

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 2

DATE OF REPORT: November 6, 2024

REPORT NO.: DSD-2024-500

SUBJECT: Minor Variance Application A2024-104 – 70 Rutherford Drive
Consent Application B2024-034 - 70 Rutherford Drive
Minor Variance Application A2024-105 – 74 Rutherford Drive
Consent Application B2024-035 - 74 Rutherford Drive

RECOMMENDATION:

A. Minor Variance Application A2024-104 – 70 Rutherford Drive

That Minor Variance Application A2024-104 for 70 Rutherford Drive requesting relief from the following sections of Zoning By-law 2019-051:

- i) Section 5.3 e) ii) to permit a drive aisle width of 4.4 metres instead of the minimum required 6 metres; and
- ii) Section 5.4 d) to permit a driveway width of 1.9 metres instead of the minimum 2.6 metres;

generally in accordance with drawings prepared by Bobican Ltd., dated August 23, 2024, BE APPROVED subject to the following conditions:

1. That the Owner shall remove the existing asphalt areas in the front and rear yards and replace with sod or other landscaping, in accordance with the regulations of Zoning By-law 2019-051 and drawings prepared by Bobican Ltd., dated August 23, 2024, to the satisfaction of the Manager of Development Approvals, by June 1, 2025.
2. Any request for a time extension must be approved in writing by the Manager of Development Approvals prior to completion date set out in this decision.
3. Failure to complete Condition No. 1 will result in this approval becoming null and void.

B. Consent Application B2024-034 – 70 Rutherford Drive

That Consent Application B2024-034 for 70 Rutherford Drive requesting consent to establish an access easement having a width of 1.9 metres a length of 58.8 metres, and an area of 113.5 square metres, BE APPROVED subject to the following conditions:

1. That Minor Variance Application A2024-104 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) 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 shall remove the existing asphalt areas in the front and rear yards and replace with sod, or other landscaping, in accordance with the regulations of Zoning By-law 2019-051 and drawings prepared by Bobican Ltd., dated August 23, 2024, to the satisfaction of the Manager of Development Approvals.
6. 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.
7. 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 Manager, Development 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.
8. That, prior to final approval, the applicant submits the Consent Application

Review Fee of \$350.00 to the Region of Waterloo.

C. Minor Variance Application A2024-105 – 74 Rutherford Drive

That Minor Variance Application A2024-105 for 74 Rutherford Drive requesting relief from the following sections of Zoning By-law 2019-051:

- i) Section 5.3 e) ii) to permit a drive aisle width of 4.4 metres instead of the minimum required 6 metres; and
- ii) Section 5.4 d) to permit a driveway width of 1.9 metres instead of the minimum 2.6 metres;

generally in accordance with drawings prepared by Bobican Ltd., dated August 23, 2024, BE APPROVED subject to the following conditions:

1. That the Owner shall remove the existing asphalt areas in the front and rear yards and replace with sod or other landscaping, in accordance with the regulations of Zoning By-law 2019-051 and drawings prepared by Bobican Ltd., dated August 23, 2024, to the satisfaction of the Manager of Development Approvals, by June 1, 2025.
2. Any request for a time extension must be approved in writing by the Manager of Development Approvals prior to completion date set out in this decision.
3. Failure to complete Condition No. 1 will result in this approval becoming null and void.

D. Consent Application B2024-035 – 74 Rutherford Drive

That Consent Application B2024-035 for 74 Rutherford Drive requesting consent to establish an access easement having a width of 1.9 metres a length of 58.8 metres, and an area of 113.5 square metres, BE APPROVED subject to the following conditions:

1. That Minor Variance Application A2024-105 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) 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 shall remove the existing asphalt areas in the front and rear yards and replace with sod, or other landscaping, in accordance with the regulations of Zoning By-law 2019-051 and drawings prepared by Bobican Ltd., dated August 23, 2024, to the satisfaction of the Manager of Development Approvals.
6. 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.
7. 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 Manager, 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.
8. 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 Minor Variance and Consent Applications to facilitate a shared driveway access between two (2) detached dwellings containing four (4) dwelling units in each.
- The key finding of this report is that the minor variances will meet the 4 tests of the Planning Act, and that the proposed consents to create the easement are appropriate to legalize the functional access to the rear parking areas on each of the detached lots.
- 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 properties are located on the East side of Rutherford Drive between Kinzie Avenue and Fergus Avenue.



Figure 1: Location Map: 70 & 74 Rutherford Drive

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

The properties are zoned 'Low Rise Residential Four Zone (RES-4)' in Zoning By-law 2019-051.

The purpose of the applications are to legalize a shared driveway, between 2 detached dwellings with four dwelling units in each, for access to rear yard parking.

The Committee of Adjustment approved Consent Application B2022-003 on January 18, 2022 to sever the original lot at 74 Rutherford Drive in half, creating a new lot (70 Rutherford Drive). The existing detached dwelling on 74 Rutherford Drive was demolished in 2022 and two new duplex dwellings were constructed.

On March 25, 2024, City Council passed the 'Enabling Four Units' Zoning By-law Amendment which allows for up to 4 units within a detached dwelling. The applicant is seeking to convert each duplex to a 4-unit detached dwelling. The subject lands currently contain front yard parking that is non-compliant with the maximum driveway width regulations of the zoning by-law. The applicant is seeking to establish a legal shared access driveway to rear yard parking, on each of the properties, through reciprocal access easements and relief from driveway and drive aisle width regulations.



**Figure 2: View of Subject Lands from Rutherford Drive (November 5, 2024)
(70 Rutherford Drive- left side, 74 Rutherford Drive- right side)**

REPORT:

Planning Comments Minor Variance Applications A2024-104 and A2024-105:

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 subject property is designated 'Low Rise Residential' in the Official Plan. The intent of this designation is to encourage a range of different forms of housing to achieve a low density neighbourhood. The requested variances will facilitate a shared driveway and support the permitted uses and continue to maintain the low density character of the properties and surrounding neighbourhood. It is the opinion of staff that the requested variances meet the general intent of the Official Plan.

General Intent of the Zoning By-law

The intent of the regulations that require a minimum of 2.6 metres for a driveway and 6 metres for a drive aisle are to ensure vehicles can make adequate turning movements to access parking spaces and that there is adequate space to park vehicles with room to open car doors. The applicant is seeking to establish reciprocal access easements through associated consent applications. Once established, the usable driveway area will be 3.86 metres (1.93 metres on 70 Rutherford Drive, 1.93 metres on 74 Rutherford Drive) which will provide adequate access. Similarly, the usable drive aisle width will be 8.88 metres (4.44 metres on 70 Rutherford Drive, 4.44 metres on 74 Rutherford Drive). In the

opinion of Staff, as legal access easements will enable functional turning movements and there will be adequate vehicle storage in the rear of the site, the requested variances meet the general intent of the Zoning By-law.



Figure 3: View of existing Shared Driveway access to rear (November 5, 2024)

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

Staff do not anticipate adverse impacts or effects resulting from the requested variances. Therefore, the effects are considered minor.

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

The requested variances are desirable and appropriate as they will enable a functional access to rear yard parking that is suitable and adequate for the use of the lands and buildings on site. The requested variances are considered desirable for the appropriate development and use of the lands and structure in the opinion of Planning staff.

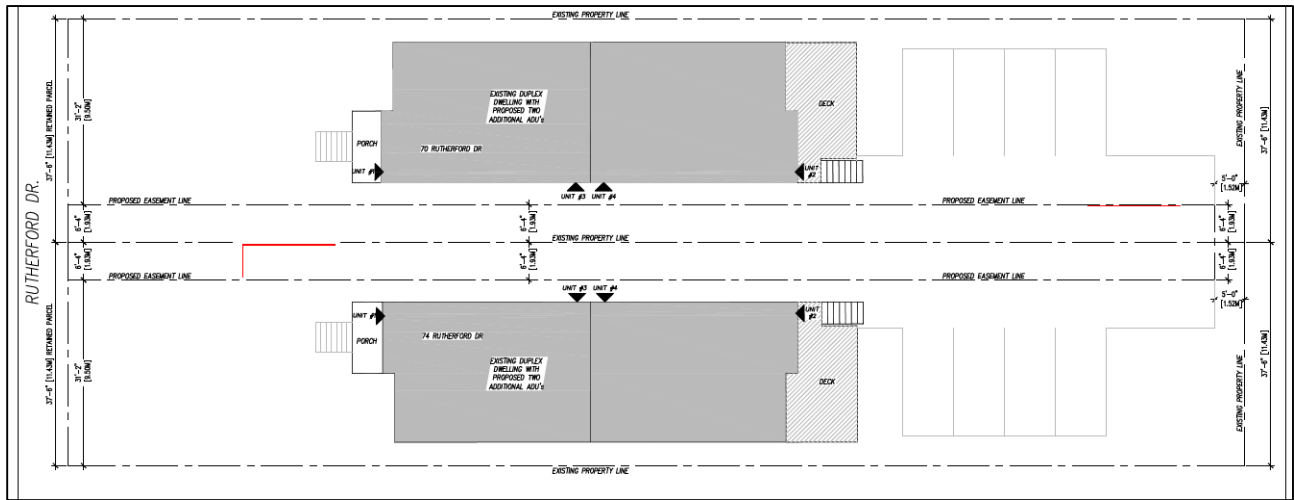


Figure 4: Proposed Easement Sketch

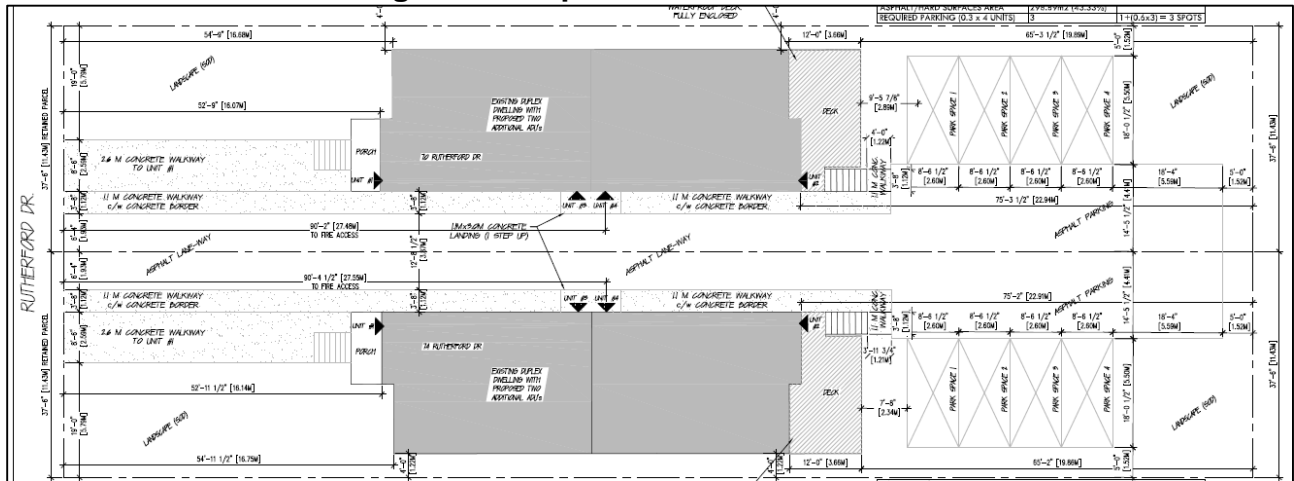


Figure 5: Concept Site Drawing

Planning Comments Consent Applications B2024-034 and B2024-035:

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 a shared driveway, 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 application 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 ‘Low 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 Four Zone (RES-4)' in Zoning By-law 2019-051. Requested easements for access will not have impacts upon the 'RES-4' 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 reciprocal access easements to facilitate a shared driveway 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 variance and consent.

Engineering Division Comments:

No Engineering comments or concerns.

Parks/Operations Division Comments:

No Parks/Operations concerns.

Transportation Planning Comments:

Transportation Services have no concerns.

Region of Waterloo Comments:

The subject lands are 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'.

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.

Hydro One Comments:

We are in receipt of your Applications for Consent, B 2024-034 and B2024-035 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-2022-040 (B2022-003)*

ATTACHMENTS:

Attachment A – Proposed Easement Plan

Attachment B – Concept Site Drawing