

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** March 18, 2025

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

**PREPARED BY:** Brian Bateman, Senior Planner, 519-783-8905

**WARD(S) INVOLVED:** Ward 10

**DATE OF REPORT:** March 4, 2025

**REPORT NO.:** DSD-2025-128

**SUBJECT:** Minor Variance Application A2025-016 – 45-53 Courtland Avenue East

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## RECOMMENDATION:

That Minor Variance Application A2025-016 for 45-53 Courtland Avenue East requesting relief from the following sections of Zoning By-law 85-1:

- i) Appendix D, Special Regulation Provision 786R, to permit a Floor Space Ratio (FSR) of 2.8 instead of 2.4;
- ii) Appendix D, Special Regulation Provision 786R, to permit a rear yard setback of 18 metres instead of 19 metres;
- iii) Appendix D, Special Regulation Provision 786R, to permit a maximum building height, excluding roof top mechanical equipment from 21 metres to 28 metres;

to facilitate the development 8-storey multiple dwelling having 95 dwelling units, in accordance with Site Plan Application SP23/034/C/BB, revised dated June 6, 2024, BE APPROVED.

## REPORT HIGHLIGHTS:

- The purpose of this report is to assess a technical request to vary By-law 85-1 in advance of By-law 2019-051 for Growing Together Zoning coming into full force and effect that would allow this development proposal as of right.
- Due to an appeal of the Growing Together Zoning to the Ontario Land Tribunal, the developer is unable to move forward to final approvals and thus requires minor variances to Zoning By-law 85-1 as the property is affected by two zoning by-laws.
- The key finding is that staff are recommending approval as the request meets the 4 tests of a Minor Variance under the Planning Act.
- 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:**

In 2023, Council approved Official Plan Amendment (OPA 125) and Zoning By-law Amendment (By-law 2023-033) to allow for the infill re-development of a 6 storey, 65-unit multiple dwelling.

Since those approvals in 2023, the City advanced the implementation of the Growing Together project that introduced Strategic Growth Area policy designations and zoning. The subject lands were redesignated 'Strategic Growth Area A' and zoned 'Strategic Growth Area 2 (SGA-2)'. The new zoning framework permits an 8 storey building with no parking requirements or maximum Floor Space Ratio. Following Council approval of Growing Together, the site plan was updated to align with the SGA-2 zoning. The site plan now shows 8 storeys and 95 units on essentially the same building footprint and same amount of parking – (see Figure 1). Unfortunately, the ZBA intended to implement the Growing Together zoning, was appealed to the OLT and is not yet in effect. Therefore, the subject lands are dual zoned under 85-1 and By-law 2019-051 pending the approval of Growing Together zoning by the OLT.

As additional building height, FSR and a minor reduction in the rear yard setback (19 metres to 18 metres) do not align with the 85-1 zoning as amended, the owner is asking for minor variances keeping in mind once Growing Together is in effect, the variances will no longer be required as the new zoning will allow the changes as-of-right. The applicant wishes to advance the request now given the uncertainty of timing around OLT approvals, which is delaying final approvals. Should the appeals be resolved prior to the Committee's decision, then the owner will withdraw his application.

The property is designated 'Strategic Growth Area (SGA) 'A' in the City's Official Plan and is dual zoned 'Mixed Use Two Zone with Special Regulation Provision 786 (MU-2, 786R)' in Zoning By-law 85-1 and 'Strategic Growth Area Two Zone (SGA-2)' in Zoning By-law 2019-51.

The purpose of the application is to seek relief from MU-2, Special Regulation Provision 786R of Zoning By-law 85-1 as follows:

1. An increase in the maximum permitted Floor Space Ratio (FSR) from 2.4 to 2.8, or alternatively that no maximum FSR be applied given the removal of a maximum FSR in the SGA-2 zone;
2. A reduction in the rear yard setback from 19 metres to 18 metres; and,
3. An increase in maximum permitted building height excluding rooftop mechanicals from 21 metres to 28 metres.

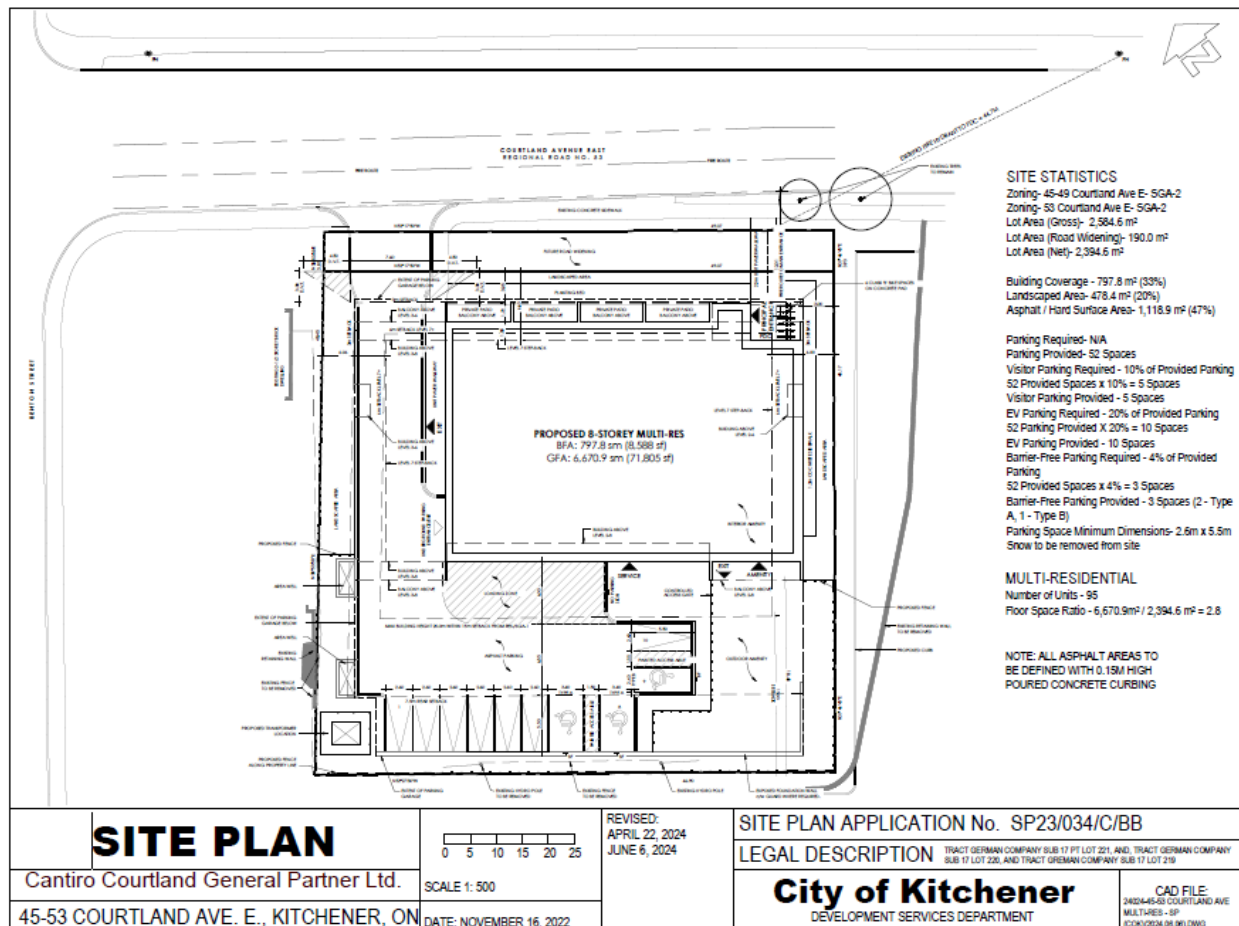


Figure 1 - Conditionally Approved Site Plan

Staff conducted a site visit on February 28, 2025.



Figure 2 – Photo of the Subject Property

## **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 new SGA 'A' land use designation under City-initiated Official Plan Amendment OPA 49 allows for low to medium density buildings up to 8 storeys in height, no FSR limit or no parking required because it is located within a Protected Transit Station Area. OPA 49 was not appealed and is in full force and effect.

Accordingly, the general intent of the Official Plan is maintained.

#### General Intent of the Zoning By-law

The intent of the Zoning By-law is maintained as the 'SGA-2' zoning once in effect will allow for 8 storeys and no FSR as-of-right. As such, the request to vary the height and FSR is technical in nature; the intent to provide for a mid-rise building is being maintained.

The rear yard setback reduction from 19 to 18 metres is due to an architectural design detail that is needed for a ground-support for a balcony above the amenity space at ground level. Because it is now ground-supported the setback is taken at ground-level whereas if the balcony was not ground-supported, the setback is from the building. In the opinion of staff, the intent of allowing providing an enhanced setback to Martin Street properties is being maintained.

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

The effects are minor and technical in nature as the proposed variances reflect the direction of the Council adopted Growing Together SGA-2 zoning while still providing adequate separation from Martin Street properties as intended through the original planning application that was approved in 2023.

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

The variances are appropriate and desirable for the use of the land as the increase in building height and FSR is in line with the Growing Together Planning Framework, and it maintains a mid-rise building form envisioned through the owner's private amendments approved by Council in 2023. It will facilitate the development of additional dwelling units in a Protected Major Transit Station Area and support the City's Housing Pledge.

### **Environmental Planning Comments:**

No concerns.

**Heritage Planning Comments:**

The Kitchener Cultural Heritage Landscape Study (CHLS) dated December 2014 and prepared by The Landplan Collaborative Ltd. was approved by Council in 2015. The CHLS serves to establish an inventory and was the first step of a phased Cultural Heritage Landscape (CHL) conservation process. The property municipally addressed as 45-53 Courtland Ave. E. is located within the Cedar Hill Neighbourhood CHL. The proposed variances are not anticipated to have any major impacts on the cultural heritage value of the Cedar Hill Neighbourhood. As such, staff have no concerns. Staff would, however, encourage that any new development be compatible with the surrounding character of the neighborhood in terms of setbacks, massing, and materials.

**Building Division Comments:**

The Building Division has no objections to the proposed variances. An application has been made for the apartment.

**Engineering Division Comments:**

Engineering has no concerns.

**Parks and Cemeteries/Forestry Division Comments:**

All Parks concerns will be addressed through Site Plan Application SP23/034/C/BB.

**Transportation Planning Comments:**

No concerns.

**Region**

No comments.

**GRCA**

No concerns.

**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-laws 85-1 and 2019-051*
- *DSD-2023-065*
- *DSD-2024-128*