

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: August 20, 2024

SUBMITTED BY: Tina Malone-Wright, Manager, Development Approvals
519-741-2200 ext. 7765

PREPARED BY: Tim Seyler, Senior Planner, 519-741-2200 ext. 7860

WARD(S) INVOLVED: Ward 3

DATE OF REPORT: August 7, 2024

REPORT NO.: DSD-2024-358

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

RECOMMENDATION:

Consent Application B2024-018 – 135 Gateway Park Drive

That Consent Application B2024-018 requesting consent to sever a parcel of land having a lot width of 237 metres, a lot depth of 140 metres and a lot area of 20,092 square metres, and to create an Easement over the 'Severed Parcel', in favour of the 'Retained Parcel' for access, generally in accordance with the severance sketch, prepared by MHBC Planning, dated March 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 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.
 10. 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.
 11. 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 Gage Avenue, to the satisfaction of the City's Director of Engineering Services.

12. 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

That Consent Application B2024-017 requesting consent to create an Easement over the 'Retained Parcel' in favour of the 'Severed Parcel' for access, generally in accordance with the severance sketch, prepared by MHBC Planning, dated May 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 Gage Avenue, to the satisfaction of the City's Director of Engineering Services.

REPORT HIGHLIGHTS:

- The purpose of this report is to review a severance application to permit the creation of one new parcel of land. Further an access easement is being created over both 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 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 2 commercial buildings are on the Retained Parcel, and 1 commercial building is on the Severed Parcel. The 1 commercial building formally contained the Landmark movie theatre. The applicant also proposes to create an easement over both the severed and retained lands in order to maintain the access through the site for both 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

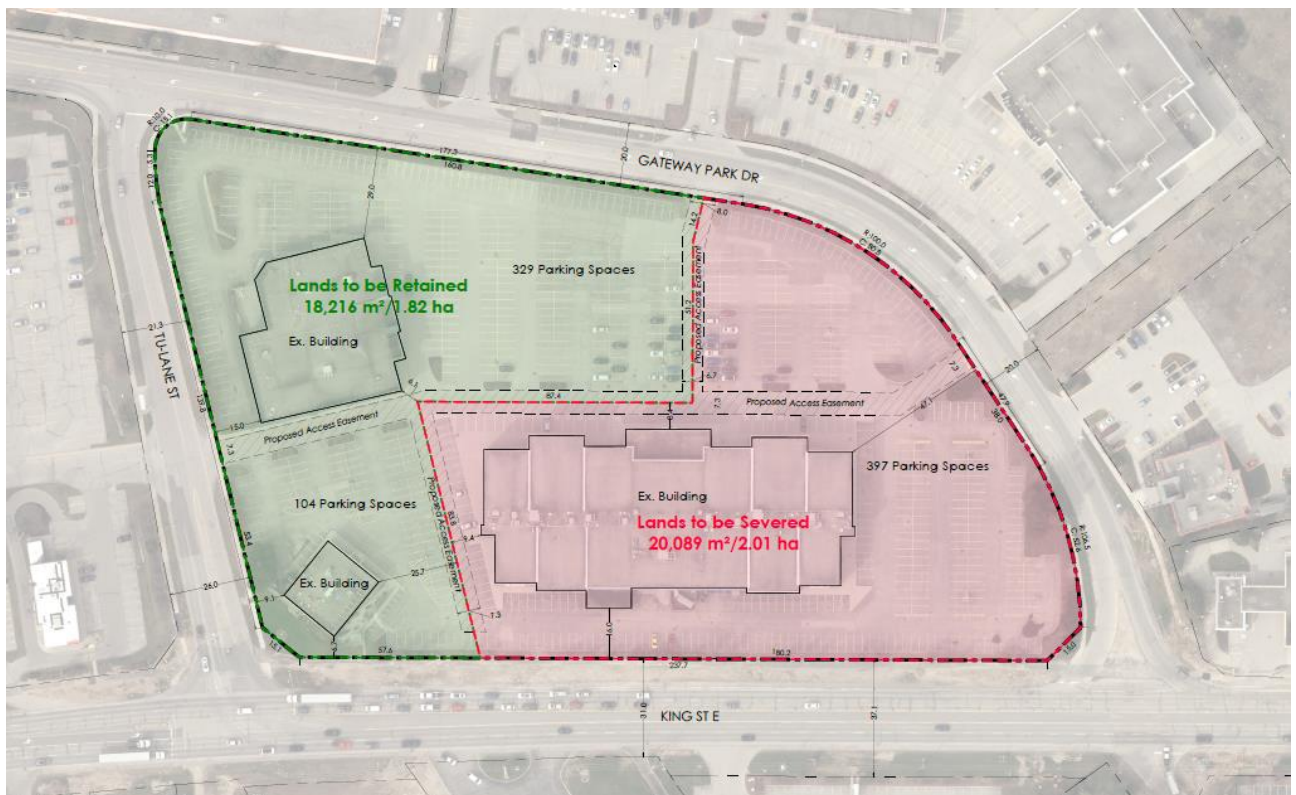


Figure 2: Proposed lot fabrics

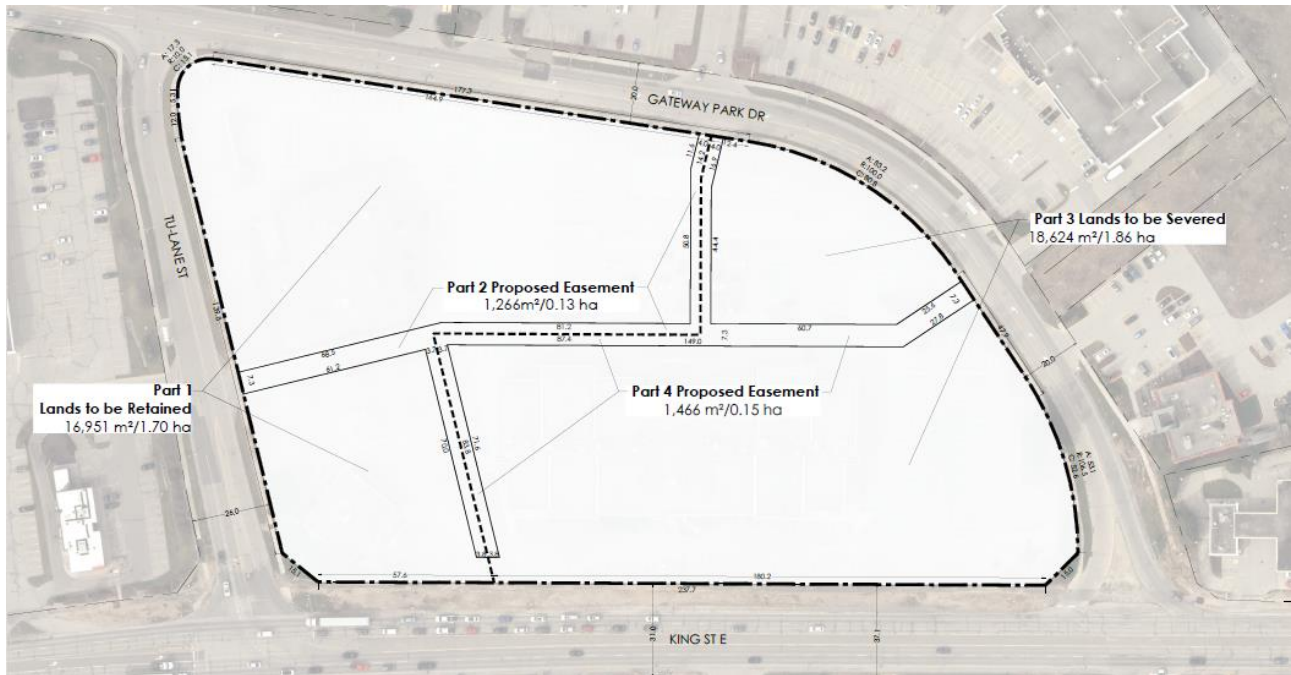


Figure 3: Proposed easements

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 application is to sever an existing lot to create two (2) lots. The retained lands will contain 2 commercial buildings, while the severed lands will contain 1 commercial building. The current buildings will be remaining on site. An access easement is also proposed in order for both lots to have access to the existing entrances/exits within the property.



Figure 4: Existing building and existing conditions



Figure 5: Existing building and existing conditions



Figure 6: 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 Policy Statement (PPS 2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Section 1.4.3(b) of the PPS

promotes all types of residential intensification, and sets out a policy framework for sustainable healthy, liveable and safe communities. The PPS promotes efficient development and land use patterns, as well as accommodating an appropriate mix of affordable and market-based residential dwelling types with other land uses, while supporting the environment, public health and safety. Provincial policies promote the integration of land use planning, growth management, transit-supportive development, intensification, and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs.

Planning staff is of the opinion that this proposal is consistent with the PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020

The Growth Plan supports the development of complete and compact communities that are designed to support healthy and active living, make efficient use of land and infrastructure, provide for a range and mix of housing types, jobs, and services, at densities and in locations which support transit viability and active transportation.

The subject lands are located within the City's delineated built up area and are in close proximity to transit. The lands will continue to make efficient use of existing infrastructure, roads, trails and transit.

Planning staff is of the opinion that the development proposal conforms to the Growth Plan.

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 lot is 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 Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe and is good planning and in the public interest.

Environmental Planning Comments:

No environmental planning concerns.

Heritage Planning Comments:

No heritage 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.

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 christine.goulet@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:

B2024-017 – 135 Gateway Dr (Easement)

No concerns, no requirements.

B2024-018 – 135 Gateway Dr (Severance 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:

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:

These lands (3.83 ha in total) contain a vacant Landmark Cinema, an operational restaurant, and a wholesale warehouse. The applicant has submitted two applications – B2024-017 proposes to sever 2.01 ha containing the Landmark Cinema and 397 parking spaces, and the second would create an easement for access in favour of the severed lands over the retained lands. The easement would maintain current vehicular circulation and access and avoid the need for new access points. No physical redevelopment is proposed.

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 acknowledgement letter for our records.

Regional fee

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

Regional staff have no objection to this application.

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 2020)*
- *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020*
- *Regional Official Plan (ROP)*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*