

# Staff Report



Development Services Department

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**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 9

**DATE OF REPORT:** March 7, 2023

**REPORT NO.:** DSD-2023-099

**SUBJECT:** Minor Variance Application A2023-038  
Consent Application B2023-011  
131 St George Street

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## RECOMMENDATION:

- A. That Minor Variance Application A2023-038 for 131 St George Street requesting relief from Section 39.2.1 of Zoning By-law 85-1 to permit a rear yard setback for 6.3 metres instead of the minimum required 7.5 metres, BE APPROVED.
- B. That Consent Application B2023-011 requesting consent to sever a parcel of land having a lot width of 11.09 metres, a lot depth of 23.77 metres and an area of 263.61 square metres, BE APPROVED subject to the following conditions:
1. That Minor Variance Application A2023-038 receive final approval.
  2. 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.
  3. 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.
  4. That the property owner shall provide 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.
  5. That the property owner provides a servicing plan showing outlets to the municipal servicing system to the satisfaction of the Director of Engineering Services.

6. 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.
7. 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.
8. 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.
9. 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.
10. That the owner shall:
  - a) complete a Building Code Assessment for the existing dwelling proposed to be retained on the retained parcel of land, prepared by a qualified person, to confirm that the proposed property line and any of the building adjacent to this new property line complies with the Ontario Building Code, to the satisfaction of the City's Chief Building Official. The assessment shall address items such as, but not limited to, spatial separation of existing buildings' wall face, and shall include recommendations such as closing in of openings pending spatial separation calculation results.
  - b) A Building Permit shall be obtained for any remedial work/ upgrades required by the Building Code Assessment.
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 the property owner shall enter into an agreement with the City of Kitchener, to be prepared by the City Solicitor, to the satisfaction of the City Solicitor and the City's Supervisor, Site Plans, and registered on title of the severed and retained lands, which shall include the following:
  - a) That the property owner shall prepare a Tree Preservation and Enhancement Plan for the severed and retained lands, 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. No changes to the said plan shall be granted except with the prior approval of the City's Supervisor, Site Plans.
  - b) That the property owner shall implement the Tree Preservation and 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.

**13. That, prior to final approval, the applicant submits the Consent Application Review Fee of \$350.00 to the Region of Waterloo.**

**REPORT HIGHLIGHTS:**

- The purpose of this report is to recommend approval of a proposed consent application and associated minor variance application to permit the creation of a new lot for a single detached dwelling.
- There are no financial implications.
- Community engagement included a notice sign being placed on the property advising that a Committee of Adjustment application has been received, notice of the application was mailed to all property owners within 30 metres of the subject property and this report was posted to the City's website with the agenda in advance of the Committee of Adjustment meeting.
- This report supports the delivery of core services.

**BACKGROUND:**

The subject property is located at the corner of St George Street and Cedar Street South, in the Cedar Hill neighbourhood. The neighbourhood is comprised of a mix of low, mid-rise and high-rise residential uses, and commercial and institutional uses.



**Figure 1: Location Map – 131 St George Street**

The subject property is identified as 'Major Transit Station Area' on Map 2 – Urban Structure and is designated 'Low Rise Conservation' on Map 11 – Cedar Hill in the Cedar Hill 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 applicant is requesting consent to create one new lot and one retain lot with the existing single detached dwelling and proposing a minor variance application to reduce the required rear yard setback of the existing single detached dwelling to 6.35 metres rather than the required 7.5 metres as a result of the proposed consent application. The severed lot would have a lot frontage of 11.09 metres, a lot depth of 23.77 metres and an area of 263.61 square metres, while the retained lot would have a lot frontage of 12.8 metres, a lot depth of 21.95 metres and an area of 280.96 square metres.





**Figure 3: Existing site conditions at 131 St George Street**

Planning staff conducted a site visit on March 2, 2023.

## **REPORT:**

### **Planning Comments Minor Variance Application A2023-038**

The applicant is requesting relief from Section 39.2.1 of the Zoning By-law to allow a rear yard setback of 6.35 metres rather than the required 7.5 metre setback.

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 lands are designated 'Low Rise Conservation' in the Cedar Hill Neighbourhood Secondary Plan in the City of Kitchener's 1994 Official Plan. This land use designation permits low density housing types including single detached dwellings, duplex dwellings, semi-detached dwellings, and multiple dwellings to a maximum of three units. The requested variance to permit a reduced rear yard setback for the existing single detached dwelling is appropriate and continues to maintain the low-density character of the property and surrounding neighbourhood, which is characterized by a variety of lot sizes and built form options. The proposed variance conforms to the designation, and it is the further opinion of staff that the requested variance is appropriate.

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

The requested variance to reduce the rear yard setback from 7.5 metres to 6.35 metres meets the general intent of the Zoning By-law. The intent of the 7.5 metre setback is to provide adequate amenity space in the rear yard. The reduction of 1.1 metres from the required 7.5 metres is minor, as the proposed 6.3 metre rear yard setback will continue to provide sufficient amenity space in the rear yard.



Are the Effects of the Variances Minor?

The reduction of the rear yard setback is considered minor. Staff is of the opinion that the requested variance will provide adequate amenity space and will not negatively affect the adjacent properties or surrounding neighbourhood.

Are the Variances Desirable for the Appropriate Development or Use of the Land, Building and/or Structure?

The proposed variance is appropriate for the development and use of the land as the proposed residential use is a permitted use in the Zoning By-law. A reduced rear yard setback and will not negatively impact the character of the subject property or surrounding neighbourhood. Furthermore, the proposed variance supports the creation of a new lot for a future single detached dwelling.

**Planning Comments Consent Application B2023-011**

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 facilitate a form of gentle intensification of the subject property with the creation of new lot for a future single detached dwelling that is compatible with the surrounding community and will 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 Conservation' on Map 11 – Cedar Hill Neighbourhood Secondary Plan in the City of Kitchener's 1994 Official Plan. The Low Rise Conservation 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 Conservation will be 40 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 proposed lot widths and lot area of the proposed severed lot exceeds the minimum 'R-5' zone lot width and lot area requirements and the lot width of retained lands is existing and legal non-conforming. 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 neighbourhood which is developed with single detached, semi detached and multiple dwellings with lots sizes that vary in width, depth, and area. The lands front onto a public street and full services are available. There are no natural heritage features that would be impacted by the proposed consent application. Planning staff is of the opinion that the proposed severance conforms with the City of Kitchener Official Plan.

#### Zoning By-law 85-1

The property is zoned 'Residential Five Zone (R-5)' in Zoning By-law 85-1. The 'R-5' zones permit a range of low rise residential dwelling types including, single detached, semi-detached and multiple dwellings. The 'R-5' zone requires a minimum lot width of 9.0 metres (internal lots), and 15.0 metres (corner lots) and a minimum lot area of 235 square metres for semi detached dwelling units. The proposed severed lands exceed the minimum lot width and lot area. The retained lands lot width is existing and legal non conforming and the lot area exceeds the minimum requirement.

#### **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 is desirable and appropriate. 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 owner shall enter into an agreement on both the severed and retained lands to submit, obtain approval of, and implement a Tree Preservation / Enhancement Plan prior to demo, grading, building permit.

#### **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 131 St. George Street is located within the Cedar Hill Neighbourhood CHL. The City has undertaken additional work on examining the CHL significance of the CHL area through its work on drafting a new Secondary Plan for the Cedar Hill. Schneider Creek area. For more information on the outcome of this CHL analysis and the specific recommendations which may impact properties located within the Cedar Hill Neighbourhood CHL, please visit the following link: [www.kitchener.ca/npr](http://www.kitchener.ca/npr)

#### **BUILDING DIVISION COMMENTS:**

The Building Division has no objections to the proposed consent provided:

- 1) A qualified designer is retained to complete a Building Code Assessment as it relates to the new proposed property line and any of the building adjacent to this new property line shall address such items as: Spatial separation of existing buildings' wall face to the satisfaction of the Chief Building Official. Closing in of openings may be required, pending spatial separation calculation results.
- 2) A building permit shall be obtained for any remedial work/ upgrades that may be required by the Building Code Assessment.

#### **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](mailto:eric.riek@kitchener.ca).
- Any new driveways are to be built to City of Kitchener 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 AND CEMETERIES 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 11.09m at a land value of \$36,080 per frontage meter with a per unit cap of \$11,862. If it can be demonstrated that this is a technical severance rather than the creation of a new lot, parkland dedication requirements can be reassessed.

#### **TRANSPORTATION PLANNING COMMENTS:**

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

#### **REGION OF WATERLOO COMMENTS:**

The applicant is proposing to sever an existing lot to permit a new single detached dwelling on the severed lands. The retained lands contain an existing dwelling.

#### **Regional Fee:**

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

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

- 1) That prior to final approval, the owner/applicant submit the Regional consent review fee of \$350.00 per consent application.

#### **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)*
- *City of Kitchener Official Plan*
- *Zoning By-law 85-1*

**ATTACHMENTS:**

Attachment A –Lot Severance Sketch