

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: February 21, 2023

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

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WARD(S) INVOLVED: 10

DATE OF REPORT: February 8, 2023

REPORT NO.: DSD-2023-067

SUBJECT: Minor Variance Application A2023-023 - 202 Breithaupt Street

RECOMMENDATION:

Zoning By-law 2019-051

That Minor Variance Application A2023-023 for 202 Breithaupt Street requesting permission under Section 45(2)(a)(i) of Planning Act, to permit the enlargement or extension of a legal non-conforming use, a multiple dwelling with 4 dwelling units, to permit a multiple dwelling with 5 dwelling units to recognize its use in the “Neighbourhood Industrial Employment Zone (EMP-1)” in accordance with drawings prepared by Guenther Rueb Surveying Limited, dated April 22, 1997, BE APPROVED subject to the following:

1. That the Owner obtain and register an environmental easement for operational noise and vibration emissions in favour of Metrolinx at the sole discretion and to the satisfaction of Metrolinx.
2. That the Owner enter into an agreement with Metrolinx, at the sole discretion and to the satisfaction of Metrolinx, to include the following warning clause in all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the Railway Corridor :
 - i) **Warning:** This is to advise that the subject land is located within Metrolinx’s 300 metres railway corridor zone of influence and as such is advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration may affect the environment of the occupants in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual lots, blocks or units.

*** This information is available in accessible formats upon request. ***
Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

REPORT HIGHLIGHTS:

- The purpose of this report is to permit the enlargement or extension of a multiple dwelling with 4 dwelling units, to a multiple dwelling with 5 dwelling units.
- The key finding of this report is that the request for permission to enlarge/extend a legal non-conforming use in the opinion of planning staff be approved.
- There are no financial implications.
- Community engagement included circulation of the application via mail, notification by way of The Record and signage on the property.
- This report supports the delivery of core services.

BACKGROUND:

The subject property is located on the north side of Breithaupt Street, near the intersection of Breithaupt Street and Margaret Avenue.



Figure 1 – Aerial photo of the Subject Property

The subject property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure and is designated 'General Industrial Employment' on Map 3 – Land Use in the City's 2014 Official Plan.

The property is zoned 'Neighbourhood Industrial Employment Zone (EMP-1)' in Zoning By-law 2019-051. The purpose of the zone is to permit a range of industrial uses on lands located within neighbourhoods and/or Major Transit Station Areas.

The purpose of the application is to permit the enlargement/extension of a multiple dwelling with 4 dwelling units, to a multiple dwelling with 5 dwelling units.

The site was originally developed with a multiple dwelling unit containing four dwelling units and an industrial building used for auto body repair and automobile sales. The site's uses were considered legal non-conforming in the previous By-law 85-1. In 1997 the Committee of adjustment approved the enlargement/extension of the legal non-conforming use from the previous owner to enlarge/extend the industrial building, to change the use from legal non-conforming to a similar or more compatible use, and to change the use of 120 square foot portion of the residential use to office.

The site has operated as a multiple dwelling with five dwelling units prior to the purchase in 2003 to the current owners. The current owners were unaware that the site was to operate as a multiple dwelling with 4 dwelling units and have applied to legalize the fifth dwelling unit.

Staff visited the site on January 27, 2023.



Figure 2 – Photo of Site Visit

REPORT:

Planning Comments:

Case law sets out the tests to be applied by the Committee of Adjustment in considering applications under Section 45(2)(a)(i). It should be noted that the test to be applied is not the four-part test for minor variances under Section 45(1) but rather whether the approval of the application:

1. Is in the public interest; and
2. Creates unacceptable or adverse impact upon abutting properties.

Is Approval in the Public Interest?

Policies 17.E.20.8 and 17.E.20.9 of the Official Plan reiterate that the Committee of Adjustment may grant permission under the Planning Act to consider an enlargement or an extension of a legal non-conforming use subject to the enlargement/extension being in the public interest, representing good planning and not creating unacceptable adverse impacts upon abutting properties.

The current Zoning By-law 2019-051 permits existing residential uses within sites zoned as 'EMP-1' in Table 10-1. A multiple dwelling with 5 dwelling units is legal non-conforming as the original use was legally known as a multiple dwelling with 4 dwelling units.

A previous Committee of Adjustment Application was approved to extend/enlarge the existing legal non-conforming uses of the site in 1997. In the opinion of planning staff, the current application to enlarge/extend the legal non-conforming use is in the public interest as it provides an additional housing unit in an existing building and represents good planning in the form of a gentle increase in density in the Major Transit Station Area.

Any Adverse or Unacceptable Impacts?

The application does not impose any impacts upon abutting properties, as it will be functioning as it did before the previous owners and is within the scope of the current zoning, which allows existing residential uses. Planning Staff do not have any concerns with the proposed enlargement/expansion of the legal non-conforming use with an additional dwelling unit. Planning staff are of the opinion that the additional dwelling unit within the existing building will not cause any adverse or unacceptable impacts.

Environmental Planning Comments:

Environmental Planning has no concerns due to nature of application (no site development).

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 202 Breithaupt Street 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.

Building Division Comments:

The Building Division has no objections to the proposed variance provided building permit for the 5th dwelling unit is obtained to legalize the unit. Please contact the Building Division at building@kitchener.ca with any questions.

Engineering Division Comments:

Engineering has no concerns.

Parks/Operations Division Comments:

Parks/operations has no concerns.

Transportation Planning Comments:

Transportation Services have no concerns with the proposed application. For any future applications, ensure the dimensioning of parking spaces and vehicle drive aisle widths be noted on the plan.

Region of Waterloo Comments:

Regio of Waterloo has no concerns.

Ministry of Transportation Comments:

The Ministry of Transportation (MTO) has no objection to this application. The subject property is located beyond MTO limits of permit control and therefore MTO review, approval and permits will not be required.

Metrolinx Comments:

- The subject property is located within 300 meters of Metrolinx's Guelph Subdivision which carries Metrolinx's Kitchener GO Train service.
- As per section 3.9 of the Federation of Canadian Municipalities and Railway Association of Canada's Guidelines for New Development in Proximity to Railway Operations, the Owner shall grant Metrolinx an environmental easement for operational emissions. The environmental easement provides clear notification to those who may acquire an interest in the subject property and reduces the potential for future land use conflicts. The environmental easement shall be registered on title of the subject property. A copy of the form of easement is included for the Owner's information. The applicant may contact Derek.Brunelle@Metrolinx.com with questions and to initiate the registration process.
- The Proponent shall provide confirmation to Metrolinx, that the following warning clause has been inserted into all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the Railway Corridor.
 - **Warning:** The Applicant is advised that the subject land is located within Metrolinx's 300 metres railway corridor zone of influence and as such is advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration may affect the environment of the occupants in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual lots, blocks or units.

WHEREAS the Transferor is the owner of those lands legally described in the Properties section of the Transfer Easement to which this Schedule is attached (the "Easement Lands");

IN CONSIDERATION OF the sum of TWO DOLLARS (\$2.00) and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Transferor, the Transferor transfers to the Transferee, and its successors and assigns, a permanent and perpetual non-exclusive easement or right and interest in the nature of a permanent and perpetual non-exclusive easement over, under, along and upon the whole of the Easement Lands and every part thereof for the purposes of discharging, emitting, releasing or venting thereon or otherwise affecting the Easement Lands at any time during the day or night with noise, vibration and other sounds and emissions of every

nature and kind whatsoever, including fumes, odours, dust, smoke, gaseous and particulate matter, electromagnetic interference and stray current but excluding spills, arising from or out of, or in connection with, any and all present and future railway or other transit facilities and operations upon the lands of the Transferee and including, without limitation, all such facilities and operations presently existing and all future renovations, additions, expansions and other changes to such facilities and all future expansions, extensions, increases, enlargement and other changes to such operations (herein collectively called the "Operational Emissions").

THIS Easement and all rights and obligations arising from same shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective officers, directors, shareholders, agents, employees, servants, tenants, sub-tenants, customers, licensees and other operators, occupants and invitees and each of its or their respective heirs, executors, legal personal representatives, successors and assigns. The covenants and obligations of each party hereto, if more than one person, shall be joint and several.

Easement in gross.

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 2019-051*
- *Committee of Adjustment Submission No. A74/97*