

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** August 16, 2022

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

**PREPARED BY:** Emily Clarkson, Student Planner, 519-741-2200 ext. 7074

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

**DATE OF REPORT:** August 5, 2022

**REPORT NO.:** DSD-2022-384

**SUBJECT:** Minor Variance Application A2022-103 - 438 Highland Road East

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## **RECOMMENDATION:**

### **Zoning By-law 85-1**

A. That Minor Variance Application A2022-103 for 438 Highland Road East requesting relief from;

- 1) Section 5.22 c) of Zoning By-law 85-1, to permit a minimum lot width of 12.1 metres instead of the minimum required lot width of 13.1 metres; and
- 2) Section 5.22 h) of Zoning By-law 85-1, to permit the ADU total building floor area to be 63% (46.5 square metres) of the principal dwelling instead of the maximum permitted 50% (36.9 square metres) of the principal dwelling;

to facilitate the development of an Additional Dwelling Unit (ADU) (Detached) in the rear yard of the subject property, generally in accordance with drawings prepared by Van Harten Surveying Inc, dated June 23, 2022, BE APPROVED.

### **Zoning By-law 2019-051**

A. That Minor Variance Application A2022-103 for 438 Highland Road East requesting relief from:

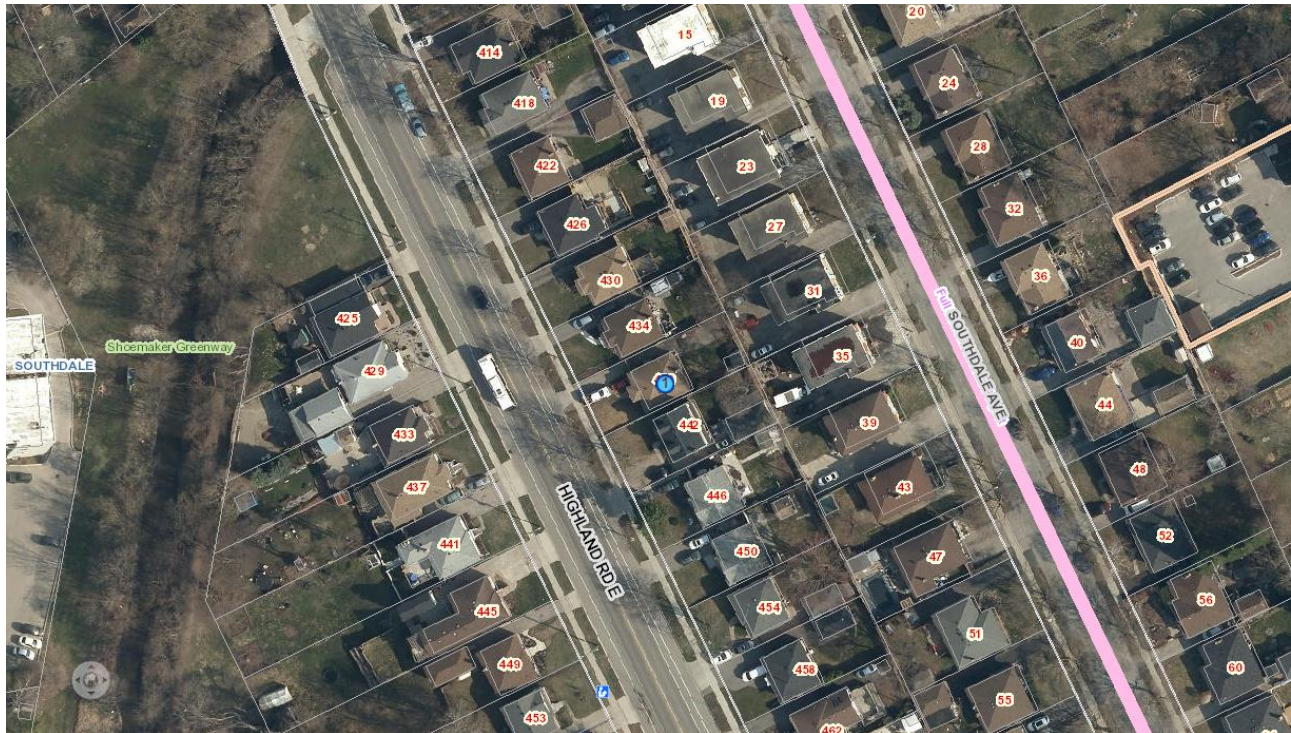
- 1) Section 4.12.3 i) of Zoning By-law 2019-051, to permit a minimum lot width of 12.1 metres instead of the minimum required lot width of 13.1 metres; and
- 2) Section 4.12.3 g) of Zoning By-law 2019-051, to permit the ADU total building floor area to be 63% (46.5 square metres) of the principal dwelling instead of the maximum permitted 50% (36.9 square metres) of the principal dwelling or 80 square metres, whichever is the lesser;

to facilitate the development of an Additional Dwelling Unit (ADU) (Detached) in the rear yard of the subject property, generally in accordance with drawings prepared by Van Harten Surveying Inc, dated June 23, 2022, BE APPROVED; subject to the following:

**This minor variance shall become effective only at such time as Zoning By-law 2022-040 comes into force, pursuant to section 34 (30) of the Planning Act, R.S.O. 1990, c. P 13, as amended, at such time the variance shall be deemed to have come into force as of the final date of this decision.**

**REPORT HIGHLIGHTS:**

- The purpose of this report is to review a minor variance application to facilitate the development of an Additional Dwelling Unit (ADU) (Detached) on the subject property.
- The key finding of this report is that the requested minor variance meets the 4 tests of the Planning Act.
- There are no financial implications.
- Community engagement included circulation of the application via mail and notification by way of the Record and signage placed on the property.
- This report supports the delivery of core services.



**Location Map of 438 Highland Rd E (subject property).**

**BACKGROUND:**

The subject property is located on the northeast side of Highland Road East and runs parallel to Southdale Avenue. The subject property contains a one-storey duplex building. A building permit was issued in October of 2019, for interior alteration to convert the single dwelling to a duplex dwelling. The property also contains a shed and a few small trees. The area is predominantly a low-rise low-density residential neighbourhood.

The subject property is identified as 'Community Area' 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 'Residential Six Zone (R-6)' in Zoning By-law 85-1, and 'Low Rise Residential Five Zone (RES-5)' in Zoning By-law 2019-051, which is currently under appeal.



The purpose of the subject minor variance application is to facilitate the development and construction of an Additional Dwelling Unit (ADU) (Detached) in the rear yard of the subject property. Specifically, the variances are as follows:

- to permit a minimum lot width of 12.1 metres instead of the minimum required lot width of 13.1 metres; and
- to permit the ADU total building floor area to be 63% (46.5 square metres) of the principal dwelling instead of the maximum permitted 50% (36.9 square metres) of the principal dwelling or 80 square metres, whichever is the lesser, in Zoning By-law 2019-051.

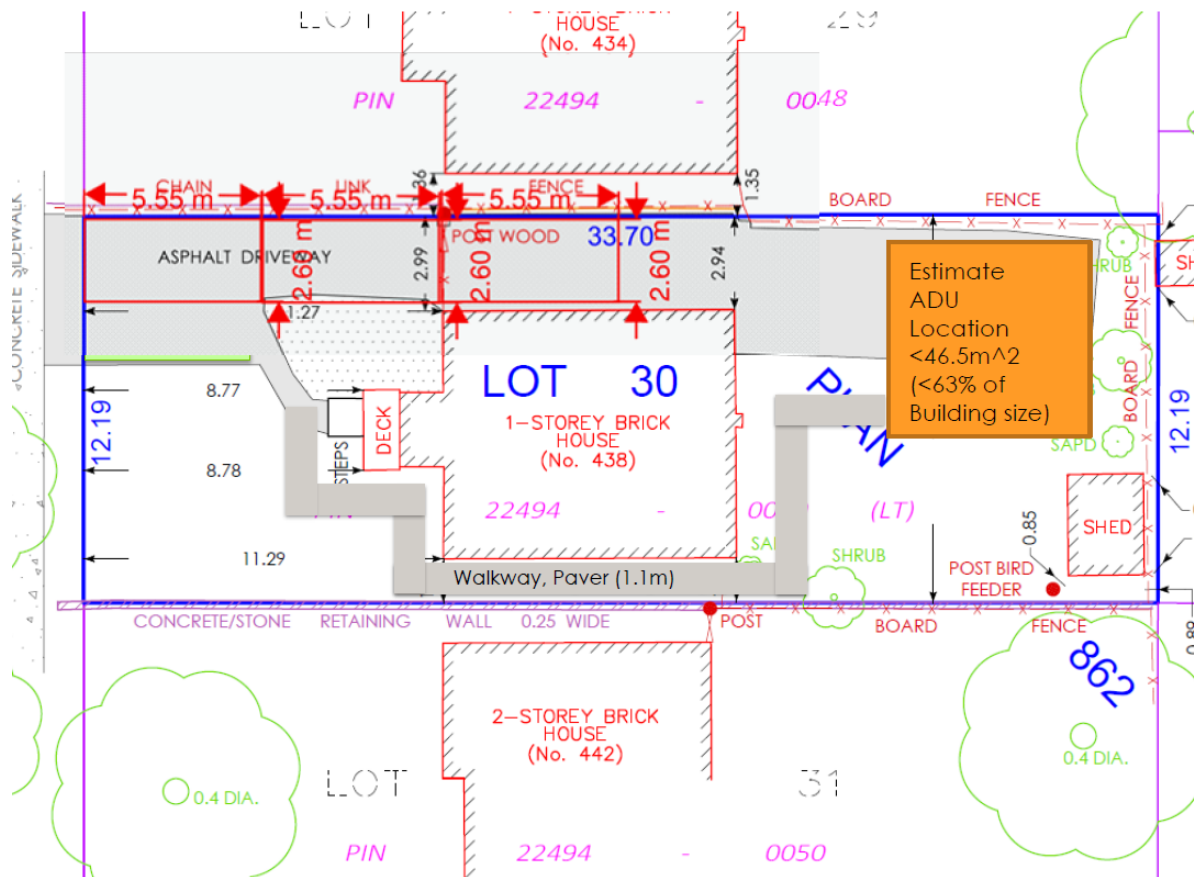
Planning staff conducted a site inspection on July 27, 2022.



**Site Visit Photo of 438 Highland Road East (subject property).**



Closer Front View of subject property.



Site Plan of location of the proposed ADU and available parking spaces. (Note: Parking is not drawn to scale, however there is room for 3 parking spaces that would be able to meet zoning requirements)

## **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 City's Official Plan supports the development of additional dwelling unit(s), attached and detached, on residential lots, where desirable and appropriate unless otherwise limited by the policies of this Plan, and in accordance with the City's Zoning By-law, in order to provide other housing options to Kitchener homeowners and residents. The City also encourages residential intensification and/or redevelopment, including adaptive re-use and infill opportunities, including additional dwelling units, attached and detached, in order to respond to changing housing needs and as a cost-effective means to reduce infrastructure and servicing costs by minimizing land consumption and making better use of existing community infrastructure. The proposed ADU will not change the existing massing, height, or other design characteristics of the property, because it will be established within the rear yard. Therefore, it is the opinion of staff that the requested variance meets the general intent of the Official Plan.

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

The general intent and purpose of the Zoning By-law regulation requiring a minimum lot width of 13.1 metres in order to develop an ADU (detached), is to ensure there is appropriate access and functioning throughout the property, and to ensure there is adequate space for required parking spaces, walkway accessibility to the ADU, and for the owner to maintain their property and principal and detached dwellings. The existing lot width of 12.1 metres will allow the principle dwelling and ADU to function appropriately on this lot including sufficient amenity area, parking, and walkway access to the ADU.

The general intent of the Zoning By-law requirement for the building area of an ADU to be 50% or less of the principal dwelling, ensures that the additional dwelling (detached) is secondary and does not overpower the existing landscape and neighbouring houses and is an appropriate size for the property. Given the location of existing vegetation and mature trees on the subject property and the adjacent properties, the applicant will be required to submit and receive approval of a Tree Preservation and Enhancement Plan as part of the Site Plan Application Approval process. Based on a high level review of the plans submitted with the application, the small increase in area of the proposed ADU will have minimal impact on the subject property and adjacent properties.

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

The requested variances can be considered minor since as there is not anticipated to be any unacceptably adverse impacts on adjacent properties with the construction of the ADU in the rear yard of the subject property. The deficiency in the lot width of the property of 1 metre (3 feet) will not impede the ability of the lot to accommodate a detached ADU which will be able to function appropriately. The 9.6 square metre increase in the size of the ADU will not be noticeable and the lot has the capacity to be able to accommodate this slight increase in area for the ADU. The variance will allow for the creation of an ADU in the rear yard that is compatible with the existing residential use of the property and will not negatively impact neighbouring lots.

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

The variances are desirable for the appropriate development and use of the land as they will facilitate the development of an ADU (Detached) in the rear yard of the subject property and facilitate a gentle form of residential intensification in the neighbourhood.

**Environmental Planning Comments:**

The ADU location may need to be adjusted to retain the existing trees. The location of the ADU will be reviewed through a Site Plan Application.

**Heritage Planning Comments:**

No comments.

**Building Division Comments:**

No comments.

**Engineering Division Comments:**

No comments.

**Parks/Operations Division Comments:**

No comments.

**Transportation Planning Comments:**

No comments.

**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 2014)*
- *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020*
- *Regional Official Plan*
- *Official Plan (2014)*
- *Zoning By-laws 85-1 and 2019-051*

**ATTACHMENTS:**

Attachment A – Plans included with Application Form



MINOR VARIANCE REQUEST:  
(A) TO PERMIT A MINIMUM LOT WIDTH TO BE 12.19 METRES INSTEAD OF THE REQUIRED 13.1 METRES.



### MINOR VARIANCE SKETCH

SCALE 1 : 200

VAN HARTEN SURVEYING INC.

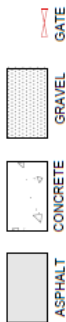
#### CAUTION:

1. THIS IS NOT A PLAN OF SURVEY AND SHALL NOT BE USED FOR TRANSACTION OR MORTGAGE PURPOSES
2. THIS SKETCH IS PROTECTED BY COPYRIGHT © 2022

#### NOTES:

1. GEOGRAPHIC DESCRIPTION: ALL OF LOT 30, REGISTERED PLAN 882, CITY OF KITCHENER, REGIONAL MUNICIPALITY OF WATERLOO
2. DISTANCES ON THIS PLAN ARE SHOWN IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.
3. DIMENSIONS ON THIS SKETCH ARE APPROXIMATE AND HAVE NOT BEEN VERIFIED BY SURVEY.
4. THIS SKETCH IS AN ORIGINAL IF EMBOSSED BY THE SURVEYOR'S SEAL

#### LEGEND:



BACKYARD HOMES AND TINY HOUSES	
REQUIRED	SUBJECT PARCEL
MINIMUM LOT AREA	395m <sup>2</sup> 411m <sup>2</sup>
MINIMUM LOT WIDTH	13.1m 12.9m (A)
MINIMUM SIDE YARD	1.2m 1.38m



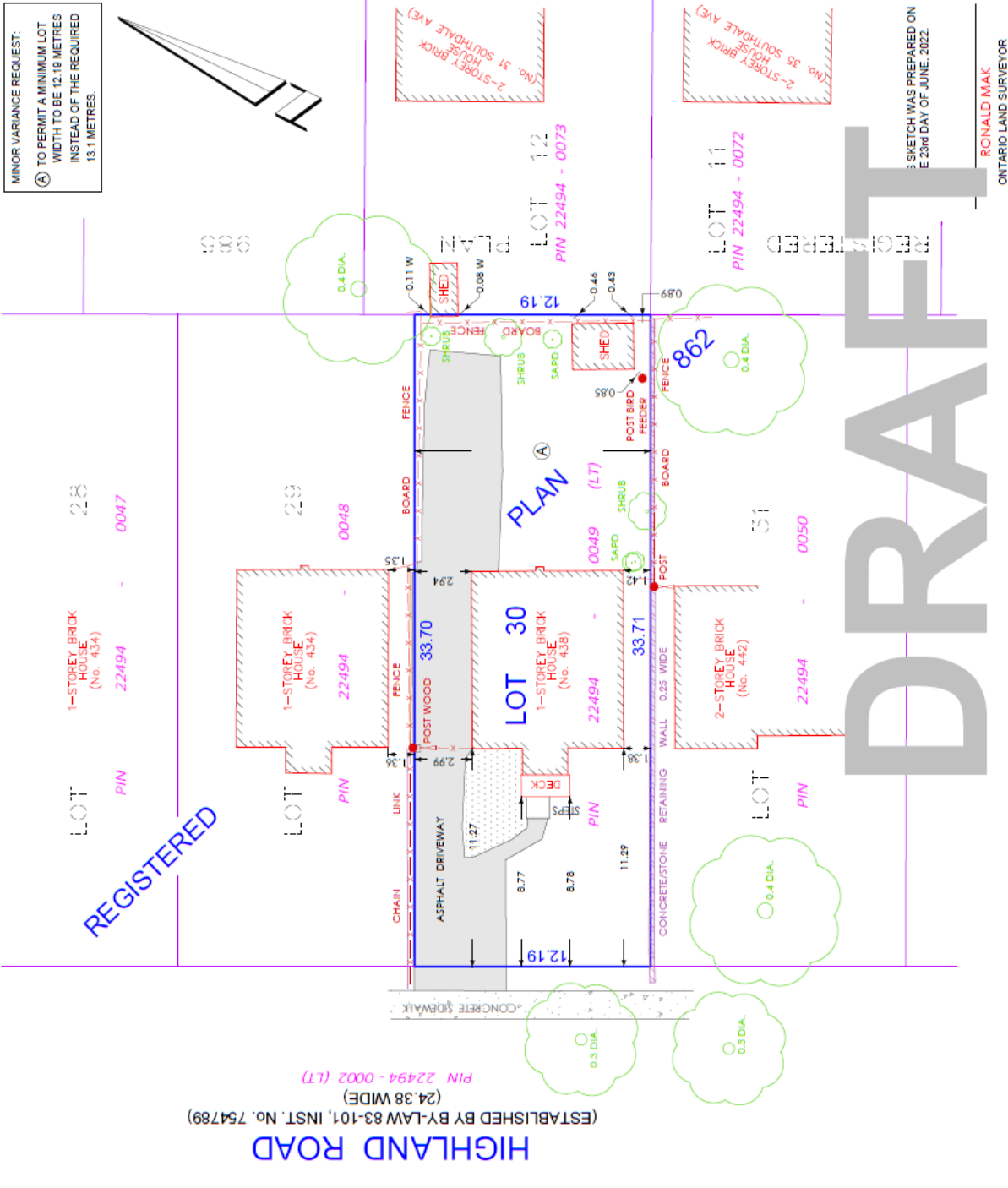
**Van Harten**  
SURVEYING INC.  
LAND SURVEYORS and ENGINEERS

Kitchener/Waterloo Ph: 519-321-2763 Orangeville Ph: 519-940-4110

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DRAWN BY: PJ CHECKED BY: MS PROJECT NO: 31490-22

Jun 23, 2022 12:05:42 PM  
M:\Geographic\K\W\Kitchener\882\ACAD\SKETCH LOT 30 PL 882 (31490-22)  
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SKETCH WAS PREPARED ON  
THE 23rd DAY OF JUNE, 2022.

RONALD MAK  
ONTARIO LAND SURVEYOR