
- *DSD-2023-455*

ATTACHMENTS:

Attachment A – Severance Sketch