

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: Sean Harrigan, Senior Planning Technician, 519-783-8934

WARD(S) INVOLVED: Ward 3

DATE OF REPORT: November 6, 2024

REPORT NO.: DSD-2024-496

SUBJECT: Minor Variance Application A2024-106 – 73 Fourth Avenue
Consent Application B2024-036 - 73 Fourth Avenue

RECOMMENDATION:

A. Minor Variance Application A2024-106 – 73 Fourth Avenue

That Minor Variance Application A2024-106 for 73 Fourth Avenue requesting relief from Section 7.3, Table 7-2 of Zoning By-law 2019-051, to permit a minimum front yard setback of 9.58 metres instead of the minimum required 11.25 metres, generally in accordance with drawings prepared by Bobicon LTD., dated September 29, 2024, BE APPROVED.

B. Consent Application B2024-036 – 73 Fourth Avenue

That Consent Application B2024-036 for 73 Fourth Avenue requesting consent to sever a parcel of land having a lot width of 10 metres, a lot depth of 40.2 metres and a lot area of 405.1 square metres, BE APPROVED subject to the following conditions:

1. That Minor Variance Application A2024-106 receive final approval.
2. 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.
3. 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.
4. That the owner provides a digital file of the deposited reference plan(s)

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

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.

5. That the Owner provides a servicing plan showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.
6. 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.
7. 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.
8. 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.
9. 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.
10. That the City-owned street tree in front of the severed lot shall be protected during any development or site alterations, including but not limited to, the installation of driveways and services, to the satisfaction of the Director of Parks and Cemeteries.
11. That the owner pay to the City of Kitchener a cash-in-lieu contribution for park dedication of \$11,862.00.
12. That, prior to final approval, the applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.
13. That prior to final approval, the Owner/Applicant submits a valid Section 59 notice.
14. That the Owner enter into a registered development agreement with the City of Kitchener to include the following noise warning clause in all agreements of offer of purchase/sale and lease/rental for all dwelling units on the retained and severed lots, to the satisfaction of the Region:

“Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of Environment, Conservation, and Parks.”

REPORT HIGHLIGHTS:

- The purpose of this report is to review the application to sever the subject lands into two (2) parcels to facilitate the construction of a single detached dwelling with an Additional Dwelling Unit (ADU)(Attached), a duplex dwelling, on each parcel. A minor variance for a reduced minimum front yard setback is required for the retained parcel.
- The key finding of this report is that the consent and minor variance applications align with applicable policies and that the variance satisfies the four tests in the Planning Act. As such, staff recommend approval of the applications.
- 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 east side of Fourth Avenue between Kingsway Drive and Connaught Street. The property previously contained a single detached dwelling and detached garage which have recently been demolished to facilitate the proposed severance application. A new single detached dwelling with an Additional Dwelling Unit (ADU) (Attached), a duplex, is currently being constructed on the north side of the property within the proposed retained lot.

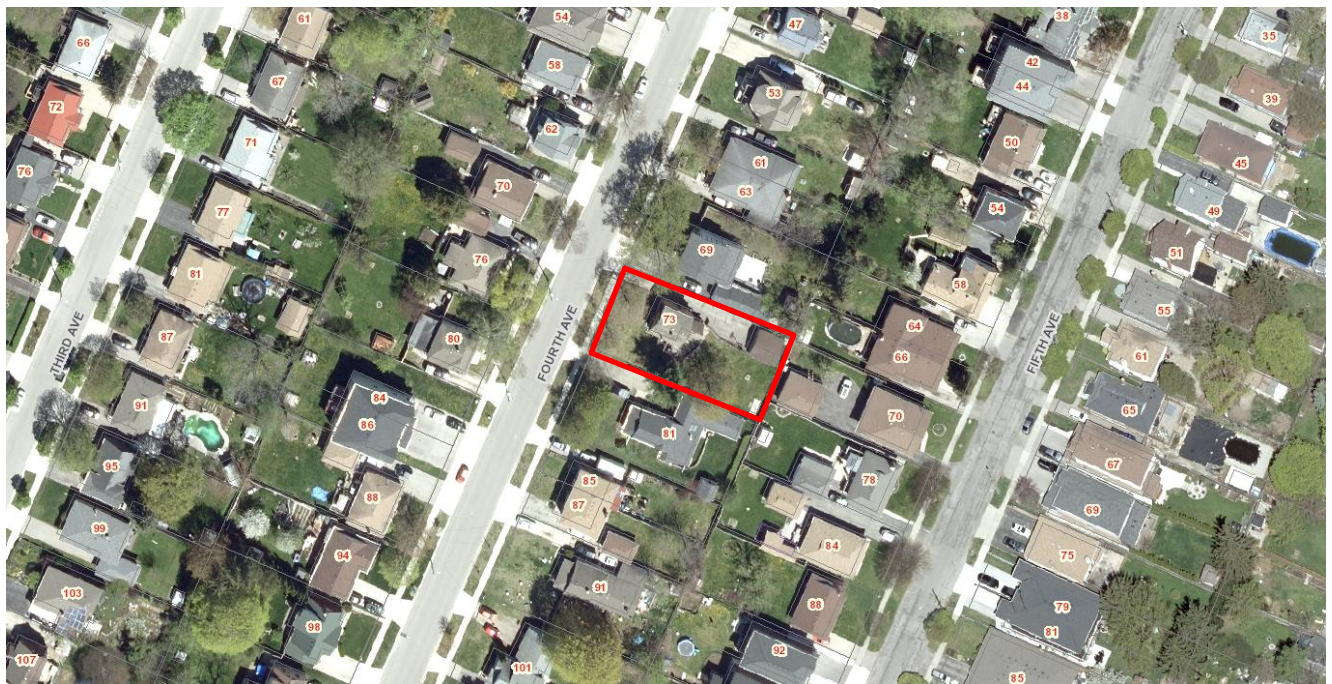


Figure 1: Location Map - 73 Fourth Avenue (Outlined in Red)

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

The property is zoned 'Low Rise Residential Four Zone (RES-4)' in Zoning By-law 2019-051. The property also falls within 'Appendix C – Central Neighbourhoods Area' and 'Appendix D – Established Neighbourhoods Area' in Zoning By-law 2019-051.

The purpose of the consent application is to divide the property into two (2) separate parcels of land to facilitate the construction of single detached dwelling with an Additional Dwelling Unit (ADU) (Attached), duplexes, on each of the severed and retained parcels.

The purpose of the Minor Variance Application is to permit a reduced minimum front yard setback of 9.58 metres on the retained lot instead of minimum required 11.25 metres. This reduced front yard setback is required for the front porch and balcony which must adhere to the minimum front yard setback due to the porch height and the fact that the balcony is supported by the ground. The habitable portion of the dwelling and garage will meet the 11.25 metre setback. The proposed duplex dwelling for the severed lot will meet the minimum required setback.

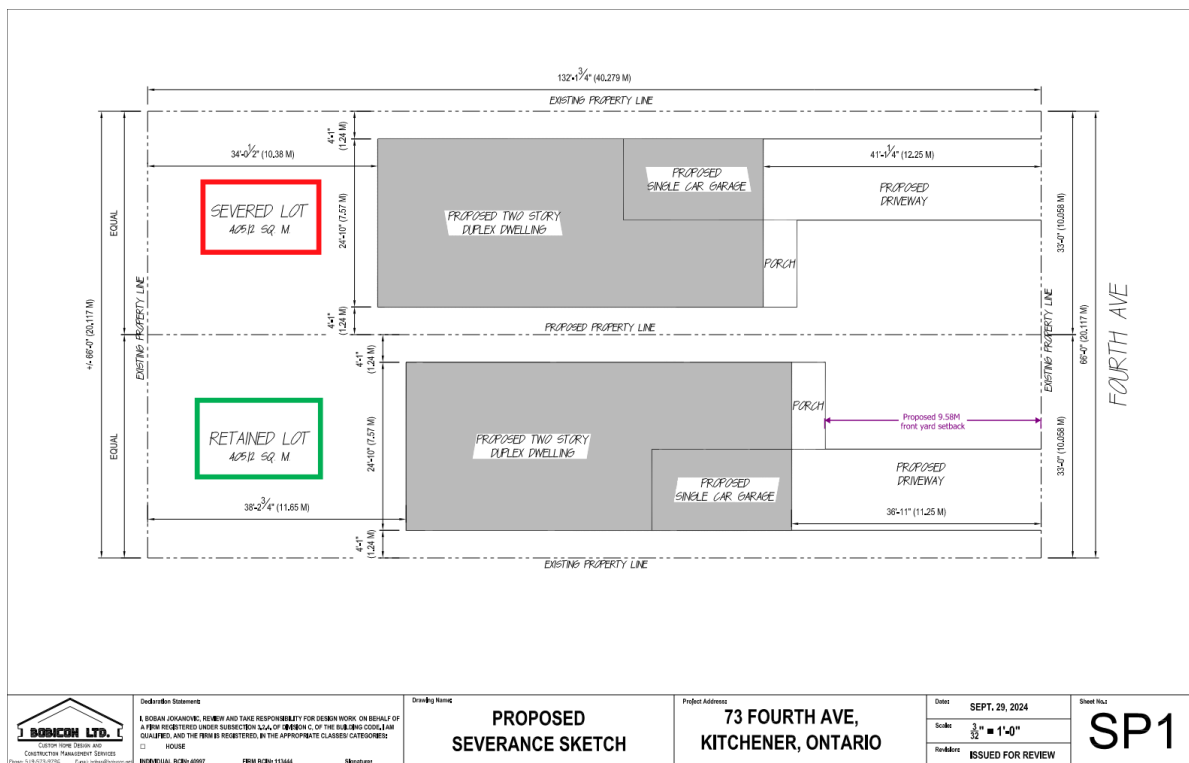


Figure 2: Proposed Severance Sketch and Reduced Front Yard Setback

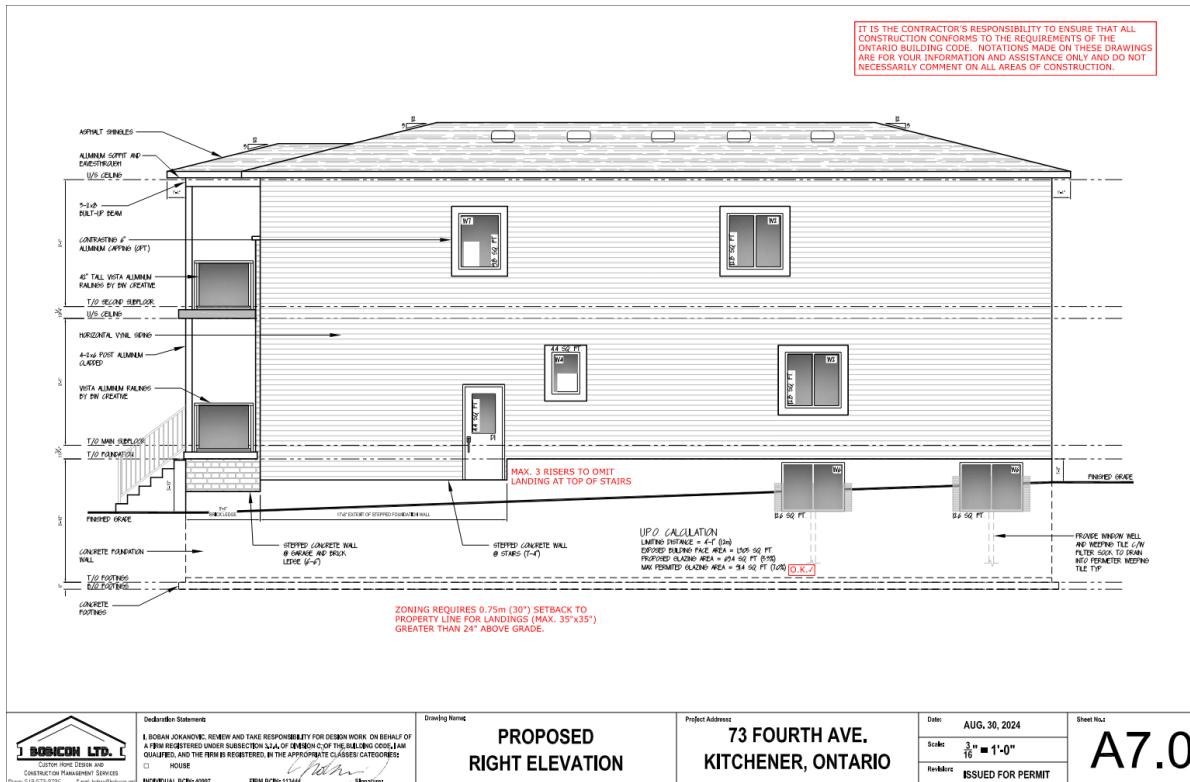


Figure 3: Building Elevation



Figure 4: Subject Property and Foundation for Single Detached Dwelling on Retained Lot



Figure 5: Porch for Retained Lot and Streetscape North of Subject Site



Figure 6: Porch for Retained Lot and Streetscape South of Subject Site

REPORT:

Planning Comments Minor Variance Application A2024-106:

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

The general intent of the 'Low Rise Residential' land use designation is to support a high quality of life while ensuring that existing and new residential areas are walkable and supported by all modes of transportation. To this regard, the proposed reduced front yard setback is required to accommodate a front porch and ground supported balcony directly above the porch. These outdoor spaces provide additional amenity space which contributes to the high quality of life while helping to activate the streetscape thereby supporting walkability. Furthermore, Official Plan policy 4.C.1.8.b) states that where front yard setback reductions are proposed for new buildings in established neighbourhoods, the requested front yard setback should be similar to adjacent properties and supports the character of the streetscape and neighbourhood. The proposed front yard setback for the retained land is between the existing front yard setbacks of the abutting properties and supports the character of the streetscape and neighbourhood. As such, staff are satisfied that the proposed variance adheres to the general intent of the Official Plan.

General Intent of the Zoning By-law

The subject property falls within 'Appendix D – Established Neighbourhoods Area' in Zoning By-law 2019-051. Properties within this area must have a front yard setback within 1 metre of the average existing front yard setbacks of the two abutting properties. The general intent of this regulation is to help ensure a consistent streetscape and that new development does not appear out of place when compared to abutting properties. To this regard, staff are satisfied that the proposed front yard setback of 9.58 metres for the retained lot maintains the general intent of this regulation. As shown in Figure 5 and 6, the proposed front porch and balcony is situated between the existing front yard setbacks on the abutting properties which means the dwelling on the retained lot will not appear out of place. Furthermore, the proposed dwelling for the severed lot will comply with the required front yard setback and will be situated further back from the front lot line than the dwelling on the retained lot. This will help ensure a smooth transition and consistent streetscape between the retained lot and the abutting property to the south.

Are the Effects of the Variance Minor?

Staff are satisfied that the potential effects of the proposed minor variance are minor in nature. As mentioned above, the proposed front yard setback is still between the existing front yard setbacks of abutting properties and the proposed dwelling on the severed lot provides a suitable transition to the abutting property to the south.

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

The proposed variance is considered desirable for the proposed development of the land. The reduced front yard setback will permit a porch and ground supported balcony which will provide additional amenity space while still maintaining a consistent streetscape.

Planning Comments Consent Application B2024-036:

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

Provincial Policy Statement (PPS 2024)

Staff are satisfied that the proposed infill severance is consistent with the Provincial Policy Statement in general and as it related to housing policies in Chapter 2 regarding intensification and facilitating housing options.

Regional Official Plan (ROP):

ROP Urban Area policies state that the focus of the Region's future growth shall be within the Urban Area. The subject lands fall within the 'Urban Area' and 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 and community infrastructure required for the proposed residential development, including transportation networks, municipal water and wastewater systems, and a broad range of social and public health services. Regional polices require 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. Staff are satisfied that he proposed severance adheres to these policies and conforms to the ROP.

City's Official Plan (2014)

The subject property is identified as 'Community Areas' on Map 2 – Urban Structure and is designated 'Low Rise Residential' on Map 3 – Land Use in the City's Official Plan. The proposed severance conforms to this aspect of the Official Plan and maintains the residential land use designation and general intent.

Section 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). These policies state 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.”

The proposed severed and retained lots satisfy the minimum zoning requirements for lot width and lot area and the proposed detached dwellings adhere to the building height and setback requirements, except for the front yard setback on the retained land which is addressed through an appropriate minor variance. The proposed lots also reflect the general scale and character of the established development pattern for this area as shown in Figure 1. Finally, the lots have suitable frontage on a public street, access to full municipal services, do not restrict development of adjacent properties, and do not require a plan of subdivision. As such, staff are satisfied that the proposed severance conforms to the City of Kitchener Official Plan.

Zoning By-law 2019-051

The property is zoned 'Low Rise Residential Four Zone (RES-4)' in Zoning By-law 2019-051. The property also falls within 'Appendix C – Central Neighbourhoods Area' and 'Appendix D – Established Neighbourhoods Area' in Zoning By-law 2019-051. The proposed development is zoning complaint with respect to lot area and lot width requirements. The proposed dwellings are also zoning complaint except for the front yard setback on the retained lot which as discussed above is addressed through a minor variance which satisfies the Four Tests.

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:

Environmental Planning has no concerns with these applications.

Heritage Planning Comments:

Heritage Planning has no concerns with these applications.

Building Division Comments:

The Building Division has no objections to the proposed consent or proposed variance. Region of Waterloo and Area Municipalities' Design Guidelines and Supplemental

Specifications for Municipal Services (DGSSMS) allows only one service per lot. Separate building permit(s) will be required for the construction of the new residential buildings.

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 niall.melanson@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:

A2024 – 106 – 73 Fourth Ave

Through Curb Cut application 2024 127427 tree protection has been approved by Forestry; this tree protection is still required.

B2024 – 036 - 73 Fourth Ave

Cash-in-lieu of park land dedication will be required on the severed parcel as 1 new development lot will be created. The cash-in-lieu dedication required is **\$11,862.00** Park Dedication is calculated at 5% of the new development lots only, with a land valuation calculated by the lineal frontage of 10.058 metre at a land value of \$36,080.00 per frontage metre with a per unit cap of \$11,862.00.

As noted for **A2024 – 106 – 73 Fourth Ave**, tree protection fencing has been required for Curb Cut application 2024 127427, and this TPF should be maintained through all demolition and construction.

Transportation Planning Comments:

Transportation Services have no concerns with these applications.

Region of Waterloo Comments:

The owner/applicant is proposing consent to sever existing residential lot to create a new residential lot. The retained and severed lots being equal in dimension; 10.058 metre width, 40.279 metre depth, and 405.126 square metre area. The consent will facilitate the redevelopment of the new lot with a detached duplex dwelling. Frontage and access on Fourth Avenue or both lots is proposed.

The subject lands area within the 'Urban Area Boundary' and designated 'Built-up Area' in the Regional Official Plan (Maps 1, 2). The subject lands are designated 'Low Rise Residential' in the City's Official Plan (Map 3 – Land Use) and zoned 'RES-4'.

Environmental Noise

At this location, the proposed development may encounter traffic noise sources due to Highway 7 and Highway 8. It is the responsibility of the applicant to ensure the proposed noise sensitive development is not adversely affected by anticipated noise impacts. To address the environmental noise impacts, the applicant must prepare an Environmental Noise Study; the noise levels criteria and guidelines for the preparation of the study should follow the Ministry of the Environment, Conservation, and Parks NPS-300 requirements. The Regional process for the requirement can be provided upon request.

In lieu of an Environmental Noise Study, the Region will require as a condition of consent approval that the owner/applicant enter into a registered Development Agreement with the City of Kitchener to implement the following noise mitigation measures:

- a) that the following warning clauses be included in all agreements of purchase and sale and/or rental agreements for all dwelling units on the retained and severed lots:
 - (i) *"Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of Environment, Conservation, and Parks."*

Source Water Protection

The subject lands are within a Wellhead Protection Area under the Clean Water Act and Wellhead Protection Sensitivity Area under the Regional Official Plan. A Notice of Source Protection Plan Compliance (Section 59 Notice) is required as part of a complete application. Please visit the TAPS website to obtain documentation and for further information: <https://taps.regionofwaterloo.ca/>. The Section 59 Notice will be required as condition of approval for the consent application.

Regional Review Fees

Regional Staff are not in receipt of the required consent review fee of \$350. 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 of bank draft can be mailed as follows: Attention 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 Section 59 Notice to the Regional Municipality of Waterloo.
2. That the Owner/Applicant submit the consent review fee of \$350 to the Regional Municipality of Waterloo.
3. That the Owner/Applicant enter into a registered development agreement with the City of Kitchener to include the following noise warning clause in all agreements of offer of purchase/sale and lease/rental for all dwelling units on the retained and severed lots, to the satisfaction of the Region:
 - i. *Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of Environment, Conservation, and Parks.*

General Comments

Any submission requirements may be subject to peer review, at the owner/applicant's expense as per By-law 23-062. If any other applications are required to facilitate the application, note that fees are subject to change and additional requirements may be apply.

Any future development on the lands subject to the above-noted consent applications will be subject to the provisions of Regional Development Charge By-law 19-037 or any successor thereof. Prior to final approval, City staff must be in receipt of the above-noted Regional condition clearances.

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 2024)*
- *Regional Official Plan (ROP)*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*