

Staff Report



Development Services Department

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REPORT TO: Committee of Adjustment

DATE OF MEETING: April 18, 2023

SUBMITTED BY: Tina Malone-Wright, Interim Manager, Development Review
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PREPARED BY: Katie Anderl, Senior Planner, 519-741-2200 ext. 7987

WARD INVOLVED: Ward 10

DATE OF REPORT: April 5, 2023

REPORT NO.: DSD-2023-162

SUBJECT: Minor Variance Application A2023-047 – 744 King Street East

RECOMMENDATION:

Zoning By-law 85-1

That Minor Variance Application A2023-047 for 744 King Street East requesting relief from:

- i) Section 54.2.1 to permit a lot width of 12.2 metres instead of the minimum required 15.0 metres;
- ii) Section 54.2.1 to permit a rear yard setback of 5.5 metres instead of the minimum required 7.5 metres;
- iii) Section 54.2.1 to permit a dwelling unit to be located on the ground floor of a mixed use building, whereas the by-law only permits a dwelling unit on the ground floor of a building only used a multiple dwelling;
- iv) Section 5.3 to permit an obstruction in the corner and driveway visibility triangles, whereas the by-law does not permit any obstruction greater than 0.9 metres in height;
- v) Section 6.1.2 of Zoning By-law 85-1 to permit 0 parking spaces instead of the minimum required 1 parking space per dwelling unit and 1 parking space per 20 square metres of commercial gross floor area; and
- vi) Special Regulation 541R to permit a building height of 25.7 metres instead of the maximum permitted building height of 19.5 metres

to facilitate the development of a mixed-use building in accordance with Site Plan Application SP23/012/K/KA, BE APPROVED, subject to the following condition:

1. That at the sole option of the City Solicitor, the Owner shall enter into an agreement with the City of Kitchener to be prepared by the City Solicitor and registered on title of the subject lands (744 King Street East). In the agreement, the Owner shall agree to:
 - a) Include a provision in all rental or lease agreements advising tenants that units do not include on-site parking, and that no on-site parking is available for visitors.
 - b) Provide a copy an executed GRT EasyGO Business Account Agreement with the Region of Waterloo to the satisfaction of the City's Director of Planning, prior to occupancy.

*** 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 review a minor variance application to facilitate the construction of a mixed-use building.
- The key finding of this report is that the requested variances meet the 4 tests of the Planning Act.
- 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 744 King Street East at the corner of King Street East and Stirling Avenue North. The lands are currently vacant and the owner has proposed a mixed use development containing 37 residential units and one commercial unit 57.5 square metres in size. Residential units are studio apartments and range from 34 square metres to 47 square metres and are planned to be rental units. The applicant is proposing to partner with a not-for-profit to operate 20% of the units (7 dwelling units) as affordable housing, and that the balance of the units would be priced at an attainable market rate.

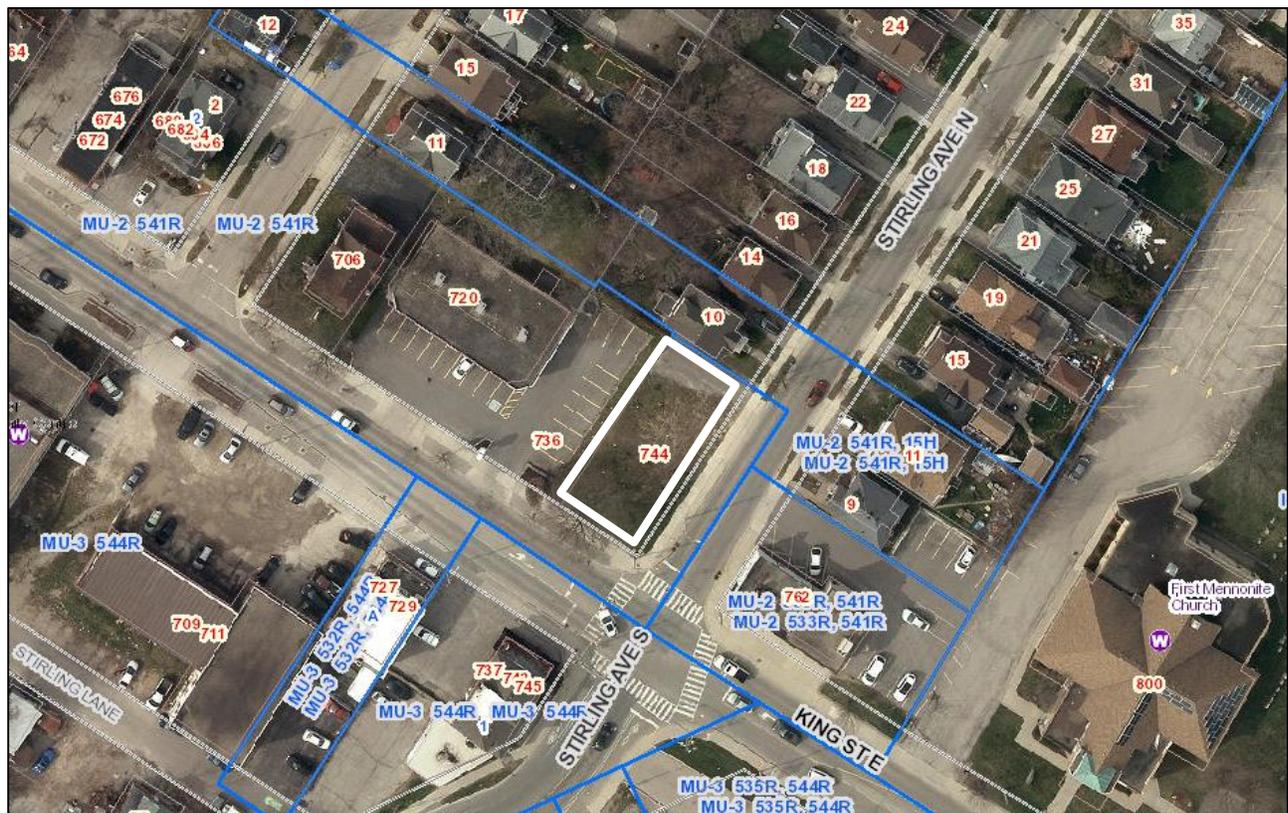


Figure 1: Location Map



Figure 2: Photo of subject land (April 4, 2023)



Figure 3: King Street East and Stirling Avenue North Conceptual Elevations

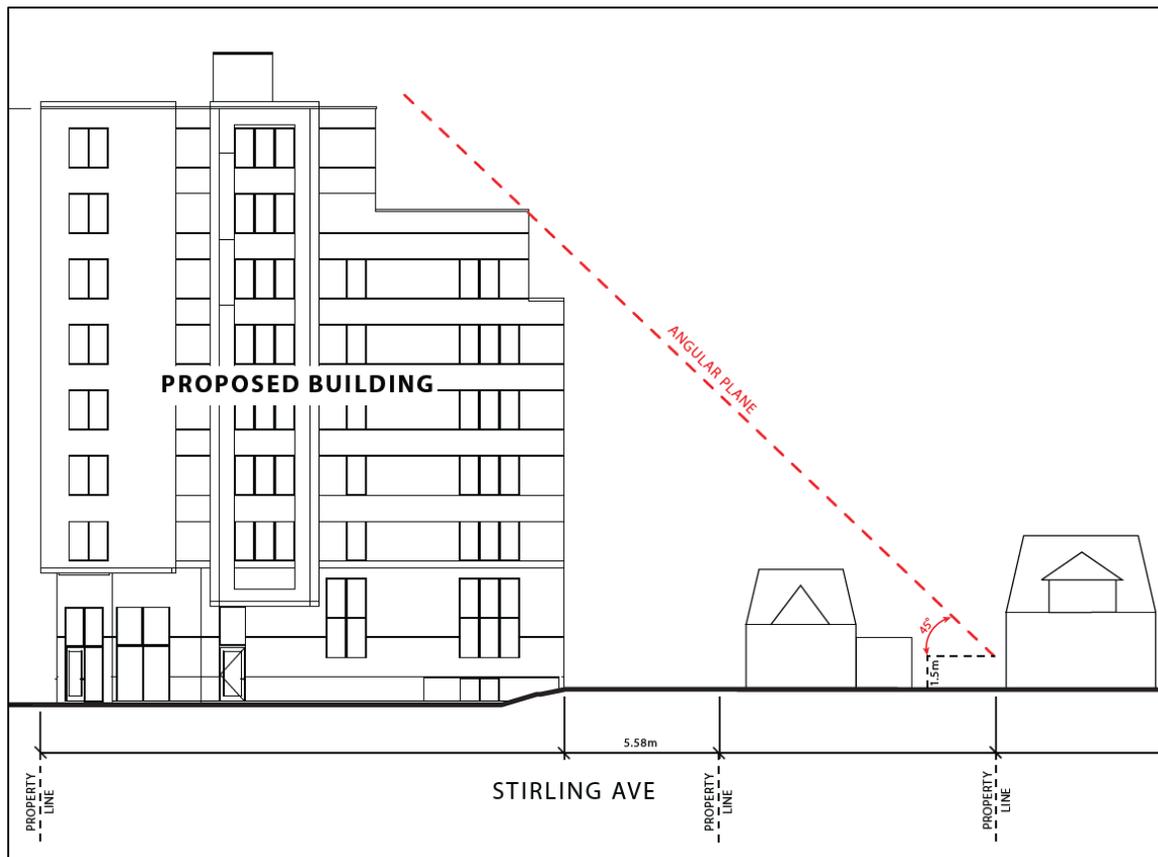


Figure 5: 45 Degree Angular Plan Analysis (from Residential Zone)

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 lands are designated 'Mixed Use Corridor' in the King Street East Neighbourhood Plan for Land Use under the 1994 Official Plan (OP). Mixed Use Corridors are intended to support a mix of uses and to intensify overtime. Development should be compatible with and of an appropriate height and density in relation to nearby low rise residential neighbourhoods. A maximum Floor Space Ratio of 4.0 is permitted and the proposal complies with the by-law in this regard. The subject lands are also located in a Major Transit Station Area (MTSA) in the 2014 OP. MTSA's provide a focus for accommodating growth through development to support existing and planned transit and rapid transit service levels. Developments within MTSA's provide connectivity of various modes of transportation to the transit system and have streetscapes and a built form that is pedestrian-friendly and transit oriented.

OP policy 4.C.1.8 requires that when minor variances are requested to facilitate residential intensification or redevelopment, the variances will be reviewed in consideration of an appropriate transition in massing and scale, compatibility, screening or buffering to help protect privacy, that the lands can function appropriately and not create unacceptable adverse impacts by providing an appropriate number of parking spaces and appropriate landscape/amenity areas. These items are

considered by staff throughout the review of the requested variances and through the Site Plan Approval Process.

The general intent of OP policies is to permit development that will support intensification at a density and with a mix of uses that are transit supportive, provide housing (including affordable housing), while also providing for an appropriate transition to nearby stable neighbourhoods, and to provide parking at a rate which is appropriate. Staff is of the opinion that the proposed variances, support a development that maintains the general intent of Official Plan policies. The building has been designed to transition and step down towards the neighbourhood. A retaining wall with privacy fencing is proposed along the rear lot line, which will effectively screen the loading area, and help to protect privacy of neighbouring lands. Staff is of the opinion that given the close proximity of transit (including ION and bus transit), the affordable nature of the units, the provision of one (1) Class A bike storage space per unit, and the provision of an on-site loading/service space, the proposed parking reduction is appropriate for the site. Staff is of the opinion that the intent of the Official Plan is maintained.

General Intent of the Zoning By-law:

a) minimum lot width of 12.2 metres, whereas the by-law requires 15.0 metres;

The intent of the minimum lot width is to ensure a lot that is large enough for the permitted uses. The subject lot is existing and is currently 14.6 metres wide. Stirling Avenue North is required to be widened through the Site Plan process. If the lot were to have complied with the minimum lot width of 15 metres today, then the variance would not be required as zoning regulations permit a reduced lot width where lands are dedicated for a widening. However, as the lands are currently non-conforming this regulation does not apply. The proposed building has been designed to accommodate for the narrowness of the lot. The commercial facade addresses both street frontages with the active commercial use, entrance doors, and windows, and exceeds the required minimum interior side yard setback. The Building has also been considered in the context of the City's Tall Building Guidelines, which generally apply to high-rise buildings greater than 8 storeys in height. The subject development is located close to the interior lot line, however, has been designed in such a way that a mid-rise or tall building could be constructed on adjacent lands without having overlook impacts. The side elevation includes articulation; however, windows and balconies are directed to the front and rear facades, allowing for a future building to also be located close to the interior side yard.

The building is proposed to be setback 0 m from the street lines, which complies with zoning regulations and is appropriate in an urban context. Building entrances and doors will be recessed to avoid encroachment of door swings. Transportation staff note, that while widenings are being taken, it is unlikely that travel lanes will be expanded. Future improvements to the right-of-way would likely be cycling improvements and enhancements to the sidewalk and streetscaping. In the interim, the applicant will be required to provide landscaping/hardscaping between the building and the existing sidewalk through the Site Plan process. Staff is of the opinion that the lot is of sufficient width for the proposed building, and therefore the intent of the by-law is maintained.

b) minimum rear yard setback of 5.5 metres, whereas the by-law requires 7.5 metre

The intent of the minimum rear yard setback is to provide separation distance between uses and to accommodate for site service functions. The rear yard area accommodates for Class B bike parking (outdoor bike racks), a service driveway, deep well garbage collection area, and a landscaped setback. The subject lands are lower than neighbouring lands, and a fence/retaining wall will help to provide additional privacy and screening to the neighbouring property which is at a higher elevation. Staff also note that while the neighbouring lands contain a dwelling, they are also zoned 'Medium Intensity Mixed Use Corridor Zone (MU-2)' and if the subject lands were oriented differently and this

yard was an internal side yard no setback would be required. Staff is of the opinion that the intent of the by-law is maintained.

- c) to allow a dwelling unit on the ground floor of a mixed use building, whereas the by-law only permits a dwelling unit on the ground floor of a building only used a multiple dwelling

The intent of this regulation is to ensure active uses are provided at grade in a mixed use building. The building includes a retail unit at grade oriented toward the intersection of King Street East and Stirling Avenue North. The façade design provides for windows and doors to be oriented the streets. The subject units are located towards the rear of the site and are located partially below grade and on a raised first storey. Orienting the residential units towards the residential area is considered an appropriate transition. Staff is of the opinion that as the primary facades contain active uses and that the intent of the by-law is maintained.

- d) to allow an obstruction in the corner visibility triangle (CVT) and driveway visibility triangle (DVT), whereas the by-law does not permit any obstruction greater than 0.9 metres in height;

The intent of this regulation is to protect visibility for vehicles entering and exiting driveways and turning corners.

Zoning By-law 85-1 requires a CVT of 7.5 x 7.5 metres. With respect to the CVT the building has been designed with an angled corner preserving a 2.5 x 2.5 metre CVT at grade – staff note that upper storeys of the building project, however this is above the ground floor and considering the commercial ground floor height of about 4.5 metres would not obstruct driver visibility. Staff note that this CVT will be setback an additional 3.8 metres from the current King Street East right-of-way and 2.4 metres from the current Stirling Avenue North right-of-way. The widening area, together with the angled corner result in a visibility area that exceeds the CVT requirement. Transportation staff have considered the proposal and are of the opinion that the proposed CVT will allow for appropriate visibility to oncoming vehicular and pedestrian traffic.

With respect to the DVT, Zoning By-law 85-1 requires a 4.5 x 4.5 metre DVT. Staff note that new Zoning By-law 2019-051 recognizes the planned intensity and compact nature in Mixed Use zones and does not require a driveway visibility triangle. Transportation staff have reviewed the site design and are satisfied that the proposed service driveway will be able to function appropriately and safely, and that the obstruction in the DVT is acceptable. It is noted that the oncoming traffic from the closest travel lane is from the north and that visibility of this traffic is not obstructed. Further the sidewalk is setback beyond the future road widening, preserving the view of pedestrian traffic. Staff is of the opinion that the intent of the by-law is maintained.

- e) to permit 0 parking spaces, whereas the by-law requires 1 parking space per dwelling unit and 1 parking space per 20 square metres of commercial gross floor area;

The intent of parking regulations is to provide an appropriate amount of parking for proposed uses. The applicant is proposing to provide 0 parking spaces for the subject development whereas the regulations of By-law 85-1 require 39. A Parking Justification Study has been submitted in support of the application and has been reviewed by Transportation staff. The Parking Justification Study identifies that the site is located in close proximity to an ION Station (Borden station within 280 metres), several bus routes, and is well located to take advantage of cycling infrastructure. Several Transportation Demand Management measures are proposed including a minimum of one secure and weather protected bike parking space per dwelling unit. This will include in unit vertical storage facilities, and a secure bike room which can accommodate larger bicycles (e.g., cargo bikes and bikes with trailers). The applicant is proposing to provide subsidized transit passes for all occupants for the first two years, and educational transit materials for tenants. Further, staff observe that there is opportunity for short-term on-street parking in close proximity on nearby local roads within about 200 metres, including on Stirling Avenue North, King Street East, Fairview Avenue and Pandora Avenue North and South. All the units are designed as rental studio units and will be professionally

managed. Staff recommend that as a condition of the minor variance the owner be required to register an agreement on title through a Minor Variance Agreement, under section 45 (9.1) of the Planning Act, requiring that the Owner advise future tenants that there is no parking available on the site, and to commit to providing subsidized transit passes. Staff is of the opinion that registering these requirements on title is useful to ensure implementation of the TDM measures, and to ensure that future residents are made aware that no parking will be available.

The subject development is also proposed to consist of affordable and attainable micro-units all having floor areas less than 51 m². Staff is of the opinion that the affordability levels of micro-units may be attractive to residents who do not require vehicle parking, and not providing parking may help to further improve affordability. Staff observe that there is on-street parking available in the surrounding area for visitors, as well as good access to transit, cycling and pedestrian modes of transportation. An on-site loading space is provided which will accommodate garbage pick-up, moving trucks, service vehicles and short term drop-off and deliveries (including commercial deliveries). Based on the foregoing, staff is of the opinion that the proposed parking reduction meets the intent of the by-law, which is to provide an appropriate amount of parking for the proposed use.

f) to allow a building height of 25.7 metres, whereas the by-law permits a maximum of 19.5 metres.

The intent of the maximum height regulation in the zoning by-law is to limit heights so that the built form is compatible with nearby land uses, and so that the effects of overlook and shadows are minimized.

The zoning by-law establishes a transition in height using two metrics: maximum overall height and an angular plane which steps down to neighbouring lands having a residential zone. Staff note that while lands immediately adjacent to the subject site contain a low-rise dwelling, the lands are also zoned 'MU-2' (see Figure 1) and are excluded from the step-backs to the residential zone. The zoning by-law permits a maximum height of 12.5 metres within 16 metres of a residential zone and permits an additional metre in height for every additional 0.6 metres in setback (as illustrated in Figure 4). This angular plane is respected by the proposed built form, including the 7th and 8th storeys which exceed 19.5 metres in height. The building has also been designed to respect a 45 degree angular plane from the first house in the residential zone. The 45 degree angular plane is a useful metric to evaluate a transition in heights in order to protect access to light (minimize shadow impacts) and minimize overlook as higher storeys are setback further. As is shown in Figure 5 the proposed built form respects a 45 degree angular plane. A Shadow Study completed for the subject proposal (see Attachment 1) demonstrates that shadow impacts to surrounding residentially zoned lands are limited during the spring, summer and fall, and mainly affect other Mixed Use lands.

Staff also note that the subject lands were included in the Neighbourhood Planning Review (NPR) for King Street East. (Note: the Neighbourhood Planning Review has been incorporated into the City's Growing Together Project which will further consider land use designations and zoning regulations that respond to new Provincial direction and new Regional Policies for MTSAs). Through the NPR, staff recommended a Medium to Highrise Mixed Use Three (MIX-3) Zone. This zoning contemplated stepping building heights from 12 metres within 15 metres of a residential zone, up to a maximum height of 26 metres and 8 storeys. The regulations contemplated a higher built form in the MTSA than the current zoning, however, maintain the concept of a transition from the greatest height near the street to lower heights in close proximity to low-rise residential uses. Like the current regulations the zoning results in a compatible built form, with height transitions to the surrounding neighbourhood, while permitting transit supportive urban densities. The proposed variance complies with the regulations proposed through the NPR.

Staff is of the opinion that the proposed variance to building height will result in a development that is compatible with nearby land uses and where the effects of shadow and overlook are minimized. Based on the foregoing staff is of the opinion that the intent of the by-law is maintained.

Are the Effects of the Variances Minor?

Staff is of the opinion that the effects of the variances are minor. The subject lands are proposed to be developed with a mixed use building that is compatible with and provides an appropriate transition to neighbouring lands. The increased building height is directed towards King Street East, and away from the established neighbourhood, and the proposed setbacks minimize additional shadow impacts and overlook of the additional storeys. The building has been designed to accommodate for a narrow lot width, and the facades address both streets while not encroaching. Active uses are provided along King Street East frontage and along Stirling Avenue North nearest the intersection, transitioning to ground floor and below grade residential units towards the neighbourhood. This treatment provides for an appropriate streetscape. Staff is of the opinion that the proposed micro-units can be appropriately managed, and transportation demand management measures implemented so that on-site parking is not required. Sufficient secure bicycle storage has been incorporated into the unit and building design, and the proposed loading space will accommodate day-to-day service vehicles. Transportation services staff are of the opinion that the obstructions in the CVT and DVT will not be a safety concern.

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

The proposed development provides for 37 small residential units, including 20% which are contemplated to be affordable housing, mixed with market rent attainable housing. The development is located in an MTSA and in proximity to ION rapid transit and several bus routes. The site is conveniently located to the cycling network, and in a pedestrian friendly area. The proposed development provides for a building that is appropriate in a MTSA, and transitions to a low-rise residential neighbourhood and will contribute the City's Housing Pledge. Staff is of the opinion that the variances are desirable for the appropriate development and use of the lands.

Environmental Planning Comments:

No concerns.

Heritage Planning Comments:

No concerns.

Building Division Comments:

The Building Division has no objections to the proposed variance provided building permit for the mixed-use building is obtained prior to construction. Please contact the Building Division at building@kitchener.ca with any questions.

Engineering Division Comments:

No concerns.

Parks/Operations Division Comments:

No Concerns. Parks and Cemeteries requirements will be addressed through SP23/012/K/KA.

Transportation Planning Comments:

Transportation Services has reviewed the Parking Study and Access and Circulation Review (January 2023) prepared by Paradigm Transportation Solutions Limited. The report was submitted to reduce the number of required parking spaces to zero (0) for the proposed 37-unit development.

Based on the intent of the development to provide below-market rate rental units, provide secured bike parking and close proximity to multiple transit options and cycling infrastructure, Transportation Services can support the request to reduce the number of required parking spaces to zero (0) for this development.

There has also been a request to permit encroachments into the Corner Visibility Triangle (CVT) and the Driveway Visibility Triangle (DVT).

The intersection of King Street East and Stirling Avenue North is an existing signalized intersection with concrete sidewalk and boulevard, coupled with the road widening being taken along the King Street East frontage, adequate sightlines can be maintained for the proposed encroachment into the CVT.

Also, a road widening is being taken along the Stirling Avenue North frontage that will also provide improved sightlines for the loading space and provide adequate space between the portion of the building encroaching into the DVT and the existing sidewalk for a driver exiting the site to see any approaching pedestrians or vehicular traffic.

Therefore, due to the road widenings being taken along both streets, Transportation Services can support the encroachments into the CVT and DVT.

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 1 – Shadow Study

