

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: December 10, 2024

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

PREPARED BY: Tim Seyler, Senior Planner, 519-783-8920

WARD(S) INVOLVED: Ward 3

DATE OF REPORT: November 27, 2024

REPORT NO.: DSD-2024-527

SUBJECT: Consent Applications B2024-017, B2024-018 and B2024-037
135 Gateway Park Drive

RECOMMENDATION:

Consent Application B2024-018 – 135 Gateway Park Drive - REVISED

That Consent Application B2024-018 requesting consent to sever a parcel of land having a lot width of 180 metres, a lot depth of 84 metres and a lot area of 18,624 square metres, and to create an Easement over the 'Severed Parcel', in favour of the 'Retained Parcel, B2024-017' and additional 'Severed Parcel, B2024-037', generally in accordance with the severance sketch, prepared by MHBC Planning, dated October 2024, BE APPROVED 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 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

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

Solicitor in consultation with the City's Director, Development and Housing 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.
5. 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.
 6. That the Owner provides a servicing plan showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.
 7. 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.
 8. 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.
 9. That the property owner shall convey to the City of Kitchener, without cost and free of encumbrance, an approximate 3-metre-wide road widening along the entire Gateway Park Drive frontage (retained and severed), as shown indicated on a reference plan by an Ontario Land Surveyor (OLS), to the satisfaction of the City's Director of Transportation Services.

Prior to conveyance, the property owner shall prepare, at their cost, a Phase I and if necessary, a Phase II Environmental Site Assessment (ESA) for the portion of the lands being dedicated for a road widening of Gateway Park Drive, to the satisfaction of the City's Director of Engineering Services.
 10. That the Owner shall complete a Building Code Assessment for the existing buildings proposed to be retained on the Severed and Retained parcels 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.

The Owner shall obtain a Building Permit for any remedial work/ upgrades required by the Building Code Assessment.

Consent Application B2024-017 – 135 Gateway Park Drive - REVISED

That Consent Application B2024-017 requesting consent to create an Easement over the 'Retained Parcel' in favour of both the 'Severed Parcels, B2024-018, B2024-037', generally in accordance with the severance sketch, prepared by MHBC Planning, dated October 2024, BE APPROVED 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 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 Director, Development and Housing 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.
5. 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.
6. That the property owner shall convey to the City of Kitchener, without cost and free of encumbrance, an approximate 3-metre-wide road widening along the entire Gateway Park Drive frontage (retained and severed), as shown indicated on a reference plan by an Ontario Land Surveyor (OLS), to the satisfaction of the City's Director of Transportation Services.

Prior to conveyance, the property Owner shall prepare, at their cost, a Phase I and if necessary, a Phase II Environmental Site Assessment (ESA) for the portion of the lands being dedicated for a road widening of Gateway Park Drive, to the satisfaction of the City's Director of Engineering Services.

Consent Application B2024-037 – 135 Gateway Park Drive

That Consent Application B2024-037 requesting consent to sever a parcel of land having a lot width of 84 metres, a lot depth of 65 metres and a lot area of 4,327 square metres, and to create an Easement over the 'Severed Parcel', in favour of the 'Retained Parcel B2024-017' and additional 'Severed Parcel, B2024-018', generally in accordance with the severance sketch, prepared by MHBC Planning, dated October 2024, BE APPROVED 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 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 Director, Development and Housing 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.
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 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 the Owner shall complete a Building Code Assessment for the existing buildings proposed to be retained on the Severed and Retained parcels 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.

The Owner shall obtain a Building Permit for any remedial work/ upgrades required by the Building Code Assessment.

11. 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 two severance applications to permit the creation of two new parcels of land. Further an access easement is being created over all parcels to maintain access to Tu Lane and Gateway Park Drive. No new development is currently proposed.
- 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 application was initially heard by the Committee of Adjustment in August 2024. At that time the applicant had requested a deferral of the application in order to have further discussions with Utilities staff. Since that time the applicant has revised the application to add an additional severance in order for each existing building to be located on a lot in order to be dealt with separately.

The subject property is located on Gateway Park Drive with frontage on Tu Lane and King Street East. The existing property contains 3 commercial buildings. The applicant proposes to sever the lots so that 1 commercial building is on the Retained Parcel, and 2 commercial buildings are each on their own Severed Parcel. 1 severed parcel will contain

the current restaurant use, and the other severed parcel will contain the former Landmark movie theatre. The applicant also proposes to create an easement over both severed parcels and the retained lands in order to maintain the access through the site for all properties to use in the future. These accesses currently exist and will remain on the properties without any new access created.



Figure 1: Location Map: 135 Gateway Park Drive

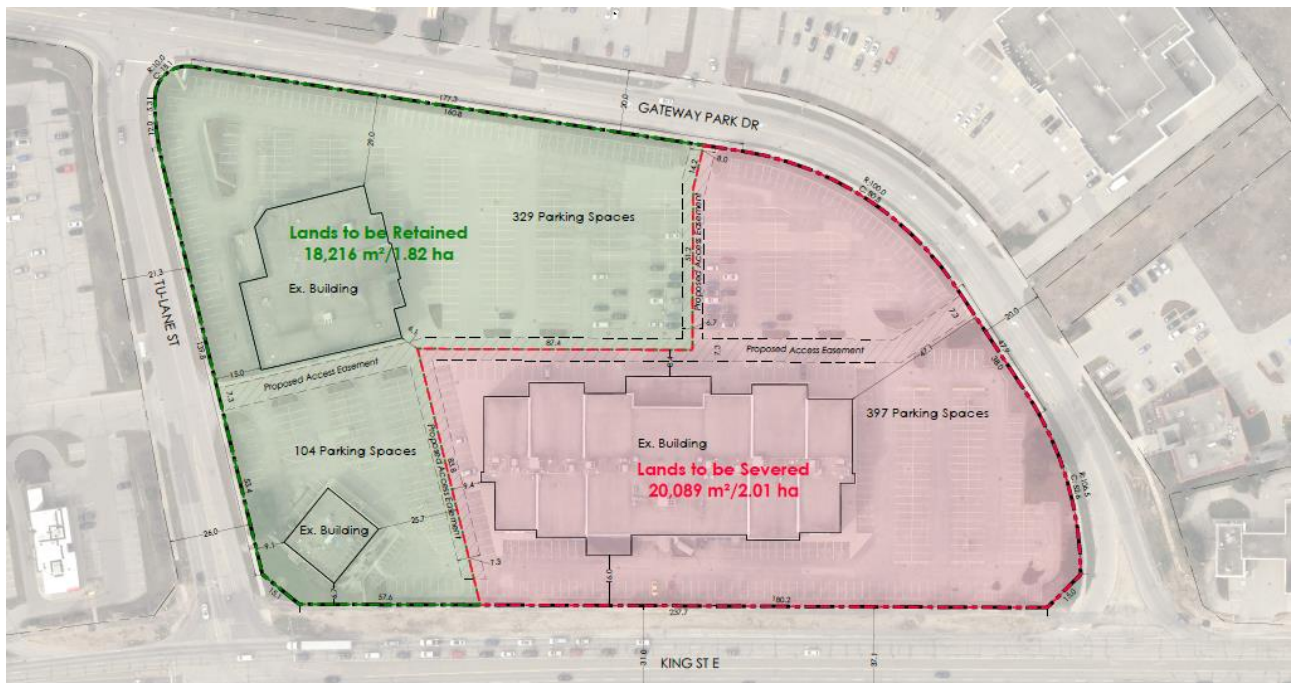


Figure 2: Initial proposed lot fabrics

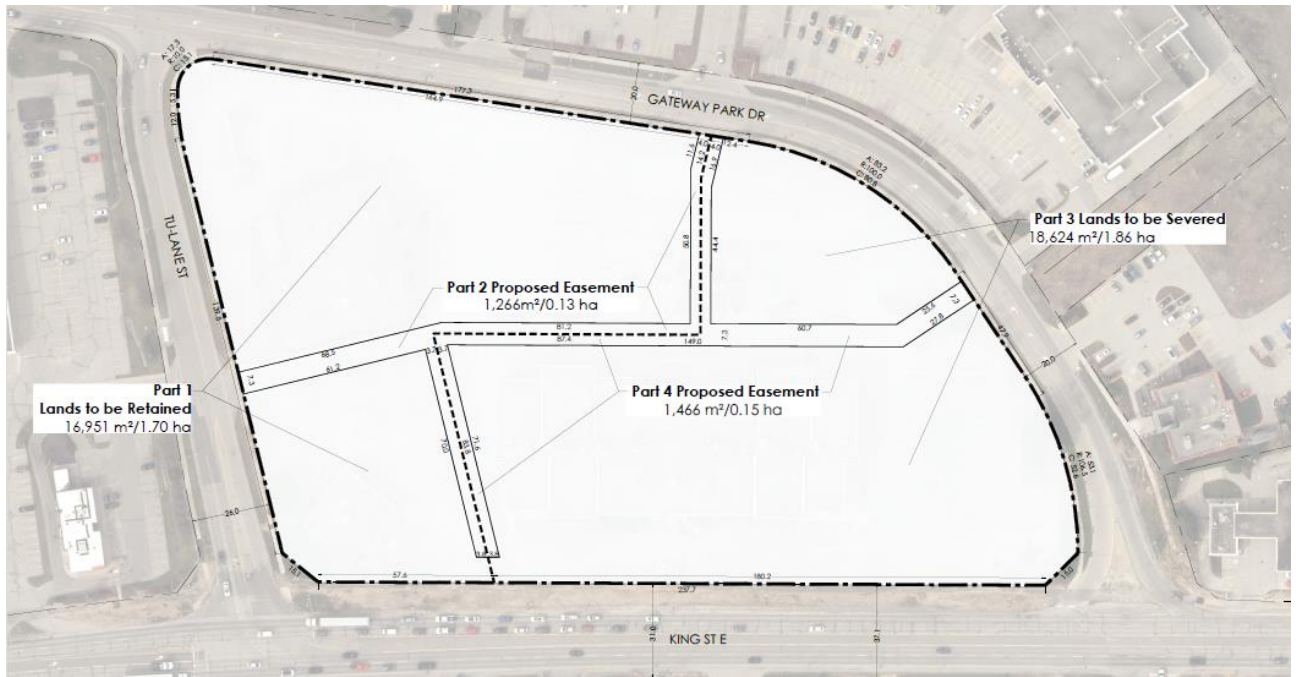


Figure 3: Initial proposed easements

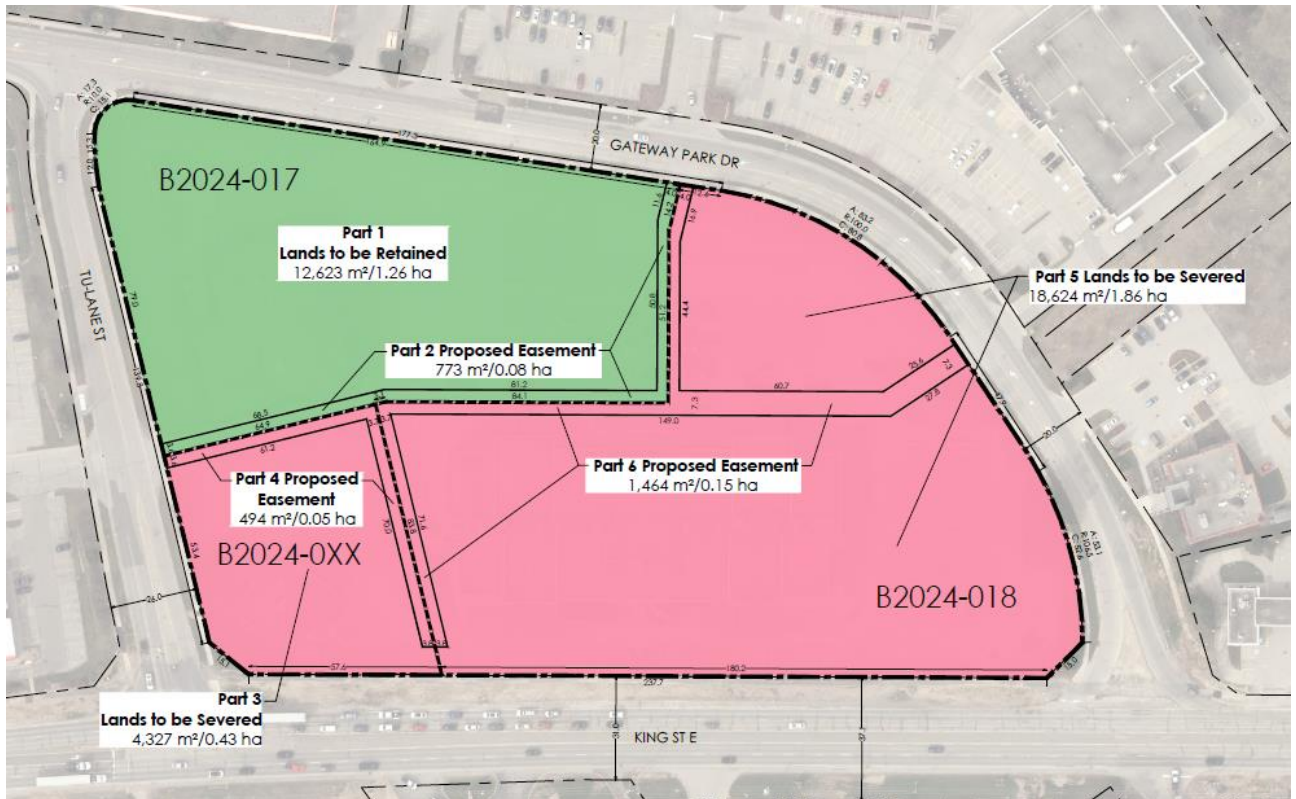


Figure 4: Revised proposed lot fabrics

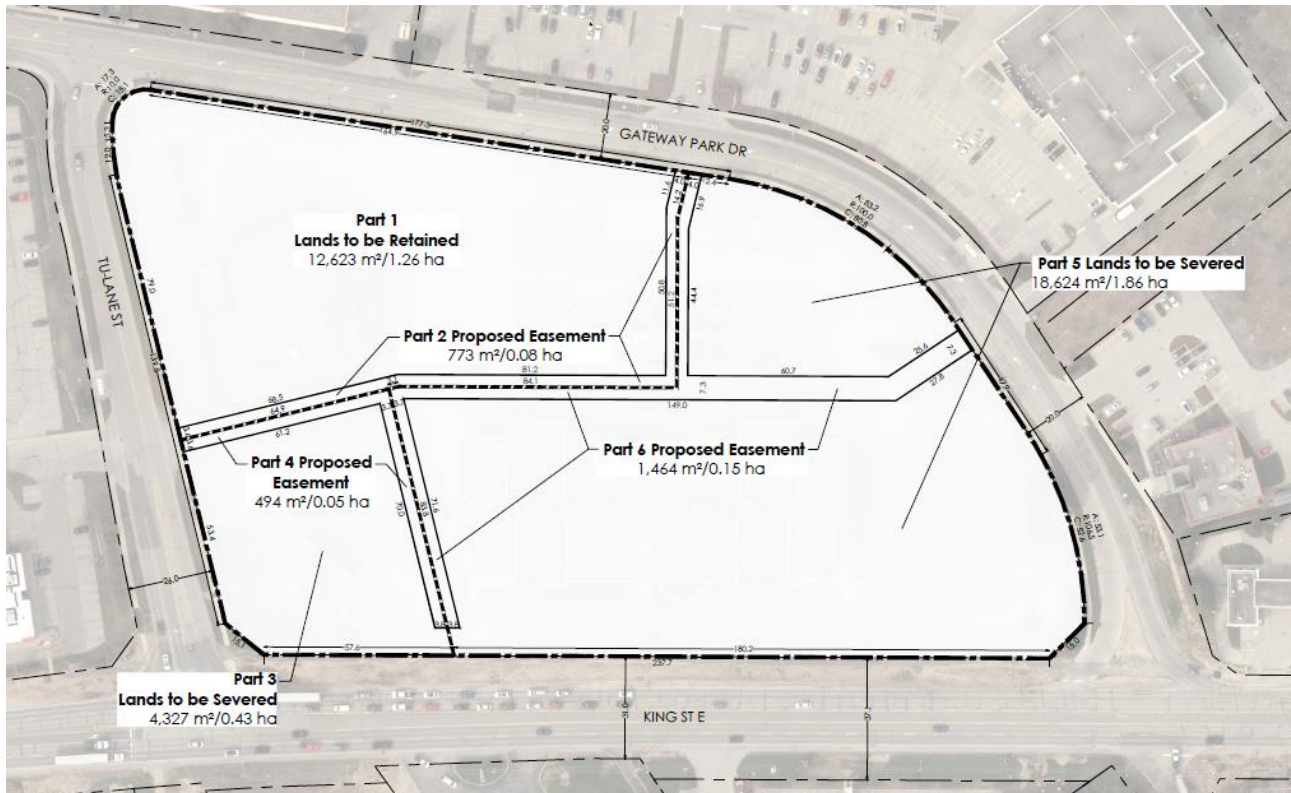


Figure 5: Revised proposed easements

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

The property is zoned 'Commercial Campus Zone (COM-4)' in Zoning By-law 2019-051.

The purpose of the applications is to sever an existing lot to create three (3) lots. The retained lands will contain 1 commercial building, while the severed lands will each contain 1 commercial building. The current buildings will be remaining on site. An access easement is also proposed in order for all three (3) new lots to have access to the existing entrances/exits within the whole of the property as it exists today.



Figure 6: Existing building and existing conditions



Figure 7: Existing building and existing conditions



Figure 8: Existing buildings and existing conditions

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)

The Provincial Planning Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Section 2.1.6 of the PPS promotes the achievement of complete communities by accommodating an appropriate range and mix of land uses, housing options, transportation options, with multimodal access, employment, public service facilities, and other institutional uses, recreation, parks and open space, to meet long term needs. The PPS promotes an appropriate range and mix of housing options, as well as a range of employment, institutional and broader mixed uses to meet long term needs. It also supports the use of active transportation and requiring transit supportive development.

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 application 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.

Planning staff are of the opinion that the severance applications conforms to the Regional Official Plan.

City's Official Plan (2014)

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

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.”

Zoning By-law 2019-051

The subject property is zoned as 'Commercial Campus Zone (COM-4)' in Zoning By-law 2019-051. The lands that are to be severed and the lands to be retained will remain within the COM-4 zoning, and the buildings that currently operate the lands will continue to be in operation.

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. The uses of both the severed and retained parcels are in conformity with the City's Official Plan and Zoning By-law. Planning staff is of the opinion that the size, dimension and shape of the proposed lots are suitable for the use of the lands and compatible with the surrounding community. The severed lands front onto an established public street and are serviced with municipal services. Staff is further of the

opinion that the proposal is consistent with the Region of Waterloo Official Plan, the Provincial Planning Statement, and is good planning and in the public interest.

Environmental Planning Comments:

No environmental planning concerns.

Heritage Planning Comments:

No heritage planning concerns.

Building Division Comments:

B2024-017:

The Building Division has no objections to the proposed consent.

B2024-018:

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.

B2024-037:

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.

Engineering Division Comments:

B2024-017 – 135 Gateway Park Drive (Easement)

- No concerns

B2024-018 – 135 Gateway Park Drive (Severance and Easement)

- 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 jason.brule@kitchener.ca.

- 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.

B2024-037 – 135 Gateway Park Drive (Severance and Easement)

- 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 jason.brule@kitchener.ca.
- 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.

Parks/Operations Division Comments:

B2024-017 – 135 Gateway Dr (Easement)

No concerns, no requirements.

B2024-018 and B2024-037 – 135 Gateway Dr (Severances and Easement)

The current use of the COM-4 zoned land is commercial and in accordance with Parkland Dedication Bylaw 2022-101 and Parkland Dedication Policy MUN-PLA-1074, Parkland Dedication is not required for this Severance. Please note that if either the severed or retained property is subject to a redevelopment application it will be assessed for Parkland Dedication according to the Planning Act, the Parkland Dedication Bylaw 2022-101 and Parkland Dedication Policy MUN-PLA-1074 in effect at the time of a site plan application.

Transportation Planning Comments:

Applications No. B 2024-017 and B2024-018 – Gateway Park Drive

The City of Kitchener's Official Plan notes Gateway Park Drive is designated for a road widening with an ultimate road width of 26 metres between Sportsworld Drive and King Street. Therefore, a conveyance of approximately 3 metres along the entire Gateway Park Drive frontages (retained and severed) is required. A reference plan be submitted by an Ontario Land Surveyor (OLS) illustrating the road widening.

The Owner shall prepare at their cost, a Phase I and if necessary, a Phase II Environmental Site Assessment (ESA) for the portion of the lands being conveyed to the City of Kitchener for a road widening of Gateway Park Drive to the satisfaction of the City's Engineering Services.

Region of Waterloo Comments:

Note: B2024-17 and B2024-18 were originally submitted with a concept to create two lots. The applications were heard at August 2024 COA meeting, and then deferred to allow for further discussion between Owner/Developer and City.

The Owner/Developer is proposing consent to sever to create three lots and associated access easements. The easements would maintain current vehicular circulation and access points. No physical redevelopment is proposed.

- B2024-017/ Retained Lands/ Parts 1 and 2 – approx. 1.24ha with 82.6m frontage on Tu-Lane St and 181m frontage on Gateway Park Dr. Presently occupied by wholesale business, 329 surface parking, and shared drive aisle (easement over Part 2).
- B2024-037/ Severed Lands A/ Parts 3 and 4 – approx. 0.48ha with 57 frontage on King St E and 53.4m frontage on Tu-Lane St. Presently occupied by restaurant, 104 surface parking, and shared drive aisle (easement over Part 4).
- B2024-18/ Severed Lands B/ Parts 5 and 6 – approx. 2.01ha with 237.7m frontage on King St E and 194m frontage on Gateway Park Dr. Presently occupied by former Landmark Cinema building, 397 surface parking, and shared drive aisle (easement over Part 6).

In the Regional Official Plan, the subject lands are designated Delineated Built-up Area within the Urban Area Boundary (Map 1, 2), and MTSA – Sportsworld Station (Fig 8a).

Archaeological Assessment (Advisory)

These lands have been previously assessed for archaeological resources. However, to Regional staff's knowledge, the site has not been cleared of archaeological concerns. While clearance is not required to support this consent application given the level of disturbance on the site, any future Planning Act application proposing physical development will require the submission of the completed Archaeological Assessment and associated acknowledgment letter from the Ministry of Citizenship and Multiculturalism. If possible and in the applicant's possession, please provide a copy of the acknowledgment letter for our records.

Regional fee

Regional staff acknowledge receipt of the required consent review fees for the August applications (\$350 per application and \$700 in total) on July 11, 2024.

Regional staff have not received the fee for consent review of \$350 for the new application. The payment of fee will be required as a condition of consent approval.

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

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

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-2024-358*