

City of Kitchener

RE: Committee of Adjustment Meeting April 14, 2025 – 160 Grand River Blvd.

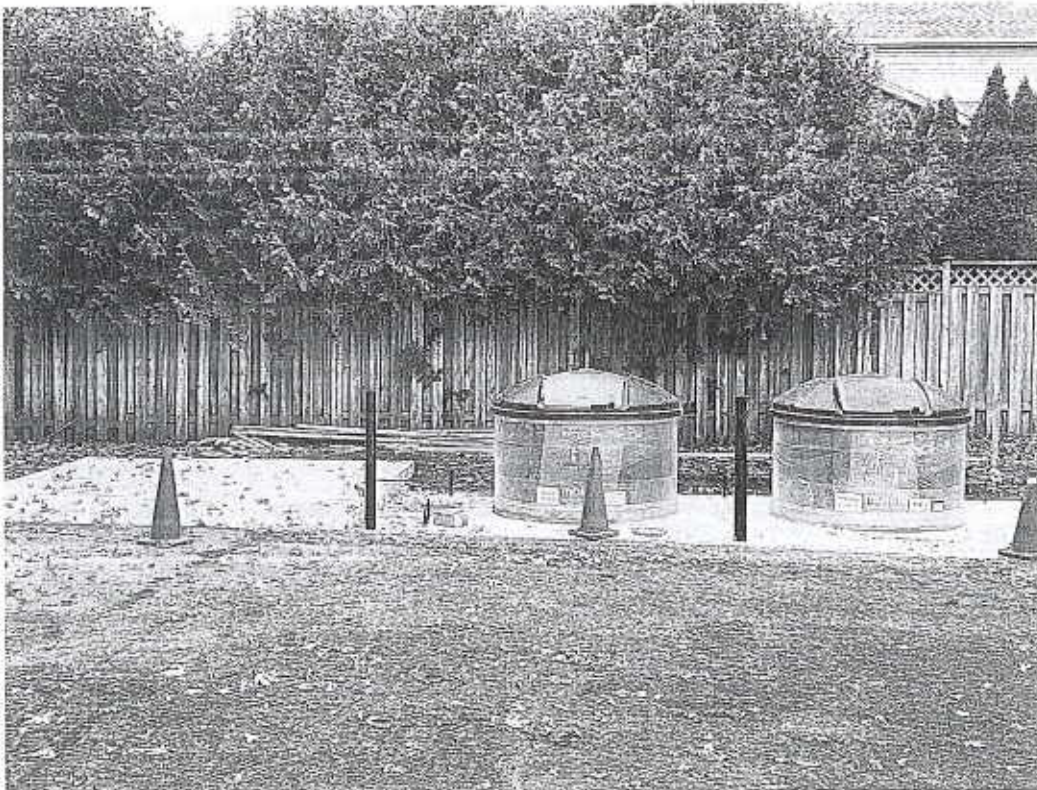
Dear Committee of Adjustment,

I want to begin with the four tests of the Planning Act. The Planning Act in Ontario outlines four tests that a minor variance application must meet to be approved.

1. Is the application minor in nature?

No, this variance is not minor in nature. I could understand misjudging by a few inch or even a foot. The property owners of 160 Grand River Blvd. encroached by 204 inches (17 feet) on one side and 95 inches (7.8 feet) on the other side. There is nothing minor about this variance.

Below are some pictures I sent City of Kitchener staff on November 6, 2023;





The concrete structure and foundation cover just over 25 square meters. As you can see this is not a garbage facility with a separate shed. This is one large structure. If you zoom in you can see the rough-in for hydro to both the shed and the lighting around the garbage containers. The Ontario Building Code does not specifically mention Molok garbage containers unless they are part of a larger structure in which case they have to follow the appropriate zoning set-backs and require a building permit. The intent to build a single structure is clear both during the planning stage and when you see the finished structure on the next page.

I need to note at this point that the City of Kitchener staff did nothing to stop the completion of this structure even after I notified them on November 6, 2023. I will speak about this later.

Below is a pictures of the finished structure;



As you can see through the pictures, this was planed as one structure, from the pouring of the foundation to the rough-in of hydro, to completion of the project. Anyone who tells you this was not planned and completed as one structure is misleading you. This is a garbage complex plain and simple.

The foundation of the structure covers just over 25-square-meters and this type of structure demands a building permit under the Ontario Building Code. A building permit was not obtained.

Let us move on to what is the impact of having a garbage complex 2.3 meters from you property vs 7.5m? The impact is huge for two reasons. The first reason is property value. The further away the garbage facility is from your property the better. If there are two comparable homes in the same area and one backs on to a garbage facility, it is certainly not going to have a higher value. The financial impact is real and obvious. This should not be minimized. The second reason is the rodent infestation problem that I was made aware of during the meeting mentioned in the staff report, which took place on April 3, 2025. During that meeting, the pastor of the church clearly stated, on several occasions, that they had an existing garbage facility that they used for decades, and moved it because of rodent problems. At one point the Director of Zoning for the City of Kitchener asked the pastor this directly to clarify, and the pastor openly stated this fact. This rodent problem is now 2.3 meters away from the properties of neighbours and this is an enormous impact. Property value and otherwise.

In case law it is clear what the test is for impact, severity and necessity of a minor variance -- 1994 Assaraf v. Toronto (City) Comm. of Adj't. 31 O.M.B.R. 257

The case law establish basically three principles;

1. A minor variances a special privilege.

2. It can reduce inflexibility of the zoning bylaw so that undue hardship does not result.
 3. There should be a valid reason why the bylaw requirements cannot be met.
- Below are images of 160 Grand River Blvd and the placement of the garbage facility..



Please take a look at the picture of the property and all the options the owners of 160 Grand River Blvd had for placement of their garbage facility and shed. The previously mentioned case law stated; "There should be a valid reason why the bylaw requirements cannot be met". After looking at the aerial photos there is no reason why the zoning set-back requirements could not have been met. They had countless options for the placement of the garbage facility and shed while maintaining a 7.5m set-back. The previous case law also states that "a minor variances a special privilege". A minor variance is a special privilege predicated on necessity and not a

right to violate set-backs by 17 feet when there is absolutely no need for those actions. Lastly, "It can reduce inflexibility of the zoning bylaw so that undue hardship does not result". There is no undue hardship as the property owner had countless options to place the garbage facility and shed elsewhere on the property. The only hardship and impact is to the affected neighbours. It should be clear that this variance is not minor in nature as there is not one redeeming reason for the neighbours to endure the impact of the property owners actions.

2. Is the general intent and purpose of the Zoning By-law maintained?

No it has not been maintained. In Ontario zoning regulations, a 7.5-meter setback (typically for a rear or side yard) aims to maintain a minimum space between buildings and property lines. The specific intent and purpose can vary depending on the zoning by-law and the type of property, but the general goal is to ensure a healthy and functional living environment. A 7.5-meter setback is specific to this zoning regulation to protect low-rise residential home owners from encroachment to ensure a healthy and functional living environment. Placement of the garbage facility and shed so close to the neighbours, violates the not only the spirit but the intent of this particular zoning. The intent and purpose of the zoning by-law was not maintained.

3. Is the general intent and purpose of the Official Plan maintained?

This section is not applicable to the variance in this situation.

4. Is the variance desirable for the appropriate development or use of the land, building, or structure?

This basically means that the proposed change should be beneficial to the development or use of the property, not just for the applicant, but also considering the broader community.

I have previously went through the impact on the neighbours and the vast number of better options available to the property owner for placement of this structure. I will focus now on an issue that has been ignored by both the property owner and city staff. It relates to safety and location of the garbage facility and shed which is one structure. Take a look at the pictures below and it will become obvious that there was zero consideration given to the safety of the community when it came to the placement of the garbage facility. I am documenting this so that it is public record. If an incident were to ever occur, both city staff and the committee of adjustment were made aware of this issue.





I will give some background about this situation. The property owner would have had to fill out a site plan application in 2023 for the expansion of the existing garage facilities. The property owner would have been obligated to disclose in 2023 that the current garage is being used as a garbage facility (with a rodent infestation problem). If the property owner would have included that information in the application (the application asks about garbage facilities), then it would have triggered a review process for placement of the new garbage facility. It seems that did not happen and they stuck the garbage in probably one of the most dangerous places on the property, from a visibility point of view. Whatever the problem was with the application or city staff follow-up in 2023, the property owner avoided engaging with the transportation department. I find it hard to believe they didn't know their preferred location was unsafe. The current location of the garbage and shed structure, are one of the only places on the property where you are completely blinded on one side as you reverse out after picking up the garbage. The placement couldn't be worse. Also, doing things this way, the property owner made sure that they made zero compliance with the urban design manual, which is part of the process.

So if you ask me was the change beneficial to the development or use of the property, not just for the applicant, but also considering the broader community --- the answer is NO.

To conclude this section, I want to say that this part of my submission is the most crucial. The Planning Act in Ontario outlines four tests that a minor variance application must meet to be approved. If the property owner failed any one of the tests then the variance cannot go forward.

I would like to inform the committee what I learned during my meeting on April 3, 2025 with city staff and the property owner. The lead person representing the church is Ps Andrei Balulescu. Mr. Balulescu, made it known during our meeting on April 3, 2025, that he not only had the same undergraduate degree from UofW as the director of zoning for the City of Kitchener, but he had also obtained his master's degree from UofW. This man obviously has a far greater understanding of how the processes works than most people. Mistakes made by the property owner in terms of zoning, set-backs or any other part of the process cannot be attributed to a lack of knowledge.

City staff in their report wrote; "The most recent Site Plan Application SP24/039/G/AA seeks to recognize the existing front fence, deep well waste collection area, and accessory shed".

I would like to speak about the fence. In 2023, the property owner decided to have the fence built at the front of the church in violation of the fencing by-law, by several feet in height. I suspect they knew that the neighbours may not agree to what the church was proposing so they just had it built. In order to work this violation into the site plan without going through public consultation -- City staff are relying on the Fence By-law. Chapter 15; "***a fence or privacy screen which is required and approved as a condition of development or redevelopment of land***". It should be obvious to everyone that this fence was not "***required as a condition***" of anything, as the church built the fence that they wanted in violation of the fencing by-law to avoid the public process and feedback. The only article that applies is Article 2 - Fences - Contrary To Regulation; "***No person shall erect, construct or permit to be erected or constructed, any fence that does not comply with the provisions of this Chapter.***" and "***No owner shall have, allow to remain, or fail to remove a fence that does not comply with the provisions of this Chapter.***" City of Kitchener zoning staff decided to forgo the usual public process for fence variance. The public had zero input and the City of Kitchener is obligated to allow for that process. The City of Kitchener needs to open up this process and allow every abutting property to have a say. Following the process as per the by-law, to allow constituents the right to voice their concerns, is something that should not be taken lightly. It doesn't matter if the fence is already built, the public should still be engaged and allowed to have their say.

I realize that the matter at hand is the zoning and set-back issue. However, city staff included this in the report and I would like to bring this to your attention.

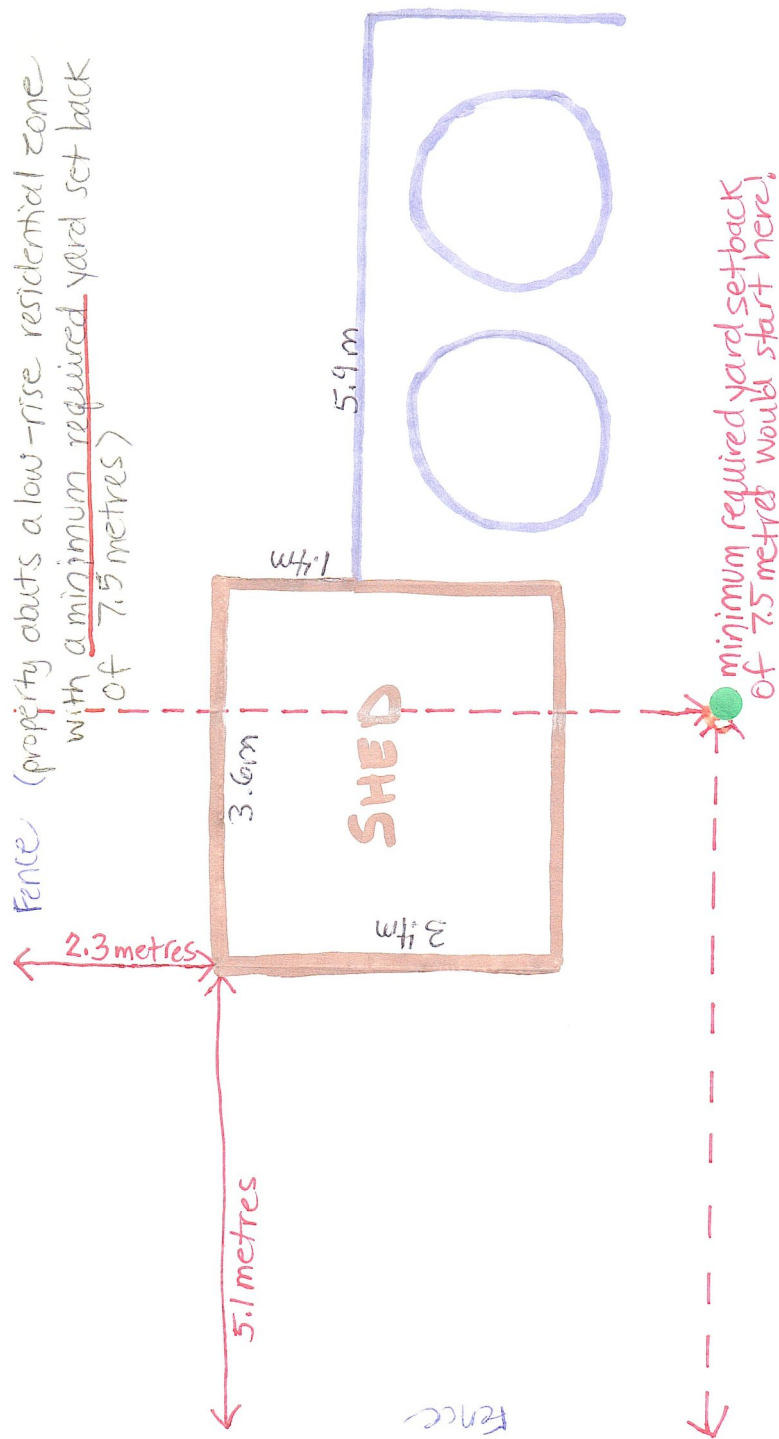
Lastly I want to conclude by going back to previously mentioned case law; "***There should be a valid reason why the bylaw requirements cannot be met***". After looking at the aerial photos there is no reason why the zoning set-back requirements could not have been met. There were countless options for the placement of the garbage facility and shed while maintaining a 7.5m set-back. Also the case law stated that "***a minor variances a special privilege***". A minor variance is a special privilege predicated on necessity and not a right to violate set-backs by 17 feet when there was absolutely no need for those actions.

The property owner failed the prescribed minor variance tests under the Planning Act and should not be rewarded.

Thank you for your consideration.

Take care,
Alex Paroski

Appendix A



Appendix B

On Dec 19, 2023, at 9:59 AM, Arwa Alzoor <Arwa.Alzoor@kitchener.ca> wrote:

Good morning Alex,

I trust this email finds you well.

Following up on our last conversation, the Church located at 160 Grand River Blvd is preparing another site plan application to capture all the new changes that were introduced after their last application, including the moloks and the accessory shed

The shed has to comply with a setback of 3.0 m . I have to check the location and the shed size in order to confirm compliance or if it requires any other review processes

I hope this answers your questions and your concerns. Please let me know if you have any additional questions.

Regards,

Arwa Alzoor

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