

# Staff Report



Development Services Department

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**REPORT TO:** Committee of Adjustment

**DATE OF MEETING:** January 17, 2023

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

**PREPARED BY:** Gaurang Khandelwal, Planner (Policy), 519-741-2200 ext. 7611

**WARD(S) INVOLVED:** Ward 10

**DATE OF REPORT:** January 4, 2023

**REPORT NO.:** DSD-2023-027

**SUBJECT:** Minor Variance Application A2023-004 - 312 Duke Street East

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## RECOMMENDATION:

### Zoning By-law 85-1

That Minor Variance Application A2023-004 for 312 Duke Street East requesting relief from the following sections of Zoning By-law 85-1:

- i) Section 5.22 m) to permit a shed roof where the peak of the roof is more than 4.5 metres from highest finished grade level, to be located 4.3 metres from a side lot line instead of the minimum required 4.5 metres; and,
- ii) Section 5.22 n) to permit an Additional Dwelling Unit (ADU) (Detached) to have a maximum lot coverage of 18.4% instead of the maximum 15%;

to facilitate the development of an accessible Additional Dwelling Unit (ADU) (Detached) in the rear yard of the subject property, generally in accordance with drawings prepared by The Architect Builders Collaborative Inc., dated November 22, 2022, BE APPROVED subject to the following condition:

#### 1. Prior to the issuance of a Demolition and/or Building Permit:

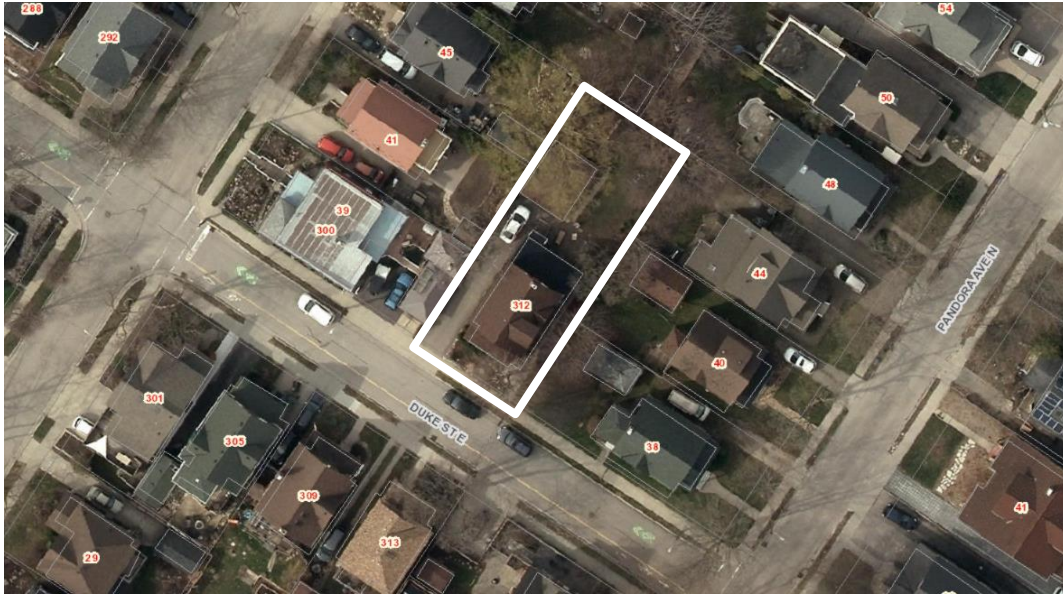
- a) The Owner shall prepare a Tree Preservation/Enhancement Plan, in accordance with the *City's Tree Management Policy*, to the satisfaction of and approval by the City's Supervisor, Site Plans. Such plans shall include, among other matters, the identification of a proposed building envelope/work zone, a landscaped area, and the vegetation to be preserved. If necessary, the plan shall include required mitigation and or compensation measures.
- b) The Owner shall implement the Tree Preservation/Enhancement Plan, prior to any tree removal, grading, servicing or the issuance of any demolition and/or building permits, to the satisfaction of the City's Supervisor, Site Plans. No changes to the said plan shall be granted except with the prior approval of the City's Supervisor, Site Plans.

**REPORT HIGHLIGHTS:**

- The purpose of this report is to review minor variances to facilitate the development of an accessible Additional Dwelling Unit (ADU) (Detached) in the rear yard of the subject property.
- 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.

**BACKGROUND:**

The subject property is located on the northerly side of Duke Street East, between Betzner Avenue North and Pandora Avenue North, in the Downtown Neighbourhood. The surrounding context comprises of primarily low-rise residential uses.



**Location Map – 312 Duke Street East**



**Photo of Subject Property**

The subject property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure and is designated 'Low Rise Conservation' in the King Street East Secondary Plan in the City's 1994 Official Plan.

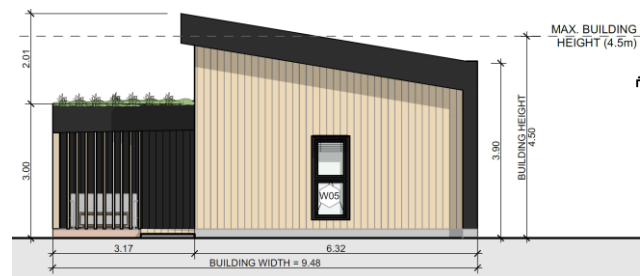
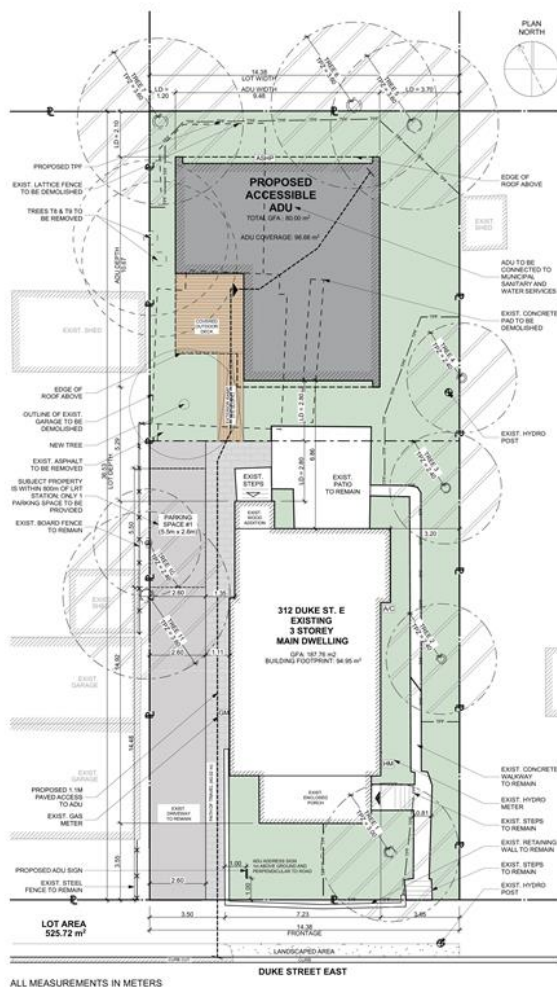
The property is zoned 'Residential Five Zone (R-5)' in Zoning By-law 85-1.

The purpose of the application is to facilitate the development of an Additional Dwelling Unit (ADU) (Detached) in the rear yard of the subject property.

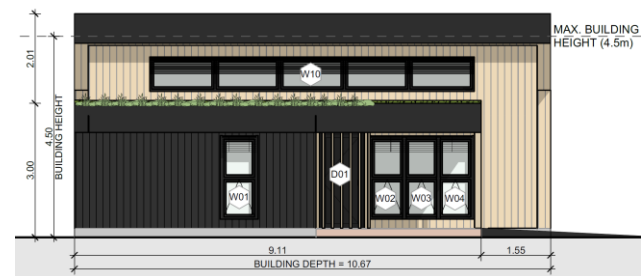
The applicant intends to demolish an existing garage in the rear yard and develop a detached one storey accessible ADU with a shed roof. While the proposed meets the maximum building height (measured to the mid point between the eaves and the peak of roof) of 4.5 metres, the peak of shed roof is more than 4.5 metres from the highest finished grade level. The highest exterior wall is located at 4.3 metres from the side lot line instead of the minimum required 4.5 metres. Further, the covered deck providing shelter to the main entrance puts the lot coverage over the 15% maximum for accessory structures by an additional 3.4%.

The deficiencies in relation to location of highest exterior wall and lot coverage for the ADU were flagged by City Planning staff as part of the ADU site plan application (SP22/168/D/TZ) process. Site Plan approval is no longer required with changes adopted through Bill 23, More Homes Built Faster Act.

City Planning staff conducted a site visit on December 28<sup>th</sup>, 2022.



**South Elevation of the ADU**



**West Elevation of the ADU**



## Site Plan showing location of Proposed ADU



**Location of Existing Garage to be demolished and Proposed ADU to be constructed**

### **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 'Major Transit Station Area' on Map 2 – Urban Structure and is designated 'Low Rise Conservation' on Map 3 – Land Use for lands located in a Secondary Plan in the 1994 Official Plan. The intent of the Low Rise Conservation designation is to preserve the scale, use, and intensity of existing development in a stable family-oriented area, while allowing for a limited range of low rise residential uses. King Street East Secondary Plan policy 13.2.1(1) specifies that "development should be of a siting and design which will be compatible with the existing development and particularly the single-detached dwellings in the interior of the neighbourhood". Official Plan policy 4.C.1.24 further maintains that the City will permit additional dwelling unit (detached) as an ancillary use to single detached dwellings where appropriate to provide alternate housing options to Kitchener homeowners and residents. Staff are of the opinion that the proposed ADU at the rear of the property is compatible with adjacent properties. The requested variances will not affect the low-rise residential character of the neighbourhood and therefore maintain the intent of the Official Plan.

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

The intent of the highest exterior wall facing the side lot line, where a shed roof is provided and the peak of roof is more than 4.5 metres from highest finished grade level, to not be closer than 4.5 metres from the side lot line is to ensure adequate separation and privacy between abutting properties. The proposed ADU will abut the rear yard of the neighbouring property. The windows on the upper west façade of the highest exterior wall will provide light into the open concept living space of the ADU. Since the proposed ADU is single storey, the highest exterior wall located at 4.3 metres from the side lot line is not anticipated to impact privacy of the neighbouring property or the subject property.

The intent of limiting lot coverage for all accessory buildings to 15%, including ADU, is to ensure ancillary nature of all the accessory buildings on a lot. The proposed ADU is designed with accessibility in mind, requiring additional space in bedrooms and bathroom. However, the total building floor area of the proposed ADU meets the 80 square metres requirement as prescribed under Section 5.22 h) of Zoning By-law 85-1. The additional 3.4% of lot coverage is primarily attributed to the covered deck providing shelter to the main entrance of the ADU. The additional lot coverage requested does not impede on the ancillary nature of the proposed ADU.

Staff are of the opinion that the requested variances meet the intent of the Zoning By-law.

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

Staff are of the opinion that the effects of the requested variances are minor as the approval of the highest exterior wall, where the peak of shed roof is more than 4.5 metres, to be located 4.3 metres instead of the minimum 4.5 metres from the side lot line and an additional lot coverage of 3.4% due to the proposed covered entrance of the accessible ADU is not distinguishable and will not have a significant impact on the adjacent properties or neighbourhood.

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

The requested variances are appropriate for the development and use of the land and building as the proposed ADU is consistent with the low rise residential and “family-oriented” characteristics of the surrounding neighbourhood. As such, the requested variances are considered desirable in order to facilitate the development of an accessible ADU.

**Environmental Planning Comments:**

The standard tree management condition should be applied. A Tree Preservation/Enhancement Plan (Arborist’s report, Aboud & Associates, 14 Oct 2022) was submitted in support of the required development approval for the ADU. We have preliminarily reviewed it and have some concerns regarding the recommendations for, and proposed treatment of, the Norway Maples at the rear lot line (Trees T5, T6, T7). Additional information and/or changes to the current recommendations will be required. Detailed comments will be provided as part of the review and approval required as a condition of the variance that is the subject of this application.

**Heritage Planning Comments:**

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 312 Duke Street East 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 Additional Dwelling Unit is obtained prior to construction. Please contact the Building Division at [building@kitchener.ca](mailto:building@kitchener.ca) with any questions.

**Engineering Division Comments:**

No Comments.

**Parks/Operations Division Comments:**

No concerns, no requirements.

**Transportation Planning Comments:**

Transportation Services does not have any concerns with the proposed application.

**Region of Waterloo Comments:**

No Concerns.

**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:**

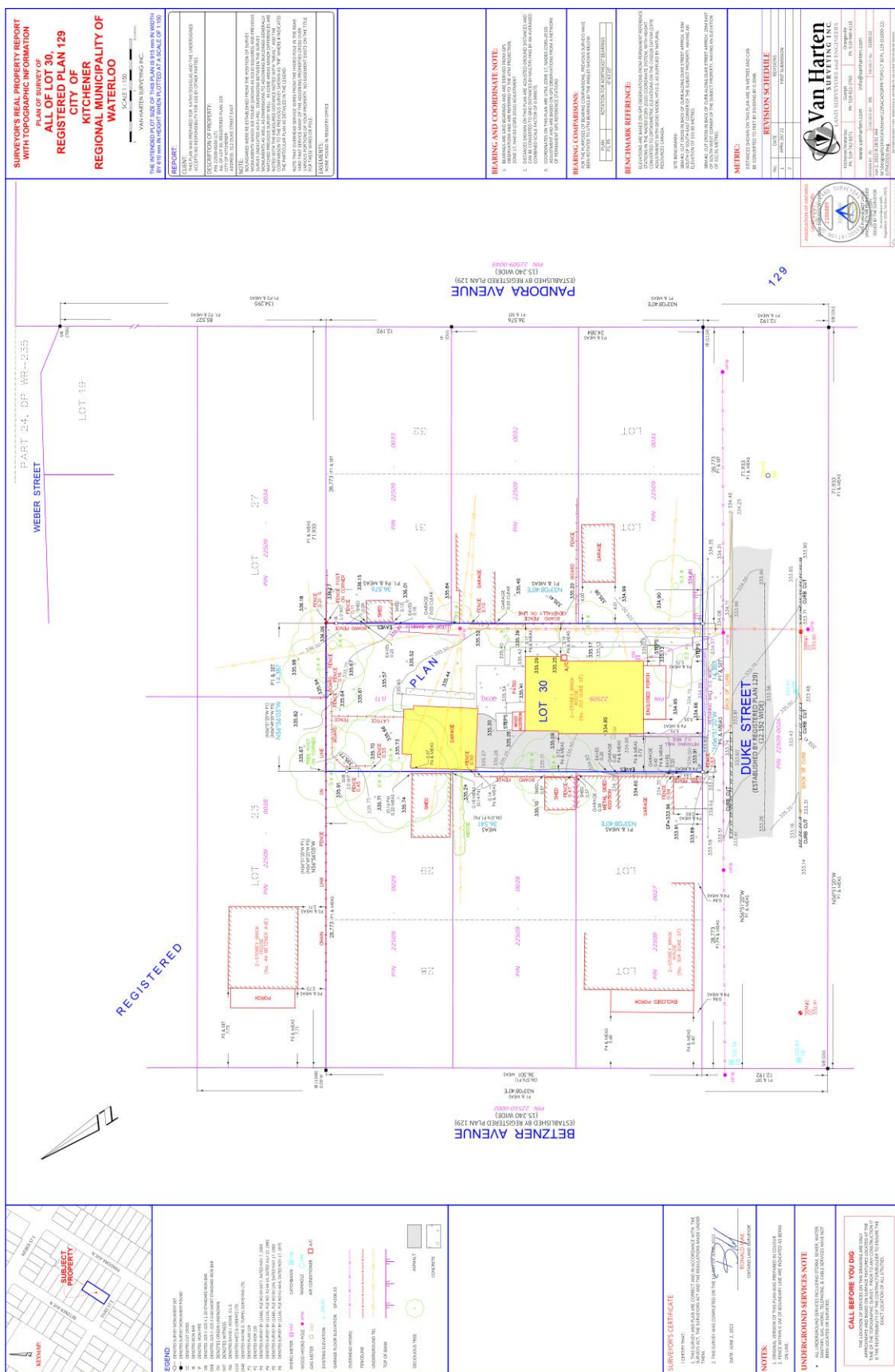
- *Planning Act*
- *Provincial Policy Statement (PPS 2020)*
- *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020*
- *Regional Official Plan*
- *Official Plan (2014)*
- *Zoning By-law 85-1*

**ATTACHMENTS:**

Attachment A – Survey of 312 Duke Street East

Attachment B – Site Plan of proposed detached ADU for 312 Duke Street East

## Attachment A – Survey of 312 Duke Street East





[illegible]

A horizontal scale bar with alternating black and white segments. It is marked with '0' at the left end, '2m' at the second segment boundary, and '5m' at the right end.