

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** September 17, 2024

**SUBMITTED BY:** Tina Malone-Wright, Manager, Development Approvals  
519-741-2200 ext. 7765

**PREPARED BY:** Sean Harrigan, Senior Planning Technician, 519-741-2200 ext. 7292

**WARD(S) INVOLVED:** Ward 9

**DATE OF REPORT:** September 9, 2024

**REPORT NO.:** DSD-2024-422

**SUBJECT:** Minor Variance Application A2024-075 - 96 Wood Street

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## **RECOMMENDATION:**

That Minor Variance Application A2024-075 for 96 Wood Street requesting relief from the following Sections of Zoning By-law 2019-051:

- i) Section 6, Table 6-3, as amended by By-law 2024-065, to permit a Multiple Dwelling on a lot area of 393 m<sup>2</sup> instead of the minimum required 450 m<sup>2</sup>;
- ii) Section 6, Table 6-3, as amended by By-law 2024-065, to permit a minimum front yard setback of 3.8 metres instead of the minimum required 4.5 metres;
- iii) Section 6, Table 6-3, as amended by By-law 2024-065, to permit a minimum exterior side yard setback of 2.5 metres instead of the minimum required 4.5 metres;
- iv) Section 6, Table 6-3, as amended by By-law 2024-065, to permit a maximum building height of 12 metres instead of the maximum permitted building height of 11 metres; and
- v) Section 4.5.a) to permit a 1.83 metre (6 foot) fence within one side of the Driveway Visibility Triangle (DVT) instead of the maximum permitted height of 0.9 metres;

to facilitate the development of an 8-unit Multiple dwelling, generally in accordance with drawings prepared by Masri O Inc. Architects, dated October 18, 2023, revised August 2, 2024, BE DEFERRED until December 10, 2024, or earlier, in accordance with the following:

1. That the Owner/Applicant prepare, submit and obtain approval of a Tree Protection and Enhancement Plan to demonstrate full protection of City-owned street trees adjacent to this property, that these trees will be protected to City standards throughout demolition and construction as per Chapter 690 of the

current Property Maintenance By-law, and that the requested minor variances would meet the 4 tests in the Planning Act.

2. That the Owner/Applicant prepare, submit and obtain approval of a Planning Justification Report to demonstrate how the proposal will meet the Official Plan Policies for the Gildner Green Neighbourhood Cultural Heritage Landscape, with particular attention to Policies 11.C.1.35 and 15.D.2.5, and having regard for the Tree Management and Enhancement Plan, to support that the requested minor variances would meet the 4 tests in the Planning Act.

#### REPORT HIGHLIGHTS:

- The purpose of this report is to review the requested minor variances to allow for the development of an 8-unit Multiple Dwelling on 96 Wood Street.
- The key finding of this report is that staff are not satisfied that the proposed development is appropriate for this area and property until the applicant demonstrates that the existing City trees will be preserved through a study prepared by a qualified professional and that the proposal will meet the Cultural Heritage Policies for the Gildner Green Neighbourhood Cultural Heritage Landscape.
- 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 in the K-W Hospital neighbourhood and is situated on the northwest corner of the intersection of Wood Street and York Street. The property has approximately 28 metres of frontage on York Street and 17 metres of frontage on Wood Street. The property currently contains a single detached dwelling and detached garage, both which will be removed. There is also an existing fence located within the City boulevard along York Street.



Figure 1: Location Map

The subject property is identified as a 'Major Transit Station Area' on Map 2 – Urban Structure and was previously designated 'Low Rise Conservation' in the K-W Hospital Neighbourhood Plan as shown on Map 18 – Secondary Plan in the City's 1994 Official Plan. Recently, the property's land use designation changed to 'Strategic Growth Area A' with the adoption of By-law 2024-062 and approval of OPA 49 by the Region of Waterloo.

The property is currently zoned 'Residential Five Zone, Special Use Provision 129U (R-5, 129U)' in Zoning By-law 85-1. The property will be zoned 'Strategic Growth Area One (SGA-1)' once the appeal to By-law 2024-065 is resolved and this by-law comes into full force and effect.

The purpose of the application is to review minor variances to allow for the development of an 8-unit Multiple Dwelling. The proposed Multiple Dwelling is not a permitted use under the current 'R-5' zone but will be permitted under the new 'SGA-1' zone. The proposed 8-unit Multiple Dwelling requires the following variances:

- A lot area of 393 m<sup>2</sup>.
- A front yard setback of 3.8 metres.
- An exterior side yard setback of 2.5 metres.
- A building height of 12 metres.
- To permit 1.8 metre high fence within the Driveway Visibility Triangle (DVT).

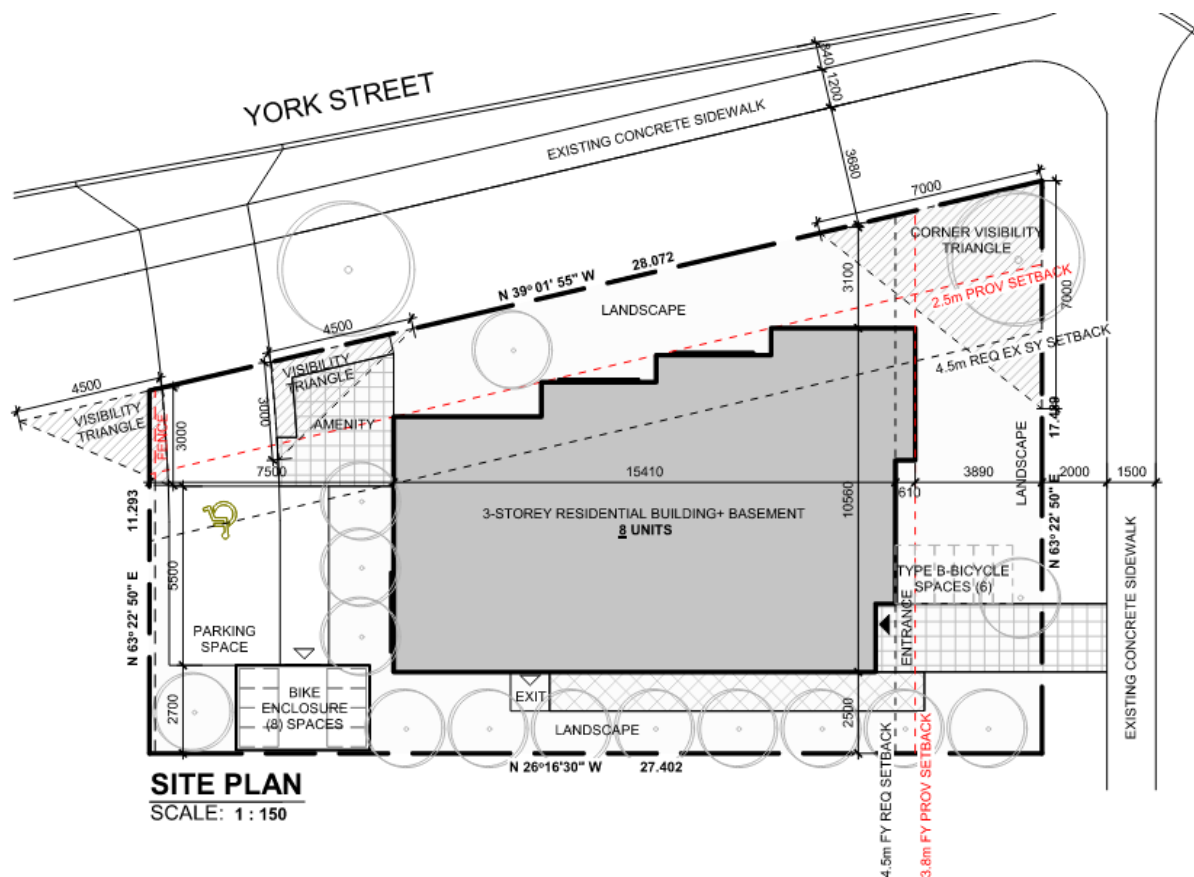
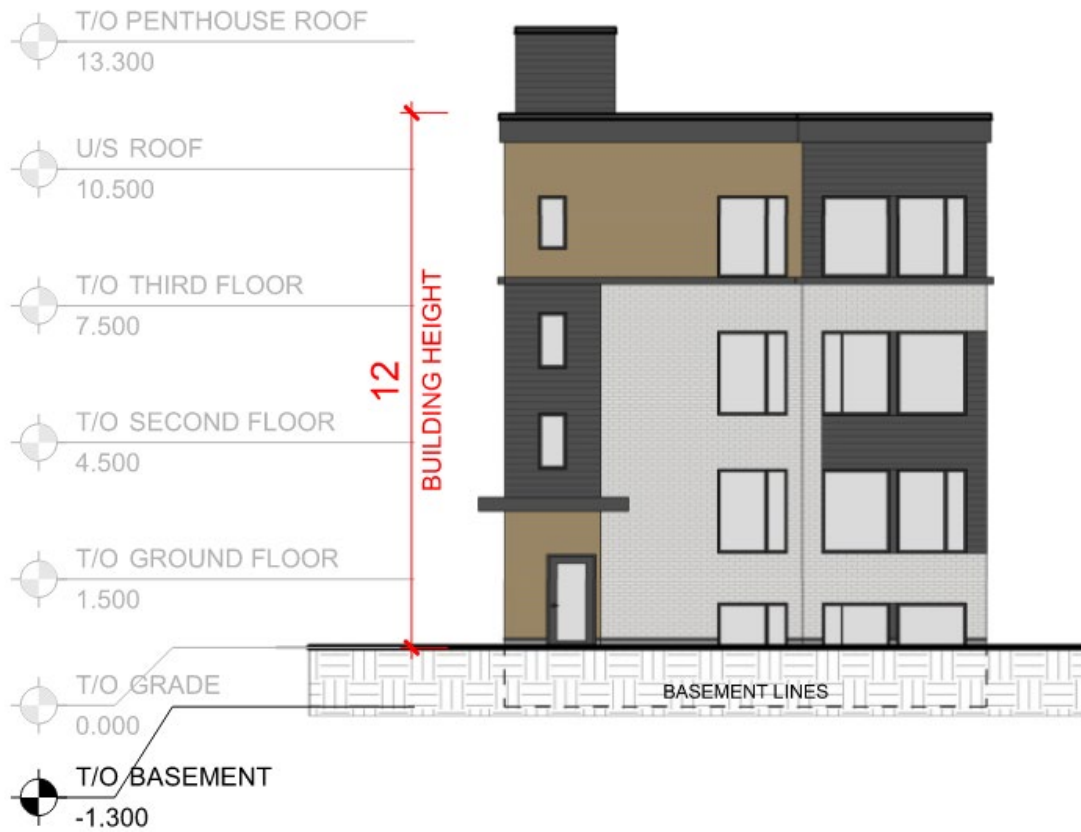


Figure 2: Site Plan



**Figure 3: Building Elevation (Wood Street Façade)**



**Figure 4: Front of Existing House (Wood Street Façade)**



**Figure 5: Existing Driveway and Detached Garage**



**Figure 6: Existing House and Wood Street Streetscape**



**Figure 7: York Street Facing North Directly Beside Subject Property**



**Figure 8: Proposed Driveway Location between City tree and Utility Box**



**Figure 9: Location of City Trees**

**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:

The proposed 8-unit Multiple Dwelling is not permitted under the current 'R-5' Zone but will be permitted once the new 'SGA-1' Zone comes into full effect. As such, the requested minor variances were reviewed against the 'SGA-1' Zone and associated Official Plan amendment.

General Intent of the Official Plan

Official Plan Amendment (OPA) 49 (By-law 2024-062) incorporated modifications to the text and mapping of the Official Plan in order to implement a new land use planning framework for seven of the City's ten Protected Major Transit Station Areas. This Official Plan amendment changed the subject property's designation to 'Strategic Growth Area A'. Strategic growth area land use designations are applied within the Urban Growth Centre and Protected Major Transit Station Areas. These lands will provide opportunities for all housing types and a range of commercial, employment, and institutional uses to create complete communities. Lands within Protected Major Transit Station Areas shall be planned to achieve minimum densities, with the target for Grand River Hospital Station being 160 residents and jobs combined per hectare as per Section 3.C.2.18. as amended

by OPA 49. The proposed development will have 203 residents per hectare and will contribute to the diversity of housing types.

As per Official Plan Section 11.C.1.37., as amended by OPA 49, the City will require development and/or redevelopment in a Protected Major Transit Station Area to support and contribute to a high quality public realm. To do this, the City will require a high quality public realm at grade which includes sidewalks, street furniture, street trees, and landscaping. The City will also require developments to support, maintain and/or increase the tree canopy, where possible, to support Kitchener's Sustainable Urban Forestry Strategy. The subject property currently abuts several mature City trees, as shown in Figure 9, that form an essential component of the streetscape character in addition to contributing to the high quality public realm, as shown in Figures 5-8. The proposed 8-unit Multiple Dwelling with reduced front and exterior side yard setbacks appears to encroach into the critical root zone of these mature City trees which poses a significant risk to their immediate and long-term retention. Ensuring the retention of these trees is critical to satisfying this Official Plan policy and as such, staff must recommend refusal for the variances until the applicant demonstrates that all City trees will be retained.

Official Plan policy 15.D.2.5., as amended by OPA 49, states that site specific applications which seek relief from the implementing zoning through a minor variance will consider the compatibility with the planned function of the subject lands and adjacent lands, suitability of the lot for the proposed use and/or built form, and other contextual or site specific factors, amongst other requirements. As noted above, the planned function of the property and adjacent lands is intensification with a clear requirement for maintaining and enhancing the streetscape character, particularly as it relates to City trees. As for the suitability of the lot, the subject property is undersized for the proposed development and built form as required by the Zoning By-law. The property might be suitable for the Multiple Dwelling despite it being undersized, but only if the undersized lot area does not negatively impact the streetscape character and City trees. As mentioned above, staff have significant concerns that the proposed development will negatively impact and require removal of the City trees. As such, staff are of the opinion that the general intent of this policy cannot be satisfied until the applicant demonstrates that the City trees will remain through an acceptable report and/or plan.

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

The general intent of the Zoning By-law with respect to required lot area, setbacks, and building height is to ensure the built form is compatible with the existing neighbourhood and planned function for the property, has sufficient landscaping and outdoor amenity space, and to prevent over development. To this regard, the proposed 8-unit Multiple Dwelling is keeping with the planning function for this area, but there are significant concerns that the reduced lot area and setbacks along with the increase in building height is over development for this property and neighbourhood. If the applicant can clearly demonstrate through a qualified professional that the streetscape character and City trees will remain unchanged, then staff would be satisfied that the general intent of the Zoning By-law is maintained.

The general intent of the driveway visibility triangle is to ensure the safety of pedestrians and vehicles when residents are entering or leaving the parking spot. Transportation staff are satisfied that the proposed obstruction within the driveway visibility triangle does not

compromise safety and that the general intent of the Zoning By-law is maintained for this specific variance.

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

The potential individual and cumulative impact of the minor variances for lot area, building height, and setbacks is dependent on whether the City trees will be retained. If the City trees are removed, the massing and built form resulting from the multiple variances for the proposed 8-unit Multiple Dwelling will have a considerable impact on the existing neighbourhood character and appear out of place when compared to surrounding properties. As such, staff are not satisfied the effects of the proposed variances are minor in nature until the applicant provides evidence that the City trees will remain.

Regarding the driveway visibility triangle, staff are satisfied the proposed variance is minor in nature given the existing fence and only 1 parking space is proposed.

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

The surrounding properties on York Street and Wood Street have similar front yard setbacks to what is proposed on the subject property. However, these surrounding properties have singled detached dwellings approximately 2 to 2.5 storeys in height with traditional sloped roofs and mature trees located between the dwelling and travelled road. The proposed development is 4 storeys in height with a flat roof and significantly more residential units than surrounding properties and what is permitted on the current lot size. This increase in massing resulting from the cumulative effect of the proposed variances is a substantial deviation from the existing neighbourhood character that is further amplified if the City trees are removed. However, if the City trees are retained, the visual buffer afforded by the canopy coverage will mitigate potential negative impacts from the individual and cumulative effects of the proposed variances and help ensure the Multiple Dwelling is appropriate development for the long term. With that said, staff are not satisfied the proposed development is appropriate until the applicant proves the City trees will be retained.

**Environmental Planning Comments:**

A number of trees are City street trees and parks/Forestry should advise on the proposal and conditions. A tree on 85 Mount Hope that has potential for shared ownership with the subject site should also be assessed for impact from the proposed development. Forestry may wish the applicant to so assess the street trees as part of a Tree Management Plan.

**Heritage Planning Comments:**

The property municipally addressed as 96 Wood Street is located within the Gildner Green Neighbourhood Cultural Heritage Landscape, per the Kitchener Cultural Heritage Landscape Study (CHLS) dated December 2014 and approved by Council in 2015.

The Gildner Green Neighbourhood Cultural Heritage Landscape was recently identified as a Cultural Heritage Landscape on Map 9 – Cultural Heritage Resources in the 2014 Official Plan by OPA 49 – Growing Together.

The CHLS identifies the attractive and consistent public realm linked by streetscape, mature trees, and grass boulevards to be a character defining features of this area.

The following policies apply:

- 11.C.1.35. New development or redevelopment in a cultural heritage landscape will:
- a) support, maintain and enhance the major characteristics and attributes of the cultural heritage landscape further defined in the City's 2014 City of Kitchener Cultural Heritage Landscapes;
  - b) support the adaptive reuse of existing buildings;
  - c) be compatible with the existing neighbourhood, including but not limited to the streetscape and the built form; and,
  - d) respond to the design, massing and materials of the adjacent and surrounding buildings.
- 12.C.1.10. The City will require the conservation of significant cultural heritage landscapes within the city.
- 15.D.2.5. Notwithstanding policies 4.C.1.8 and 4.C.1.9, site specific applications which seek relief from the implementing zoning through a minor variance(s) or amendment to the Zoning By-law, and/or seek to amend this Plan will consider the following factors:
- a) compatibility with the planned function of the subject lands and adjacent lands;
  - b) suitability of the lot for the proposed use and/or built-form;
  - c) lot area and consolidation as further outlined in Policy 3.C.2.11;
  - d) compliance with the City's Urban Design Manual and Policy 11.C.1.34;
  - e) cultural heritage resources, including Policy 15.D.2.8; and,
  - f) technical considerations and other contextual or site specific factors.
- 15.D.2.29. All development or redevelopment will embrace, celebrate and conserve the Cultural Heritage Resources in the Urban Growth Centre (Downtown) and Protected Major Transit Station Areas and will be subject to the Cultural Heritage Resources Policies in Section 12 and subject to any other supporting documents, adopted by Council, including Heritage Conservation District Plans.

Through Section 11.C.1.35 of the amended Official Plan, "New development or redevelopment in a cultural heritage landscape will a) support, maintain and enhance the major characteristics and attributes of the cultural heritage landscape further defined in the City's 2014 City of Kitchener Cultural Heritage Landscapes and c) be compatible with the existing neighbourhood, including but not limited to the streetscape and the built form." As such, Heritage Planning staff have concerns related to the possible encroachment or risk to the mature City trees which abut the subject property. The retention and maintenance of these trees should be ensured through the completion of a Tree Management Plan with demonstration through a Planning Justification Report that the proposal will comply with Policies 11.C.1.35 and 15.D.2.5.

**Building Division Comments:**

The Building Division has no objections to the proposed variance provided building permit for the new residential building is obtained prior to construction. Please contact the Building Division at [building@kitchener.ca](mailto:building@kitchener.ca) with any questions.

**Engineering Division Comments:**

No concerns.

**Parks/Operations Division Comments:**

There are several large City owned street trees adjacent to this property and these trees should be protected to City standards throughout demolition and construction as per Chapter 690 of the current Property Maintenance By-law. Suitable arrangements including the **submission and approval of a Tree Protection and Enhancement Plan showing full protection for existing trees; an ISA valuation of City-owned trees and any required securities or compensation for removed trees will be required to the satisfaction of Parks and Cemeteries prior to the issuance of a Building Permit.**

Please see Urban Design Manual Part C, Section 13 and [www.kitchener.ca/treemanagement](http://www.kitchener.ca/treemanagement)

There are existing encroachments onto City lands as shown in the survey included in the Committee of Adjustment application. These encroachments should be removed entirely and complete restoration of public property to City standards will be expected through the off-site works related to the Building Permit application.

**Transportation Planning Comments:**

Transportation Services have no concerns with the encroachment into the driveway visibility triangle as this is an existing condition with the neighbouring property at 85 Mt. Hope Street.

**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 Policy Statement (PPS 2020)*
- *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020*
- *Regional Official Plan*
- *Official Plan (2014)*
- *Official Plan Amendment 49 (By-law 2024-062)*
- *Zoning By-law 2019-051*
- *Zoning By-law Amendment 2024-065*