

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** July 15, 2025

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

**PREPARED BY:** Sean Harrigan, Senior Planning Technician, 519-783-8934

**WARD(S) INVOLVED:** Ward 3

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

**REPORT NO.:** DSD-2025-311

**SUBJECT:** Minor Variance Application A2025-067 – 38 Fifth Ave. (Right)  
Minor Variance Application A2025-068 – 38 Fifth Ave. (Left)

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**RECOMMENDATION:**

**A. Minor Variance Application A2025-067 (Right Half – Unit A)**

That Minor Variance Application A2025-067 for 38 Fifth Avenue requesting relief from the following Sections of Zoning By-law 2019-051:

- i) To permit a Semi-Detached Dwelling use where the Semi-Detached Dwelling Units are divided vertically by a shared driveway and common wall above the driveway extending to the roofline;
- ii) Section 5.4. e) to permit a minimum driveway width of 1.5 metres instead of the minimum required 2.6 metres;
- iii) Section 5.4. f) to permit a maximum driveway width of 8.5 metres in the rear yard instead of the maximum permitted 8 metres; and
- iv) Section 7.3, Table 7-3, to permit a maximum building height of 11.5 metres instead of the maximum permitted 11 metres;

to facilitate the development of the right side of a new type of Semi-Detached Dwelling use generally in accordance with drawings prepared by John MacDonald Architect, dated April 2, 2025, revised June 17, 2025, BE APPROVED.

**B. Minor Variance Application A2025-068 (Left Half – Unit B)**

That Minor Variance Application A2025-068 for 38 Fifth Avenue requesting relief from the following Sections of Zoning By-law 2019-051:

- i) To permit a Semi-Detached Dwelling use where the Semi-Detached Dwelling Units are divided vertically by a shared driveway and common wall above the driveway extending to the roofline;
- ii) Section 5.4 e) to permit a minimum driveway width of 1.5 metres instead of the minimum required 2.6 metres;
- iii) Section 5.4 f) to permit a maximum driveway width of 8.5 metres in the rear yard instead of the maximum permitted 8 metres; and
- iv) Section 7.3, Table 7-3, to permit a maximum building height of 11.5 metres instead of the maximum permitted 11 metres;

to facilitate the development of the left side of a new type of Semi-Detached Dwelling use generally in accordance with drawings prepared by John MacDonald Architect, dated April 2, 2025, revised June 17, 2025, BE APPROVED.

#### **REPORT HIGHLIGHTS:**

- The purpose of this report is to review Minor Variance Applications for a proposed new style of Semi-Detached Dwelling with a shared driveway and increased building height.
- The key finding of this report is that the requested variances satisfy the Four Tests of the Planning Act and staff recommend approval of the applications.
- 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 west side of Fifth Avenue between Kingsway Drive to the north and Connaught Street to the south. The property currently contains a Single Detached Dwelling with approximately 18 metres of frontage on Fifth Avenue.

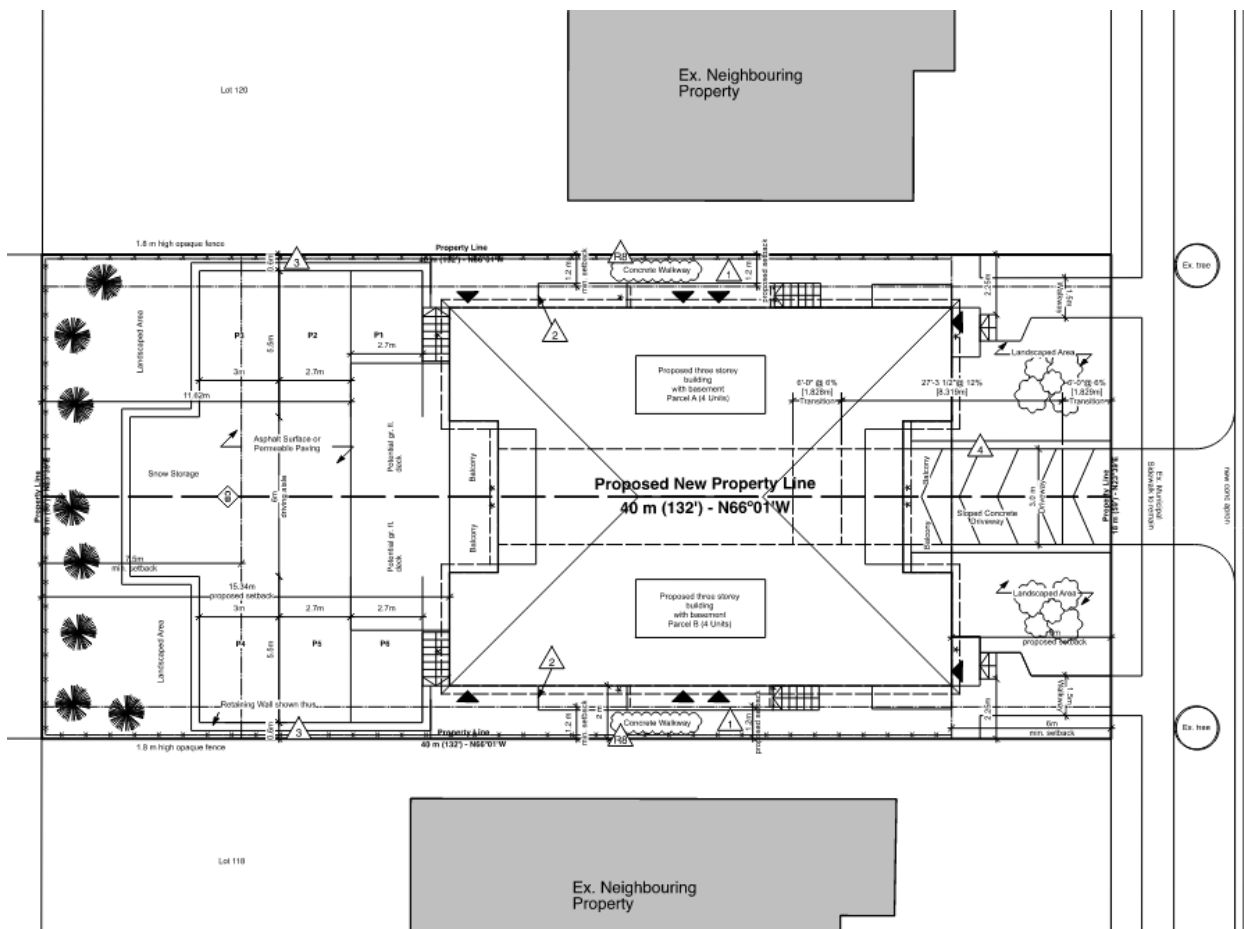
The subject property is identified as 'Community Areas' on Map 2 – Urban Structure and is designated 'Low Rise Residential' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'Low Rise Residential Four Zone (RES-4)' in Zoning By-law 2019-051. The property also falls within 'Appendix C – Central Neighbourhoods Area' and 'Appendix D – Established Neighbourhoods Area' in Zoning By-law 2019-051.

The purpose of the applications is to permit a new type of Semi-Detached Dwelling divided vertically into two semi-detached dwelling units by a shared driveway and common wall above the driveway extending to the roofline that prevents internal access between dwelling units. This new type of Semi-Detached Dwelling is slightly different from the standard zoning definition which states that a Semi-Detached Dwelling is divided by only a common wall which extends from the foundation to the roofline. Each side of the proposed new type of Semi-Detached Dwelling requires minor variances to permit an increased building height, reduced driveway width within the building to reflect the shared driveway, and increased driveway width within the rear yard to accommodate parking spots perpendicular to the building with sufficient space for maneuverability.



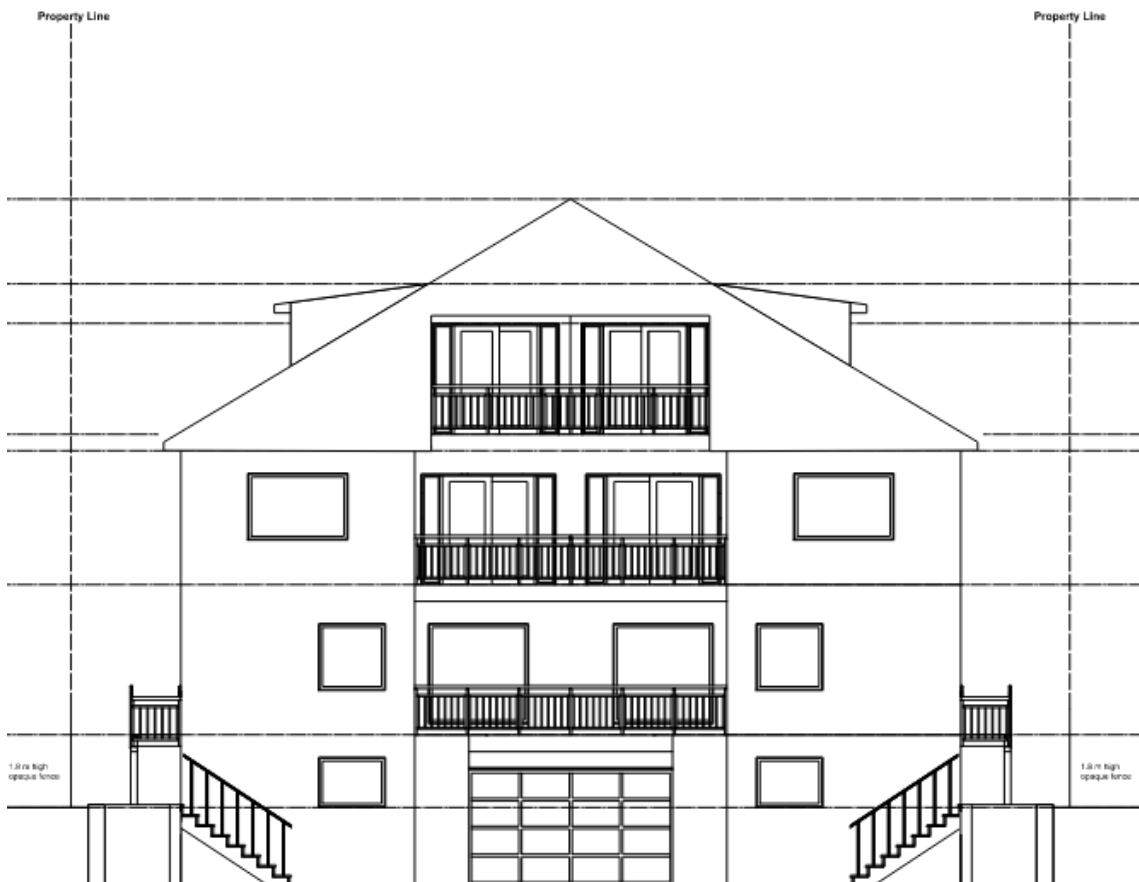
**Figure 1: Location Map (38 Fifth Avenue shown in RED)**



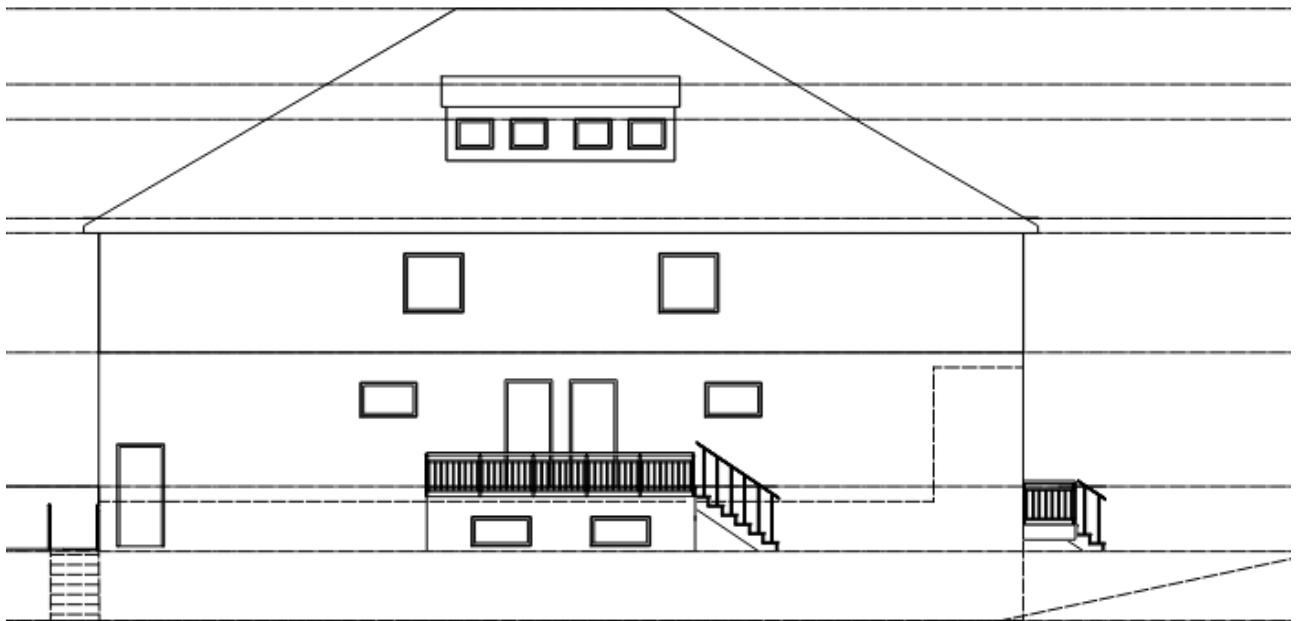
**Figure 2: Site Plan**



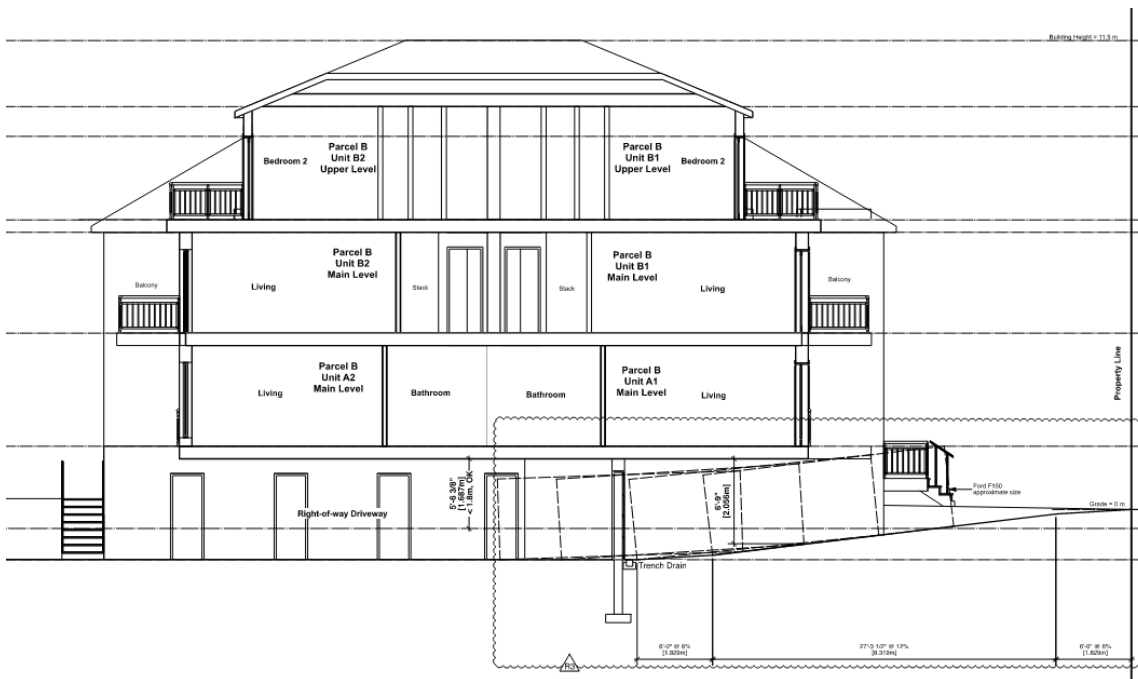
**Figure 3: Proposed Front Elevation**



**Figure 4: Proposed Rear Elevation**



**Figure 5: Proposed Side Elevation**



**Figure 6: Proposed Side Elevation Cross Section**





**Figure 7: Existing House**



**Figure 8: Existing House (Right Side)**



**Figure 9: Existing House - Left Side**



**Figure 10: Existing Streetscape Right of Subject Site**



**Figure 11: Existing Streetscape Left of Subject Site**

## **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 general intent of the 'Low Rise Residential' land use designation is to support a high quality of life while ensuring that existing and new residential areas are walkable and supported by all modes of transportation. The 'Low Rise Residential' designation will also accommodate a full range of low density housing types and the City will encourage and support the mixing and integrating of innovative and different forms of housing to achieve and maintain a low-rise built form. The proposed new type of Semi-Detached Dwelling is an innovative design that allows for a shared driveway to help reduce the amount of paved surface dedicated vehicles. This contributes to walkability and increased amenity space thereby supporting a high quality of life while still maintaining a low-rise built form.

Official Plan policy 4.C.1.9 states that where minor variances are requested to facilitate residential intensification or redevelopment of lands, the overall impact of the minor variances will be reviewed to ensure that any new buildings are appropriate in massing and scale and are compatibility with the built form and neighbourhood community, new builds are sensitive to exterior areas of adjacent properties, and the lands can function appropriately and not create unacceptable adverse impacts for adjacent properties, amongst other requirements. To this regard, staff are satisfied that the proposed new type of Semi-Detached Dwelling with a slight increase in building height and modifications to driveway widths is appropriate in massing and scale, is compatible with the existing built form and neighbourhood community, is sensitive to exterior areas of adjacent properties, and can function appropriately particularly as it relates to the shared driveway for vehicle access. As such, staff are satisfied that the proposed variances maintain the general intent of the Official Plan.

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

The general intent of a Semi-Detached Dwelling as defined and regulated under the Zoning by-law is to create two sides that can operate and function as independent lots with the option to add up to 4 residential dwelling units and for the two sides to be severed. The proposed new type of Semi-Detached Dwelling satisfies this general intent of the Zoning By-law.

The general intent of the zoning regulation for maximum building height is to help ensure a consistent streetscape and built form. To this regard, the proposed new type of Semi-Detached has a building height of approximately 11.1 metres as measured from the highest grade elevation surrounding the building to the peak of the roof. The building height from the lowest grade elevation in the rear yard to the peak of the roof is approximately 12.5 metres which exceeds 110% of the maximum building height as specified in the Zoning definition of building height. This 12.5 metre height from the lowest grade elevation in the rear yard to the peak of the roof is due to the unique parking layout and shared driveway through the basement. The proposed 11.1 metre building height is

generally consistent with the two Semi-Detached Dwellings on the abutting properties and surrounding neighbourhood while the 12.5 metre height in the rear yard does not deviate from the established built form or create adverse impacts for abutting properties. As such, staff are satisfied that the requested variance for increased building height maintains the general intent of the Zoning By-law.

The general intent of the Zoning By-law for maximum and minimum driveway widths is to help ensure required parking any development can function appropriately and does not exceed the maximum lot coverage. The Zoning By-law currently allows the minimum driveway width to be measured across property lines in the case of shared driveways where reciprocal easements are in place. The applicant intends to establish reciprocal easements when they sever the Semi-Detached Dwelling. However, the applicant must first build the Semi-Detached Dwelling before they can sever the property, which means they cannot establish the easements at this time and instead must obtain minor variance approval to allow the reduced driveway width for the portion of the driveway under the building until they can sever the property and register the necessary easements. This order of applications and processes is consistent with the general intent of the Zoning By-law. Regarding the maximum driveway width, this is necessary to facilitate parking spots perpendicular to the building with sufficient space for maneuverability. This increase in maximum driveway width does not conflict with required rear yard landscaping or create any other adverse impacts for the site or surrounding properties. As such, staff are satisfied that the requested variance for maximum driveway width maintains the general intent of the Zoning By-law.

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

Staff are satisfied that the requested variances are minor in nature. As discussed above, the proposed new type of Semi-Detached Dwelling is consistent with a Semi-Detached Dwelling as defined by the Zoning By-law while providing an innovative design for shared parking that decreases the amount of driveway within the front yard. The slight increase in building height and modifications to driveway widths are also minor deviations from the Zoning By-law that should not have any adverse impacts on site functionality or surrounding properties.

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

The proposed new type of Semi-Detached Dwelling with a slight increase in building height and modifications to driveway widths is considered appropriate development and use of the land. The Semi-Detached Dwelling is similar to other Semi-Detached Dwellings throughout the City, with the exception of a shared driveway for improved functionality. The increase in building height allows for the shared driveway in the basement and increased light for the basement units for a higher quality of life. The proposed changes to minimum and maximum driveway widths facilitates the shared driveway and provides sufficient maneuverability in the rear yard without compromising minimum required landscaping.

**Environmental Planning Comments:**

No comments.



**Heritage Planning Comments:**

No Heritage comments or concerns

**Building Division Comments:**

The Building Division has no objections to the proposed variance provided a building permits 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:**

Engineering has no concerns.

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

While this application is not requesting a severance to the lot, the site plan drawing shows a 'proposed new property line.' At the time of severance, cash-in-lieu of park land dedication will be required on the severed parcel as 1 new development lot will be created. The cash-in-lieu dedication required would be \$11,862.00 if the severance occurred at this time. Park Dedication is calculated at 5% of the new development lot only, with a land valuation calculated by the lineal frontage of 9 m at a land value of \$36,080 per frontage meter, which equals \$16,236.00. In this case, a per unit cap of \$11,862.00 has been applied. Depending on when the anticipated severance application is received, the per unit cap may be different.

There is an existing City-owned street tree located on Fifth Avenue that should be protected in place throughout all construction. It is expected that all City owned tree assets will be fully protected to City standards throughout demolition and construction as per Chapter 690 of the current Property Maintenance By-law. Protection and Enhancement Plans to Forestry's satisfaction will be required outlining complete protection of City assets prior to any demolition or building permits being issued.

**Transportation Planning Comments:**

Transportation Services recommends that outbound vehicles yield to inbound vehicles due to the increased difficulty of inbound vehicles reversing up the ramp, and the increased risks that reversing up the ramp poses to pedestrians and other motorists. The applicant should consider "Yield to Incoming Traffic," or other signage/measures when entering the garage from the rear of the property, and when exiting the garage to Fifth Avenue.

While a constrained one-lane drive aisle may occasionally inconvenience residents, minimal hazards are expected due to very low expected traffic volumes.

**Ministry of Transportation Ontario Comments:**

The subject property does fall within MTO permit control area, however based on the modifications to the site as proposed, MTO permits, approval, review will not be required.

**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*