

REPORT TO: Committee of Adjustment

DATE OF MEETING: March 18, 2025

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

PREPARED BY: Adiva Saadat, Planner, 519-783-7658

WARD(S) INVOLVED: Ward 9

DATE OF REPORT: March 4, 2025

REPORT NO.: DSD-2025-116

SUBJECT: Minor Variance Application A2025-024 – 507 Stirling Ave. S.

RECOMMENDATION:

A. Minor Variance Application A2025-024 – 507 Stirling Avenue South

That Minor Variance Application A2025-024 for 507 Stirling Avenue South requesting relief from the following sections of Zoning By-law 2019-051:

- i) Section 4.1 d), to permit an accessory structure to have a building height, to the underside of the fascia, of 4 metres instead of the maximum permitted 3 metres;
- ii) Section 7.3, Table 7-2, to permit a lot coverage of 18% instead of the maximum permitted 15%;

to facilitate the construction of a new accessory building and Additional Dwelling Unit (ADU)(Detached) in the rear yard of the subject property generally in accordance with drawings prepared by KS Consulting & Design, dated January 30, 2025, BE APPROVED, subject to the following conditions:

1. That the Owner provides confirmation, to the satisfaction of the Director of Engineering Services, that the existing services can support the proposed additional demand prior to an application for a Building Permit being received. If the demand cannot be supported, the Owner shall make an Application through the Off-Site Works Process, to the satisfaction of the Director of Engineering Services.
2. That the Owner acknowledges that any new driveways or widenings to existing driveways are to be built to City of Kitchener standards and that the Owner confirms, to the satisfaction of the Director of Engineering Services, if

an application for a Curb Cutting/Driveway Widening Permit is required prior to an application for a Building Permit being received.

3. That the Owner shall:

- a) Prepare a Tree Preservation Plan for the Subject Lands, in accordance with the City's Tree Management Policy, to be approved by the City's Manager, Site Plans and City's Director, Parks and Cemeteries, and where necessary, implemented prior to any grading, servicing, tree removal or the issuance of Demolition and/or Building Permits. Such plans shall include, among other matters, the identification of a proposed building envelope/work zone, a landscaped area and the vegetation to be preserved. If necessary, the plan shall include required mitigation and/or compensation measures.**
- b) That the Owner further agrees to implement the approved plan. No changes to the said plan shall be granted except with the prior approval of the City's Manager, Site Plans**

B. Minor Variance Application A2025-024 – 507 Stirling Avenue South

That Minor Variance Application A2025-024 for 507 Stirling Avenue South requesting relief from the following section of Zoning By-law 2019-051:

- i) Section 4.12.3 n) to permit a required unobstructed walkway of 1.1 metres to share a driveway whereas the by-law does not permit this;**

to facilitate the construction of a new Additional Dwelling Unit (ADU)(Detached) in the rear yard of the subject property generally in accordance with drawings prepared by KS Consulting & Design, dated January 30, 2025, BE REFUSED.

REPORT HIGHLIGHTS:

- The purpose of this report is to review a minor variance application to permit the construction of a new accessory building and Additional Dwelling Unit (ADU)(Detached) in the rear yard
- The key finding of this report is that two of the three requested minor variances meet all four tests of the Planning Act. The variance for the shared unobstructed walkway and the driveway does not meet all four tests of 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:

The subject property is located on the north-east side of Stirling Avenue South and Lorne Avenue. It is in the Southdale neighbourhood which is primarily comprised of low-rise residential uses.



Figure 1: Location Map – 507 Stirling Avenue South (Outlined in Red)

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

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

The purpose of the application is to review a minor variance application to facilitate the construction of a new accessory building and Additional Dwelling Unit (ADU)(Detached) in the rear yard of the subject property. The applicant is seeking three variances:

1. The requested variance to permit a 1.1 metre wide shared walkway is to provide access to the ADU over the driveway. Planning staff advised the applicant to relocate the walkway to the other side of the primary dwelling to meet zoning requirements. Despite the advice, the applicant indicated that they wanted to proceed with the minor variance application to avoid relocating the air conditioner and gas meter in this side yard.
2. The variance to permit 4 metres fascia height is requested to accommodate the height of the proposed accessory building.
3. The variance to permit a lot coverage of 18% is to facilitate the construction of both the ADU and the accessory building as the combined lot coverage exceeds the permitted lot coverage.

Variance for 4m fascia height

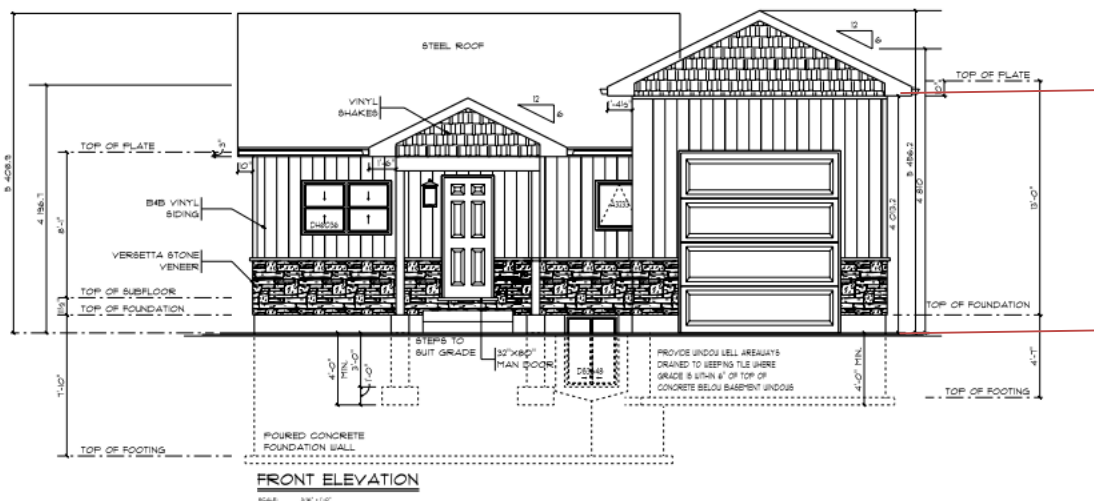


Figure 2: Requested Variance for Accessory Building

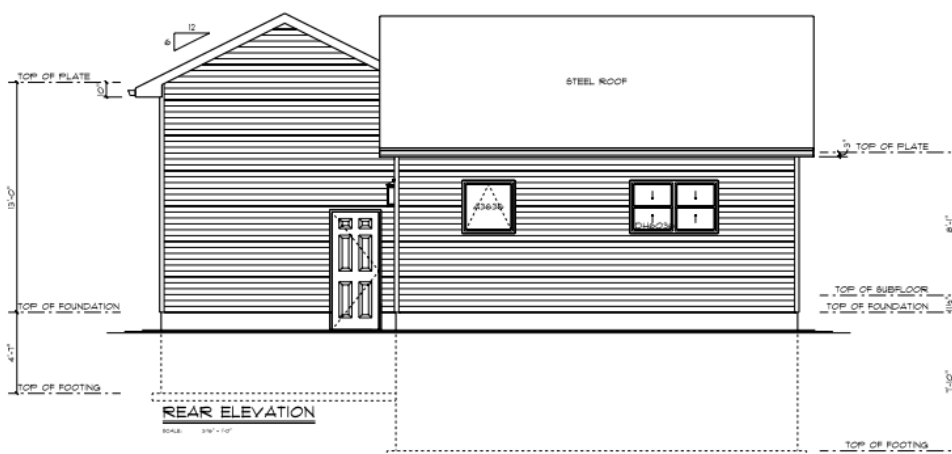


Figure 3: Rear Elevation of Proposed Structures

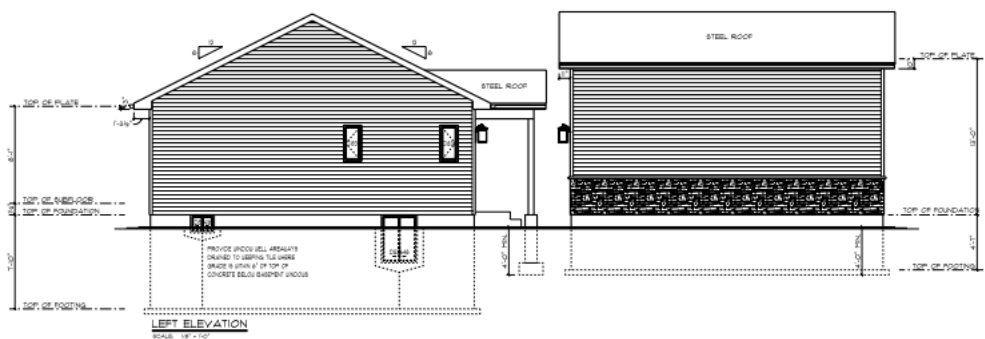


Figure 4: Left Elevation of Proposed Structures

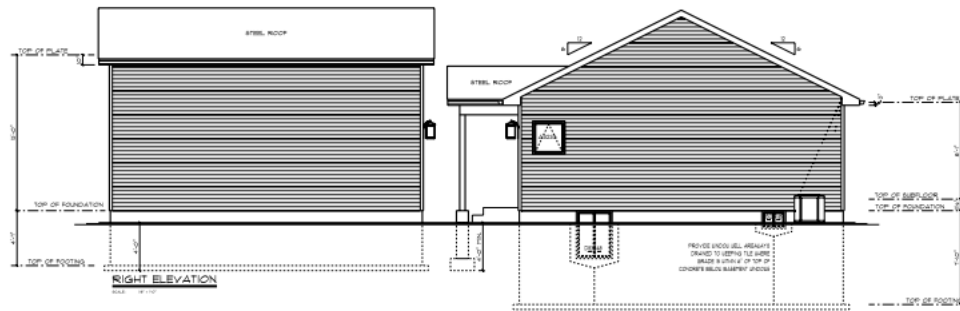


Figure 5: Right Elevation of Proposed Structures

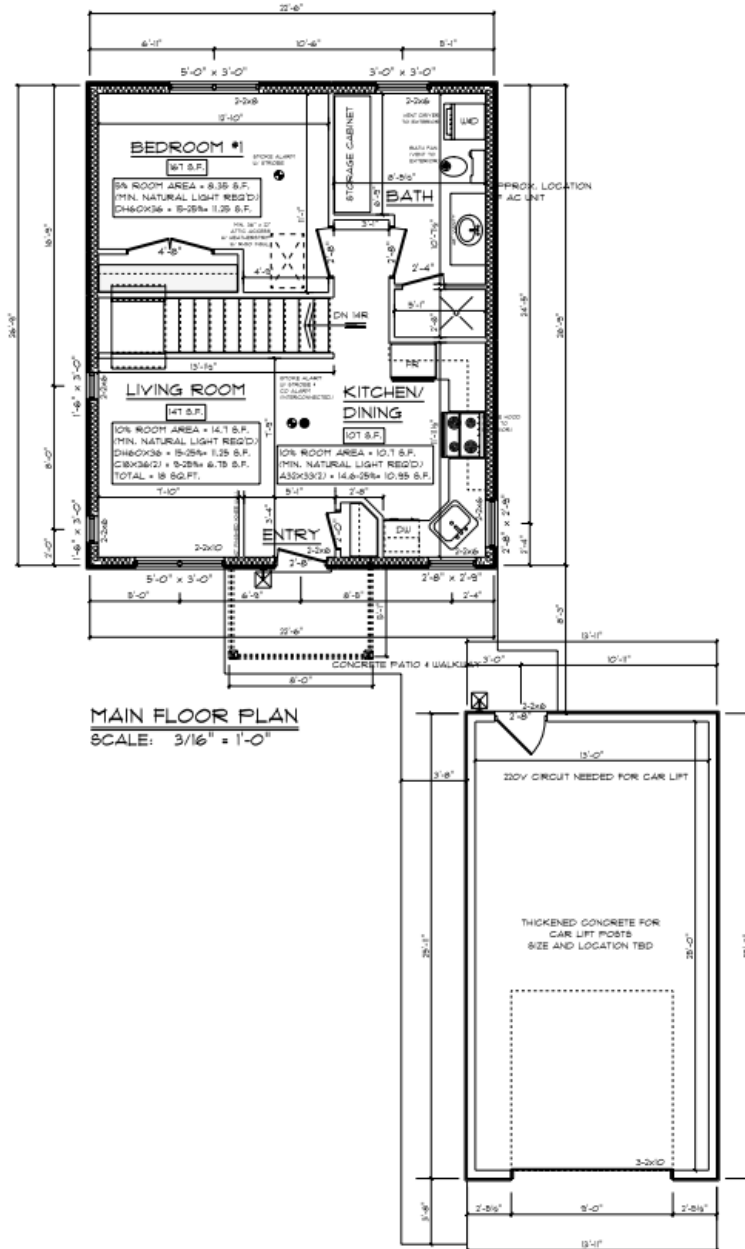
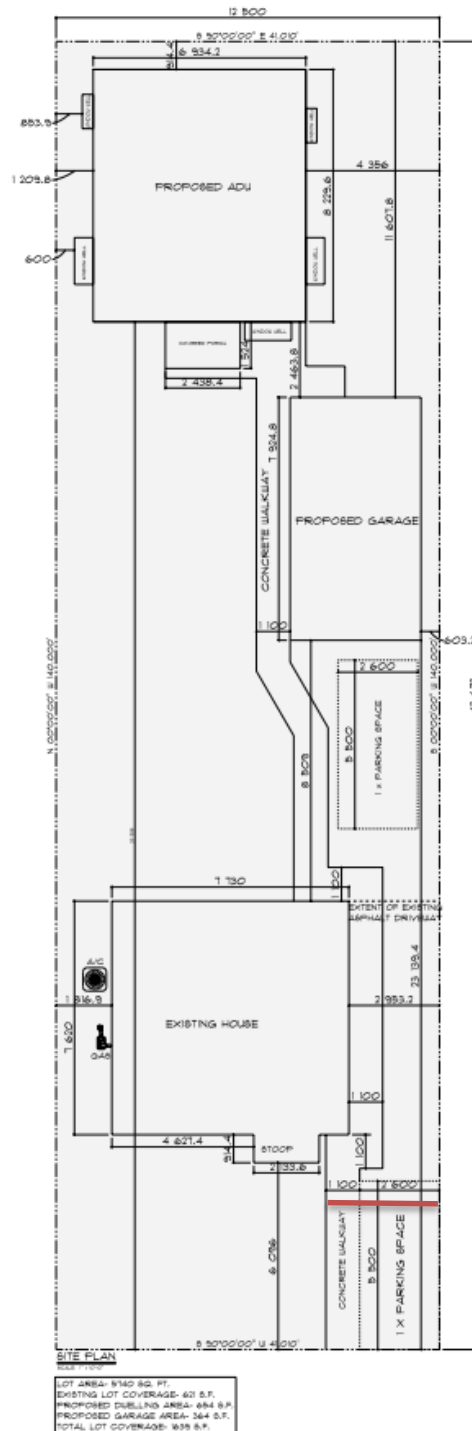


Figure 6: Floor Plan of Proposed Structures



Variance for 1.1m shared walkway

Figure 7: Requested Variances Site Plan

Planning Staff conducted a site visit on February 27, 2025



Figure 8: Existing Site Conditions as of February 27, 2025



Figure 9: Proposed Shared Walkway and Driveway (West Side)



Figure 10: East Side Interior Side Yard



Figure 11: Rear Yard of the 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

Variance for the Walkway

Urban Design Policies 11.C.1.14 and 11.C.1.15 Section 11 of the City's Official Plan emphasize community and site design to prioritize efficient emergency response, fire prevention and public safety.

- 11.C.1.14. Where feasible and in compliance with the other policies of this Plan, the City will ensure that the efficiency of emergency medical, fire, and

police services be considered in the design of communities, neighbourhoods and individual sites.

- 11.C.1.15. Development applications will be reviewed to ensure that they are designed to accommodate fire prevention and timely emergency response.

Also, the City's Urban Design Manual prioritize pedestrian safety by mitigating potential conflicts with pedestrians and vehicles. The proposed 1.1 metre walkway is proposed to be shared with the driveway will not be unobstructed and may block emergency services access. Given this potential conflict, this variance will not meet the intent of the Official Plan.

Variances for the Accessory Building – Fascia Height and Lot Coverage

The subject property is designated 'Low Rise Residential' in the City's Official Plan. This land use designation places emphasis on compatibility of building form with respect to massing, scale, and design in order to support the successful integration of different housing and building types. The proposed accessory building use of the property conforms to the land use designation and is a desirable addition to a residential property. It is the opinion of staff the requested variance meets the general intent of the Official Plan.

General Intent of the Zoning By-law

Variance for the Walkway

The general intent of the Zoning By-law requiring unobstructed walkway is to ensure safe, accessible, and efficient movement for occupants of the ADU and emergency services can access the site efficiently. This includes ensuring that pathways are clear of physical obstacles, such as parked vehicles, debris, or structures, so people can walk freely without risk of injury. The provided walkway is not unobstructed, the Zoning By-law definition which states that the walkway must be "...unencumbered by obstructions including but not limited to: stairs, decks and porches (except those which form part of the path of travel to the principal entrance); parking spaces; driveways;..." In this case, parking spaces and the driveway encumber the walkway. Staff is in opinion that the proposed variance does not meet the general intent of the Zoning By-law.

Variance for the Accessory Building Fascia Height

The intent of the maximum height to the underside of the fascia is to ensure that accessory building is not excessive in height and to ensure neighbouring properties do not have adverse impacts from large rear yard structures. The accessory building will be used strictly for vehicle storage, ensuring that it will not create any privacy concern to the neighbouring properties. Staff is of the opinion that the requested variance meets the general intent of the Zoning By-law.

Variance for Increased Lot Coverage for Accessory Building and Additional dwelling Unit (ADU) (Detached)

The intent of the maximum lot coverage is to ensure that accessory buildings remain secondary to the primary building. If you combine the lot coverage of both the accessory building and the ADU it exceeds the maximum permitted 15% as per Section 7.3, Table 7-2 by 3% or 15 square metres. Despite the combined exceeded lot coverage, the size of

the accessory building and ADU is under the maximum permitted building footprint of 80 square metres. Staff is of opinion that the variance meets the general intent of the Zoning By-law by remaining secondary and accessory to the primary building.

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

Variance for the Walkway

Staff is in opinion that the effects of the variance are not minor in nature. The shared driveway obstructs the walkway, making it inaccessible for emergency vehicles causing a safety issue. As a result of the variance, there will be a conflict between pedestrian and vehicle use as neither walkway nor the driveway will be able to function independently.

Variance for the Accessory Building Fascia Height

The effects of the variance is minor in nature as there are no significant impact on the neighbouring properties. The accessory building with the proposed increased fascia height maintains a sufficient setback of 11.6 metres from the rear lot line which mitigates privacy concerns for the neighbouring properties as well as no windows to overlook the neighbouring property while using the accessory building.

Variance for Increased Lot Coverage for Accessory Building and Additional dwelling Unit (ADU) (Detached)

The variance is minor in nature. The combined 15 square metres increased lot coverage is not noticeable when compared to the overall size of the structures relative to the lot. The ADU and garage are located at the far rear of the property. The increased lot coverage is not noticeable from the streetscape and does not impact the visual appearance of the neighbourhood.

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

Variance for the Walkway

The variance is not desirable for the use of the land. The design creates a conflict between pedestrian and vehicle on site and fails to support a walkable community without providing an unobstructed connection to the street. Occupants and emergency services will not be able to navigate safely which compromises the usability of the land.

Variance for the Accessory Building Fascia Height

The variance is appropriate for the development and use of the land as it will increase the usability of the accessory building on the subject property. The increased fascia height will allow the accessory building to be more functional and allow for efficient storage of vehicles.

Variance for Increased Lot Coverage for Accessory Building and Additional dwelling Unit (ADU) (Detached)

The variance for an increased lot coverage is desirable and appropriate use of the land as it facilitates the construction of an accessory building and an additional dwelling unit (ADU). The increased lot coverage will allow for efficient vehicle storage and improve the usability of the land by accommodating the ADU which contributes to the overall functionality and usability of the property.

Fire Services Comments:

With no legal mechanism to enforce no-parking in the driveway where the walkway is proposed to be located, fire would not support the combined walkway and driveway. The proposal does not comply with the Emergency Services Policy because the ADU is approximately 37 metres from the principal entrance, whereas the emergency service policy restricts this distance to a maximum of 30 metres for dwelling units with direct access to the outside from the unit. If the exit/principal entrance is shared by two or more units that distance is reduced to 15 metres.

Environmental Planning Comments:

No natural heritage. Trees may be impacted in the rear yard by ADU construction. Accordingly, it is recommended that the standard Tree Management Condition be added as a Condition of the Minor Variance Application to ensure there are no negative impacts to trees on adjacent properties.

1. That the Owner shall:

- a) Prepare a Tree Preservation Plan for the Subject Lands, in accordance with the City's Tree Management Policy, to be approved by the City's Manager, Site Plans and City's Director, Parks and Cemeteries, and where necessary, implemented prior to any grading, servicing, tree removal or the issuance of Demolition and/or Building Permits. Such plans shall include, among other matters, the identification of a proposed building envelope/work zone, a landscaped area and the vegetation to be preserved. If necessary, the plan shall include required mitigation and or compensation measures.
- b) That the Owner further agrees to implement the approved plan. No changes to the said plan shall be granted except with the prior approval of the City's Manager, Site Plans.

Heritage Planning Comments:

No comments or concerns.

Building Division Comments:

The Building Division has no objections to the proposed variance provided building permits for the detached ADU and detached garage is obtained prior to construction. Please contact the Building Division at building@kitchener.ca with any questions.

Engineering Division Comments:

1. That the Owner provides confirmation, to the satisfaction of the Director of Engineering Services, that the existing services can support the proposed additional demand prior to an application for a Building Permit being received. If the demand cannot be supported, the Owner shall make an Application through the Off-Site Works Process, to the satisfaction of the Director of Engineering.
2. That the Owner acknowledges that any new driveways or widenings to existing driveways are to be built to City of Kitchener standards and that the Owner confirms, to the satisfaction of the Director of Engineering Services, if an application for a Curb

Cutting/Driveway Widening Permit is required prior to an application for a Building Permit being received.

Parks and Cemeteries/Forestry Division Comments:

No comments or concerns.

Transportation Planning Comments:

Transportation Services does not support the proposed garage or parking space location at the rear of the property. Vehicles accessing the parking space or garage must drive over the walkway, and occupants may not be aware to keep this walkway unobstructed of parked vehicles. Obstructions of the walkway may block emergency services accessing the ADU.

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 2019-051*