

REPORT TO: Committee of Adjustment

DATE OF MEETING: April 15, 2025

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

PREPARED BY: Evan Wittmann, Senior Planner, 519-783-8523

WARD(S) INVOLVED: Ward 10

DATE OF REPORT: April 7, 2025

REPORT NO.: DSD-2025-156

SUBJECT: Minor Variance Application A2025-037 – 265 Breithaupt Street

RECOMMENDATION:

That Minor Variance Application A2025-037 for 265 Breithaupt Street requesting relief from the following sections of Zoning By-law 2019-051:

- i) Section 5.6, Table 5-5, of Zoning By-law 2019-051 to permit a minimum parking supply of 25 spaces whereas 49 are required; and,
- ii) Section 10.2, Table 10-1, of Zoning By-law 2019-051 to add “Fitness Centre” as a permitted use in the ‘EMP-1’ Zone;

to permit the existing use of the KW Badminton Club generally in accordance with drawings prepared by Vinlanda Engineering, dated February 27, 2025, BE REFUSED.

REPORT HIGHLIGHTS:

- The purpose of this report is to review and make a recommendation regarding the minor variance application for 265 Breithaupt Street.
- The key finding of this report is that the variance to add the “Fitness Centre” use does not meet the 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 KC Badminton Club has been a tenant in the current building since early 2019. At that time, Zoning By-law 85-1 was in effect, which zoned the property 'General Industrial Zone (M-2)'. Under this zone, the KC Badminton Club was considered a permitted use under the definition of "Private Club". With the implementation of Zoning By-law 2019-051, the zoning of the subject property changed to 'Neighbourhood Industrial Employment Zone (EMP-1)', which no longer permits a "Private Club" nor a like use that the Badminton Club would fall under the definition of.

Although the Badminton Club is an existing use, they are not considered to be a 'Legal Non-Conforming Use' as they did not obtain a Zoning (Occupancy) Certificate ("ZOC") while Zoning By-law 85-1 was in effect. Section 2.3 of Zoning By-law 85-1 and new Section 1.8 of Zoning By-law 2019-051 establish that no change may be made in the type of use of any land without a Zoning (Occupancy) Certificate ("ZOC").

Although Building Permits were issued prior to the change in zoning, these check for zone compliance, but do not establish use, as outlined in the above noted section of the Zoning By-laws. As no ZOC was issued, the Badminton Club was not established as a 'Legal Non-Conforming Use' when the new Zoning By-law was implemented. Regardless of the status as current tenants and an existing use, a minor variance is required, and the four tests of the *Planning Act* must be assessed. This application seeks to establish the existing use and associated parking to comply with the current Zoning By-law.

The subject property is located on the southern side of Breithaupt Street between Margaret Avenue and St. Leger Street. The CN Rail train tracks abut the subject property to the south.



Figure 1: The Subject Property (Taken March 28, 2025)



Figure 2: Subject Property Aerial (Subject Property In Red)

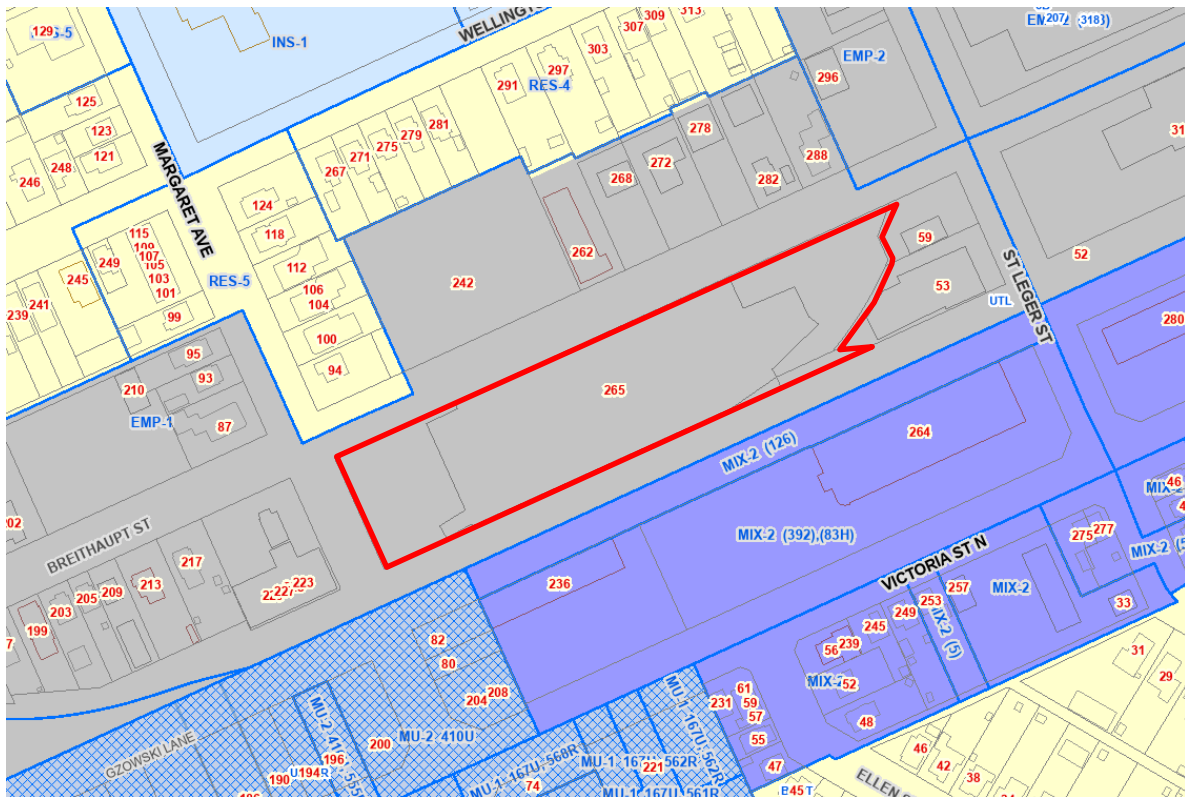


Figure 3: Zoning By-Law 2019-051 (Subject Property In Red)

The property is zoned 'Neighbourhood Industrial Employment Zone (EMP-1)' in Zoning By-law 2019-051. The purpose of the application is to establish a current tenant, the KC Badminton Club, as a permitted use, along with the associated required parking for the use.

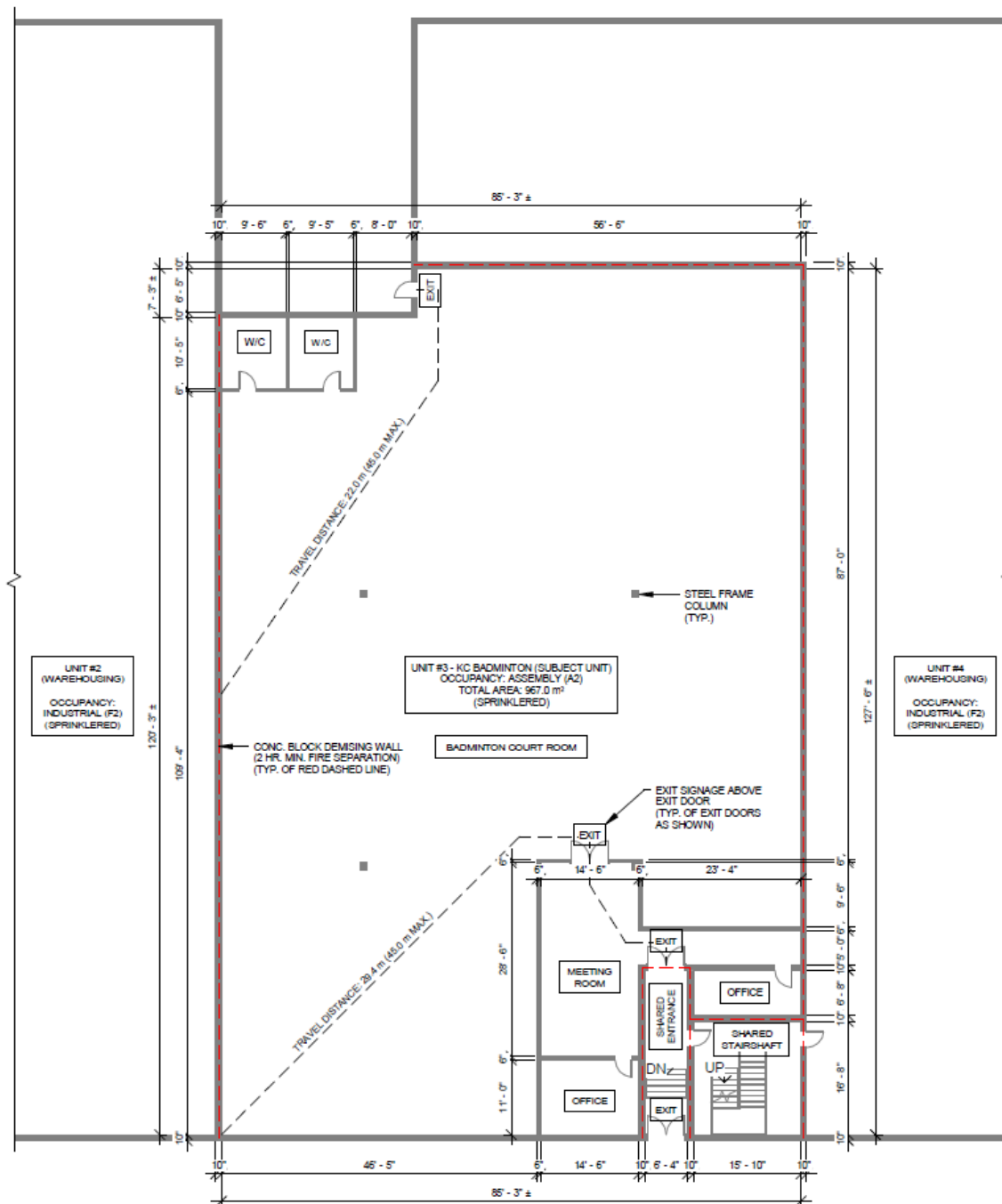


Figure 4: Internal Site Plan

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 as 'General Industrial Employment' on Map 3 of the Official Plan. The general intent of the General Industrial Employment land use designation is to provide for a broad range of industrial uses, some of which by virtue of their operation or site utilization may need to locate within an industrial area or require appropriate buffering to mitigate potential impacts on residential areas. A limited number of accessory or ancillary uses which support the primary function of the General Industrial Employment land use designation are also permitted, including fitness centres, subject to the following criteria:

- i) they are located within a building containing at least one primary permitted industrial employment area use;
- ii) the individual units will not exceed 1,500 square metres of gross floor area; and,
- iii) they will not conflict or interfere with the satisfactory operation and development of the lands for industrial employment area purposes.

The intent of permitting accessory or ancillary uses to industrial uses is generally to support the primary, industrial use on the subject property. For Fitness Centres, this would generally entail a fitness use for staff use to contribute to competitive employment and employee benefits.

Although currently existing, the KC Badminton Club is not an accessory or ancillary use to an existing industrial use on the subject property.

While tangentially permitted, adding a standalone Fitness Centre use does not meet the intent of the Official Plan.

General Intent of the Zoning By-law

The subject property is zoned 'EMP-1' in Zoning By-law 2019-051. The purpose of this zone is to accommodate a limited range of industrial uses on lands located within neighbourhoods and/or Major Transit Station Areas. Under this Zoning By-law, the KC Badminton Club is considered a "Fitness Centre". A Fitness Centre *is* a permitted use within the EMP-1 zone; however, the Fitness Centre must be accessory to a different permitted use, and the individual unit cannot exceed 1,500 square metres of gross floor area, following the policy direction of the Official Plan.

The KC Badminton Club, as it exists, is not accessory to another use in the existing multi-unit building on the subject property.

Although tangentially permitted, the current use does not reflect the general intent of the 'EMP-1' zone for Fitness Centres to not be a standalone use.

The Zoning By-law sets minimum parking rates based on use to ensure that sufficient parking is provided. As badminton courts generally cater to a low participant count for the amount of space they occupy, lower parking rates than required for the general definition of a “Fitness Centre” could be appropriate. Based on current tenant usage, the requested 25 spaces are sufficient to service the Badminton Club and is above current usage. The variance to reduce the required parking meets the general intent of the Zoning By-law.

Are the Effects of the Variance(s) Minor?

Generally, to assess if the effect of a variances is minor, the impacts on the subject property and surrounding areas is considered. As the KC Badminton Club has been operating for several years, no new adverse impacts will result a result of the change to permitted uses. The Badminton Club is sized within the 1,500 square metre maximum for accessory/ancillary recreational uses, and as such, would functionally meet the Zoning By-law had the use been accessory to a different use in the building. No parking complaints have been filed to the City regarding the property based on the current use and parking arrangement. As such, the variances are considered minor in nature.

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

Industrial designated land is intended to contribute to the economic strength of the City, providing land for employment uses that may be less compatible with sensitive land uses, such as residential or institutional uses. Considering the range of zones that permit Fitness Centre uses as-of-right (all Commercial, Mixed-use, and Strategic Growth Area zones), fitness centre uses are more appropriate and desirable in land use designations that are not earmarked for employment use.

Regarding the parking variance, an oversupply of parking contributes to an abundance of paved surfaces, which contributes negatively to environmental and urban design impacts. The requested supply is appropriate for the existing use and is desirable.

Environmental Planning Comments:

No concerns due to the nature of the development (variance for use and parking, no construction/site alteration).

Heritage Planning Comments:

The subject property has no heritage status. However, it is located within the Warehouse District Cultural Heritage Landscape (CHL). 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 requested changes is not anticipated to have an adverse impact on the value of the CHL, and as such, there are no heritage concerns.

Building Division Comments:

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

Engineering Division Comments:

No comment.

Parks and Cemeteries/Forestry Division Comments:

No concerns.

Transportation Planning Comments:

Transportation Services does not support the requested variance to vehicle parking to permit 25 spaces, where 49 are required. Transportation Services did not receive any parking justification for the proposed 50% parking reduction.

GRCA Comments:

GRCA has no objection to the approval of the above applications. The subject properties do not contain any natural hazards such as watercourses, floodplains, shorelines, wetlands, or valley slopes. The properties are not subject to Ontario Regulation 41/24 and, therefore, permission from GRCA is not required.

Region of Waterloo Comments:

No concerns.

Metrolinx Comments:

GO/HEAVY-RAIL – ADVISORY COMMENTS

- The Proponent is advised of the following:

Warning: The Applicant is advised that the subject land is located within Metrolinx's 300 metres railway corridor zone of influence and as such is advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration may affect the environment of the occupants in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual lots, blocks or units.

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*

ATTACHMENTS:

Attachment A – Site Plan

ATTACHMENT A – SITE PLAN

