

# Staff Report



Development Services Department

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

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

**DATE OF REPORT:** October 12, 2022

**REPORT NO.:** DSD-2022-453

**SUBJECT:** Minor Variance Application A2022-123  
109 Park Street  
David and Thelma Wilkinson

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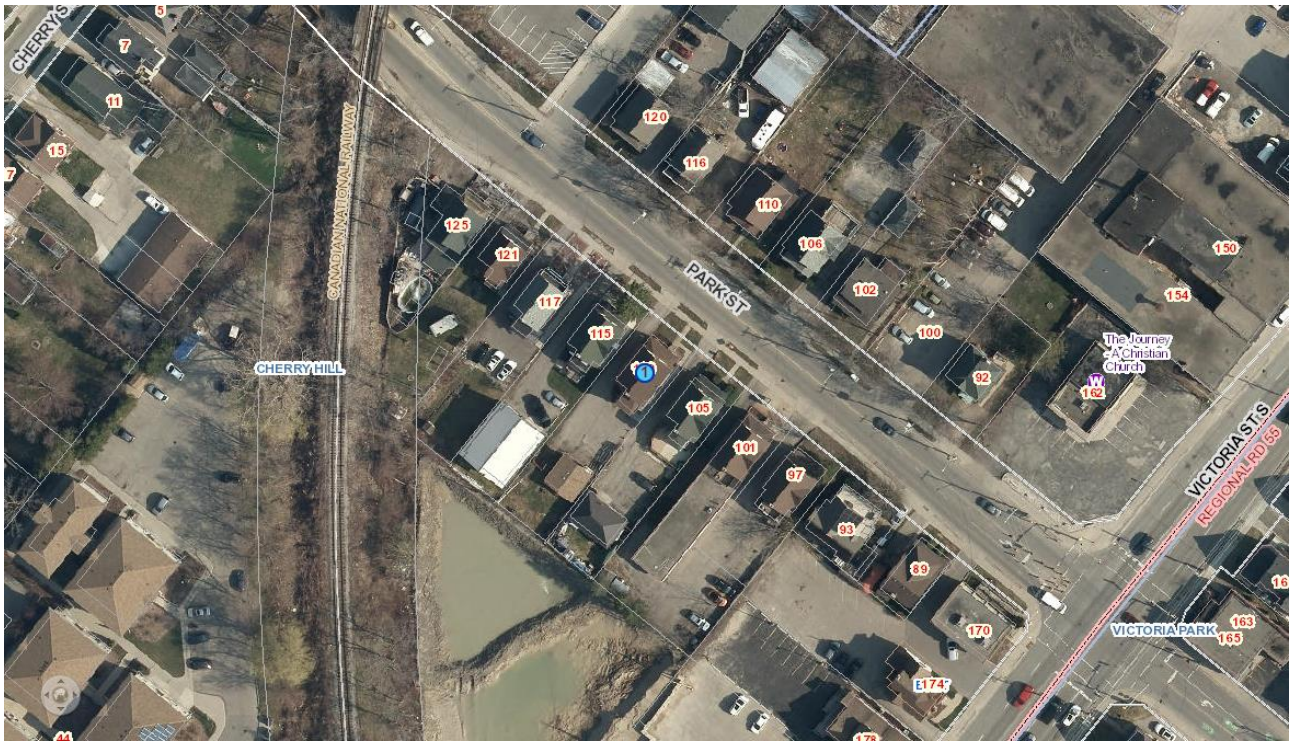
## RECOMMENDATION:

### Zoning By-law 85-1

- A. That Minor Variance Application A2022-123 for 109 Park Street requesting relief from Section 53.2.1 of Zoning By-law 85-1, to permit a minimum lot width of 12.1 metres instead of the minimum required 15 metres, to permit the use of the existing building for three (3) dwelling units, generally in accordance with the Site Plan, dated September 8, 1977, to be updated by a future Site Plan Application, 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 and to the satisfaction of CN.

## REPORT HIGHLIGHTS:

- The purpose of this report is to review a minor variance application to facilitate the legalization of a triplex dwelling 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.
- This report supports the delivery of core services.



**Location Map of 109 Park St (subject property).**

## **BACKGROUND:**

The subject property is located on the south side of Park Street and is located near the intersection of Park Street and Victoria Street South (Regional Road 55). The subject property currently contains a duplex dwelling, and a detached garage. The area is predominantly a low-rise low-density, mixed-use residential neighbourhood.

The subject property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure and is designated 'Mixed Use' on Map 4 – Urban Growth Centre (Downtown) in the City's 2014 Official Plan.

The property is zoned 'Low Intensity Mixed Use Corridor Zone (MU-1)' in Zoning By-law 85-1.

The purpose of the application is to review a minor variance application to legalize the lot width for a multiple dwelling having 3 dwelling units (triplex). Specifically, the variance is as follows:

- To permit a minimum lot width of 12.1 metres instead of the minimum required lot width of 15 metres.

Site Plan Approval is required for multiple dwellings having 3 dwelling units (triplex). Pending approval of the minor variance, a site plan application, an update to the approved 1977 site plan, will be reviewed to ensure the parking is configured to function appropriately. For the purposes of the minor variance application, staff are of the opinion that the 3 required parking spaces can adequately be provided on the subject property.

Planning staff conducted a site inspection on September 29, 2022.





**Site Visit Photo of 109 Park St (subject property).**



**Rear yard of 109 Park St (subject property).**

## **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 third unit will not change the existing massing, height, or other design characteristics of the property, because it will be established within the existing building. 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 a third attached dwelling unit (triplex) is to ensure there is appropriate access and functioning throughout the property, and to ensure there is adequate space for required parking spaces, and for the owner to maintain their property and dwelling units. The existing lot width of 12.1 metres will allow the three dwelling units to function appropriately on this lot including sufficient amenity area, parking, and buffer between 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 legalization of the third dwelling unit in existing building 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 an additional third dwelling unit, which will be able to function appropriately. The variance will allow for the eventual legalization of a triplex dwelling in the existing building, 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 legalization of a third attached dwelling unit in the existing building of the subject property and facilitate a gentle form of residential intensification in the neighbourhood.

### **Environmental Planning Comments:**

No comments.

### **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 109 Park St is located within the Warehouse District 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.

The subject property was reviewed in 2009 for the Kitchener Heritage Inventory and determined to have no heritage status.

**Building Division Comments:**

The Building Division has no objections to the proposed variance.

**Engineering Division Comments:**

Engineering has no concerns.

**Parks/Operations Division Comments:**

No comments.

**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 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 – Sketch submitted with application.



