

13th October 2022

File No. 22301

City of Kitchener
200 King Street West
Kitchener, ON
N2G 4G7

Attn: Ms. Marilyn Mills - Acting Secretary-Treasurer, Committee of Adjustment

Dear Ms. Mills:

**Re: Minor Variance Application A 2022-126
44 Rusholme Road, Kitchener**

GSP Group is the planning consultant to Gary Levene and Debbie Eisenberg (the "Levenes"), owners of the property located at [REDACTED], Kitchener, immediately east of the property the subject of Minor Variance Application A 2022-126 for 44 Rusholme Road. While the Levenes are not opposed to the proposed renovation and addition to the existing single detached dwelling, they are not in favour of the proposed reduction in interior side yard.

The Notice of the Minor Variance Application is misleading in that it reads:

"Requiring a minor variance to the Zoning By-law to permit an interior side yard setback of 1.5m rather than the minimum required 3m, to facilitate the construction of an addition in the rear yard [emphasis added] of an existing single detached dwelling."

If the addition to the single detached dwelling were only in the rear yard, no minor variance would be required. Rather, the proposed construction is in the interior side yard and rear yard and will have a significant impact on [REDACTED].



PLANNING | URBAN DESIGN | LANDSCAPE ARCHITECTURE

72 Victoria St. S., Suite 201, Kitchener, ON, N2G 4Y9
162 Locke St. S., Suite 200, Hamilton, ON, L8P 4A9
gspgroup.ca

The figure to the right illustrates the proposed addition to 44 Rusholme Road, wherein:

- The existing garage (facing east) is proposed to be demolished;
- New house addition to be constructed to the rear of the existing single detached dwelling; and
- New garage addition proposed to be constructed to the east of the existing single detached dwelling.

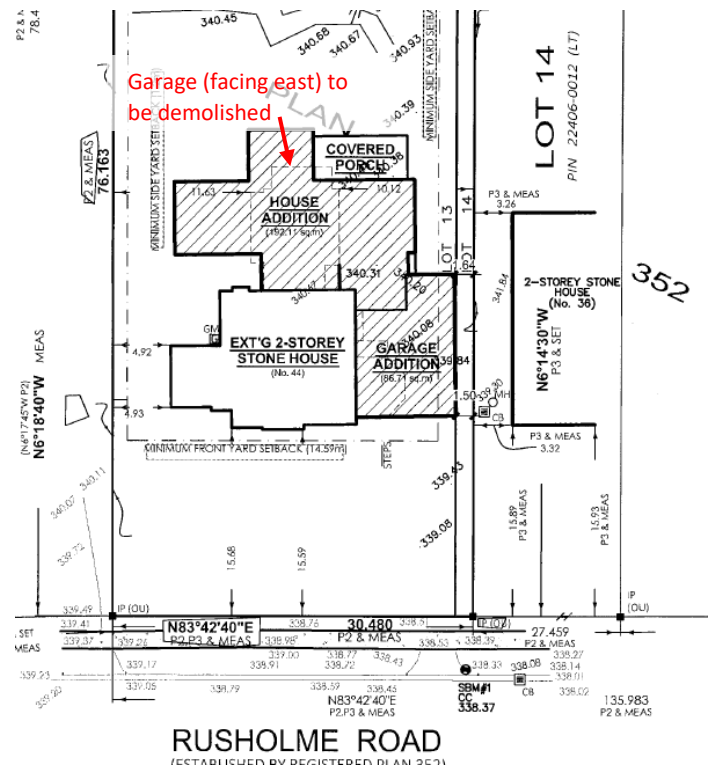
There is little detail about the proposal, including:

- The width of the garage (two or three car);
- The height of the garage;
- If the garage will have habitable floor space above the ground floor and/or a third-floor attic or usable space;
- The roof detail, for example roof pitch and height to peak; and
- Fenestration details, windows and/or cladding of the garage.

While it is not imperative that these details be provided, it would assist in evaluating the impacts of the proposed Minor Variance Application on the adjacent Levene property.

In the absence of this information, the Levenes are opposed to the Minor Variance for the following reasons:

REASON 1: The City of Kitchener recently applied the RES-1 zoning classification (Zoning By-law 2019-051) to the properties, which requires a minimum 3.0m interior side yard. The previous Residential R-2 zoning classification (Zoning By-law 85-1) applied a minimum 1.2m setback. It is anticipated that the City applied the new and increased setback regulation recognizing the unique character of



Rusholme Road neighbourhood – large lots, with significant front yard setbacks and, therefore, appropriate increased side yard setbacks to maintain the character of the neighbourhood.

I agree that the increased side yard setback of 3.0m is appropriate given the unique character and context of the neighbourhood, recognized by the Waterloo Historical Society.

REASON 2: There are significant trees located on the Levene property line that will be impacted by the proposed garage addition. Specifically, there are two healthy, large deciduous trees that are located on the mutual property line between the two dwellings. The first mature tree (top photo) is not immediately adjacent to the proposed addition but may be impacted by driveway reconstruction to align with the new garage (if that is undertaken) or, more likely by heavy equipment used in the construction.



The second photo illustrates an existing mature deciduous tree immediately opposite the existing garage to be demolished and replaced by the proposed house and garage addition. This tree is healthy, despite having the westerly half of its root zone impacted by the existing driveway. It is anticipated that the construction of footings and foundation for the new addition will compromise the health of this tree, creating a hazard or loss of the tree.



The requested reduction in the side yard setback from 3.0m to 1.5m will further exacerbate the impacts and increase the likelihood of tree removal. Simply imposing a condition for “tree preservation” may not be sufficient to save this tree. Rather, maintaining the applicable 3.0m setback will provide the best protection for preservation of this tree.

REASON 3: The proposed minor variance will exacerbate an existing drainage problem that has the potential to negatively impact the Levene property. There is a significant grade difference at 44 Rusholme from the northwest elevation of 343 masl to the southeast corner at Rusholme Road with an elevation of 337.5 masl, a fall of 5.5 metres. In reviewing the topography and contours of 44 Rusholme, surface water drainage

conveyance is from northwest to southeast, towards the Levene property. A 3.0m side yard setback, particularly along the easterly property line, would afford sufficient room for the creation of proper drainage design and implementation to avoid impacts to the Levene property.

Indeed, the previous owner of 44 Rusholme undertook a minor modification of the driveway a few years ago, wherein they removed the curb that previously captured and conveyed drainage to the street. This resulted in “sheet drainage” onto the Levene property, with no barrier (i.e. curb) to redirect the water to the street. According to the Levenes, this resulted in numerous floods in their finished basement. At their expense, they had Gateman-Milloy construct a storm sewer catchbasin on their property and obtained approval from the City to connect the catchbasin to the storm sewer in Rusholme Road to relay surface stormwater from 44 Rusholme to the street. The catchbasin on the Levene property is illustrated on the Applicant's sketch. It should be noted that care was taken to protect the trees during the Levene's construction, wherein directional drilling was used to construct that storm sewer, versus open trench construction that would have considerably impacted the trees.

Maintaining a minimum 3.0 metre side yard setback would ensure proper drainage techniques are implemented to avoid impact to the Levene property.

REASON 4: As illustrated on the Applicant's sketch on Page 2 of this letter, the Levene dwelling has an interior side yard setback of 3.32 metres. The Applicant's west side yard is 4.93 metres; however, they are looking to vary the existing zoning regulation to 1.5m to accommodate their house plans for a large garage addition. While no dimensions of the garage width are provided, it is calculated that it is +9 metres in width, which would accommodate a 3-car garage. While this may be desirable by the owners of 44 Rusholme, it is not necessary and does not fit in the context of the site. Rather, the easterly side yard setback should comply with the minimum 3.0m requirement, in keeping with the other side yard setbacks of the two properties.

REASON 5: The proposed minor variance does not meet the four (4) tests of the *Planning Act*. Specifically, the variance is “*not desirable or minor in nature*” (*Planning Act*, Section 45(1)). It has a high likelihood of negatively impacting the mature trees on the mutual property line and will not provide the owners of 44 Rusholme with sufficient side yard to properly create a surface drainage catchment to convey existing drainage out to the street and away from the Levene property.

For all of these reasons, it is respectfully requested that Minor Variance Application A 2022-126 be Refused. Members of the Committee of Adjustment are encouraged to do a site visit to appreciate the sensitivities of the mature trees on the mutual property line of ■ & 44 Rusholme and gain an

appreciation for the existing topography and resultant drainage that will negatively affect the Levene property.

Finally, the Levene's house has active living spaces that face westerly onto 44 Rusholme Road, including windows looking out from a main floor dining room, second storey bedroom and finished attic bedrooms. The views from those indoor uses will be negatively impacted by the proposed addition. It is acknowledged that the difference between a 1.5 and a 3.0 metre side yard setback may be relatively imperceptible. However, there is no pair of residences on the Rusholme Road that has the same visual impact of living space looking out onto the façade of a garage.

Again, it is recommended that the minor variance application not be approved.

However, should the Committee of Adjustment determine that the application is acceptable and approve the request for variance, it is further requested that the following be imposed:

- The applicant prepare and obtain approval of Tree Protection Plan by a Certified Arborist, detailing how the trees on the mutual property line will be protected from impacts during construction, to the satisfaction of the City's Forester;
- The applicant prepare a detailed grading plan by a licensed Civil or Water Resource Engineer illustrating how surface drainage will be conveyed from the rear yard of the lot to Rusholme Road without increasing drainage volume to [REDACTED], to the satisfaction of the City Engineering Department;
- The garage be limited to a maximum building height of one-storey to a maximum height of 4.5m to the peak of the roof; and
- The easterly façade of the proposed garage addition be constructed with no windows.

In conclusion, the homes on Rusholme Road are a part of the exemplary Westmount neighbourhood, planned in the early 20th Century by prominent city builders including Rieder, Kaufman and Olmsted. Indeed, the house at 44 Rusholme was once A.R. Kaufman's home and is listed on the City's inventory of significant heritage resources. For the reasons set out in this letter, it is considered that the application for minor variance is not appropriate for the neighbourhood and is not good planning and should be refused.

We look forward to the Committee of Adjustment's consideration of our comments in the context of the application. Should Committee members wish to see the property at [REDACTED], the Levenes would be pleased to show the impacts of the proposed variance.

In the meantime if you have any other questions, please do not hesitate to contact me.

Sincerely,
GSP Group Inc.

A handwritten signature in black ink, appearing to read "Chris Pidgeon". The signature is stylized with a large "C" and "P".

Chris Pidgeon, MCIP, RPP
Principal Planner

c.c. Gary Levene and Debbie Eisenberg – [REDACTED]
Tim Seyler – City of Kitchener