

REPORT TO: Committee of Adjustment

DATE OF MEETING: March 21, 2023

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

PREPARED BY: Craig Dumart, Senior Planner, 519-741-2200 ext. 7073

WARD(S) INVOLVED: Ward 10

DATE OF REPORT: March 6, 2023

REPORT NO.: DSD-2023-098

SUBJECT: Consent Application B2022-057 - 193 Louisa Street

RECOMMENDATION:

That Consent Application B2022-057 requesting consent to sever a parcel of land having a lot width of 13.1 metres, a lot depth of 22.6 metres, and a lot area of 237 square metres and requesting a servicing easement described as Part 1, Plan 58R-21637, having a width of 13.18 metres and a depth of 4.5 metres over the severed lands in favour of the retained lands BE APPROVED subject to the following conditions:

1. That the property owner's solicitor shall provide draft transfer documents and associated fees for the Certificate of Official to the satisfaction of the Secretary-Treasurer and City Solicitor, if required.
2. That the property owner shall obtain a tax certificate from the City of Kitchener to verify that there are no outstanding taxes on the subject property(ies) to the satisfaction of the City's Revenue Division.
3. That the property owner provides a digital file of the deposited reference plan(s) prepared by an Ontario Land Surveyor in PDF and either .dwg (AutoCad) or .dgn (Microstation) format, as well as two full size paper copies of the plan(s). The digital file needs to be submitted according to the City of Kitchener's Digital Submission Standards to the satisfaction of the City's Mapping Technologist.
4. That the Transfer Easement document(s) required to create the Easement(s) being approved herein shall include the following, and shall be approved by the City Solicitor in consultation with the City's Supervisor, Development Applications:
 - a) a clear and specific description of the purpose of the Easement(s) and of the rights and privileges being granted therein (including detailed terms and/or conditions of any required maintenance, liability and/or cost sharing provisions related thereto); and

- b) a clause/statement/wording confirming that the Easement(s) being granted shall be maintained and registered on title in perpetuity and shall not be amended, released or otherwise dealt with without the express written consent of the City.
5. That a satisfactory Solicitor's Undertaking, to register the approved Transfer Easement(s) and to immediately thereafter provide copies thereof to the City Solicitor, be provided to the City Solicitor.
 6. That the property owner provides a servicing plan showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.
 7. That the property owner submit a Development Asset Drawing (digital AutoCAD) for the site (servicing, SWM etc.) with corresponding layer names and asset information to the satisfaction of the City's Director of Engineering Services, prior to deed endorsement.
 8. That the property owner makes financial arrangements for the installation of any new service connections to the severed and/or retained lands to the satisfaction of the City's Director of Engineering Services.
 9. That any new driveways are to be built to City of Kitchener standards at the Owner's expense prior to occupancy of the building to the satisfaction of the City's Director of Engineering Services.
 10. That the property owner provides confirmation that the basement elevation can be drained by gravity to the street sewers to the satisfaction of the City's Director of Engineering Services. If this is not the case, then the owner will need to pump the sewage via a pump and forcemain to the property line and have a gravity sewer from the property line to the street to the satisfaction of the City's Director of Engineering Services.
 11. That the property owner pay to the City of Kitchener a cash-in-lieu contribution for park dedication equal to \$11,862.00 of the value of the lands to be severed.
 12. That prior to final approval, the owner/applicant submit the Regional consent review fee of \$350.00.
 13. That prior to final approval, the owner/applicant will apply for and obtain the required access permit(s) to the satisfaction of the Region of Waterloo.
 14. That prior to final approval the owner/applicant must apply for and obtain approval of a Regional Work Permit from Regional Corridor Management Division of any works within or abutting the Region's Road right-of-way and Region of Waterloo Railway Corridor.
 15. That prior to final approval, an agreement between the owner/applicant and the Region of Waterloo, to the satisfaction of the Region of Waterloo, must be registered on title for both the retained and severed lands that includes the requirement for the following warning clauses in all agreements of Offers of Purchase and Sale/lease/rental agreements:
 - i) "Purchasers / tenants are advised that sound levels due to increasing road traffic on Weber Street and Region of Waterloo Railway may occasionally interfere with some activities of the dwelling occupants as the sound levels

exceed the sound level limits of the Region of Waterloo and the Ministry of the Environment, Conservation and Parks. This dwelling has been designed with the provision of adding central air conditioning at the occupant's discretion. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Region of Waterloo and the Ministry of the Environment, Conservation and Parks (MECP).

- ii) "Purchasers / tenants are advised that sound levels due to increasing traffic on Weber Street and Region of Waterloo Railway may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Region of Waterloo and the Ministry of the Environment Conservation and Parks (MECP)."
- iii) "Warning: Region of Waterloo / Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject thereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."

REPORT HIGHLIGHTS:

- The applicant is requesting to sever the existing lot into two lots to allow separate ownership of the semi detached dwelling units and requesting a servicing easement over the severed lands in favour of the retained lands.
- There are no financial implications.
- This report supports the delivery of core services.

BACKGROUND:

The purpose of the application is to request consent to sever the new semi-detached dwelling so that each half of the semi-detached dwelling can be dealt with and conveyed separately and independently of one another.

Applications for Consent and Minor Variances (B2019-063, A2019-104, A2019-105) were considered by the Committee of Adjustment in September of 2019. Although the applications were approved, the conditions of Consent Application B2019-063 were not fulfilled with the prescribed 2-year time frame.

On November 22, 2022, the Committee of Adjustment deferred consideration of Consent application B2022-057 as staff had identified that a servicing easement over the severed lands in favour of the retained lands was required to allow for the existing lot containing a semi detached dwelling to be severed into two lots. The applicant has revised the application to include a proposed servicing easement over the severed lands in favour of the retained lands.

The subject property is located on the corner of Louisa Street and Weber Street West, in the Mount Hope Huron Park neighbourhood. The neighbourhood is comprised of a mix of low and mid-rise residential uses, and commercial/retail uses.



Figure 1: Location Map – 193 Louisa Street

The subject property is identified as 'Community Areas' 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 'Low Rise Residential Five Zone (RES-5)' in Zoning By-law 2019-051.

The applicant is requesting to sever the existing lot into two lots to allow separate ownership of the semi detached dwelling units and requesting a servicing easement over the severed lands in favour of the retained lands.

The severed lands (Part 1, Plan 58R-21572) will have a width of 13.18 metres, a depth of 22.6 metres, and a lot area of 237 square metres. The retained lands (Part 2, Plan 58R-21572) will have a lot width of 7.5 metres, a depth of 27.9 metres, and a lot area of 190 square metres. Minor variances (A2019-104 and A2019-105) have been granted to address the deficient lot area and rear yard setbacks. (see Zoning Bylaw section below).

The proposed servicing easement (Part 1, Plan 58R-21637) over the severed lands will have a width of 13.18 metres and a depth of 4.5 metres in favour of the retained lands.

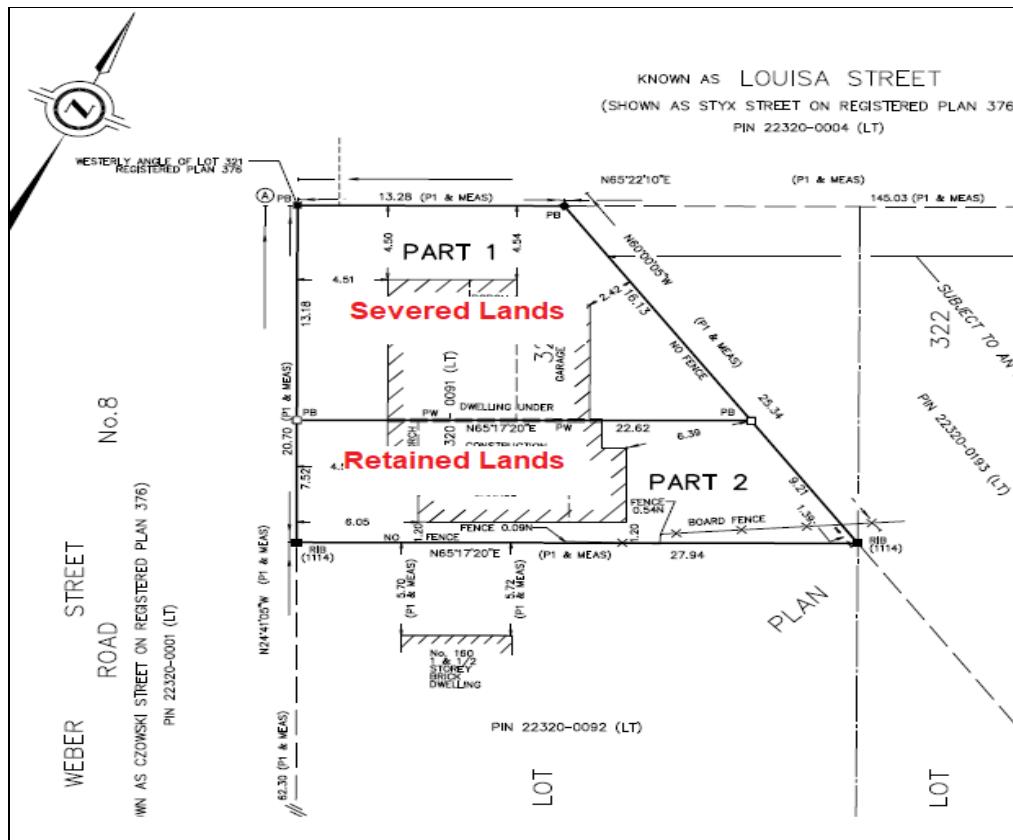


Figure 2: Proposed Lot Fabric

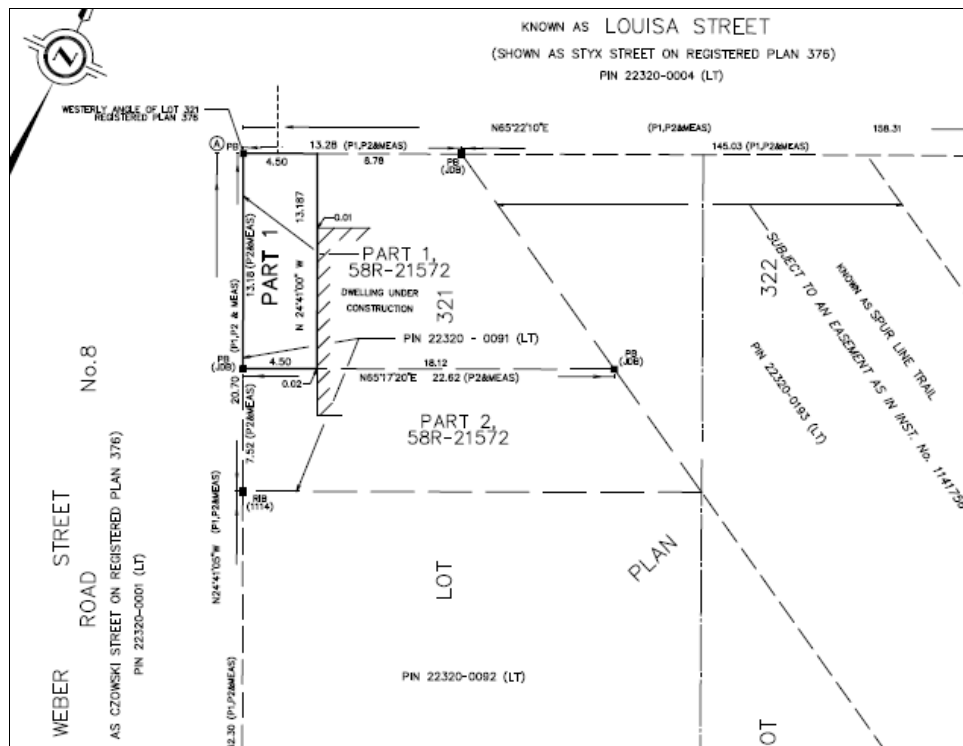


Figure 3: Proposed Servicing Easement (Part 1)



Figure 4: Existing Semi Detached Dwelling at 193 Louisa Street

Planning staff conducted a site visit on March 1, 2023.

REPORT:

PLANNING COMMENTS:

In considering all the relevant Provincial legislation, Regional and City policies and regulations, Planning staff offer the following comments:

Provincial Policy Statement, 2020:

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. Section 1.4.3(b) of the PPS promotes all types of residential intensification, and sets out a policy framework for sustainable healthy, liveable and safe communities. The PPS promotes efficient development and land use patterns, as well as accommodating an appropriate mix of affordable and market-based residential dwelling types with other land uses, while supporting the environment, public health and safety. Provincial policies promote the integration of land use planning, growth management, transit-supportive development, intensification, and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs.

Planning staff is of the opinion that the proposed application will allow for the creation of two lots and allow for separate ownership of each dwelling unit and make use of the existing infrastructure. No new public roads would be required for the proposed development. Planning staff is of the opinion that this proposal is consistent with the PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (Growth Plan):

The Growth Plan supports the development of complete and compact communities that are designed to support healthy and active living, make efficient use of land and infrastructure, provide for a range and mix of housing types, jobs, and services, at densities and in locations which support transit viability and active transportation. The subject lands are in close proximity to transit and the subject lands are in closer proximity to trails and parks.

Policy 2.2.6.1(a) Municipalities will support housing choice through the achievement of the minimum intensification and targets in this plan by identifying a diverse range and mix of housing options and densities, including additional residential units and affordable housing to meet projected needs of current and future residents.

The subject lands are located within the City's delineated built up area. The proposed development represents intensification and will contribute towards achieving the City's intensification density targets. The severance application will help make efficient use of existing infrastructure, parks, roads, trails and transit. Planning staff is of the opinion that the development proposal conforms to the Growth Plan.

Regional Official Plan (ROP):

Urban Area policies of the ROP identify that the focus of the Region's future growth will be within the Urban Area. The subject lands are designated Built-Up Area in the ROP. The proposed development conforms to Policy 2.D.1 of the ROP as this neighbourhood provides for the physical infrastructure and community infrastructure to support the proposed residential development, including transportation networks, municipal drinking-water supply and wastewater systems, and a broad range of social and public health services. Regional policies require Area Municipalities to plan for a range of housing in terms of form, tenure, density and affordability to satisfy the various physical, social, economic and personal support needs of current and future residents. Planning staff are of the opinion that the severance application conforms to the Regional Official Plan.

Official Plan

The subject lands are designated Low Rise Residential (Map 3) in the 2014 Official Plan. The Low Rise Residential land use designation permits a full range of low density housing types which may include single detached dwellings, semi-detached dwellings, street townhouse dwellings, and low-rise multiple dwellings. The Low Rise Residential land use designation encourages mixing and integrating different forms of housing to achieve and maintain a low-rise built form. The maximum net residential density for lands which are designated Low Rise Residential will be 30 units per hectare.

The proposed severance is in accord with this aspect of the plan and maintains the residential land use designation.

Section 17.E.20.5 of the Official Plan implements Section 51 of the Planning Act and contains policies regarding infill development and lot creation (Consent Policies). These policies state the following:

17.E.20.5 Applications for consent to create new lots will only be granted where:

- a) the lots comply with the policies of this Plan, any Community Plan and/or Secondary Plan, and that the lots are in conformity with the Zoning By-law, or a minor variance has been granted to correct any deficiencies;
- b) the lots reflect the general scale and character of the established development pattern of surrounding lands by taking into consideration lot frontages, areas, and configurations;

- c) all of the criteria for plan of subdivision are given due consideration;
- d) the lot will have frontage on a public street;
- e) municipal water services are available;
- f) municipal sanitary services are available except in accordance with Policy 14.C.1.19;
- g) a Plan of Subdivision or Condominium has been deemed not to be necessary for proper and orderly development; and,
- h) the lot(s) will not restrict the ultimate development of adjacent properties.”

The subject lands have been granted minor variances (see A2019-104 and A2019-105) to permit “Part 1, Plan 58R-21572 (severed lands)” to have a width of 13.18 metres, a depth of 22.6 metres, a rear yard setback of 2.4 metres rather than the required 7.5 metres, and an area of 237 square metres, and to permit “Part 3, Plan 58R-21572 (retained lands)” to have a width of 7.52 metres, a depth of 27.94 metres, a rear yard setback of 6 metres rather than the required 7.5 metres, and an area of 190 square metres.

Staff are of the opinion that the size, dimensions, and shape of the proposed lots are suitable for the use of the lands and compatible with the surrounding neighbourhood; adjacent properties contain a range of low rise residential dwelling types also on lots varying in width, depth, and area. The lands front onto a public street and full services are available. The servicing easement is required as each lot is required to have its own set of services. There are no natural heritage features that would be impacted by the proposed consent application. Staff are of the opinion that the proposed consent application conforms with the City’s Official Plan.

Zoning By-law 2019-051

The property is zoned ‘Low Rise Residential Five Zone (RES-5)’ in Zoning By-law 2019-051. The ‘RES-5’ zones permit a range of low rise residential dwelling types including semi-detached dwellings. The ‘RES-5’ zone requires a minimum lot width of 7.5 metres (internal lots), and 12.0 metres (corner lots) and a minimum lot area of 210 square metres for semi detached dwelling units.

Minor variances (A2019-104 and A2019-105) have been granted to permit a 2.4 metre rear yard setback for “Part 1, Plan 58R-21572 (severed lands)” and a 6.0 rear yard setback and lot area of 190 square metres for “Part 2, Plan 58R-21572 (retained lands)”. As such, the proposed lot widths and lot areas of the proposed severed and retained lots meet the minimum zoning lot width and lot area requirements.

PLANNING CONCLUSIONS

With respect to the criteria for the subdivision of land listed in Section 51(24) of the Planning Act, R.S.O. 1990, c.P.13, staff is satisfied that the creation of the severed lot with the servicing easement is desirable and appropriate. The servicing easement is necessary as each lot is required to have its own set of services. The uses of both the severed and retained parcels are in conformity with the City’s Official Plan and Zoning By-law. Planning staff is of the opinion that the size, dimension and shape of the proposed lots are suitable for the use of the lands and compatible with the surrounding community. There are existing schools within the neighbourhood. Staff is further of the opinion that the proposal is consistent with the Region of Waterloo Official Plan, the Provincial Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe and is good planning and in the public interest.

ENVIRONMENTAL PLANNING COMMENTS:

The Tree Management Plan (Mackinnon & Assoc., August 12, 2019) approved by City staff must continue to be implemented.

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 193 Louisa Street is located within the Mt Hope/Breithaupt 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 consent. Region of Waterloo and Area Municipalities' Design Guidelines and Supplemental Specifications for Municipal Services (DGSSMS) allows only one service per lot.

ENGINEERING DIVISION COMMENTS:

- Severance of any blocks within the subject lands will require separate, individual service connections for sanitary, storm, and water, in accordance with City policies.
- The owner is required to make satisfactory financial arrangements with the Engineering Division for the installation of new service connections that may be required to service this property, all prior to severance approval. Our records indicate sanitary, storm and water municipal services are currently available to service this property. Any further enquiries in this regard should be directed to eric.riek@kitchener.ca
- Any new driveways are to be built to City of Kitchener/Region of Waterloo standards. All works are at the owner's expense and all work needs to be completed prior to occupancy of the building.
- A servicing plan showing outlets to the municipal servicing system will be required to the satisfaction of the Engineering Division prior to severance approval.
- A Development Asset Drawing (digital AutoCAD) is required for the new site infrastructure with corresponding layer names and asset information to the satisfaction of the Engineering Division prior to severance approval.
- The owner must ensure that the basement elevation of the building can be drained by gravity to the street sewers. If this is not the case, then the owner would have to pump the sewage via a pump and forcemain to the property line and have a gravity sewer from the property line to the street.

PARKS/OPERATIONS DIVISION COMMENTS:

Cash-in-lieu of park land dedication will be required on the severed parcel as 1 new development lot will be created. **The cash-in-lieu dedication required is \$11,862.** Park Dedication is calculated at 5% of the new development lots only, with a land valuation calculated by the lineal frontage of 13.19m at a land value of \$36,080 per frontage meter with a per unit cap of \$11,862.

TRANSPORTATION PLANNING COMMENTS:

Transportation Services have no concerns with the proposed application.

REGION OF WATERLOO COMMENTS:

The owner/applicant is required to submit the Regional consent review fee of \$350.00 prior to final approval of the consent.

Regional Water Services (Advisory):

The Applicant shall be advised that no connection to regional watermain will be permitted in accordance with Section B.2.1.4.1 of the Design Guidelines and Supplemental Specifications for Municipal Services, February 2022.

Corridor Planning:**Access Permit:**

Regional Staff advise that an Access Permit application, with the required \$100.00 fee, shall be required for the proposed access onto Weber Street West (RR #08). Applications for the permit are available at the following link: [Application and Payment for an Access Permit - Region of Waterloo](#)

Servicing Easement/Work Permit:

- a) The Servicing Easement and any servicing within the easement must be totally located within the private property limits of severed/retained lots;
- b) The works within the Region's road allowance must be limited to excavation activities and asphalt restoration;
- c) The applicant(s) contractor must apply and obtain approval of a Regional Work Permit from the Regional Corridor Management Division of any works within or abutting the Region's Road right-of-way and Region of Waterloo Railway Corridor, as may be required for the construction of the site servicing. In addition the applicant must abide by all conditions and stipulations outlined within the Work Permit Application. The Permit application can be found here: [Apply For A Permit - Regional Municipality of Waterloo Online Application \(permitcentral.ca\)](#)
- d) It is recommended that the proposed 150mm diameter storm service connect directly to the existing manhole along Louisa Street to mitigate the extent of the asphalt restoration along Louisa Street; and
- e) Lane closures or traffic impacts along Weber Street will not be permitted as part of these works.

Environmental Noise:

The proposed development is likely to have impacts from road traffic noise from traffic on Weber Street West (RR #08) and rail noise / vibration from adjoining Region of Waterloo railway line.

Regional Staff acknowledge that based on discussions with the City of Kitchener and CN Railway that all parties are agreeable to waiving the requirement for a detailed noise and vibration study. The owner/applicant may choose to undertake and implement a noise and vibration study; however Regional Staff are recommending that the following noise warning clauses be implemented through a development agreement with the Region, registered on title, indicating that:

1. The following noise warning clause will be required to be included on all offers of purchase, deeds and rental agreements for the building / dwelling units:
 - i) "Purchasers / tenants are advised that sound levels due to increasing road traffic on Weber Street and Region of Waterloo Railway may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Region of Waterloo and the Ministry of the Environment, Conservation and Parks. This dwelling has been designed with the provision of adding central air conditioning at the occupant's discretion. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Region of Waterloo and the Ministry of the Environment, Conservation and Parks (MECP).
 - ii) "Purchasers / tenants are advised that sound levels due to increasing traffic on Weber Street and Region of Waterloo Railway may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Region of Waterloo and the Ministry of the Environment Conservation and Parks (MECP)."

- iii) "Warning: Region of Waterloo / Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject thereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."

The Region has no objection to the proposed application, subject to the following conditions:

1. That prior to final approval, the owner/applicant submit the Regional consent review fee of \$350.00.
2. That prior to final approval, the owner/applicant will apply for and obtain the required access permit(s) to the satisfaction of the Region of Waterloo.
3. That prior to final approval the owner/applicant must apply for and obtain approval of a Regional Work Permit from Regional Corridor Management Division of any works within or abutting the Region's Road right-of-way and Region of Waterloo Railway Corridor,
4. That prior to final approval, an agreement between the owner/applicant and the Region of Waterloo, to the satisfaction of the Region of Waterloo, must be registered on title for both the retained and severed lands that includes the requirement for the following warning clauses in all agreements of Offers of Purchase and Sale/lease/rental agreements:
 - i) "Purchasers / tenants are advised that sound levels due to increasing road traffic on Weber Street and Region of Waterloo Railway may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Region of Waterloo and the Ministry of the Environment, Conservation and Parks. This dwelling has been designed with the provision of adding central air conditioning at the occupant's discretion. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Region of Waterloo and the Ministry of the Environment, Conservation and Parks (MECP).
 - ii) "Purchasers / tenants are advised that sound levels due to increasing traffic on Weber Street and Region of Waterloo Railway may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Region of Waterloo and the Ministry of the Environment Conservation and Parks (MECP)."
 - iii) "Warning: Region of Waterloo / Canadian National Railway Company or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject thereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way."

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 (ROP)*
- *Official Plan (2014)*
- *Zoning By-law 2019-051*
- *B2019-063, A2019-104, A2019-105*

ATTACHMENTS:

Attachment A – Reference Plan for Lot Severance
Attachment B – Reference Plan Servicing Easement