

# Staff Report



Development Services Department

www.kitchener.ca

**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** November 15, 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 3

**DATE OF REPORT:** November 4, 2022

**REPORT NO.:** DSD-2022-474

**SUBJECT:** Minor Variance Application A2022-132 - 85 Byron Avenue

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## **RECOMMENDATION:**

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

**A. That Minor Variance Application A2022-132 for 85 Byron Avenue requesting relief from:**

- 1) Section 37.1 of Zoning By-law 85-1, to permit a multiple dwelling having 3 dwelling units as a permitted use;
- 2) Section 4 of Zoning By-law 85-1 to permit two (2) of the required three (3) parking spaces to be in tandem; and
- 3) Section 6.1.1.1 d) i) of Zoning By-law 85-1 to permit 2 parking spaces between the façade and the front lot line;

in accordance with Site Plan Application SP22/137/B/TZ, BE APPROVED.

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

**B. That Minor Variance Application A2022-132 for 85 Byron Avenue requesting relief from:**

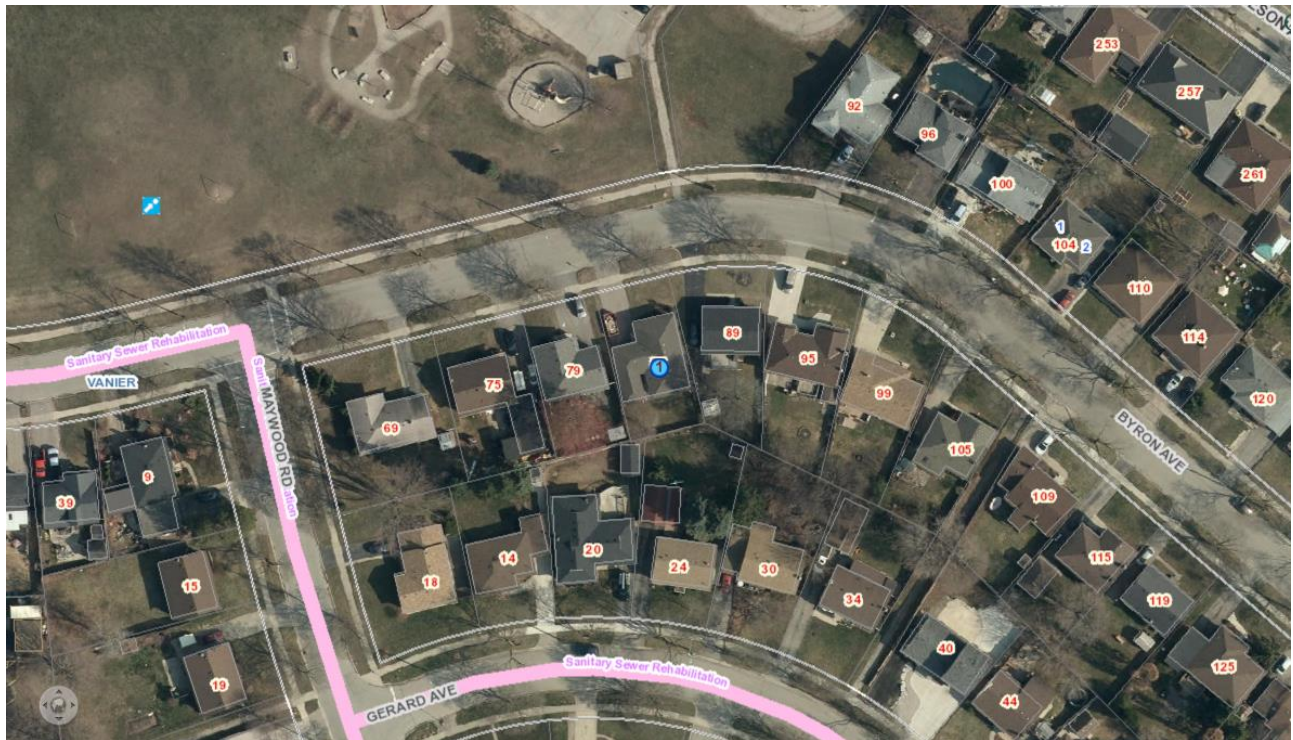
- 1) Section 7.3, Table 7-2 of Zoning By-law 2019-051, to permit an interior side yard setback of 0.9 metres instead of the minimum required 1.2 metres; and
- 2) Section 5.3.3 ii) to allow two (2) of the three (3) required parking spaces to locate on the driveway within 6 metres of the front lot line, whereas only one (1) parking space is permitted within 6 metres of the front lot line;

in accordance with Site Plan Application SP22/137/B/TZ, 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 conversion of the duplex dwelling on the subject property into a multiple dwelling having 3 dwelling units (triplex)(single detached dwelling with two (2) attached dwelling units).
- The key finding of this report is that the requested minor variances meet the 4 tests of the Planning Act.
- There are no financial implications.
- This report supports the delivery of core services.



**Location Map of 85 Byron Avenue (subject property).**

## BACKGROUND:

The subject property is located South of Byron Avenue, near the intersection of Byron Avenue and Maywood Road. The subject property currently contains a duplex dwelling and an attached garage. The area is predominately a low-rise low-density 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 Three Zone (R-3)' in Zoning By-law 85-1, and 'Low Rise Residential Two Zone (RES-2)' in Zoning By-law 2019-051, which is currently under appeal.

The minor variances are required to facilitate the conversion of the attached garage into a third attached dwelling unit. Specifically, the variances are as follows:

- to permit a multiple dwelling having 3 dwelling units as a permitted use;
- to permit two (2) parking spaces between the façade and the front lot line;
- to permit two (2) of the required parking spaces to be in tandem;

- to permit an interior side yard setback of 0.9 metres instead of the required 1.2 metres; and
- to allow two (2) of the three (3) required parking spaces to locate on the driveway within 6 metres of the front lot line, whereas only one (1) parking space is permitted within 6 metres of the front lot line

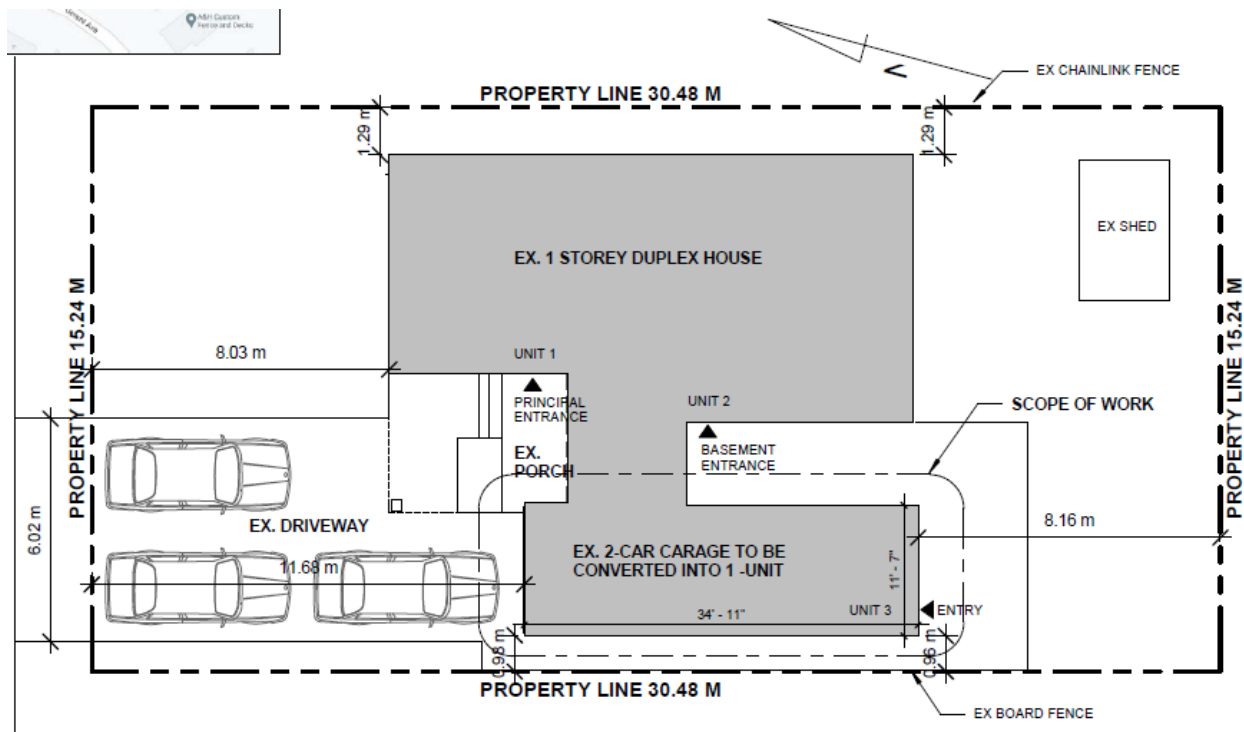
Site Plan Application SP22/137/B/TZ to facilitate the conversion is currently under review by Planning Staff.

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



**Site visit photo of 85 Byron Avenue (subject property).**





**Site Plan of 85 Byron Avenue (subject property) submitted with application.**

## 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

In the City's Official Plan, the intent of the Low-Rise Residential land use designation is to permit a variety of low-density residential uses. Within this designation, emphasis is placed on compatibility of built form with respect to massing, scale, and design to ensure a cohesive relationship with adjacent buildings, streets, and exterior areas. The property is presently developed with a 1-storey duplex dwelling. The proposed dwelling unit will not change the existing massing, height, or other design characteristics of the property, because it will be established within the existing attached garage. Additionally, the City's Official Plan also supports the development of additional dwelling unit(s), attached, within a residential unit, 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 another housing option 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. Therefore, it is the opinion of staff that the requested variances meet the general intent of the Official Plan.

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

While three (3) dwelling units are not permitted in the 'R-3' zone in Zoning By-law 85-1, new Zoning By-law 2019-051, when it comes into effect, will allow properties zoned 'RES-2' to have up to three (3) dwelling units on one (1) lot.

The conversion of the attached garage will contribute and provide an appropriately sized living space for a third unit, which use of the property will meet the intent of Zoning By-law 2019-051.

The general intent and purpose of the Zoning By-law requiring parking spaces to be located a minimum distance of 6 metres from the street line, that parking spaces should not be located between the façade and the front lot line, and that 2 parking spaces cannot be in tandem, is to ensure the presence of vehicles do not dominate the streetscape and that vehicles can exit the property in a safe manner. The existing driveway is located in the front yard, and all three cars fit appropriately in the designated spaces. Many of the properties on the street utilize their driveways to park and accommodate vehicles.

The general intent and purpose of the Zoning By-law requiring a 1.2 metre side yard setback, is to ensure an appropriate access to the rear yard, that there is adequate buffering and minimal impacts between buildings, and to provide adequate space for the owner to maintain their property and dwelling. The rear yard is accessible from the other side yard, which is 1.2 metres in width. It should be noted that the principal building and existing side yard setback has existed since the building was constructed.

Accordingly, it is staff's opinion that the general intent of the zoning by-law will be maintained.

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

The requested variances can be considered minor since they are not anticipated to cause unacceptably adverse impacts on adjacent properties. A single detached dwelling, with 2 attached dwelling units, is a permitted use in Zoning By-law 2019-051. Both the parking configuration and deficient side yard of the attached garage are existing conditions which have functioned appropriately since the dwelling was constructed in 1957. The parking area or existing driveway will allow each dwelling unit to have a parking space and the 0.3 metre deficiency in the interior side yard is not discernible. Accordingly, it is staff's opinion that the effects of the variance are minor.

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 recognize the parking configuration in the existing driveway and the location of the attached garage which will enable conversion of the existing duplex dwelling into a multiple dwelling having 3 dwelling units. The variances are also desirable as they will allow a gentle form of residential intensification on the subject property.

**Environmental Planning Comments:**

No natural heritage concerns or tree management concerns.

**Heritage Planning Comments:**

No concerns.

**Building Division Comments:**

The Building Division has no objections to the proposed variance. A Building Permit Application has been made for the change of use to a triplex.

**Engineering Division Comments:**

No comments.

**Parks/Operations Division Comments:**

Through SP22/137/B/TZ Parks and Cemeteries advised that there was an existing street tree that should be protected in place throughout all construction. No Tree Protection and Enhancement Plan was required at that application based on the scope of work proposed and is not required now.

**Transportation Planning Comments:**

Transportation Services can support the proposed application as the proposed site layout adequately services three (3) parking spaces without impacting the sidewalk.

NOTE: If the applicant is seeking to widen the driveway and modify the curbing, they must obtain a curb cut permit that can be initiated by the Planning team.

**GRCA Comments:**

GRCA has no objection to the approval of the above applications. The subject properties do not contain any watercourses, floodplains, shorelines, wetlands, valley slopes or other environmental features of interest to GRCA. The properties are not subject to Ontario Regulation 150/06 and therefore a permission from GRCA is not required.

**Hydro One Comments:**

We are in receipt of your Application, A2022-132 dated October 25, 2022. We have reviewed the documents concerning the noted Plan and have no comments or concerns at this time. Our preliminary review considers issues affecting Hydro One's 'High Voltage Facilities and Corridor Lands' only.

**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 and drawings submitted with application.

# INTEGRATION DATA

OBSERVED REFERENCE POINTS (ORP's): UTM ZONE 17, NAD83 (CSRS) (2010.0),	
COORDINATES TO URBAN ACCURACY PER SECTION 14 (2) OF OREG 216/10.	
POINT ID	NORTHING
ORP (A)	4 808 174.67
ORP (B)	4 808 195.17
COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.	
THE RESULTANT TIE BETWEEN ORP (A) AND ORP (B) IS 95.29 N77°34'00"E	

## PART 2 - SURVEY REPORT

- DESCRIPTION  
PIN 22584-0266 (LT)  
LOT 97, REGISTERED PLAN 849
- REGISTERED EASEMENTS AND/OR RIGHTS-OF-WAY  
SUBJECT TO EASEMENT IN FAVOUR OF BELL TELEPHONE AS IN INSTRUMENT No. 136796
- BOUNDARY FEATURES  
FENCING AS SHOWN  
PREPARED FOR:  
MARIE GANIGAN

## SURVEYOR'S REAL PROPERTY REPORT PART 1 - PLAN OF SURVEY OF LOT 97

**REGISTERED PLAN 849**  
**CITY OF KITCHENER**  
**REGIONAL MUNICIPALITY OF WATERLOO**

SCALE 1 : 250

5 0 5 10 15 metres

J.D. BARNES LIMITED  
© COPYRIGHT

**METRIC** DISTANCES AND/OR COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

### NOTES

BEARINGS ARE UTM GRID, DERIVED FROM OBSERVED REFERENCE POINTS A AND B, TO A REAL TIME NETWORK (RTN) OBSERVATIONS, UTM ZONE 17, NAD83 (CSRS) (2010.0).

DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999579.

FOR BEARING COMPARISONS, A ROTATION OF 0°02'10" CLOCKWISE WAS APPLIED TO BEARINGS ON P1. A ROTATION OF 0°23'20" COUNTER-CLOCKWISE WAS APPLIED TO BEARINGS ON P2.

### LEGEND

- DENOTES SURVEY MONUMENT FOUND (STC UNLESS NOTED OTHERWISE)
- DENOTES SURVEY MONUMENT SET
- SIB DENOTES STANDARD IRON BAR
- PB DENOTES PLASTIC BAR
- CB DENOTES PLASTIC BAR
- CC DENOTES CLUT CROSS
- BF DENOTES BOARD FENCE
- CLF DENOTES CHAIN LINK FENCE
- WT DENOTES WITNESS
- MEAS DENOTES MEASURED
- SRPR DENOTES SURVEYOR'S REAL PROPERTY REPORT
- 706 DENOTES D. J. HOWE, O.L.S.
- STC DENOTES STANTEC GEOMATICS LTD.
- P1 DENOTES SRPR BY STANTEC DATED: NOV 20, 2020 FILE: 161660676
- P2 DENOTES REGISTERED PLAN 849

## SURVEYOR'S CERTIFICATE

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 11th DAY OF AUGUST, 2022.

Aug 26, 2022  
DATE

RAYMOND J. SETHORP  
ONTARIO LAND SURVEYOR



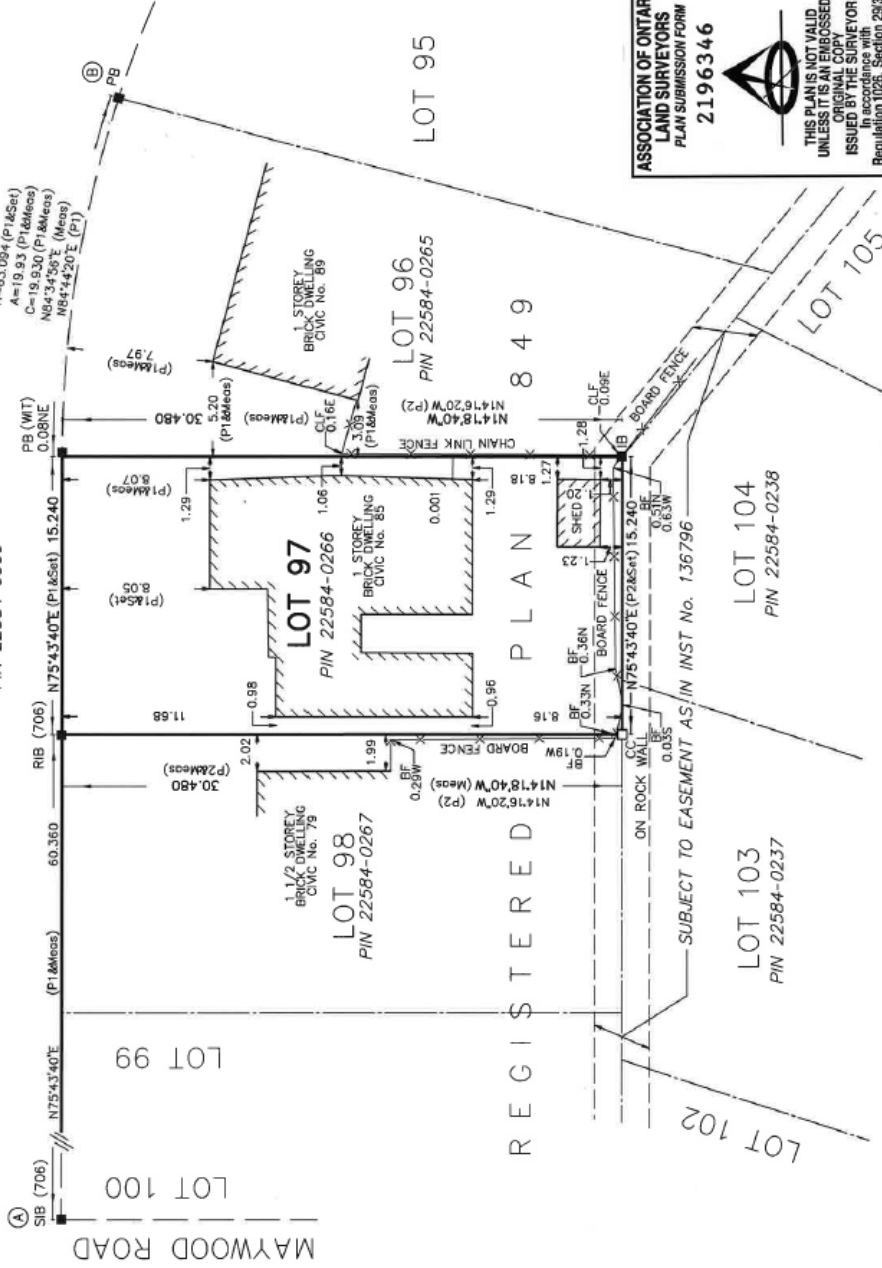
**J.D. BARNES**  
SURVEYING  
& MAPPING  
LAND INFORMATION SERVICES  
251 WOODLAND ROAD WEST, UNIT 101, GUELPH, ON N1H 1B1  
T: (519) 832-4001 F: (519) 832-1226 www.jdbarnes.com

RS/RJ 00000  
RJS 00000  
TJNS 00000  
AUG 17/2022  
22-14-787-00

**ASSOCIATION OF ONTARIO  
LAND SURVEYORS  
PLAN SUBMISSION FORM**  
**2196346**

THIS PLAN IS NOT VALID  
UNLESS IT IS AN EMBOSSED  
ORIGINAL COPY  
ISSUED BY THE SURVEYOR  
Regulation 1026, Section 28(3)

**BYRON AVENUE**  
BY REGISTERED PLAN 849  
PIN 22584-0306



REGISTERED PLAN 849

LOT 95

LOT 96  
PIN 22584-0265

LOT 97  
PIN 22584-0266

LOT 98  
PIN 22584-0267

LOT 99

LOT 100

LOT 103  
PIN 22584-0237

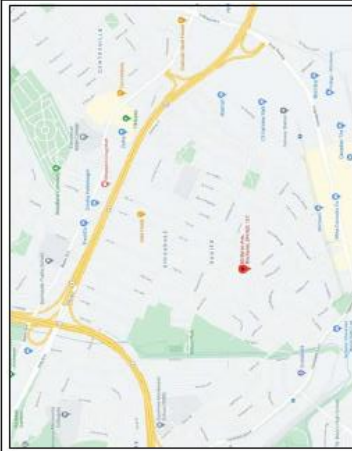
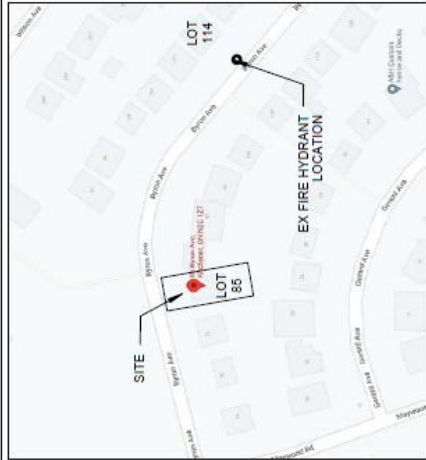
LOT 104  
PIN 22584-0238

LOT 105

LOT 102

SUBJECT TO EASEMENT AS IN INST No. 136796

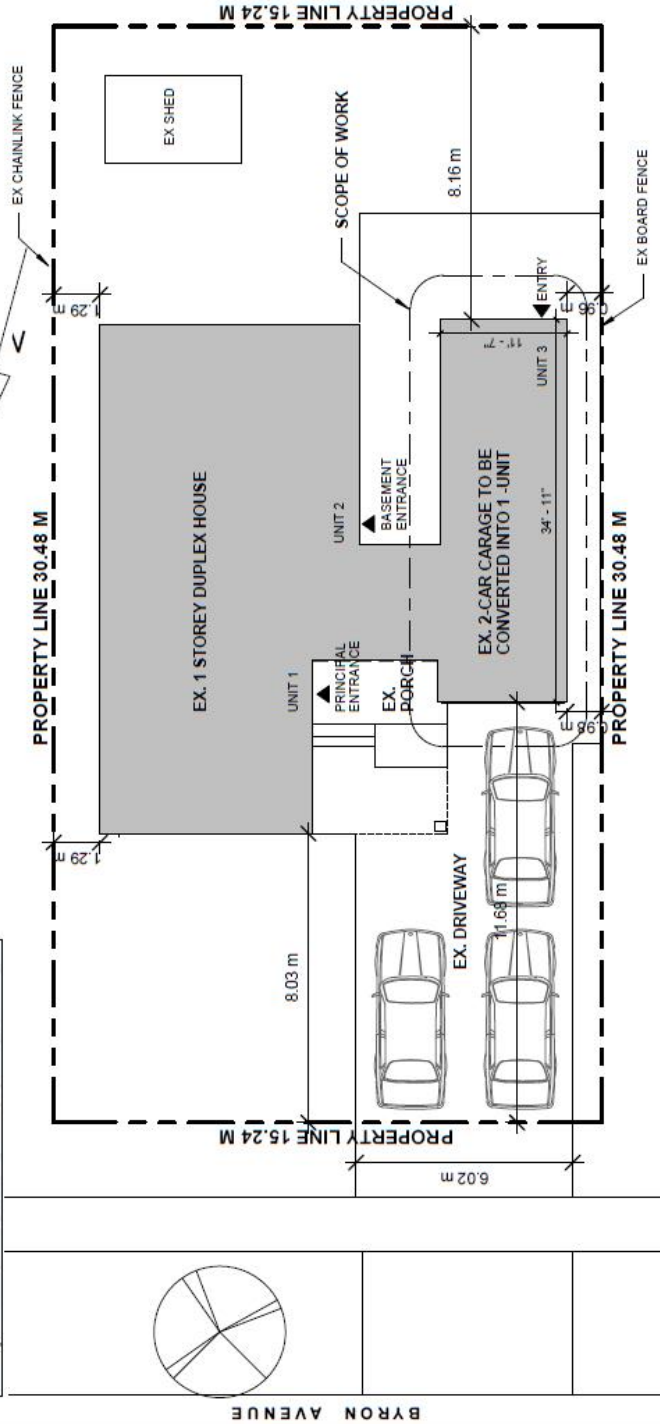
MAYWOOD ROAD



KEY PLAN

EX.1 STOREY BRICK HOUSE

EX.1 STOREY BRICK HOUSE



1 SITE PLAN  
3/32" = 1'-0"

SITE STATISTICS

DESCRIPTION	PERMITTED	PROPOSED
ZONING CATEGORY: RES-2		
LOT AREA	411 m <sup>2</sup>	457 m <sup>2</sup>
LOT WIDTH	13.70 m	15.24 m (EX)
LOT COVERAGE	55%	33%
FRONT YARD SETBACK	4.5 m MIN.	EXISTING
REAR YARD SETBACKS	7.50 m MIN.	EXISTING
SIDE YARD SETBACKS	1.2 m MIN.	0.86 m (EX)
NO. OF DWELLING UNIT	3	3
BLDG HEIGHT	11.0m	3.91 m (EX)
STOREYS	3	1 (EX)
LANDSCAPE	20 % MIN	42 %
PARKING SPACES	3 SPACES	3 SPACES

3	SEPT 21 2023	ISSUED FOR EPA
2	AUG 30 2023	ISSUED FOR EPA
1	JUN 13 2023	ISSUED FOR BUILDING PERMIT
NO	DATE	REVISIONS

PROJECT	PROPOSED THIRD SUITE
ADDRESS:	85 BYRON AVENUE, KITCHENER, ONTARIO
DESCRIPTION:	

SITE PLAN	
DATE: 05/27/21	SHEET NO. A1
SCALE: AS NOTED	