

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: January 21, 2025

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 10

DATE OF REPORT: January 10, 2025

REPORT NO.: DSD-2025-026

SUBJECT: Minor Variance Application A2025-004 - 240 Chapel Street

RECOMMENDATION:

That Minor Variance Application A2025-004 for 240 Chapel Street requesting relief from Section 39.2.1 of Zoning By-law 85-1 to permit an east side yard setback of 0.4 metres instead of 1.2 metres, generally in accordance with drawings prepared by QBS Architects, dated December 16, 2024, BE APPROVED subject to the following condition:

1. That the property owner shall modify the existing driveway such that it does not exceed a maximum width of 8.0 metres, is a minimum 0.46 metres from the eastern side lot line and is clearly distinguishable from all other ground cover or surfacing including landscaping and walkways, in accordance with the regulations of Zoning By-law 85-1, by May 31, 2025. 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. Failure to complete this condition will result in this approval becoming null and void.

AND

That Minor Variance Application A2025-004 for 240 Chapel Street requesting relief from Section 5.22.f) of Zoning By-law 85-1 to permit an unobstructed walkway with a minimum width of 0.92 metres instead of 1.1 metres, generally in accordance with drawings prepared by QBS Architects, dated December 16, 2024, BE REFUSED.

REPORT HIGHLIGHTS:

- The purpose of this report is to review the minor variance application to allow for a reduced minimum side yard setback and minimum width for an unobstructed walkway to facilitate the conversion of a basement into an Additional Dwelling Unit (Attached).

- The key finding of this report is that the minor variance for a reduced minimum side yard setback satisfies the four tests in the Planning Act, but the minor variance for a reduced minimum width for an unobstructed walkway fails to satisfy one of the four tests.
- 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 north side of Chapel Street between Dumfries Avenue and East Avenue and south of Frederick Mall. The property currently contains a Single Detached Dwelling with one Additional Dwelling Unit (Attached) and one Additional Dwelling Unit (Detached).



Figure 1: Location Map – 240 Chapel Street (Outlined in Red)

The subject property is identified as ‘Community Areas’ on Map 2 – Urban Structure and is designated ‘Low Rise Conservation A’ on Map 20 – Central Frederick Neighbourhood Plan for Land Use in the City’s 2014 Official Plan.

The property is zoned ‘Residential Five Zone (R-5)’ in Zoning By-law 85-1. The property also falls within Appendix H – Residential Intensification in Established Neighborhoods Study (RIENS) Area in Zoning By-law 85-1

The purpose of this minor variance application is to recognize the existing minimum side yard setback to facilitate the conversion of an existing basement into an Additional Dwelling Unit (Attached) and to legalize an undersized unobstructed walkway required for an existing Additional Dwelling Unit (Detached) and for the proposed Additional Dwelling Unit (Attached).

A previously minor variance application, A2022-074, was approved on July 19, 2022, which permitted a reduced minimum side yard setback of 0.4 metres instead of 1.2 metres to facilitate the construction of the Additional Dwelling Unit (Detached) in the rear yard. This previous minor variance was limited to the proposed development at the time of the application which means the owner must receive approval again for the reduced minimum side yard setback before adding another Additional Dwelling Unit (Attached).

During a site visit for this minor variance application, staff discovered a chimney and utility meter on the left side of the main house which projected 0.18 metres into the 1.1 metre wide unobstructed walkway required for the existing Additional Dwelling Unit (Detached) and proposed basement Additional Dwelling Unit (Attached). As such, the property is not currently zoning compliant. These partial walkway obstructions were not identified on the previous minor variance application, site plan application, or building permit. This zoning deficiency was not identified until this point as final inspections for building permits do not involve exterior landscaping. The applicant was informed of this zoning deficiency and promptly amended the current minor variance application to address the issue. It was also identified that part of the poured concrete for the existing unobstructed walkway encroached approximately 0.06 metres into the abutting property. This encroachment is not included in this minor variance application and instead is a civil issue between property owners.

If the minor variance is not approved for the walkway, then modifications will be necessary to the chimney and utility meter, or obtaining an easement for the walkway, in order to meet the minimum 1.1 metres.

During the site visit, staff also noticed that the existing driveway exceeded the maximum permitted width and encroached into the required side yard setback. The applicant was made aware of this issue and has agreed to convert part of the driveway of both sides to a walkway to comply with zoning regulations. A condition of approval has been requested to ensure the necessary driveway modifications are implemented.

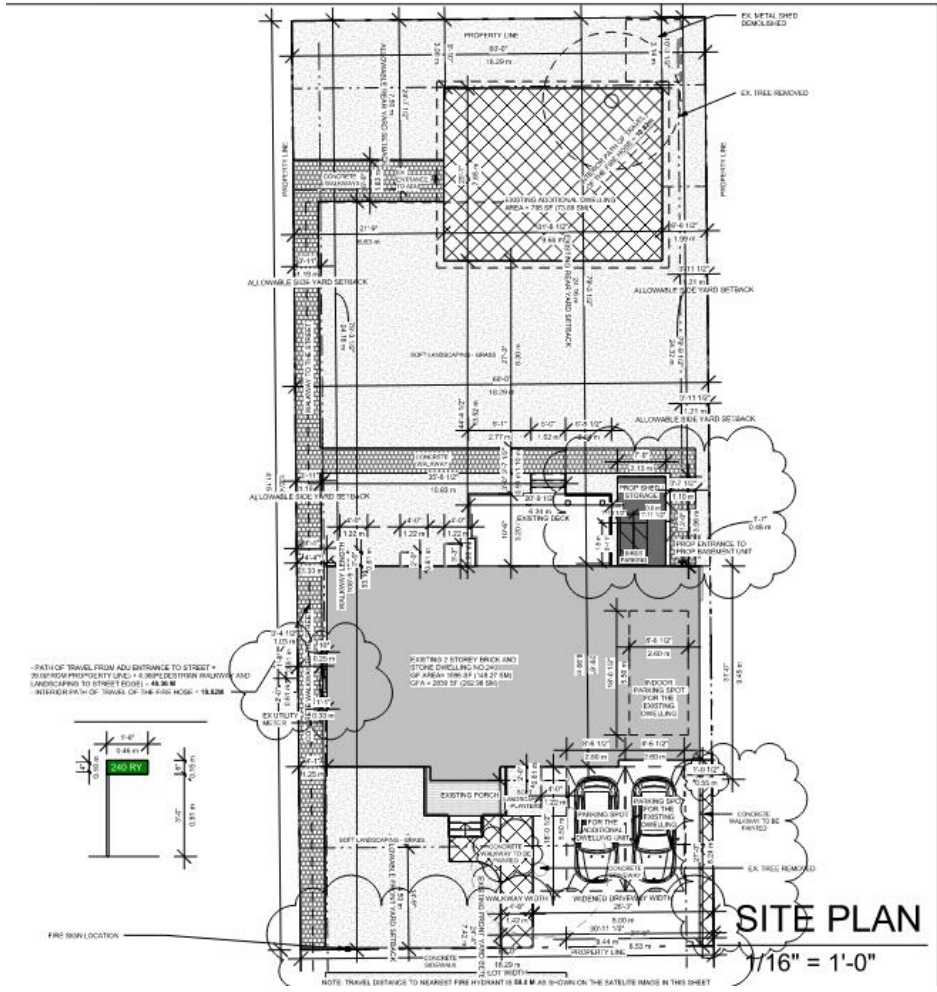


Figure 2: Site Plan

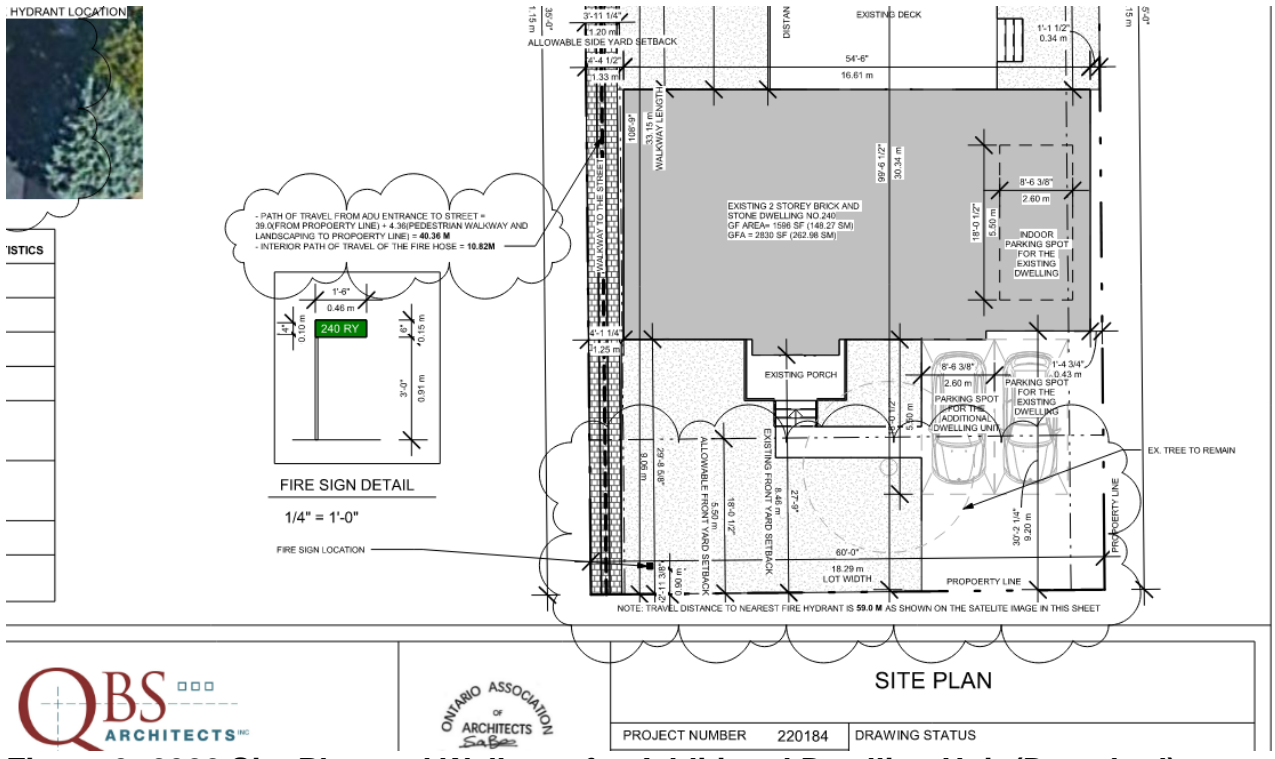


Figure 3: 2022 Site Plan and Walkway for Additional Dwelling Unit (Detached)



Figure 4: 240 Chapel Street (Edge of Driveway on Both Sides Proposed as Walkway)



Figure 5: Walkway Leading to Existing and Proposed Additional Dwelling Unit



Figure 6: Existing Rear Yard with Additional Dwelling Unit (Detached) and Walkway



Figure 7: Proposed Entrance to Dwelling Unit and Bike Parking

REPORT:

Planning Comments:

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 Conservation A' on Map 20 – Central Frederick Neighbourhood Plan for Land Use in the Official Plan. The intent of this designation is to preserve the scale, use, and intensity of existing development in portions of the community where the vast majority of land use is single detached dwellings. The proposed conversion of the basement into another Additional Dwelling Unit (Attached) does not require exterior alterations except for a new door in the rear yard. As such, staff are satisfied that the proposed variance for a reduced side yard setback to facilitate the construction of the new Additional Dwelling Unit (Attached) maintains the general intent of the Official Plan.

A 1.1 metre wide unobstructed walkway was originally required for the existing Additional Dwelling Unit (Detached) and is now required for the proposed new basement Additional Dwelling Unit (Attached). Official Plan policy 4.C.1.24 lists criteria that will be considered as the basis for permitting an Additional Dwelling Unit (Detached) and clearly includes the requirement that site layout considers pedestrian and vehicular access. Suitable vehicle access has been achieved through the proposed driveway while suitable pedestrian access has been achieved through the existing walkway. The walkway is slightly narrower than the zoning requirement at one point directly beside the chimney and utility meter, but the rest of the walkway is sufficient in width and this pinch point should not negatively impact daily pedestrian access. As such, staff are satisfied that the variance for a reduced unobstructed walkway width maintains the general intent of the Official Plan.

General Intent of the Zoning By-law

The general intent of the minimum side yard setback is to ensure sufficient space for drainage and pedestrian access along the side of the house and to help ensure a consistent streetscape. To this regard, the reduced side yard setback is an existing situation which has not appeared to negatively impacted drainage or pedestrian access. This existing situation has also been part of the streetscape character for several decades. As such, staff are satisfied that the variance for reduced minimum side yard setback maintains the general intent of the Zoning By-law.

The general intent of the 1.1 metre wide unobstructed walkway comes from the Emergency Services Policy which requires a suitable emergency access route from a street to the principal entrance of an Additional Dwelling Unit (Attached) where the door does not face a street and all Additional Dwelling Units (Detached). The Emergency Services Policy originally requires a 1.2 metre wide walkway, but through further discussions with Emergency Services, it was decided to slightly lower the minimum width to 1.1 metres in the Zoning By-law to make it easier to add Additional Dwelling Units to properties with existing dwellings without compromising staff's ability to respond to an emergency. However, Emergency Services made it abundantly clear that they generally

do not support further deviations from the Emergency Services Policy to allow walkways below 1.1 metres in width as this can create problems responding to emergencies. For this particular case on 240 Chapel Street, Emergency Services has concerns with the pinch point directly beside the chimney and utility meter since it may be difficult to maneuver a stretcher, fire fighting equipment, or other emergency services around the chimney and utility meter without crossing onto the neighbouring property, which could be blocked by a fence or structure should the neighbour ever decided to construct something on this part of their property. Given these concerns with emergency access, staff are not satisfied that the variance for reduced walkway width maintains the general intent of the Zoning By-law.

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

The proposed variance for a reduced minimum side yard setback is required for an existing Single Detached Dwelling to facilitate the conversion of a basement into another Additional Dwelling Unit (Attached). Staff are satisfied that the proposed variance is minor in nature given that this is an existing situation and the increase in residential units should not negatively impact the subject property, abutting property, or neighbourhood.

The proposed reduction in walkway width is also considered minor in nature given the proposed width does not significantly deviate from the Zoning By-law and the reduced width is only required for one pinch point directly beside the chimney and utility meter.

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

The proposed variance for reduced minimum side yard setback and minimum width for an obstructed walkway are considered desirable for the appropriate development of the land. The variances are required for existing and proposed Additional Dwelling Units which are encouraged for this area of the City. The variances also do not negatively impact the use of the land, abutting properties, or neighbourhood.

Environmental Planning Comments:

No concerns.

Heritage Planning Comments:

No concerns.

Building Division Comments:

The Building Division has no objections to the proposed variance provided building permit for the additional dwelling units is obtained prior to construction. Please contact the Building Division at building@kitchener.ca with any questions.

Engineering Division Comments:

No concerns.

The side yard currently accommodates overland stormwater flows from the rear yard. A sidewalk is required to the rear yard in accordance with the Zoning By-law. The final grading of this property shall not adversely affect the drainage of adjacent properties or the overall grading control plan. The Owner is responsible to address storm water drainage at the Building Permit stage.

Parks/Operations Division Comments:

There is an existing City-owned street tree within the boulevard and this tree should be protected in place to City standards throughout all construction. Tree protection fencing should be provided on all four sides of the tree as shown in green - please see fencing requirements at

https://www.kitchener.ca/en/resourcesGeneral/Documents/INS_OPS_Treemanagementpolicy.pdf



Transportation Planning Comments:

Transportation Services have no concerns with 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 Planning Statement (PPS 2024)*
- *Regional Official Plan*
- *Official Plan (2014)*
- *Zoning By-law 85-1*
- *City of Kitchener Emergency Service Policy*