

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** October 18, 2022

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

**PREPARED BY:** Joanne McCallum, Coordinator, Planning & Zoning,  
519-741-2200 ext. 7075

**WARD(S) INVOLVED:** 10

**DATE OF REPORT:** October 3, 2022

**REPORT NO.:** DSD-2022-464

**SUBJECT:** Minor Variance Application A2022-121 - 24 Chestnut Street

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## **RECOMMENDATION:**

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

That Minor Variance Application A2022-121 for 24 Chestnut St requesting relief from Section 39.2.1 of Zoning By-law 85-1, to permit an interior side yard setback of 0.7 metres instead of the minimum required 1.2 metres to facilitate the construction of an addition at the rear of the existing single detached dwelling, generally in accordance with the Site Plan drawing submitted with this Minor Variance Application, dated June 2022, BE APPROVED subject to the following condition:

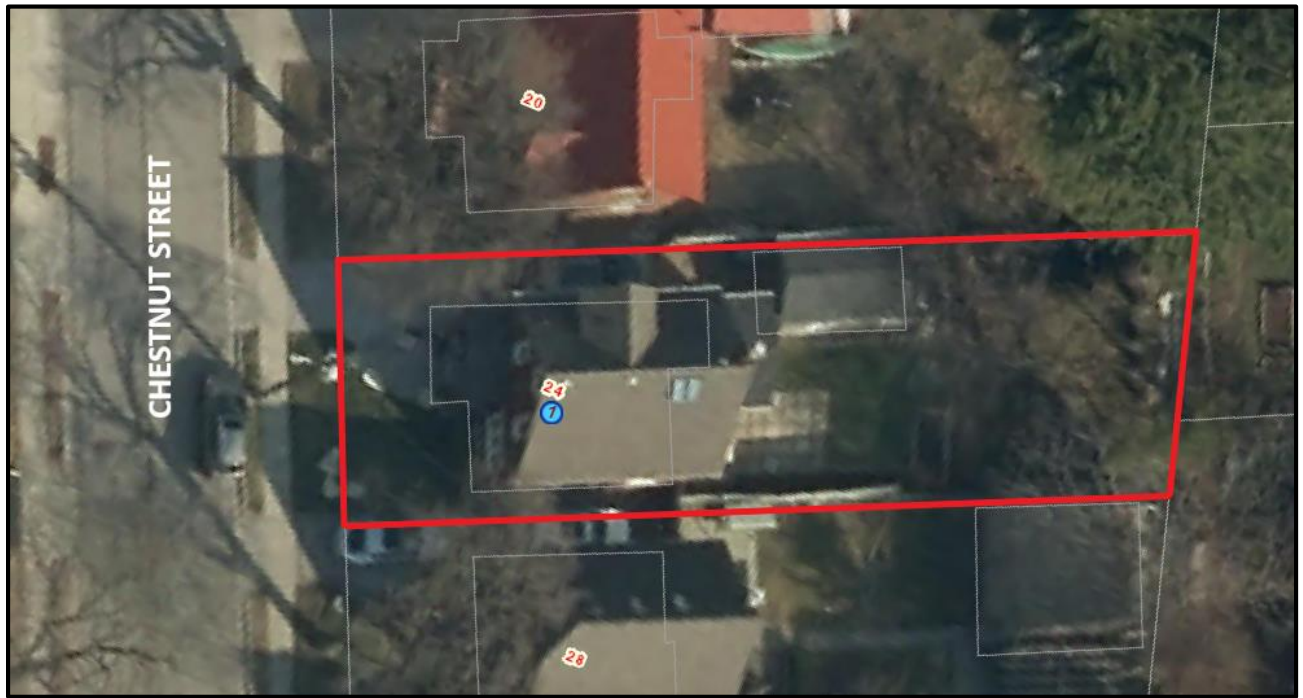
1. That the applicant obtain and register an environmental easement for operational noise and vibration emissions in favour of Canadian National Railway (CN) at the sole discretion of and to the satisfaction of Canadian National Railway (CN).

## **REPORT HIGHLIGHTS:**

- The purpose of this report is to review a proposed minor variance to reduce the side yard setback to 0.7 metres instead of the required side yard setback of 1.2 metres.
- There are no financial implications associated with this application.
- This report supports the delivery of core services.

## **BACKGROUND:**

The subject property is located at 24 Chestnut Street. The aerial image below shows a detached garage in the rear yard which has since been removed and will not interfere with the proposed addition at the rear of the existing dwelling.

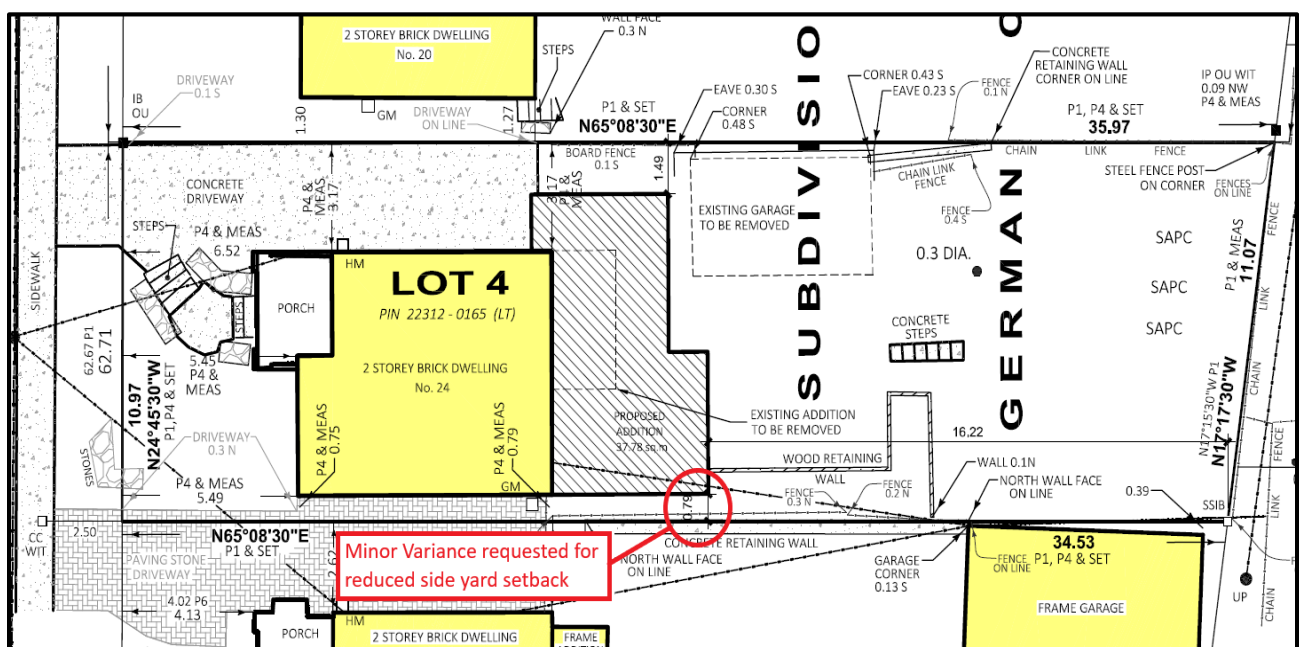


**Figure 1: Location Map - 24 Chestnut Street**



**Figure 2: Front view of subject property**

The sketch below shows a detached garage to be removed. Staff visited the site on October 4<sup>th</sup> and can confirm that the detached garage has been removed. The sketch also shows a portion of the house proposed to be removed which will facilitate the new addition.



### Figure 3: Proposed Addition at Rear of Dwelling





**Figure 4: Photo of rear yard, location of proposed addition**

**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 Low Rise Conservation A in the Central Frederick Neighbourhood Plan. The intent of this designation is to preserve the scale, use and intensity of existing development. The property is currently developed with a two-storey, single detached dwelling. The proposed addition will not significantly change the existing scale of the property. There will be no change in the use or intensity of the property. The proposed variance conforms to the designation, and it is the opinion of staff that the requested variance is appropriate and 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 requiring a 1.2 metre side yard setback is to ensure access to the rear yard, that there is adequate buffering between buildings, and to provide adequate space for the owner to maintain their property and dwelling. The applicant is proposing a reduced side yard setback and will continue to maintain appropriate access to the rear yard, furthermore, the left-side yard setback is approximately 1.4 metres wide which provides an alternate means of access for equipment such as lawn mowers and wheelbarrows into the rear yard. There is also currently an existing fence on site that maintains adequate separation and buffering to the adjacent neighbouring property. Planning staff is of the opinion that the variance meets the general intent and purpose of the Zoning By-law.

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

The requested variance can be considered minor. Staff is of the opinion that the requested reduction of the side yard setback will allow for the construction of the addition at the rear of the existing dwelling and will not negatively impact the adjacent property. The proposed side yard setback of 0.79 metres is adequate to continue to provide access to the rear yard and therefore, the reduction of the side yard setback of 0.41 metres is considered minor.

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

The variance is appropriate for development and use of the land as it is an extension of the dwelling area for the property owner and their family. The variance is desirable as it will enable the addition to be constructed in line and with the same side yard setback as the existing dwelling.

**Environmental Planning Comments:**

No natural heritage / tree management policy concerns.

**Heritage Planning Comments:**

There are no heritage concerns. 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 property municipally addressed as 24 Chestnut St is located within the Central Frederick Neighbourhood CHL. The owner and the public will be consulted as the City considers listing CHLs on the Municipal Heritage Register, identifying CHLs in the Official Plan, and preparing action plans for each CHL with specific conservation options.

**Building Division Comments:**

The Building Division has no objections to the proposed variance provided building permit for the addition to the single detached dwelling 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/Operations Division Comments:**

No concerns.

**Transportation Planning Comments:**

Transportation Services have no concerns with the proposed application.

**CN Rail (CN Proximity) Comments:**

Thank you for circulating CN. It is noted that the subject site is located in proximity to the CN railway corridor. CN recommends that the following be implemented as a condition of approval:

- Registration of an environmental easement for operational noise and vibration emissions, in favor of CN.

Planning staff received comments CN Rail with respect to the proposed minor variance. CN has requested registration of an environmental easement for operational noise and vibration emissions given the proximity of the subject property to a Principal Branch Line, instead of the standard noise warning clauses in all development agreements, offers of purchase, agreements of purchase and sale or lease for each dwelling unit within 300 metres. Planning staff have followed up by email with

CN Rail to obtain more information and details surrounding the condition. i.e. the reason for requesting this condition (residential uses are currently permitted); to whom should this condition be satisfied; details of the preparation and cost of the registration of the easement.

At the time of finalizing this staff report, Planning staff had not heard back from CN. In the interest of addressing CN Rail interest, staff propose the following condition:

*“That the applicant obtain and register an environmental easement for operational noise and vibration emissions in favour of Canadian National Railway (CN) at the sole discretion of and to the satisfaction of CN.”*

#### **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-law 85-1*

#### **ATTACHMENTS:**

Attachment A – Site Plan

Attachment A – Site Plan

