



## **Stratford Committee of Adjustment**

**Public Hearing Pursuant to Sections 45 and 53 of the  
*Planning Act R.S.O 1990, Ch. P.13.***

### **AGENDA**

**Date:** Wednesday, January 22, 2025

**Time:** 4:00 p.m.

**Location:** Stratford City Council Chamber (upper level), located at 1 Wellington Street, Stratford.

#### **1. Call to Order**

The Chair to call the meeting to order.

Opening remarks

Land acknowledgement

Respectful Conduct Statement

#### **2. Disclosure of Pecuniary Interest and the General Nature Thereof**

The Municipal Conflict of Interest Act requires any member declaring a pecuniary interest and the general nature thereof, where the interest of a member has not been disclosed by reason of the member's absence from the meeting, to disclose the interest at the first open meeting attended by the member and to otherwise comply with the Act.

Name, Item and General Nature of Pecuniary Interest

#### **3. General Business**

#### **4. Adoption of the Previous Minutes**

Motion by:

Seconded by:

**THAT the minutes from the Stratford Committee of Adjustment hearing dated December 18, 2024 be adopted as printed.**

## 5. Current Applications

### 5.1 **B09-22 & A26-22 – 386 William Street**

**Owner:** Thomas G. Drake

**Agent:** N/A

**Request:**

The purpose and effect of consent application B09-22 is to create a new residential infill lot along Joffre Street with an area of approximately 679 sq. m. to facilitate the construction of a single-storey house with an area of approximately 127.26 sq. m. The proposed lot is separated from Joffre Street by an intervening strip of land (reserve) owned by the City of Stratford.

The purpose and effect of minor variance application A26-22 is to seek relief from Section 4.2.1a) of the zoning bylaw to permit the creation of the lot without frontage on a public street and be further amended to recognize a reduction in lot depth and rear yard setback from the existing garage foundation as well as a reduction in the interior side yard setback for the retained lands in order to facilitate a severance of a lot which is intended for infill development with a single detached residence.

### 5.2 **A27-24 – 641 Erie Street**

**Owner:** Mona Kumar

**Agent:** Chris Warkentin

**Request:**

The purpose of the application is to facilitate the alteration of the parking area of the existing restaurant to improve traffic flow.

The effect of the application is to reduce the minimum number of parking and stacking spaces for an eat-in restaurant, in addition to permitting the required spaces to be located within 7.5 m from the street line.

**Variance(s) Requested:**

1. Section 4.8 a) iii) – Drive Throughs, Stacking Lanes and Staking Spaces: To decrease the minimum required number of stacking spaces for a drive-through service window from 10 spaces to 7.
2. Table 5.1 – Minimum Parking Space Requirements: to decrease the minimum requirement parking spaces for a eat-in restaurant from 14 spaces to 11 spaces.
3. Table 5.3.2 – Location of Driveways, Parking Areas and Parking Aisles: To reduce the minimum setback for parking spaces from the street line from 7.5m to 5m.

### 5.3 **A29-24 – Worth Street (Block 93)**

**Owner:** Cachet Developments (Stratford) Inc. c/o Marcus Gagliardi

**Agent:** Glen Schnarr & Associates c/o Mark Condello

**Request:**

The purpose and effect of this application is seek relief from the City of Stratford Comprehensive Zoning By-law with respect to the exterior side yard width requirement to allow the construction of a street townhouse dwelling. A street townhouse dwelling containing seven (7) units is proposed.

**Variance Requested:**

1. Section 15.4.33 j) of the By-law requires a minimum exterior side yard width of 3.5 metres whereas a reduced exterior side of 2.9 metres is being requested.

5.4 **B07-24 & A28-24 – 0 Moderwell Street (lands between 45 and 43 Moderwell Street)**

**Owner:** Bardh & Dardan Investments Corp.

**Agent:** Musli Prebreza

Request:

The purpose and effect of application B07-24 is to sever an 809 m<sup>2</sup> property into two equal parts to create a new residential lot for the purposes of facilitating the development of a semi-detached dwelling on the severed and retained lands. The severed and retained lands are each to contain a semi-detached dwelling unit; the applicant is proposing to include two Additional Residential Units (ARUs) within each semi-detached dwelling unit. ARUs are self-contained residential units containing their own kitchen and bathroom facilities.

In 2019, the Provincial Government amended the Planning Act through Bill 108, being the More Homes, More Choice Act, by mandating municipalities to not prohibit ARUs to a maximum of three (3) units per lot including the primary dwelling unit. In addition, Bill 108 also clarified parking requirements associated with Additional Residential Units. The purpose and effect of application A28-24 is to reduce the minimum required landscaped open space to facilitate the development and the required parking spaces on-site.

Variance requested:

1. Table 6.4.2 – Regulations in the Residential Second Density Zone: to reduce the minimum landscaped open space requirement from 30% to 26%.

5.5 **B08-24 – 270 Lorne Ave E**

**Owner:** 2007227 Ontario Inc.

**Agent:** MTE c/o Trevor McNeil

Request:

The purpose and effect of this application is to sever the east portion of the subject lands to create a new lot to support a new industrial use. The proposed severed lands would have an approximate frontage of 35.0 metres, an approximate depth of 64.2 metres, and an approximate area of 2,245.5 square metres. The proposed retained lands would have a frontage of approximately 78.1 metres, an approximate depth of 64.2 metres and an approximate area of 5,012.4 square metres. The retained lands are occupied with an existing car wash whereas the lands to be severed are vacant.

5.6 **B09-24 – 16 Chestnut Street**

**Owner:** John Carey-Woodman

**Agent:** Monteith Ritsma Phillips Professional Corporation c/o Matthew Orchard

Request:

The purpose of this application is to sever a 490.5 m<sup>2</sup> portion at the rear of the subject property to convey as a lot addition to the northwestern abutting lands, known

municipally as 212 Railway Avenue, Stratford. The retained parcel will have a frontage of 20 m and a lot area of approximately 840.9 m<sup>2</sup>. The lot to be enlarged would have an area of approximately 1471.6 m<sup>2</sup>.

**6. Next Meeting** – February 19, 2025 – City Hall Council Chambers (upper level), located at 1 Wellington Street, Stratford.

**7. Adjournment**

Motion by:

Seconded by:

**THAT the January 22, 2025 Stratford Committee of Adjustment meeting adjourn.**

**Time Start:**

**Time End:**

**If you require this document in an alternate format, please contact City Hall at 519-271-0250 extension 5237 or email [clerks@stratford.ca](mailto:clerks@stratford.ca)**





**Building and Planning Services**  
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## Staff Report

Report To	Committee of Adjustment
Meeting Date	January 22 <sup>nd</sup> , 2025
Submitted By	City of Stratford, Building & Planning Services Division
Report Author	Juliane vonWesterholt, Consulting Planner
Report Date	December 9 <sup>th</sup> , 2024
Application	Minor Variance Application A26-22, Consent Application B09-22
Address	386 William Street

### PURPOSE

The purpose and effect of consent application B09-22 is to create a new residential infill lot along Joffre Street with an area of approximately 679 sq. m. to facilitate the construction of a single-storey house with an area of approximately 127.26 sq. m. The proposed lot is separated from Joffre Street by an intervening strip of land (reserve) owned by the City of Stratford.

The purpose and effect of minor variance application A26-22 is to seek relief from Section 4.2.1a) of the zoning bylaw to permit the creation of the lot without frontage on a public street and **be further amended** to recognize a reduction in lot depth and rear yard setback from the existing garage foundation as well as a reduction in the interior side yard setback for the retained lands. in order to facilitate a severance of a lot which is intended for infill development with a single detached residence.

### CONTEXT



The subject lands are located at 386 William Street. The site has a total lot area of approximately 0.78 hectares (.44 acres) in area with approximately 25.9 metres of frontage along William Street, which is a Local Road. The subject lands currently contain a single detached dwelling with an attached carport.



Figure 1-386 William Street photo taken December 5<sup>th</sup>, 2024 by J. von Westerholt. Surrounding land uses include residential uses to the north, east, and west. The park and open space lands associated with the Avon River are located to the south of the subject lands.



## **BACKGROUND**

The subject lands are developed with a single detached residence with an attached carport that faces onto William Street. The lot is considered a through lot, which is defined in the zoning bylaw as any lot other than a corner lot, having separate lot lines abutting at least 2 separate streets. The subject lands have a lot line abutting Joffre Street as well as William Street.

The lot line abutting Joffre Street has a 0.3 metre reserve (City owned lands) across the width of the lot, which is intended to control or limit access to the street. The property owners have unsuccessfully requested that the 0.3 m reserve be removed by the City in the past. The matter was also considered by various levels of judiciary courts including the Supreme Court all resulting in the upholding of the 0.3m reserve owned by the City, which restricts the access onto the public road.

The owners have made an application for a variance from Regulation 4.2.1a) to create an infill lot without frontage on the street, as legal frontage has been denied several times by the City on the grounds that the lands are intended for snow storage during the winter season. The lot is intended for residential use and the plan submitted with the application shows a house and the footings for a garage. The owners' daughter intends to reside in the residence should the consent and variance be approved.

A site visit was conducted on December 5<sup>th</sup>, 2024. Site visit photos have been incorporated into the report. In addition, other neighbouring streets that are cul-de-sacs were also visited as these streets also have homes onto the cul-de-sac bulb and some are through lots with frontage onto William Street. In these cases, there was no 0.3 m reserve preventing development and access to the cul-de-sac on the following streets: Denison, Morison and Dawson Streets. It appeared that those homes on Denison also had frontage onto William similar to the subject lands with Joffre Street, save for the reserve lands.



Figure 2-Photo of proposed lot off of Joffre taken on December 5<sup>th</sup>, 2024 by J. von Westerholt.





Figure 3-Taken from Dawson Street taken December 5<sup>th</sup>, 2024 by J. von Westerholt showing rear frontage onto Dawson.



Figure 4- same home as Figure 2 above with frontage onto William Street taken December 5<sup>th</sup> , 2024 by J. von Westerholt.

### **AGENCY COMMENTS**

These application(s) were circulated for agency comments on November 22, 2024, with comments being due December 9<sup>th</sup>, 2024.

All agency comments received to date have been appended to this report and have been reflected throughout this report as appropriate. Generally, there were no concerns raised by several City Departments including Infrastructure Services, Climate Action and Environmental Services Division, and the Fire Department. Festival Hydro also had no concerns. The UTRCA has been circulated and has indicated no objection to this application as the lands are outside of the regulated area.



In addition, the Housing Consortium is in favour of the additional density that this proposed consent provides on this long lot and the additional housing that will be created. They have indicated that should the proponent wish to talk about the possibility of creating an additional basement suite for affordable or attainable housing in the new build they could be contacted.

### **City Engineering**

#### **A26-22 & B09-22: 386 William Street**

The Engineering Division maintains the stance to deny this request for driveway access off Joffre Street, as stated in the Management Report (ITS24-004) submitted on February 28, 2024. Their comments read: *"We agree to uphold the decision from the Stratford City Council – Meeting No. 4740 held on Monday, April 8, 2024. Reasoning behind our perspective are as follows:*

- *An active land reserve from 1954 exists between the City owned right-of-way (Joffre Street) and the subject property. Restricting access to the remaining adjoining properties from installing a second driveway.*
- *The City requires available snow storage along this land reserve. If this land reserve is removed the ability for snow maintenance equipment to access this turnaround is limited if additional driveways are added. Snow would therefore must be removed offsite using specialized equipment, increasing costs for this type of maintenance."*

### **PUBLIC COMMENTS**

Notice of Application and Public Hearing was provided in the Town Crier portion of the Beacon Herald Newspaper on November 23<sup>rd</sup>, 2024; this notice serves as the prescribed public notice.

Additional public notices were circulated to all property owners within 60 metres of the subject lands on November 22<sup>nd</sup>, 2024. The circulated public notice requested that written comments be provided by 8:30 a.m. on the day of the public meeting.



As of the date this report was finalized, no written public comments have been received. Any public comments received after this report is finalized will be provided to the Committee of Adjustment for consideration.

## **POLICY ANALYSIS**

The application proposes to sever a lot or in broader terms “subdivide the existing lot” at 386 William Street to create a second smaller lot with a single storey proposed single detached dwelling. While the proposed consent is not a plan of subdivision, some of the principles that apply to subdivisions as outlined below have been considered.

### **Planning Act Section 51(24)**

In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

*(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;*

#### **Response:**

The Province of Ontario has prioritized the provision of housing as a provincial interest and through recent changes brought on by Bill 23 the “More Homes Faster Act” has permitted the provision of up to 4 dwelling units per lot as of right in the Province. This would allow 4 dwelling units on the existing lot as of right. In this case, the applicant is seeking to permit a second unit on an independent lot. This could have been considered as an additional dwelling unit on the same lot but is however being advanced as a small independent residence on a separate lot. The effect is similar in that public interest to provide additional housing is being prioritized, which is a top interest of the province.

In addition, the City’s own Housing Consortium has shown support for the additional unit and even encourages further intensification through possible basement apartments.

*(b) whether the proposed subdivision is premature or in the public interest;*

#### **Response:**





Save for the provision of an access to the back of the property from Joffre Street, all services could be readily available to the subject lands. The infrastructure department had no concerns only mentioned that separate services would be needed for the lot. This is an infill situation which seeks to provide modest housing in an already developed area with services and infrastructure in place, to deal with the provision of housing. It does not appear to be premature, but reactive to the current housing shortages facing the province.

*(c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;*

**Response:**

The proposed lot creation conforms to the majority of the criteria outlined in Sections 4.3 and 9.5 which direct the residential development and lot creation respectively and are discussed below save for the provision of access to Joffre Street which is controlled by the City.

*(d) the suitability of the land for the purposes for which it is to be subdivided;*

**Response:**

The existing lot at 386 William as an area of approximately .44 acres with one residence on it and a significant portion of the property is underutilized. The proposed new single storey house and lot will make more efficient use of the lands and will provide independent housing to a family member of the applicants. It is suitable for the proposed use and provides sufficient setbacks to accommodate the proposed house and separation from adjacent lots.

*(d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;*

**Response:**

The proposed lot and house do not meet the definition of affordable housing and this does therefore not apply to this proposed development.



*(e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;*

**Response:**

The only factor concerning the highway or roadway in this case is access over the 0.3m reserve or the removal of the reserve, which rests with the City of Stratford and has been denied and challenged in the past, but is being sought as part of these applications to be reconsidered given the current housing situation.

*(f) the dimensions and shapes of the proposed lots;*

**Response:**

The proposed severed lot is somewhat smaller than others, however it is generally a rectangular shape and meets the minimum lot size and width requirements. It has been demonstrated that the lands could be developed with a single detached residence and comply with the majority of the performance regulations in place, save for the lot depth which is somewhat irregular. The retained lands meet the requirements of the bylaw.

*(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;*

**Response:**

Other than typical restrictions of any zone, we are not aware of any specific restrictions pertaining to these lands.

*(h) conservation of natural resources and flood control;*

**Response:**

The lands do not contain any natural resources and our outside of the regulatory flood plain. The UTRCA has been circulated and has indicated no objection to this application as the lands are outside of the regulated area.



*(i) the adequacy of utilities and municipal services;*

**Response:**

The lands are located within the built-up area of the City and services and utilities are available. City and utilities were circulated on the application and no concerns were raised.

*(j) the adequacy of school sites;*

**Response:**

The lands are located within the built-up area of the City. The school boards were circulated on the application and no comments were received to date.

*(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;*

**Response:**

The development of the lands does not involve the dedication of or conveyance of land for public purposes. It is anticipated that should the consent be approved, that parkland dedication would be as cash-in-lieu of land.

*(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and*

**Response:**

The modest intensification proposed by this development will make more efficient use of municipal utilities, infrastructure and resources, thereby meeting this the intent of this policy.

*(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection.*



**Response:**

The site will be only one additional lot (unit) and will therefore not be subject to site plan control.

**Provincial Planning Statement**

Ontario is a vast, fast-growing province that is home to many urban, rural and northern communities distinguished by different populations, economic activity, pace of growth, and physical and natural conditions. More than anything, a prosperous Ontario will see the building of more homes for all Ontarians. This is why the province has set a goal of getting at least 1.5 million homes built by 2031. Ontario will increase the supply and mix of housing options, addressing the full range of housing affordability needs. Every community will build homes that respond to changing market needs and local demand. Providing a sufficient supply with the necessary mix of housing options will support a diverse and growing population and workforce, now and for many years to come.

Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected needs of current and future residents permitting and facilitating:

- 1. all housing options required to meet the social, health, economic and wellbeing requirements of current and future residents, including additional needs housing and needs arising from demographic changes and employment opportunities; and*
  
- 2. all types of residential intensification, including the development and redevelopment of underutilized commercial and institutional sites (e.g., shopping malls and plazas) for residential use, development and introduction of new housing options within previously developed areas, and redevelopment, which results in a net increase in residential units*

The PPS directs that settlement areas shall be the focus of growth and development. Within settlement areas, growth should be focused in, where applicable, strategic growth areas, including major transit station areas.



The PPS goes on to state that land use patterns within settlement areas should be based on densities and a mix of land uses which:

- a) efficiently use land and resources;
- b) optimize existing and planned infrastructure and public service facilities;

Planning authorities shall support general intensification and redevelopment to support the achievement of complete communities, including by planning for a range and mix of housing options and prioritizing planning and investment in the necessary infrastructure and public service facilities.

### **Analysis**

The proposed lot is located within the built area of the settlement boundary of the City of Stratford. The proposed development presents a different housing option that provides for a modest house on a lot in an established area. It makes more efficient use of infrastructure and services and an underutilized lot through the provision of a modestly sized dwelling, which complies to the majority of the planning regulations save for the lot depth and rear yard for the existing foundation of the garage and an interior side yard for the existing home on the retained lands.

### **City of Stratford Official Plan**

The City of Stratford's Official Plan designates the subject lands Residential on Schedule 'A'.

Areas designated "Residential Area" on Schedule "A" shall permit low and medium density residential uses in accordance with the policies of this section including the height and density requirements of Sections 4.5.3.3 and 4.5.3.4. The permitted uses, buildings and structures are low density residential including single detached, semi-detached and duplex dwellings.

Policy 4.5.3.1 outlines development within Stable Residential Areas. Stable residential areas are residential areas where potential new development or redevelopment is limited. Any intensification will be modest and incremental occurring through changes such as development of vacant lots, accessory apartments, or other forms of residential housing that meet the criteria below.



Applications for new development in such areas shall be evaluated based on their ability to generally maintain the following elements of the structure and character of the immediate surrounding residential area through the following criteria:

- i) scale of development respects the height, massing and density of adjacent buildings and is appropriate for the site;

Response:

The proposed lot is slightly smaller, however, the proposed house is single storey and of a modest size that allows for appropriate setbacks to adjacent properties. The height is below the 10 m maximum which would allow up to 3 storeys. The massing does not create shadow or overlook situation on adjacent lands and therefore complies to this policy.

- ii) respects the nature of the streetscape as defined by such elements as landscaped areas, and the relationship between the public street, front yards and primary entrances to buildings;

Response:

The proposed dwelling will face the front of Joffre Street at a setback that meets the minimum front yard and be situated on the lot in line with the established streetscape. The proposed detached garage does not protrude in front of the residence but provides additional buffering from the proposed house to the neighbour to the north.

- iii) respects the relationship between the rear wall of buildings and rear yard open spaces;

Response:

The proposed lot has an adequate rear and side yard area to provide for outdoor amenity space. A conceptual patio or deck is shown on the submitted plan that confirms that adequate space for outdoor amenity space is available. The patio shape and size can be further designed to ensure zoning compliance with setbacks.

- iv) siting of buildings in relation to abutting properties ensures that there will be no significant negative impacts with respect to privacy and shadowing and appropriate buffering can be provided;



Response:

The proposed house is situated centrally on the site with adequate setbacks proposed. The house is single storey which will not cast shadows over the adjacent 2 storey building to the north. The proposed garage will also be situated between the single storey house and the neighbouring lands to the north thereby eliminating any potential for overlook.

- v) conforms with density provisions of the Section 4.5.3.3;

Response:

The density provisions are for a minimum of 12 units/ ha and maximum of 25 units per hectare. The proposed lot has an area of 679m<sup>2</sup> with a house area of 127.26m<sup>2</sup> and this results in a total of 14.72 units per hectare which complies with the range specified.

- vi) conforms with the policies of Section 3.5, Heritage Conservation and preserves designated and listed heritage buildings and structures, and where located adjacent to such buildings and structures is designed to be compatible;

Response:

There are no Cultural Heritage features on the property, therefore this does not apply.

- vii) respects the residential lotting pattern in the immediate surrounding area;

Response:

The proposed lot is generally of the same shape and orientation but is smaller than some of the lots in the area. Given its location on a cul-de -sac the lots often are of a different configuration than lots on a grid plan. It respects the front yard and setbacks that are established and would present similarly at the street.

- viii) satisfies the City with respect to the proposed grading, drainage and stormwater management, and, in particular that there is no impact on adjacent properties;



Response:

If approved, the proposed lot and new house will have to comply with grading , drainage and storm water management best practices as part of the building permit application.

- ix) development has direct access from a public or condominium road;

Response:

This development does not have direct access to the public road as a 0.3m reserve exists across the frontage of the lot. It is the hope of the applicants that this be considered for removal as part of the application. The City has maintained that access be restricted to provide for snow storage.

- x) alignment of any proposed streets with existing streets promotes acceptable traffic circulation;

Response:

There are no new streets proposed as part of the development.

- xi) any proposed streets are adequate to accommodate municipal services;

Response:

This is not applicable as no new streets are proposed. Arrangements for municipal service connections would be made should the application be approved.

- xii) protection of significant trees and other natural features identified as significant by the City;

Response:

There are trees on the lot and at the time of development the best practices for conserving or retention of trees would be explored based on the health of the trees.

- xiii) does not hamper or prevent orderly development of adjacent properties;





Response:

The creation of this lot does not prevent the orderly development of the adjacent properties as they are already developed and this proposed infill would provide needed housing to a relative of the owner. Permission would be required from the City to remove the 0.3 m reserve to permit access to this small area on the cul-de-sac.

- xiv) garages are designed so that they are not the dominant feature in the streetscape; and,

Response:

The garage proposed for the site does not dominate the streetscape and is tucked in to the side of the proposed dwelling and does not protrude out the front of the dwelling or the adjacent dwelling to the north. It provides additional separation from the proposed dwelling and the existing dwelling thereby minimizing any potential overlook or adverse impacts.

- xv) has regard for the City's Urban Design and Landscape Guidelines.

Response:

If approved, the site design would have regard to the urban design guidelines.

#### *Consent Policies*

Section 9.5 of the Official Plan outlines the evaluation criteria for consent applications. The criteria applicable to the subject consent are as follows (delete the criteria below that are not applicable):

- i) a plan of subdivision is not required to ensure the proper and orderly development of the lands, which shall generally be where more than five lots are being created and in accordance with the policies of Section 9.3 of this Plan;

The proposed infill development intends to create one new lot and retain the balance of the subject lands. As five lots are not proposed, a plan of subdivision is not required.



- ii) the proposed consents will not adversely affect the financial status of the City;

Response:

The addition of one additional lot will not likely present any adverse impacts on the financial status of the City and will generate development charges and taxes.

- iii) the proposed use is compatible with adjacent land uses and in an existing built-up residential area the lot size, frontage and configuration of the severed and retained lots shall generally be in keeping with the existing development in the area;

Response:

As mentioned previously in the report the general shape of the lot is rectangular with an irregular front lot line resulting in a slight reduction in lot depth. The lot is slightly smaller than other lots but meets the minimum lot area requirements and the lots in this area were created decades ago when land was abundant and housing readily available. Land costs are also different now than in the 1950-1970's when the build out occurred in this area of the City and approval authorities are directed to make more efficient use of land and infrastructure as per the Provincial Planning Statement.

- iv) the proposed lots front on, and have direct access from, an improved public road which is maintained on a year-round basis and which is of a reasonable standard of construction;

Response:

This is the issue as the site is suitable for additional development as shown on the concept sketch and as described herein, were it not for the requirement to have direct access onto a street. The street has a 0.3m reserve and the City constructed a guard rail to prohibit access to these lands along Joffre Street. There is a fence that appears to encroach onto the 0.3 m reserve on lands known as 400 William Street which was observed the day of the site inspection.



- v) the access to the proposed lot shall not create a traffic hazard or serve to increase an existing traffic hazard as a result of limited sight lines, curves or grades;

Response:

If approved, the proposed driveway will be designed to minimize any traffic concerns over sight lines in consultation with the City staff.

- vi) the additional lots do not extend or create a strip of development nor limit the potential for development of the retained lands and adjacent lands, and a consent shall be given favourable consideration if it has the effect of infilling;

Response:

The consent shall not limit the development potential of adjacent lands which are currently developed. The intended purpose of this lot is for modest infilling.

- vii) the proposed lots can be adequately serviced;

Response:

The proposed lot can be adequately serviced.

- viii) The lot frontage and area of the proposed lots are adequate for the existing and proposed uses and comply with the Zoning By-law. Where it is not possible to meet the standards of the Zoning By-law, an amendment or variance shall be required as a condition of approval, where such action is considered appropriate;

Response:

The proposed lot area and frontage comply. The property does not have access to a public street given the 0.3m reserve and a minor variance application has been submitted to that affect and to address the rear yard setback to the existing garage foundation and the interior side yard setback to the existing home on the retained lands.



- ix) a consent shall generally not be granted within the Regulatory Flood Line on Schedules "A" and "B" when the intended use is the construction of a permanent building or structure;

Response:

This site is outside of the regulatory flood lines.

- x) the consent will not negatively impact on a site which is a designated heritage site or which is on the City's Register of Property of Cultural Heritage Value or Interest; and,

Response:

The subject lands do not contain any cultural heritage resources and therefore this does not apply.

- xi) the consent will not result in negative impacts on the "Wetland Unit (MNR)", "Wetland Hazards (UTRCA)", "Natural and Naturalized Woodland", "Anthropogenic Woodlands/Park" and "NHS Plantings" features as designated on Schedule "B" to this Plan which impacts will be evaluated in accordance with the policies of Section 5.2 of this Plan.

Response:

This consent is outside to these natural heritage areas as identified above. The UTRCA has been circulated and has indicated no objection to this application as the lands are outside of the regulated area.

In summary, the proposed severance conforms to the majority of the policies outlined above in the City's Official Plan, with the exception for the requirement for access onto a public street. This can only be remedied if the variance is supported or if Council reconsiders its position on the lifting of the 0.3 metre reserve. To address this matter, consideration could be given to have the owner provide a financial contribution to the additional costs of snow removal. This could be included as a condition of the consent.

### **City of Stratford Zoning By-law**



The subject lands are zoned R1(2) Residential First Density in the City's Zoning Bylaw. This zone permits Single detached dwellings and a group home.

*1. R1(2) Zone Provisions*

Table 6.4.1 outlines the regulations for the R1(2) zone. The applicable regulations include a minimum lot area of 600m<sup>2</sup>; frontage of 20m; depth of 30m; side yard of 1.0 m with increases of .5m for each additional storey to a maximum of 2.0 m.; maximum lot coverage of 40 % for main and accessory buildings; and 40% landscaped areas. Relief is being requested for a lot depth ranging from 20.8m-21.8m and the minimum rear yard setback for the existing garage foundation which is 1.5m from the lot line and to recognize the reduction in the interior side yard setback for the existing dwelling on the retained lands to 0.4m.

*Section 4.2.1 a) of the General Provisions requires frontage on a public street.*

The above noted section requires that each lot has frontage on public street. As the proposed severed lot has a 0.3 metre reserve across the Joffre Street frontage, there is no access for the proposed lot.

In summary, a minor variance application is required to provide relief for the deficiencies of the proposed lot and to recognize existing deficiencies on the retained lot.

## **RECOMMENDATION**

**THAT the City of Stratford Committee of Adjustment APPROVE with conditions Application B09-22 as submitted by Dr. Thomas Drake to create an infill lot to facilitate the construction of a single detached one storey dwelling for the following reasons:**

1. The proposed severed lot will create an appropriately sized infill lot that more efficiently uses the lands and infrastructure and provides additional housing options to resident of the City of Stratford.



**2. AND THAT the Decision of the City of Stratford Committee of Adjustment regarding Application B09-22 be subject to the following conditions:**

1. THAT prior to the issuance of the Certificates of Consents under Section 53(42) of the Planning Act, the owner fulfills all conditions of approval for consent application B09-22, and that the fulfillment of these conditions is completed within two years of the date of the mailing of the decision for application B09-22;
2. THAT the City of Stratford removes the 0.3m reserve from the subject lands and provides access to the severed lot.
3. THAT the owner applies for and receives approval from the Committee of Adjustment for minor variance application A26-22 as amended;
4. THAT arrangements be made with, and to the satisfaction of, the City of Stratford Finance Division for the payment of any outstanding Municipal property taxes;
5. THAT the owner provides to the City a copy of the deposited reference plan in an electronic format compatible with the latest version of AutoCAD referenced to NAD83 UTM Zone 17 Horizontal Control Network for the City of Stratford. This Reference Plan shall be created from survey information utilizing the City's Survey Control Network. It is the responsibility of the applicant to obtain the necessary Reference Sketches and associated information required to complete the survey from the City;
6. THAT for the purposes of satisfying any of the above conditions, the Owner shall file with the City of Stratford a complete submission consisting of all required clearances and final plans, and to advise the City of Stratford in writing how each of the conditions has been satisfied. The Owner acknowledges that, in the event that the final approval package does not include the complete information required by The City of Stratford, such submission will be returned to the Owner without detailed review by the City.



## **Minor Variance Analysis**

### **Planning Act, R.S.O. 1990, c. P. 13**

Section 45(1) of the *Planning Act, R.S.O., 1990, c. P.13*, grants a Committee of Adjustment the power to authorize minor variances from the provisions of the Zoning Bylaw. Minor variances under Section 45(1) must pass the following four tests:

1. Does the variance maintain the general intent of the Official Plan?
2. Does the variance maintain the general intent of the Zoning Bylaw?
3. Is the variance desirable for the appropriate development or use of the land?
4. Is the variance minor?

### **Four Tests of a Minor Variance Under Section 45(1) of the Planning Act**

#### *1. Does the variance maintain the general intent of the Official Plan?*

The subject lands are designated Residential Area in the City of Stratford's Official Plan. The residential designation permits residential uses consistent with the existing residential use of the subject lands. In addition, the proposed residential use for the proposed infill lot is also permitted subject to regulations in the zoning by-law and other policies for consideration in the Official Plan.

Section 9.5.1 of the Official Plan outlines evaluation criteria when considering applications for consent to sever. The policy states that "Consents, shall only be permitted in accordance with the policies of this Plan and where the consent does not prejudice the future or existing development of the land or abutting lands" and goes on to outline the specific criteria to be considered as outlined above in the consent section of the report. The only policy that was not in compliance was policy iv) below:

- iv) the proposed lots front on, and have direct access from, an improved public road which is maintained on a year-round basis and which is of a reasonable standard of construction;



In consideration of the variance for the creation of a lot, the intended use for the lands as a “residential use” would meet the general intent of the land use designation, however, the creation of the lot does not meet the requirement as outlined in paragraph iv) of the consent criteria outlined above which requires that a proposed lot have access onto a public street. The matter concerning access can be addressed through a condition of consent that requires the lifting of the 0.3 m reserve. With the addition of the above noted condition, the general intent of the Official Plan can be maintained.

With respect to the additional variances for the irregular lot depth, the rear yard setback for the existing detached garage and the interior side yard for the existing house on the retained lands, it is our opinion that it would not impact the proposed use as intended by the Official Plan and would continue to meet to the general intent of the Official Plan.

*2. Does the variance maintain the general intent of the Zoning Bylaw?*

The subject lands at 386 William Street are zoned Residential First Density R1 (2) in the City of Stratford’s Zoning Bylaw. The R1(2) zone permits single detached dwellings and, group homes. The existing and proposed uses of the subject lands for detached residential purposes are permitted in the R1 (2) zone. However, the by-law also specifies regulations concerning the creation of a lot in Section 4.2.1a) requires that a lot has frontage on a public street. Frontage is defined as means the horizontal distance between the side lot lines of a lot, such distance being measured along a line which is parallel to the front lot line and measured at the required setback. In this case the existing lot (proposed to be retained) fronting onto William Street would comply with the requirement, for frontage onto a public street.

The proposed severed lot would not meet the requirement of Section 4.2.1a) referenced above as frontage on the street is not feasible given the 0.3 m reserve across the Joffre lot line. However, were the consent to be granted subject to the lifting of the 0.3m reserve to provide access to Joffre Ave., the lot would comply with





Section 4.2.1a). The word frontage and lot width have been interchanged in the zoning by-law.

To measure frontage the measurement is taken from the 4.5m front yard setback from the front lot line and the lot would comply with the width requirements, as it would have a width of approximately 24.6m across the lot from side lot line to the other side lot line at the 4.5m setback, which is less than the 6m required front yard so the frontage complies as it is wider at the 6.0 setback.

It is important to note that the proposed lot complies with the minimum lot area, frontage (as in lot width), the front, and side yard setbacks, but would require relief for the lot depth and rear yard. The minimum lot depth is 30.m. This reduction would have to be included in the requested variances to permit an irregular lot depth from 21.9m to 24.8.m resulting from the irregular shape of the lot.

Additionally, the reduction in the rear yard setback is only required for the existing garage foundation, which is 1.5m from the rear lot line, whereas 7.5m is required. This is an existing condition and is triggered by the lot creation as a non-complying matter. Similarly, the interior side yard of the existing house on the proposed retained lot is also non-complying, as it exists today and has lawfully existed for some time. Section 4.17.6 of the zoning by-law recognizes that lots or structures may become non-conforming as result of a consent and "deems them to conform" as a result. These additional variances were mentioned to confirm that these matters are addressed and have been included to ensure compliance and may not be necessary and therefore become redundant, given this regulation in the general provisions of the Zoning By-law. The proposed and retained lots would comply in all other matters.

Therefore, the variances noted above maintain the general intent of the Zoning Bylaw. The variance to create a lot without frontage/ access to a public road is also redundant if conditional consent is granted as recommended.

### *3. Is the variance desirable for the appropriate development or use of the land?*

The proposed variances would have the effect of facilitating some infill housing on the back end of an underutilized through lot. The housing proposed would be single storey



and would comply to all setback and lot area requirements and would not create adverse effects, such as shadow impacts or overlook onto adjacent lands to the north, which contain a single storey detached dwelling. The variances pertain to the lack of legal frontage on a street which is separated by a 0.3m reserve and a reduced lot depth for an irregularly shaped lot, both of which are technical matters that can be remedied through a condition applied to the consent to remove the 0.3m reserve. The proposed variances are appropriate for the development and use of the lands. Infill development is encouraged in the consent policies of the Official Plan. In addition, the Province of Ontario is experiencing a housing shortage and this modest form of infill, would help address the housing needs for local residents.

Therefore, the variances are desirable for the appropriate use of the land.

#### *4. Is the variance minor?*

Whether a variance is minor is evaluated in terms of the impact the proposed development is expected to have on the surrounding neighbourhood. It is not expected that the proposed minor variance for lot depth would adversely impact the character of the area or the ability of adjacent property owners to use their properties in accordance with the Zoning Bylaw. The proposed additional residential use complies with the intended use of the lands and meets the majority of the performance measures for the site, but does not have legal frontage on a public road and has an irregular lot depth with a reduction in the rear yard behind the existing garage foundation. If the consent is approved as recommended, the lack of lot frontage on a public road becomes a redundant issue.

The proposed single storey house on a slightly smaller lot would not create adverse impacts such as shadow or overlook onto adjacent lands and meets the separation distances of the by-law. The slightly irregular depth of the lot and reduced rear yard for the garage do not create adverse impacts.

In a similar manner, the retained lands have existed with the reduced interior side yard setback for the existing dwelling at 386 William Street. The creation of the new lot and subsequently the retention of the lot containing the existing dwelling, triggered the



need for a variance, but are however, deemed to comply as per Section 4.17.6 referenced above.

Therefore the remaining variance for irregular lot depth is minor.

## **CONCLUSION**

As outlined in this report, the proposed variances meet all four tests of a minor variance as outlined in Section 45(1) of the Planning Act. Staff are recommending APPROVAL of the minor variance as follows:

## **RECOMMENDATION**

**THAT the City of Stratford Committee of Adjustment APPROVE Application A26-22 for relief from Section 4.2.1 a) as submitted by Dr. Thomas Drake for the following reason(s):**

1. The variance maintains the general intent of the Official Plan;
2. The variance maintains the general intent of the Zoning Bylaw.
3. The variance is appropriate and desirable development of the lands;
4. That the variance is minor.

**NOTE: The variance becomes redundant should conditional consent be granted as recommended above.**

**Further THAT the City of Stratford Committee of Adjustment APPROVE Application A26-22 for relief from Table 6.4.1 for the minimum lot depth, as submitted by Dr. Thomas Drake for the following reason(s):**

1. The variance maintain the general intent of the Official Plan;
2. The variance maintains the general intent of the Zoning Bylaw.
3. The variance is appropriate and desirable development of the lands;
4. That the variance is minor.



**5. Further THAT the City of Stratford Committee of Adjustment APPROVE Application A26-22 for relief from Table 6.4.1 for the minimum interior side yard for the existing house on the retained lands and rear yard setback for the existing garage on the severed lands as submitted by Dr. Thomas Drake for the following reason(s):**

6. The variance maintain the general intent of the Official Plan;
7. The variance maintains the general intent of the Zoning Bylaw.
8. The variance is appropriate and desirable development of the lands;
9. That the variance is minor.

**AND these variances also may be redundant as per Section 4.17.6.**

**Reviewed By**

Pierre Chauvin, Partner MHBC Planning, Consulting Planner

**Recommended By:**

Juliane vonWesterholt, Associate MHBC Planning, Consulting Planner

**ATTACHMENTS**

- Attachment 1 – Location Map
- Attachment 2 – Severance Sketch
- Attachment 3 – Agency Comments
- Attachment 4 – Public Comments
- Attachment 5 – Zoning Map
- Attachment 6 – Official Plan Map

Public Comments Received

B09-22 & A26-22 – 386 William Street

To: Planning Division

From: Neighbours objecting to the application (see signatures below)

Date: January 14, 2025

Re: Application No.: B09-22 & A26-22

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RECEIVED  
CITY OF STRATFORD  
JAN 15 2025  
BUILDING AND PLANNING  
SERVICES

**REQUEST:** We the undersigned object to the above noted application on the basis that this application is moot and an abuse of process.

It is our understanding that lands without road access are not able to be severed. We also understand that this application is for a severance conditional on the applicant gaining road access. The Applicants claim that the only viable access to their property is via Joffre Street. That potential access is blocked by City-owned land. As such, this application seems to be seeking a severance conditional on access via Joffre Street. We are asking that this application be denied, in its entirety, on the basis that there can be no reasonable expectation that such access will be granted given the 30 year legal history outlined below. We also object to this application on the basis that it represents an abuse of process.

Thomas Drake and David Drake (the “**Applicants**”) have made numerous requests to the City dating back to at least 1995. The Applicants have made this request to every sitting City Council since that time. The most recent request was in the fall of 2024. Every successive request has been denied. Unsatisfied with the repeated denials, the Applicants brought two separate lawsuits related to access. In each instance, many levels of courts ruled against the Applicants. Each of the Applicants’ appeals to the Ontario Court of Appeal resulted in a denial of access. The Applicants were also unsuccessful at the Supreme Court of Canada which refused to grant leave to appeal. The Applicants have exhausted all legal avenues and have failed to gain access to their property from Joffre Street. This application is an abuse of process designed to circumvent the decisions of successive City Councils and successive court rulings.

Our position is that this application is an excessive and fruitless exercise. The Applicants have repeatedly chosen to ignore and challenge every authority that will not give them what they want. This has caused considerable stress to their neighbours, who only wish to continue the quiet enjoyment of their own land without being confronted with the same matter year after year. It is our fear that any approval, even conditional, will embolden the Applicants to drag out this previously decided matter for years to come.

We ask the Committee to consider the finding of fact in Justice Templeton’s written ruling where she noted at paragraph 12 (in referring to Thomas Drake,) that, “The Applicant deposes that he accepted the fact that the City was not prepared to grant his request for a

permanent driveway off Joffre Street.” The Applicants are effectively asking the Committee of Adjustments to allow access which was denied by the Supreme Court.

For all the above reasons, we request that the application be denied in its entirety.

We have attached copies of each of the written court rulings for the edification of the board.

A detailed timeline follows. Items 1 through 5 were findings of fact by Justice Templeton of the Superior Court of Justice (*Drake v. Stratford (City)*, 2010 ONSC 2544)

1. The Applicants sought and were granted temporary access to the rear of their property in 1995. That temporary access expired.
2. In October 2005, the Applicants requested permanent access to their property via Joffre Street but were denied by City Council.
3. In May 2006, the Applicants sought and were granted a building permit to build a storage shed. That permit expressly prohibited the Applicants from accessing the property from Joffre Street.
4. Construction of the shed commenced in April 2009. The Applicants ignored the prohibition in the building permit and repeatedly accessed the property via Joffre Street.
5. On May 15, 2009, the City had to resort to erecting a series of concrete blocks to prevent the Applicants from ignoring the prohibition of access from Joffre Street.
6. In 2009 the Applicants sued the City for access.
7. In January 2010 the matter was heard by Justice Templeton who did not grant access but ordered that the process be recommenced with proper notice to all affected parties. *Drake v. Stratford (City)*, 2010 ONSC 2544 (CanLII) (March 18, 2010)
8. In 2011 the Applicants appealed effectively asking the Ontario Court of Appeal to grant access from Joffre Street. Court of Appeal Justices Sharp, Blair and Rouleau heard the appeal and ruled that the City was within its rights to deny access and supported the denial of access from Joffre Street. The court overturned the trial judge’s ruling that the city had used a flawed process for determining whether to grant access.

*Drake v. Stratford (City)*, 2011 ONCA 98 (CanLII) (2011 02 08)

9. The Applicants sought leave to appeal the ruling to the Supreme Court of Canada. That leave was denied in September 2011. September 22, 2011 – Supreme Court of Canada Judgment.
10. On June 24, 2013, the Applicants once again approached the City with a request that they be allowed to purchase the City-owned land blocking access from Joffre Street. City Council denied the request after reviewing the prior history noted above.
11. On June 26, 2015, the Applicant again sued the City seeking an injunction restraining the City from erecting or maintaining a barrier to restrict access from Joffre Street. In an oral decision by Justice P. Henderson, the Superior Court of Justice denied the applicant's claim, in part because that matter had already been dealt with by other courts. (Henderson's judgment subsequently released and dated January 6, 2015).
12. In 2015 the Applicant appealed Justice Henderson's ruling to the Ontario Court of Appeal. Justices Laskin, Pardu and Brown wrote, at paragraph 5 of their decision,

In this litigation the Drakes sought to prevent the City from maintaining a barrier preventing access from the rear of their property to Joffre Street. That is the same question that was before the court and decided in 2009. It matters not that the City proposes to replace the concrete barrier with a wood barrier. And it matters not where the wood barrier will be located as both the roadway and the grassy strip are owned by the City. Our disposition of the appellants' first submission is sufficient to resolve this appeal.

14. Fall 2024 The Applicant made their latest request to City Council. This was denied.

Thank you for your consideration,

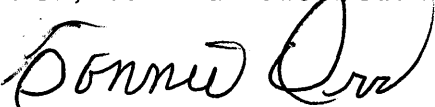
Denise Whitehead and Mark Hunter, 30 Joffre Street, Stratford



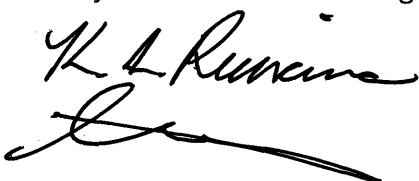
Bob and Heather Tamas, 23 Joffre Street, Stratford



Connie Orr, 400 William Street, Stratford

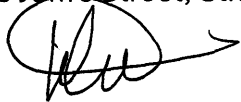


Kerry Runciman and Liz Lagerwerf, 24 Joffre Street, Stratford,

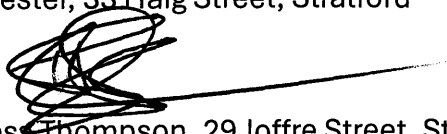




Dan and Yoko Otten, 8 Joffre Street, Stratford



Heather Sylvester, 33 Haig Street, Stratford



Darryl and Jess Thompson, 29 Joffre Street, Stratford



Stewart and Rebecca Wilson, 16 Joffre Street, Stratford



James and Catherine Hadwick, 27 Haig St., Stratford

*Hadwick*

Owners of



, 21 Haig Street, Stratford

CITATION: Drake v. Stratford, 2010 ONSC 2544  
COURT FILE NO.: 2204/09  
DATE: 2010-03-18

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN: )  
 )  
Thomas Glen Drake and David Hugh Drake ) D. Andrew Thomson, for the Applicants  
 )  
 )  
Applicants )  
 )  
- and - )  
 )  
The Corporation of the City of Stratford ) M. van Bodegem, for the Respondent  
 )  
 )  
Respondent )  
 )  
 )  
 ) HEARD: January 5, 2010

REASONS FOR JUDGMENT

Templeton J.

[1] The Applicants are the registered owners of residential property located at 386 William Street, Stratford, Ontario ("the Drake property"). The front of the Drake property is located on William Street. Their lot is long (300 feet) and narrow.

[2] In fact, the Drake property is so narrow that the Drakes are unable to access the rear of the property by vehicle or larger machine for the purpose of storage, landscaping or maintenance. Their carport on the east side of the house is 1.5 feet from the property line and trees, a retaining wall, fences and a hedge block access to the rear of the property via the 9 foot wide space on the west side of the house.

[3] The northeast portion of the lot behind the house is adjacent to a strip of land, a grass boulevard, ("the City property") which is approximately 25 feet wide and is owned by the City of Stratford. This grassy area borders Joffre Street; a paved, curbed street that runs perpendicular to William Street but has been closed and ends in a cul de sac alongside the Drake property. Other streets in the area that run parallel to Joffre Street and also end in cul de sacs are Denison, Morrison and Dawson Streets.

[4] The Applicants wish to construct a shed/garage and install a swimming pool at the rear of the property. They obtained a building permit and then sought permission from the City of Stratford to traverse the City Property in order to access the rear of their lot from Joffre Street to implement their plans. By way of resolution, the City Council has refused to grant the applicants permission and has placed concrete barriers along the sides of the cul de sac preventing access across the grass boulevard to the Drake property.

[5] Pursuant to Rule 14.05(2)<sup>1</sup> and the *Municipal Act, 2002*,<sup>2</sup> the Applicants seek an order from this Court that the resolution of the City is illegal and therefore invalid and of no force and effect; that the Chief Building Officer of the City had no authority to restrict or attempt to restrict passage by the Applicants over public lands for the purpose of gaining access to the Applicants' lands to permit construction on their lands; and, a mandatory injunction directing that City

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<sup>1</sup> *Rules of Civil Procedure*, O. Reg. 575/07, s. 6.

<sup>2</sup> S.O. 2001, c.25 [*Municipal Act*].

remove the concrete barriers erected on Joffre Street which restrict access across public lands to the Applicants' property.

[6] It is the position of the Respondent that the Application ought to be dismissed.

**The Evidence**

[7] The City of Stratford acquired the property in question by way of Deed in 1953. Part of Joffre Street is paved and bordered by a concrete curb.

[8] A request by the Applicants for temporary access to their lot for construction purposes was granted by the City and extended to October 31, 1995 but a request for permanent access from Joffre Street was denied on the basis that snow plowing would be difficult. By way of correspondence from the City's solicitor, the Applicants learned that the grass boulevard over which they wished to build a driveway was public land with no restriction as to use.

[9] On October 17, 2005, the Applicants wrote again to the City asking for permission to construct a permanent driveway onto their property from the cul de sac on Joffre Street. The City gave notice of the request to only those neighbours who had previously objected (one of whom had previously lost a claim against the Applicants that he had acquired 30 feet of the rear of their property through adverse possession). No notice of the Application was provided to the public at large or property owners in a specified radius. The neighbours objected once again and on December 19, 2005, the request was again denied.

[10] Following this denial, numerous letters were exchanged between various City Departments and the Applicants.

[11] On May 25, 2006, the Applicants applied for and obtained a building permit to construct a storage shed at the rear of the property. Employees of the City added the words "City

Property, No Access, including construction access, is permitted to 386 William Street” and “No Access Permitted from Joffre Street” to the documents and to the building permit.

[12] The Applicants deposes that he accepted the fact that the City was not prepared to grant his request for a permanent driveway off Joffre Street. He had received prior permission for temporary access however and, notwithstanding the expiry of the limitation date, commenced construction of a shed/garage in or about March 2009. Materials had to be delivered to the rear of the property via Joffre Street in mid-April, 2009 over a period of three days and one day in May, 2009.

[13] On May 12, 2009, the Applicants wrote to the City and requested temporary access to their property from Joffre Street for construction of a shed, fences and a swimming pool. The Applicants received a letter from the City dated the same day requiring that entry onto their property by way Joffre Street cease immediately.

[14] On May 15, 2009, the Applicants alerted the City that the excavation was filling with water and creating a dangerous situation. The Applicants arranged for the delivery of gravel to fill the holes. That same day, the City directed the placement of large concrete blocks on Joffre Street adjacent to the Drake property to block access. The City had received letters of complaint from four neighbours.

[15] The City's Public Works subcommittee held a meeting on May 26, 2009. The Applicants' request for temporary access was on the agenda. There was no written or public notice of the meeting but the Applicants were informed, in advance, by telephone as was a neighbour who had objected to the request.

[16] Dorothy Drake, wife of the Applicant, Thomas Drake, attended the meeting. The letters of complaint had not been disclosed or made available to the Applicants prior to the meeting.

[17] Mrs. Drake deposes that she made a prepared presentation to the subcommittee. A neighbour who objected to the request and who had recently moved onto the far end of Joffre Street also spoke. She told the Committee that there had been countless times that the Drake property had been accessed from Joffre Street; the issue had been ongoing for years; that she spoke on behalf of other residents in the area who claimed they felt intimidated; and, that she felt "threatened, intimidated and antagonized".<sup>3</sup> Not having been made aware of either the fact or nature of the complaints previously, Mrs. Drake was unprepared and unable to respond effectively. She did not ask for an adjournment or an opportunity to cross-examine the authors of the letters.

[18] It is when the Applicants requested the City's file contents after City Council passed a resolution denying access that they were able to see the complaints of their neighbours. But for one complaint of noise, none of the complaints in the file concerning noise and construction lights and considered by the subcommittee had been brought to the Applicants' attention or notice in advance of the meeting. Mrs. Drake was not provided with an opportunity to prepare a response to the complaints.

[19] The sub-committee referred the issue to the full Public Works Committee which consists of all members of Council. On June 3, 2009, the Applicants provided the City with written submissions in support of their request and in response to the issues raised at the subcommittee hearing.

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<sup>3</sup> Mrs. Drake deposes that neither she nor her husband has spoken with this neighbour nor have they written to her about their request for access.

[20] On June 8, 2009, the Public Works Committee held a meeting and considered the Applicants' request to obtain temporary access to their property. A review of the Minutes of that meeting confirms the following:

- (a) The sub-committee had recommended that the construction be completed by the end of July 2009 following all City By-laws otherwise approval would automatically be revoked.
- (b) The same neighbour, a new homeowner, who had attended the subcommittee meeting also attended this meeting. She had indicated that, in her view, the Applicants are able to access the rear of their property from their own property; that the Applicants have violated the "mandate" countless times and when they refused, the City had to place concrete barriers up; that to now grant approval would show bias and set a precedent; that the issue has been going on for a lot of years and has caused a lot of stress; that many of the older residents in the area feel intimidated by the situation; and that the situation had become volatile.
- (c) Comments from the engineering department were considered indicating that, if the request for temporary access was approved, a number of conditions could be put in place to maintain the integrity of the City owned land.

[21] The Public Works Committee recommended to City Council that the request of the Applicants be denied.

[22] On June 22, 2009, City Council denied the Applicants' request at its regular meeting and ordered that the staff investigate a permanent barrier to limit access from Joffre Street. No reasons for the decision of the Committee or Council were disclosed in the Minutes of the meeting.

[23] According to the Applicants, a property owner with frontage onto William Street has a driveway off the cul de sac called Morrison Street and another property owner with frontage onto William Street has access to the rear of the property from Dawson Street.

### **Position of the Applicants**

[24] It is the position of the Applicants that the resolution passed by City Council ought to be set aside because it was made in bad faith and is therefore illegal. The resolution is discriminatory. Further, the resolution of Council was passed solely on the grounds that neighbours objected and those objections were based neither upon planning nor safety considerations but rather the personal opinions of the neighbours at least one of whom had previously been involved in personal, acrimonious and unsuccessful prior litigation with the Applicants. There was no investigation into the safety or cost issues raised.

[25] Further, the committee did not consider the contemporaneous practice of other neighbours both on this street and on neighbouring cul de sacs. Another resident on Joffre Street has exercised regular access over the City's boulevard to the rear garden of his property to deliver manure, enter the rear garden and perform construction on the roof of his home. The prohibition of access to the Applicants does not apply equally to other property owners or properties abutting the cul de sac at the south end of Joffre Street who have and will continue to gain access across the City's boulevard to their own properties. Similarly, the prohibition of access to the Applicants does not apply equally to at least two other residents whose properties also front William Street but who have access to the rear of their properties from the cul de sacs abutting the rear portion of the properties.

[26] The evidence of the comments of councilors during the meetings; the provision of notice to only the objectors to the application; the failure to advise of and provide an opportunity to



prepare and respond to the objections; and, the personal relationship between one or more of the voting councilors and one or more of the objectors proves the existence of bad faith with respect to the decision of City Council.

### **The Position of the Respondents**

[27] In early 2009, the City received a number of complaints from other residents in the area that the Applicants or their agents were traversing the City's property adjacent to Joffre Street to access the rear of their own property. The City wrote to the Applicants asking them to stop. Further complaints were received as a result of which the City placed concrete blocks to stop access on May 15, 2009.

[28] The Applicants were notified of the meeting of the Public Works subcommittee on May 26, 2009. Mrs. Drake attended the meeting as agent of the Applicants. She did not ask for an adjournment to allow the Applicants to attend in person. She gave a presentation to the subcommittee. At that meeting, she was provided with copies of the letters of complaint from nearby residents received by the City. She was given an opportunity to respond to those complaints. She did not ask for adjournment to address the complaints in the letters or the petition that had been sent to the City. The Applicants had been free to elicit letters in support of their application.

[29] On June 3, 2009, the Applicants provided written submissions in support of their request and responded to the issues raised at the meeting on May 26, 2009. On June 8, 2009, one of the Applicants attended the meeting of the Public Works Committee but did not ask to make submissions, did not seek an adjournment or object to the procedure adopted at the meeting. The Committee recommended that the request be denied.

[30] On June 22, 2009, Council of the City held its regular public meeting. One of the Applicants attended but did not ask to make submissions, seek an adjournment or object to the procedure adopted at the meeting. City Council adopted the recommendation of the Public Works Committee and rejected the Application.

[31] Residents have no right or entitlement to access or traverse City-owned property without permission. The city is under no obligation to grant permission. There is no evidence of bad faith or that the decision of the City Council was wrong so as to be patently unreasonable. There is no evidence that any members of Council were acting out of corrupt or personal interest. The Application before the Court ought to be dismissed.

**Analysis**

**(a) Characterization of the City's property adjacent to the paved road known as Joffre Street**

[32] Although raised in the pleadings but not argued before me, I accept the submissions of counsel for the City and find that the grass property in question that lies between the paved portion of the road and curb forming Joffre Street and the property owned by the Applicants does not form part of Joffre Street. This finding is grounded in By-law 5050, which was passed in 1954. No condition was attached to the transfer of the property in 1953 to the City by Thomas Orr. In the alternative, any condition that did attach has either been satisfied or is now unenforceable.

**(b) Relevant legislation**

[33] The relevant sections of the *Municipal Act, 2001*<sup>4</sup> provide:

272. A by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law.

273(1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality.

(2) In this section, "by-law" includes an order or resolution

**(c) The test for judicial intervention**

[34] The Supreme Court of Canada in *Nanaimo (City) v. Rascal Trucking Ltd.*,<sup>5</sup> and the Ontario Court of Appeal in *Equity Waste Management of Canada v. Halton Hills (Town)*<sup>6</sup> and *Pedwell v. Pelham (Town)*<sup>7</sup> direct that courts should afford generous deference to the decisions of democratically elected municipal councils exercising their powers on behalf of the electorate.

[35] However, as the legislation sets out, a municipal by-law, or in this case resolution, may be set aside on grounds of illegality.

[36] Although the term "illegal" is not defined in the legislation, in *Immeubles Port Louis Ltée v. Lafontaine (Village)*,<sup>8</sup> the Supreme Court clarified that "'illegality' is a generic term covering any act not in accordance with the law". More recently, in *Grosvenor v. East Luther Grand*

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<sup>4</sup> S.O. 2001, c.25.

<sup>5</sup> [2000] 1 S.C.R. 342, [2000] S.C.J. No. 14, at paras. 35 – 36.

<sup>6</sup> (1997), 35 O.R. (3d) 321, [1997] O.J. No. 3921, 40 M.P.L.R. (2d) 107 (C.A.), revg [1994] O.J. NO. 2036, 22 M.P.L.R. (2d) 167 (Gen. Div.), supp. reasons (1995), 2 O.R. (3d) 796, [1995] O.J. No. 1028, 27 M.P.L.R. (2d) 123 (Gen. Div.) [*Equity*].

<sup>7</sup> [2003] O.J. No. 1774, 37 M.P.L.R. (3d) 161 (C.A.) [Leave to appeal to S.C.C. refused [2003] S.C.C.A. No. 355].

<sup>8</sup> [1991] 1 S.C.R. 326, [1991] S.C.J. No. 14, at p. 343 S.C.R.

*Valley (Township)*,<sup>9</sup> Mr. Justice Blair stated that "illegality" encompasses by-laws that are passed in bad faith.

[37] In the case before me, the definition of "by-law" includes a resolution of a municipal council. There is no dispute that the onus of establishing bad faith rests on the Applicants who are attacking the resolution.

[38] The obligation to act in good faith is an essential characteristic of the exercise of the authority by municipal councils. In *Grosvenor*, Mr. Justice Blair referred to the comments of Chief Justice McLachlin in her dissent in *Shell Canada Products Ltd. v. Vancouver (City)*.<sup>10</sup> At para. 30 he stated:

McLachlin J. gave new life to this deferential standard of review, however, in her dissent in *Shell*, supra. There, relying upon earlier jurisprudence and upon trenchant academic criticism of the pro-interventionist approach then employed by courts, she concluded, at pp. 244-47 S.C.R.:

Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold...

[39] As courts must be deferential when considering the exercise of statutory power by a municipality, the doctrine of bad faith applies. Justice Blair explained in *Grosvenor*, at para. 37:

In my view, the obligation to act in good faith continues to be an essential characteristic of the valid exercise of by-law enacting authority by municipal councils. It is one component of the modern deferential approach. McLachlin J. implicitly acknowledged as much in *Shell*, supra, at p. 243 S.C.R., by relying upon the decision of Lord Greene in *Wednesbury*, supra -- Lord Greene said that judicial intervention "would be justified where there was evidence of bad faith or absurdity" -- and explicitly by stating, at pp. 247-48 S.C.R.:

<sup>9</sup> (2007), 84 O.R. (3d) 346 (C.A.) [*Grosvenor*].

<sup>10</sup> [1994] 1 S.C.R. 231, [1994] S.C.J. No. 15 [*Shell*].

Expressing this notion another way, it could be argued, by analogy to judicial review of administrative tribunals, that unless a municipality's interpretation [page358] of its power is "patently unreasonable", in the sense of being coloured by bad faith or some other abuse, the interpretation should be upheld.

.....

... Judicial intervention is warranted only where a municipality's exercise of its powers is clearly ultra vires, or where council has run afoul of one of the other accepted limits on municipal power.

[40] Mr. Justice Blair summed up the role of good faith, at para. 41:

I conclude, therefore, that good faith remains a central foundation for the validity of a municipal by-law enacted in conformity with the municipality's power. My conclusion in this regard is strengthened by the existence of s. 272 of the Municipal Act, 2001, which states:

272. A by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law

[41] Thus, a by-law, or resolution in this case, passed in bad faith is no longer immune from review. What constitutes "bad faith"? The words of Robins J. in *H.G. Winton Ltd. and Borough of North York (Re)*<sup>11</sup> are apposite:

To say that Council acted in what is characterized in law as "bad faith" is not to imply or suggest any wrongdoing or personal advantage on the part of any of its members: *Re Hamilton Powder Co. and Township of Gloucester* (1909), 13 O.W.R. 661. But it is to say, in the factual situation of this case, that Council acted unreasonably and arbitrarily and without the degree of fairness, openness, and impartiality required of a municipal government.

[42] Mr. Justice Laskin in *Equity* stated that "[b]ad faith by a municipality connotes a lack of candour, frankness and impartiality", including "arbitrary or unfair conduct".<sup>12</sup>

<sup>11</sup> (1978), 20 O.R. (2d) 737, [1978] O.J. No. 3488 (Div. Ct.) at p. 744 O.R. [*Winton*].

<sup>12</sup> At p. 340 O.R.

**(d) Findings of Fact**

[43] I find that the City purposefully notified only those residents in the area who had objected to the prior application for permanent access rather than opting to notify all residents in the area or none at all with respect to the new application for temporary access.

[44] I find that the Applicants were afforded an opportunity to make a presentation and provide their reasons and evidence in support of their Application to the subcommittee of Public Works and the Public Works Committee; I am not so satisfied with respect to the City Council.

[45] I am further not satisfied that the Applicants received notice and disclosure of the letters or other documentation in opposition to the Application in advance of the respective meetings. On the other hand, and in stark contrast, the residents who objected to the Application clearly had advance notice of the nature and extent of the Applicants' request and had the time and opportunity to prepare a response and raise issues of concern to them.

[46] I am satisfied that the Applicants were not aware of the opportunity to make additional or supplementary oral submissions to the Committee or City Council at the time of consideration of the Application.

**(e) Analysis**

[47] The City submits that it is not obligated by any statutory requirement to provide a hearing of any sort for requests by residents to access real property owned by the City. Thus, the fact that the Applicants were given the opportunity to participate at the three City meetings, at which their request was considered, is evidence that the City was acting in good faith.

[48] In this case the City undertook a process to consider an Application by tax payers/residents which allowed for participation. However, on the facts before me, I am of the

opinion that the process was not fair. The City chose to notify only those neighbours who had previously filed complaints on the issue rather than all residents in the area. In so doing, the City created an appearance of bias in the process if not in substance. Further, the City failed to provide full disclosure to the interested parties who intended to make submissions i.e. the Applicants of all relevant material including the complaints that was to be considered in arriving at a decision.

[49] If prior disclosure were not possible, the parties ought to have been made aware of the potential for an adjournment on request in order to prepare responses once disclosure had been made. I am not satisfied that the Applicants were made aware that a request for an adjournment of the Committee's consideration of their Application in order to prepare a response to the objections was available to them in the circumstances. The City submits that the Applicants did not ask for an adjournment so that they would have an opportunity to prepare a response. Given that the process for consideration of such an Application is within the discretion of the City according to the City's own submissions, their criticism begs the question as to whether the Applicants even knew that they could ask for an adjournment of the committee's consideration of their request. There is no probative evidence before me that they did know.

[50] The City submits that the decision ultimately reached by Council was consistent with every letter it received from neighbouring property owners and the petition signed by those neighbours. Those issues were that access to the Applicant's property from Joffre Street would increase noise and traffic on Joffre street; access over the City's property for construction purposes risked damage to the property including street-side curbs; access would result in snow-removal and other street maintenance difficulties; access would tend to cause Joffre Street to be used as an access lane instead of a street-fronting residential road; the Applicants

trespassed over the City property until they were caught as a result of which the City incurred the costs of placing concrete barriers. Such conduct of residents ought not to be condoned.

[51] Counsel for the City submits that, "While the majority may not always be right, this fact is some indication that the decision was not entirely devoid of merit or reason".

[52] This submission is at the heart of the issue. The objections of the neighbours were clearly of significance to the Committees and Council. The Applicants allege that the complaints were false, exaggerations or vindictive personal attacks. Contrary to one neighbour's suggestion that the Applicants have repeatedly disobeyed the City's orders, the Applicants state that there was only one request (not an order) from the City and the Applicants complied.

[53] In addition to the fact that the hearings were conducted without the degree of openness and fairness that is required of a municipal government, I find the degree of impartiality is questionable.

[54] As I have indicated, the Public Works Committee is apparently comprised of the City Council members. Nowhere in the Minutes of those meetings is there evidence of an objective discussion in which the merits of the Application and the suggestions of the engineering department are weighed in comparison with, in response to, in contrast to or in proportion to the objections of either the nearby neighbours who objected and/or the similar circumstances involving access over City owned property facing William Street by other residents in the area.

[55] I agree with the City's submissions that a municipality is obligated to plan for the development and growth of its communities and is further obligated to establish and maintain public streets and holding strips of land abutting streets or other property. I also agree that controlling access to the use of these strips of land is in furtherance of these obligations. Rights



of the community are paramount to rights of the owner when powers are exercised for these policy purposes.

[56] In this case, however, the City at one point in time found it reasonable and justifiable and apparently in accordance with the purpose of the policy to allow the Applicants temporary access over the strip of land adjacent to the Drake property. In the face of neighbours' objections which speak primarily to dirt, light and noise over a number of weeks, all of which issues may be addressed by way of conditions as suggested by the subcommittee, the decision has been reversed. This was done without identifiable or discernable reason in the Minutes of the meetings. Of most significance, is the lack of evidence that the Committee and the Council considered the practice of other residents with respect to traversing the City's same strip of land both on Joffre Street and on two other nearby cul de sacs.

[57] Further, I find it concerning that the majority of the issues as identified by the Affiant on behalf of the City and considered by the Public Works Committee and City Council relate to the installation of a permanent driveway over the City property rather than temporary access for the purpose of construction of a shed and a swimming pool in the back yard of the Drake property. If the conduct of the Applicants, in proceeding with the construction without first having obtained an extension of the permission for temporary access which had been granted in 1995 and subsequently expired, was a live issue, that should have been brought to the attention of the Applicants and dealt with. If damage to the curb and property were indeed the concern of the Committee and City Council and a factor in refusing the Application then Council ought to have at least heard from the Applicants with respect to that issue.

[58] I am alive to the fact that courts should afford generous deference to municipalities in the exercise of their statutory powers. Municipal by-laws and resolutions are not to be lightly

quashed; I understand that the role of the Court is to intervene only where there is a finding of bad faith.

[59] It is not the City's decision itself that is of concern to this Court. As I have indicated, I am not entitled to substitute my decision, in any event.

[60] What is of concern to the Court, however, is the process and the manner by which the decision was determined.

[61] On the evidence, the process lacked the candour, frankness and impartiality that is required of municipal bodies. In my view, on a balance of probabilities, the Applicants have established bad faith in this instance in three ways: firstly, by virtue of the fact that notice of the proceedings was given only to those neighbours who had complained; secondly, that the Applicants were deprived of having access to or knowing in advance the contents of letters and complaints and issues put before the committees by neighbours who objected to their Application and then were not advised of the opportunity available to them to seek a deferral of the committee's consideration of their Application until they had had sufficient time to comprehend the allegations of the neighbours and prepare an adequate response; and, thirdly, the apparent consideration by the Public Works Committee and/or Council of issues raised in the objections relating to the installation of a permanent driveway which was not the nature of the Application and the apparent consideration of these issues without balancing the merits of the Application.

[62] I use the term "bad faith" advisedly. There is no evidence whatsoever of intentional or personal "mala fides" in this case. There is, however, probative evidence as I have identified, of a lack of good faith. As has previously been enunciated in the Courts, the most important

indicia of good faith are frankness and impartiality. In my view, the evidence in this case indicates that neither indicia were characteristic of the process regarding this application.

**Conclusion**

[63] For the foregoing reasons, I order that the resolution is quashed. As it was enacted in bad faith, it is illegal within the meaning of s. 273(1) of the *Municipal Act* and cannot stand as a valid exercise of the municipality's statutory authority.

[64] The application process for temporary access over the City property to the rear of the Drake property for the purpose of the construction of a shed and swimming pool will be commenced again on full notice to all the residents in the area and will proceed through the ordinary course following the same participatory plan with both the Applicants and objectors having a right to full disclosure of all material and evidence to be considered by the reviewing body in advance and the right to make submissions to each deciding body until conclusion.

[65] Submissions as to costs with respect to this Application may be made by the parties in writing within the next 30 days.

**"Justice L.C. Templeton"**

Justice Lynda C. Templeton



**CITATION:** Drake v. Stratford, 2010 ONSC 2544  
**COURT FILE NO.:** 2204/09  
**DATE:** 2010-04-29

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

Thomas Drake and David Drake

Applicants

- and -

The Corporation of the City of Stratford

Respondents

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**REASONS FOR JUDGMENT**

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Justice L. C. Templeton

**Released:** April 29, 2010

COURT OF APPEAL FOR ONTARIO

CITATION: Drake v. Stratford (City), 2015 ONCA 497

DATE: 20150703

DOCKET: C59980

Laskin, Pardu and Brown JJ.A.

BETWEEN

Thomas Glen Drake and David Hugh Drake

Applicants (Appellants)

and

The Corporation of the City of Stratford

Respondent (Respondent)

D. Andrew Thomson, for the appellants

Michael A. van Bodegon and D. Veinot, for the respondent

Heard and released orally: June 26, 2015

On appeal from the judgment of Justice Paul J. Henderson of the Superior Court of Justice, dated January 6, 2015.

ENDORSEMENT

[1] The Drakes brought an application to quash the City's 2014 resolution and for an injunction restraining the City from erecting or maintaining a barrier to restrict access from Joffre Street to the rear of their property. The application judge dismissed the application.

[2] On appeal, the Drakes make three submissions:

(1) The application judge erred by holding that the court proceedings in 2009 gave rise to issue estoppel;

(2) The application judge erred by holding that the resolution was not discriminatory; and

(3) The application judge erred by preferring the evidence of the City's deponent over that of Thomas Drake.

[3] We do not agree with the appellants' submissions.

[4] We agree with the application judge that the doctrine of issue estoppel applied. The question to be decided in both pieces of litigation was in substance the same. In the previous litigation the Drakes sought, and were denied an injunction to remove the concrete barrier. That denial was not appealed. Thus, the dismissal of the request for an injunction amounted to a judicial determination that the City had the right to maintain a barrier preventing access to Joffre Street.

[5] In this litigation the Drakes sought to prevent the City from maintaining a barrier preventing access from the rear of their property to Joffre Street. That is the same question that was before the court and decided in 2009. It matters not that the City proposes to replace the concrete barrier with a wood barrier. And it matters not where the wood barrier will be located as both the roadway and the grassy strip are owned by the City. Our disposition of the appellants' first submission is sufficient to resolve this appeal.

[6] Accordingly the appeal is dismissed. The respondent is entitled to its costs of the appeal, which we fix in the agreed on amount of \$13,000 inclusive of disbursements and applicable taxes.

"John Laskin J.A."

"G. Pardu J.A."

"David Brown J.A."



CITATION: Drake v. Stratford (City), 2011 ONCA 98  
DATE: 20110208  
DOCKET: C52172

COURT OF APPEAL FOR ONTARIO

Sharpe, Blair and Rouleau J.J.A.

BETWEEN

Thomas Glen Drake and David Hugh Drake

Applicants (Appellants)

and

The Corporation of the City of Stratford

Respondent (Respondent in Appeal)

D. Andrew Thomson, for the appellants

Michael A. Van Bodegom and Daniel W. Veinot, for the respondent

Heard: February 1, 2011

On appeal from the judgment of Justice L.C. Templeton of the Superior Court of Justice dated April 29, 2010.

ENDORSEMENT

[1] This appeal arises from a dispute between the appellants and the respondent City regarding access to Joffre Street, a municipal street that ends in a cul-de-sac, bordered by a grassy strip of land owned by the City, at the back of the appellants' property. The

appellants wish to access the back of their property from Joffre Street to facilitate a building project. This would involve crossing the grassy strip of land owned by the City that separates the appellants' property from the Joffre St. cul-de-sac.

[2] The appellants' request was first considered by the City's Public Works Sub-Committee which recommended that they be allowed access. However, the issue was then referred to the Public Works Committee, consisting of all members of Council, which recommended against the appellants' request. That recommendation was accepted by City Council and the appellants' request was denied.

[3] The appellants brought an application for an order pursuant to rule 14.05 (2) and the *Municipal Act, 2002*, declaring the resolution denying their request to be invalid and of no force and effect and other related relief.

[4] The application judge found that the grassy strip separating the appellants' property from Joffre Street was City property that did not form part of the street and that the appellants had no right to use it to gain access to their property. However, the application judge concluded that the City Council resolution denying the appellants' request was tainted by bad faith on the ground that "the process lacked the candour, frankness and impartiality that is required of municipal bodies" because:

- notice of the proceedings had been given only to neighbours who had complained;
- the appellants were not given access to letters and complaints submitted to the City; and

- the Public Works Committee and/or Council considered objections relating to the installation of a permanent driveway which was not what the appellants had requested.

[5] The application judge ordered that the appellants' request for access be recommenced on full notice to all residents in the area and that the applicants and objectors be afforded a full right of disclosure of material evidence to be considered by the deciding body.

[6] The appellants appeal the application judge's dismissal of their claim to a right of access and the City cross-appeals the order nullifying the resolution denying the appellants' request and ordering further proceedings

### **Analysis**

*1. Did the application judge err in finding that the appellants had no right of access?*

[7] The appellants submit that when a private owner conveyed to the city the property for the Joffre St. cul-de-sac in 1954, there was dedication by the owner and acceptance by the City of the entire parcel as a public road.

[8] We are unable to accept that submission. The City by-law enacted at the time of the conveyance from the private owner in 1954 accepted as part of Joffre St. only a specifically described parcel of land. It is common ground that the parcel of land as described in the by-law excluded the grassy strip that is at issue in this appeal. In our

view, the combined effect of the conveyance and the by-law was to transfer the entire parcel to the City but to limit the City's acceptance of the parcel as a public road to that portion of the lands so described.

[9] The City's acceptance of only part of the conveyed land as a public road is confirmed by the usage in the succeeding years. Only part of the parcel is paved and used as a public road and the City has consistently maintained that the grassy strip is a distinct piece of city property that does not form part of the public road.

[10] The appellants rely on *Stager v. Muskoka Lakes (Township)* (1989), 71 O.R. (2d) 126 (Div. Ct.). That case is distinguishable. In the case at bar, the municipal by-law shows that only a portion of the lands conveyed by the former owner were accepted for purpose of creating Joffre St. and only the portion accepted became a public road.

[11] Accordingly we reject the submission that the application judge erred by finding that the grassy strip did not form part of Joffre St.

*2. Did the trial judge err in finding that the City's consideration of the appellants' request for permission to access Joffre St. was tainted by bad faith?*

[12] We agree with the City that the application judge appears to have misapprehended the evidence as to what occurred before the Council. With respect to the notification of other parties she confused or conflated the request and issue before her and the appellants' earlier request in 2005 for permission to access the Joffre Street.

[13] We also agree with the City that the application judge erred by weighing in her determination that the entire process was deficient because of the alleged procedural defects that occurred before the Public Works Sub-Committee. As the appellants were successful before the Sub-Committee we fail to see how any defect in the process at that level infected the outcome before the Council.

[14] We see no basis in the record for the application judge's conclusion that the Public Works Committee and/or Council were diverted from their task by considering objections relating to the installation of a permanent driveway rather than the request for temporary access. That contention is not supported by the evidence including the minutes of the meetings.

[15] More fundamentally, it is our view that the application judge erred by applying standards of procedural fairness that are more applicable to an adjudicative body than to the proceedings of an elected municipal council. The Council is an elected legislative body. It was under no statutory or common law duty to provide a quasi-judicial hearing to the appellants who were requesting access over the City's property.

[16] In any event, the appellants attended three meetings of Council or Council committees and they were afforded the opportunity to make submissions. They were permitted to file detailed written submissions and they did not object at any time to the process adopted at the various meetings they attended. They did not request

adjournments, nor did they ask the City to take any other procedural step in the course of these various meetings.

[17] The appellants were afforded the opportunity to present their case and the opportunity they were afforded was sufficient to satisfy any duty imposed on the City and to displace any suggestion of bad faith on the part of the City.

**Disposition**

[18] Accordingly, we dismiss the appeal, allow the cross-appeal and set aside paragraphs 2 and 3 of the application judge's order. The City is entitled to its costs of both the application and the appeal fixed at \$20,000 for the application and \$12,000 for the appeal, both sums inclusive of disbursements and applicable taxes.

“Robert J. Sharpe”  
“R.A. Blair J.A.”  
“Paul Rouleau J.A.”

September 22, 2011

Le 22 septembre 2011

Coram: Binnie, Abella and Rothstein JJ.

Coram : Les juges Binnie, Abella et Rothstein

**BETWEEN:**

**ENTRE :**

Thomas Glen Drake and David Hugh Drake

Thomas Glen Drake et David Hugh Drake

Applicants

Demandeurs

- and -

- et -

Corporation of the City of Stratford

Cité de Stratford

Respondent

Intimée

**JUDGMENT**

**JUGEMENT**

The motion to adduce new evidence to the application for leave to appeal is dismissed without costs. The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C52172, 2011 ONCA 98, dated February 8, 2011, is dismissed with costs.

La requête en vue de produire de nouveaux éléments de preuve à la demande d'autorisation d'appel est rejetée sans dépens. La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C52172, 2011 ONCA 98, daté du 8 février 2011, est rejetée avec dépens.

J.S.C.C.  
J.C.S.C.

COURT OF APPEAL FOR ONTARIO

CITATION: Drake v. Stratford (City), 2015 ONCA 497

DATE: 20150703

DOCKET: C59980

Laskin, Pardu and Brown JJ.A.

BETWEEN

Thomas Glen Drake and David Hugh Drake

Applicants (Appellants)

and

The Corporation of the City of Stratford

Respondent (Respondent)

D. Andrew Thomson, for the appellants

Michael A. van Bodegon and D. Veinot, for the respondent

Heard and released orally: June 26, 2015

On appeal from the judgment of Justice Paul J. Henderson of the Superior Court of Justice, dated January 6, 2015.

ENDORSEMENT

[1] The Drakes brought an application to quash the City's 2014 resolution and for an injunction restraining the City from erecting or maintaining a barrier to restrict access from Joffre Street to the rear of their property. The application judge dismissed the application.

[2] On appeal, the Drakes make three submissions:



(1) The application judge erred by holding that the court proceedings in 2009 gave rise to issue estoppel;

(2) The application judge erred by holding that the resolution was not discriminatory; and

(3) The application judge erred by preferring the evidence of the City's deponent over that of Thomas Drake.

[3] We do not agree with the appellants' submissions.

[4] We agree with the application judge that the doctrine of issue estoppel applied. The question to be decided in both pieces of litigation was in substance the same. In the previous litigation the Drakes sought, and were denied an injunction to remove the concrete barrier. That denial was not appealed. Thus, the dismissal of the request for an injunction amounted to a judicial determination that the City had the right to maintain a barrier preventing access to Joffre Street.

[5] In this litigation the Drakes sought to prevent the City from maintaining a barrier preventing access from the rear of their property to Joffre Street. That is the same question that was before the court and decided in 2009. It matters not that the City proposes to replace the concrete barrier with a wood barrier. And it matters not where the wood barrier will be located as both the roadway and the grassy strip are owned by the City. Our disposition of the appellants' first submission is sufficient to resolve this appeal.

[6] Accordingly the appeal is dismissed. The respondent is entitled to its costs of the appeal, which we fix in the agreed on amount of \$13,000 inclusive of disbursements and applicable taxes.

"John Laskin J.A."

"G. Pardu J.A."

"David Brown J.A."

***REPORT TO THE COMMITTEE OF ADJUSTMENT***

**Submitted By: Planning and Building Services Department  
Planning Services Division**

**Application No.: A27-24**

**Meeting Date: January 22, 2025**

**Owner: Mona Kumar**

**Agent: Chris Warkentin**

**Location: 641 Erie Street, legally described as Plan 4 Part Lot 4 with  
ROW subject to an easement in the City of Stratford.**

**Zoning: C2 – Highway Commercial**

**Official Plan Designation: Commercial Area**

**Road Classification: Erie Street – Arterial Road**

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**Purpose of Application:**

The purpose of the application is to facilitate the alteration of the parking area of the existing restaurant to improve traffic flow.

The effect of the application is to reduce the minimum number of parking and stacking spaces for an eat-in restaurant, in addition to permitting the required spaces to be located within 7.5 m from the street line.

**Variance(s) Requested:**

1. Section 4.8 a) iii) – Drive Throughs, Stacking Lanes and Staking Spaces: To decrease the minimum required number of stacking spaces for a drive-through service window from 10 spaces to 7.
2. Table 5.1 – Minimum Parking Space Requirements: to decrease the minimum requirement parking spaces for an eat-in restaurant from 14 spaces to 11 spaces.
3. Table 5.3.2 – Location of Driveways, Parking Areas and Parking Aisles: To reduce the minimum setback for parking spaces from the street line from 7.5 m to 5 m.

## **Background:**

### Attachments

- Map 1 – Location & Zoning Map
- Map 2 – Concept Site Plan
- Figure 1 – Site Photo

### Site Characteristics

Existing Use:	Restaurant
Frontage:	27 m
Depth:	40.2 m
Area:	1085.4 m <sup>2</sup>
Shape:	Rectangular

### Surrounding Land Uses:

North:	Commercial buildings
East:	Commercial buildings
South:	Commercial buildings
West:	Industrial buildings

### Agency Comments

Circulation of the application to various agencies produced the following comments:

#### **City of Stratford Infrastructure and Development Services Department – Engineering Division:**

Ensure queuing is appropriately sized for the proposed drive-through, as vehicles in que shall not impede traffic on Erie Street. Vehicles should not block their entrances/exits, impede pedestrian foot traffic on the sidewalk, nor spill onto the roadway.

Refer to previous comments from Formal Consultation FC22-24 for this municipal address.

#### **City of Stratford Infrastructure and Development Services Department – Building Services:**

Building has no comments on the minor variances.

#### **City of Stratford Clerks Department:**

The Clerk's Office has reviewed the application and would like to note the following related to parking:

- There is a No Parking restriction on both sides of Erie Street between St. Patrick Street and Lorne Avenue

Our office has no concerns with the proposed reduction of parking spaces however we would like to note that no on-street parking would be available for the property on Erie Street.

**City of Stratford Fire Prevention:**

No comments or concerns.

**Festival Hydro:**

Festival Hydro has no concerns with this application.

Public Comments

A Public Notice was provided to neighbouring property owners within 60 metres on January 3rd, 2025, in accordance with the provisions of the *Planning Act*. In addition, notice of the proposed severance was published in the Town Crier of the Beacon Herald on January 4th, 2025. At the time of writing this report, no comments or concerns were received from the public.

Any additional public comments received after the date of completion of the report will be provided to the Committee of Adjustment.

**Analysis:**

Provincial Planning Statement (2024)

All planning decisions in the Province of Ontario shall be consistent with the Provincial Planning Statement (PPS) which came into effect on October 20<sup>th</sup>, 2024, which is intended to streamline the provincial planning framework and replaces the Provincial Policy Statement (2020) and the Growth Plan for the Greater Golden Horseshoe, with an emphasis on more enabling housing policies. The 2024 PPS provides policy direction on matters of provincial interest relating to Building Homes, Sustaining Strong and Competitive Communities, Infrastructure and Facilities, Wise Use and Management of Resources, and Protecting Public Health and Safety.

Section 2.3.2 of the PPS states that land use patterns within settlement areas shall be based on densities and a mix of land uses which efficiently use land and resources.

Section 2.8.1 of the PPS states that planning authorities shall promote economic development and competitiveness by providing an appropriate mix and range of employment and considering the needs of existing and future businesses.

The subject variance application is proposing to reduce the number of required parking spaces and stacking spaces for an eat-in restaurant as well as to permit parking spaces to be located within 5 metres of the front lot line. The requested variances are proposed to facilitate the alteration of the parking lot on the subject lands, to improve

efficiency and traffic flow. As there are no changes proposed for the existing building, and the requested variances intend to improve the site design of the subject lands, Staff are of the opinion that the proposal is consistent with the requirements of the PPS.

Does the request Maintain the Intent and Purpose of the Official Plan?

The property is designated "Commercial Area" on Schedule "A" of the Official Plan and Erie Street is identified as an arterial road on Schedule "D". The Commercial area policies allow for a range of commercial uses, including the existing eat-in restaurant.

The Commercial Area goals and objectives include providing a wide variety of commercial uses or services desired by the community and maintaining and enhancing their economic viability. Additionally, the goals and objectives recognize the location of some commercial uses that are not available in the Downtown Core and are permitted along high traffic arterial roads. The proposed redevelopment of the property's parking lot is intended to improve traffic flow and efficiency onsite, leading to increased economic viability. As the eat-in restaurant is a permitted use and located on an arterial road outside the Downtown Core, Staff are satisfied that the application conforms to the Commercial Area policies of the Official Plan.

Does the request Maintain the Intent and Purpose of the Zoning By-law?

The subject lands are zoned Highway Commercial C2 in the City of Stratford Zoning By-law 10-2022. The C2 zoning permits eat-in restaurants and the surrounding area primarily contains commercial and industrial uses.

The applicant has requested variances to the Zoning By-law to reduce the minimum number of parking and stacking spaces for an eat-in restaurant, in addition to permitting the required spaces to be located within 7.5 m from the street line, to facilitate the alteration of the property's parking area. Zoning By-law 10-2022 requires a minimum of 1 parking space per 10 m<sup>2</sup> of net floor area for an eat-in restaurant. As the net floor area of the existing restaurant is 132.26 m<sup>2</sup>, 14 spaces are required whereas the applicant is proposing a minimum of 11 spaces. The Zoning By-law also requires a minimum of 10 stacking spaces associated with a drive-through service window whereas the applicant is requesting a minimum of 7. Additionally, the Zoning By-law requires a minimum setback of 7.5 m for parking spaces from the street line where the street has or is proposed to have a width of 30 m or greater. Erie Street has a design width of 30 m or greater and the applicant is requesting a minimum setback of 5 m from the street line for parking spaces. These are variances of 3 spaces and 2.5 m respectively.

The intent of the minimum required parking space provision is to ensure that sufficient parking is provided on-site for the existing commercial use. The existing parking lot design

provides 14 spaces, meeting the requirements of the Zoning By-law for an eat-in restaurant. However, the layout is not conducive to efficient traffic flow and three of the required spaces are restricted by the drive-through stacking lane. To facilitate the alteration of the parking lot and remove the existing parking spaces that are obstructed by the drive-through stacking lane, the applicant is requesting a minimum of 11 spaces. The applicant has expressed that the existing parking exceeds standard demand for the restaurant and that the "fast-food" nature of the business encourages quick turnarounds for customers. Given the limited size of the subject property and the improved traffic efficiency of the proposed parking lot, Planning Staff are of the opinion that 11 spaces are sufficient for the existing restaurant use.

The intent of the minimum requirement for stacking lanes associated with a drive-through service window is to provide adequate space for vehicles to queue for a restaurant drive-through safely and without obstructing other vehicle traffic on and off the site. As shown on the proposed Site Plan, 10 stacking spaces will encroach onto the City right-of-way and obstruct the parking aisles. As the restaurant drive-through is existing and the subject lands have limited space, staff are supportive of the request to reduce the minimum stacking lanes, as it will result in more efficient traffic flow and improve safety on-site.

The intent of the minimum front yard setback provision for parking spaces is to provide a safe distance from the street line and to maintain a consistent streetscape. The current parking layout meets this setback as the existing parking spaces are located approximately 7.5 m from the street line. However, to facilitate the alteration of the parking lot, the applicant is requesting that parking spaces be located a minimum of 5 m from the street line. Planning Staff are satisfied that the on-site parking will remain consistent with the surrounding commercial and industrial uses and that the 5 m setback will maintain a safe distance from the street line. As a result, Staff are of the opinion that the requested variances maintain the general intent and purpose of the Zoning By-law.

Are the requested variances desirable for the appropriate development of the lands?

The subject lands are classified as "Commercial Areas" in the City's Official Plan and zoned Highway Commercial C2 in the Zoning By-law. The requested variances to the Zoning By-law are to reduce the minimum number of parking and stacking spaces for an eat-in restaurant, in addition to permitting the required spaces to be located within 7.5 m from the street line, to facilitate the alteration of the property's parking area. The requested variances will permit the applicant to redevelop the parking lot of the existing restaurant to improve efficiency and traffic flow. The subject property is subject to Site Plan Control and an active Site Plan agreement is registered on title for the lands. As a result, as a condition of minor variance approval, an amendment to the existing Site Plan will be required. As such, subject to the recommended condition, Staff are of the opinion that the requested variances are desirable for the appropriate development of the lands.

Is the requested variance minor?

Whether a variance is minor is evaluated in terms of the impact the proposed development is expected to have on the surrounding neighbourhood. The proposed variances would facilitate the redevelopment of the existing restaurant's parking area to improve efficiency and traffic flow. Staff is of the opinion that, subject to the recommended condition, the requested variances will not have an adverse impact on the character of the area or the ability of adjacent property owners to use their property in accordance with the Zoning By-law. As such, the requested variances are considered minor.

**Recommendation:**

**THAT the City of Stratford Committee of Adjustment APPROVE Application A27-24, submitted by Chris Warkentin for lands described as Plan 4 Part Lot 4 with ROW subject to an easement and municipally addressed as 641 Erie Street in the City of Stratford, as it relates to:**

1. Section 4.8 a) iii) – Drive Throughs, Stacking Lanes and Staking Spaces: To decrease the minimum required number of stacking spaces for a drive-through service window from 10 spaces to 7.
2. Table 5.1 – Minimum Parking Space Requirements: to decrease the minimum requirement parking spaces for a eat-in restaurant from 14 spaces to 11 spaces.
3. Table 5.3.2 – Location of Driveways, Parking Areas and Parking Aisles: To reduce the minimum setback for parking spaces from the street line from 7.5 m to 5 m.

Subject to the following condition:

- i) That the applicant amend Site Plan Agreement 97 in the City of Stratford to reflect these proposed changes, to the satisfaction of the City's Manager of Planning.

The proposed relief is consistent with the Provincial Planning Statement.

The requested relief meets the four tests of a minor variance as set out in Section 45(1) of the Planning Act as follows:

The requested relief maintains the intent and purpose of the Official Plan as the proposal conforms to the Commercial policies of the Official Plan.

The requested relief maintains the intent and purpose of the City's Zoning By-law as the proposed alterations to the parking area will provide sufficient parking and will remain compatible with the streetscape and a safe distance from the street line.

The requested relief is desirable for the use of the land as it will facilitate the alteration of the existing parking area.



The requested relief is minor in nature as the requested variance will not affect the ability of neighbouring property owners to use their land in accordance with the provisions of the Zoning By-law.

**Prepared by:**

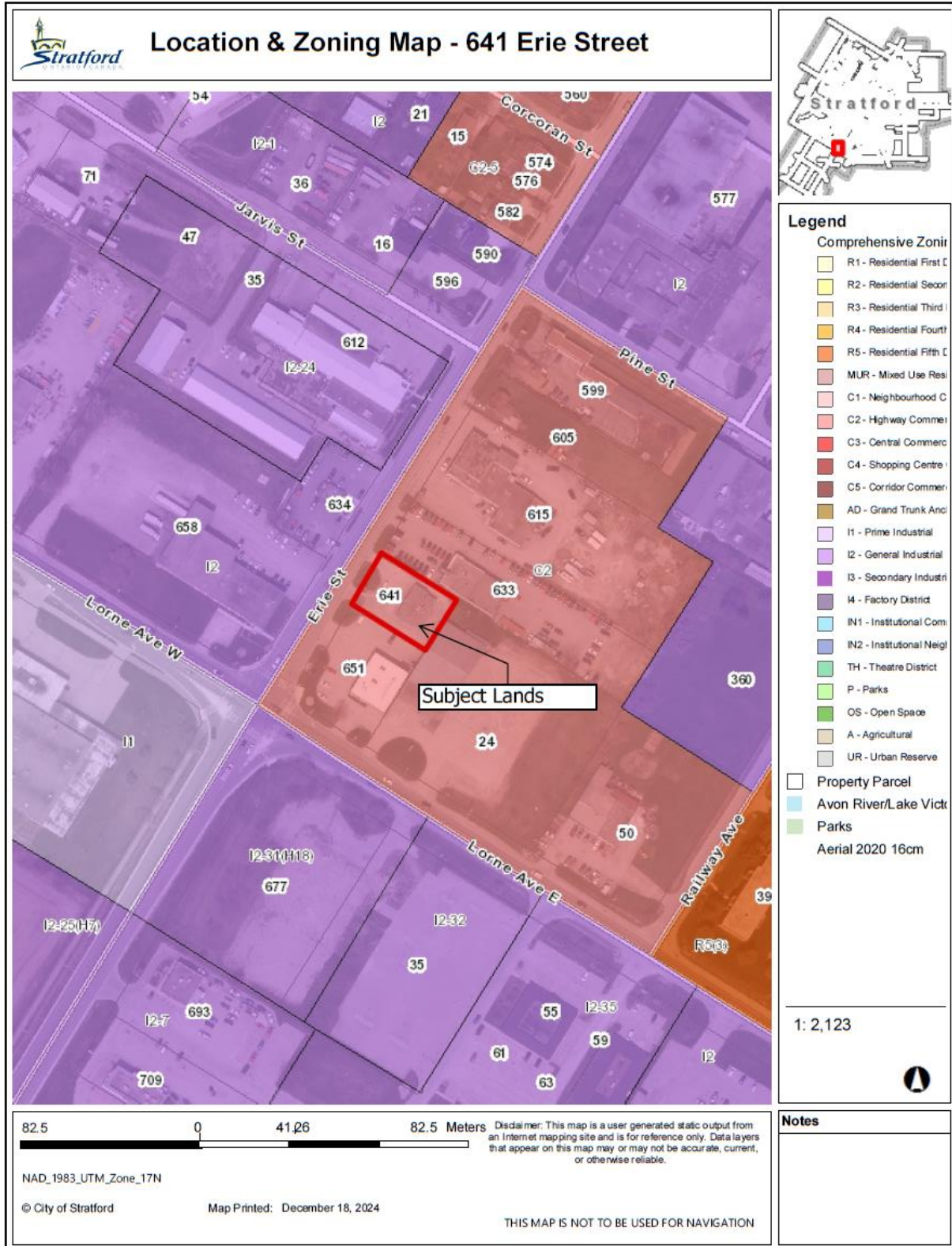
Alexander Burnett, Intermediate  
Planner

**Reviewed, Recommended & Approved by:**

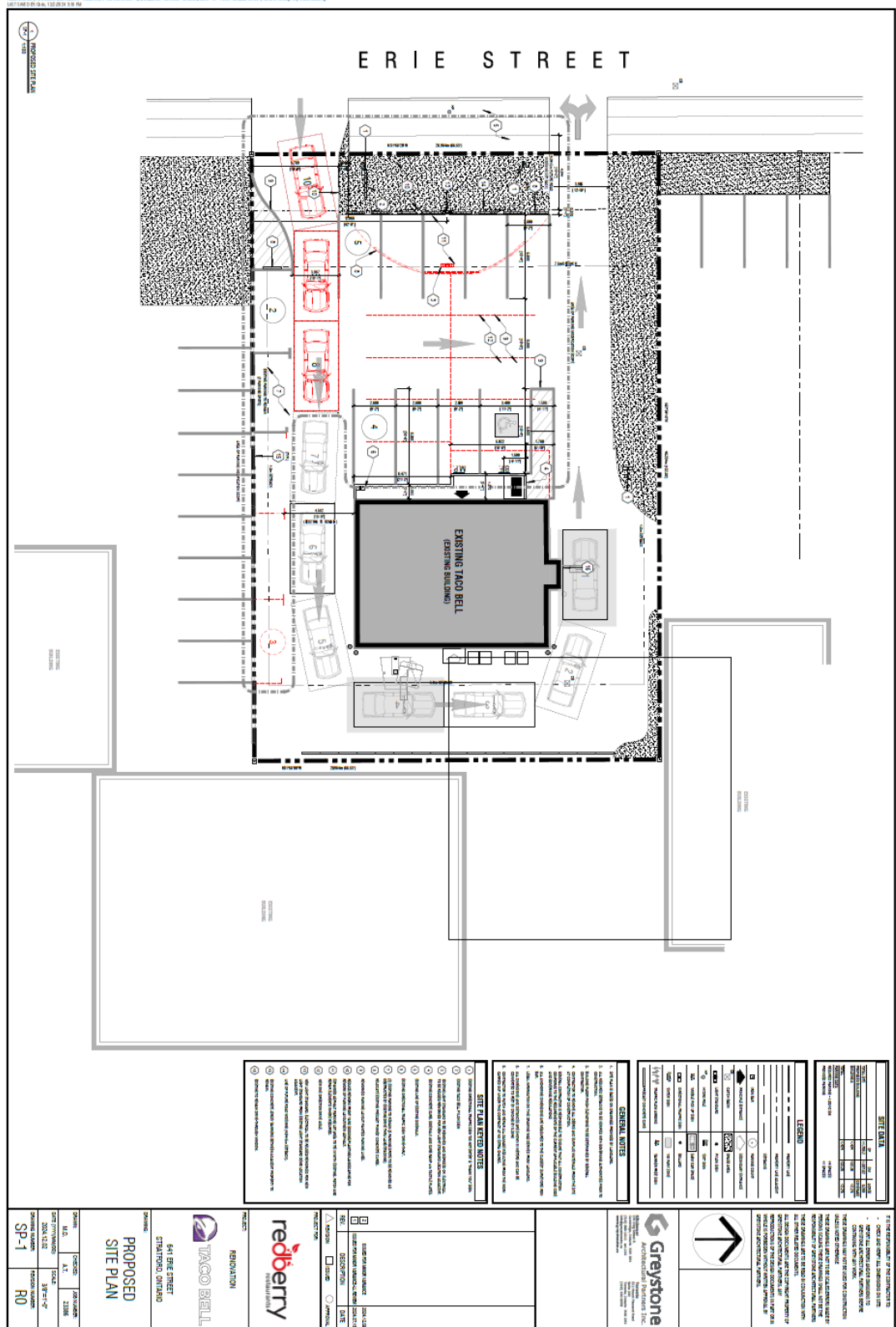
Marc Bancroft, Manager of  
Planning, MPL, MCIP, RPP

**Report finalized:** January 15<sup>th</sup>, 2025

**Map 1 – Location and Zoning Map**  
**File # A27-24**  
**Chris Warkentin – 641 Erie Street**



**Map 2 – Concept Site Plan**  
**File # A27-24**  
**Chris Warkentin – 641 Erie Street**



**SITE DATA**

PROJECT NO.	DATE	SCALE
A27-24	11/24/2018	AS SHOWN
OWNER	DESIGNER	DATE
Chris Warkentin	GreyStone Architects	11/24/2018

**LEGEND**

Symbol	Description
Red dashed line	PROPOSED CURB CUT
Red dashed line with arrow	PROPOSED DRIVEWAY
Red dashed line	PROPOSED SIDEWALK
Black dashed line	EXISTING CURB CUT
Black dashed line	EXISTING DRIVEWAY
Black dashed line	EXISTING SIDEWALK
Black dashed line	EXISTING PROPERTY LINE
Black dashed line	EXISTING STREET FRONT
Black dashed line	EXISTING STREET REAR
Black dashed line	EXISTING STREET SIDE
Black dashed line	EXISTING STREET BACK
Black dashed line	EXISTING STREET CORNER

**GENERAL NOTES**

1. THE CLIENT IS PROVIDING ALL NECESSARY PERMITS AND APPROVALS FOR THIS PROJECT.

2. THE DESIGNER HAS CONDUCTED A VISUAL SURVEY OF THE PROJECT SITE AND HAS FOUND NO HAZARDOUS MATERIALS ON THE PROPERTY.

3. THE DESIGNER HAS CONDUCTED A VISUAL SURVEY OF THE PROJECT SITE AND HAS FOUND NO HAZARDOUS MATERIALS ON THE PROPERTY.

4. THE DESIGNER HAS CONDUCTED A VISUAL SURVEY OF THE PROJECT SITE AND HAS FOUND NO HAZARDOUS MATERIALS ON THE PROPERTY.

5. THE DESIGNER HAS CONDUCTED A VISUAL SURVEY OF THE PROJECT SITE AND HAS FOUND NO HAZARDOUS MATERIALS ON THE PROPERTY.

**SITE PLAN LEGEND**

1. EXISTING BUILDING

2. EXISTING DRIVEWAY

3. EXISTING SIDEWALK

4. EXISTING PROPERTY LINE

5. EXISTING STREET FRONT

6. EXISTING STREET REAR

7. EXISTING STREET SIDE

8. EXISTING STREET BACK

9. EXISTING STREET CORNER

10. EXISTING DRIVEWAY

11. EXISTING SIDEWALK

12. EXISTING PROPERTY LINE

13. EXISTING STREET FRONT

14. EXISTING STREET REAR

15. EXISTING STREET SIDE

16. EXISTING STREET BACK

17. EXISTING STREET CORNER

**PROJECT INFO**

PROJECT NAME: **redberry**  
 641 ERIE STREET  
 STRATHROY, ONTARIO

OWNER: **TACO BELL**

DESIGNER: **GreyStone Architects**

DATE: **11/24/2018**

SCALE: **AS SHOWN**

PROJECT NO.: **A27-24**

**641 ERIE STREET**  
**PROPOSED**  
**SITE PLAN**

**SP-1**      **RO**

**reberry**  
 REFINERY GROUP INC.

**TACO BELL**

**GreyStone Architects**

**Figure 1 – Site Photo (January 10, 2025)**  
**File # A27-24**  
**Chris Warkentin – 641 Erie Street**



## **REPORT TO THE COMMITTEE OF ADJUSTMENT**

**Submitted By: Building & Planning Services Department -  
Planning Division**

**Application No.: A29-24**

**Meeting Date: January 22, 2025**

**Owner: Cachet Developments (Stratford) Inc. c/o Marcus Gagliardi**

**Agent: Glen Schnarr & Associates c/o Mark Condello**

**Location: 3025 Ontario Street, legally described as Part of Lots 41 and 42, Concession 1 (geographic Township of South Easthope), now in the City of Stratford; more specifically, the subject property is Block 93 on the proposed final plan of subdivision, situated on east side of Worth Street and the south side of the extension of Douro Street**

**Zoning: Residential Fourth Density – R4(1)-33**

**Official Plan Designation: Residential Area  
/ Special Policy Area 19**

**Road Classifications: Worth Street – Proposed Local  
Douro Street (extension) – Proposed Collector**

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### **Purpose of Application:**

The purpose of this application is seek relief from the City of Stratford Comprehensive Zoning By-law 10-2022 with respect to the exterior side yard width requirement to allow the construction of a street townhouse dwelling. A street townhouse dwelling containing seven (7) units is proposed.

Variance Requested:

1. Section 15.4.33 j) of the By-law requires a minimum exterior side yard width of 3.5 metres whereas a reduced exterior side of 2.9 metres is being requested.

The lands are also subject to Application for Draft Plan of Subdivision (File No. 31T21-001) approved by City Council on March 27, 2023 subject to conditions. A subdivision agreement was executed and registered on title under Instrument Number PC228295 on January 7, 2025, to which the issuance of final approval is anticipated in early 2025.



## **Background:**

### Attachments

- Map 1 – Zoning & Location Map
- Map 2 – Minor Variance Sketch
- Map 3 – Site Plan

### Site Characteristics

Existing Use: Vacant, Street townhouse dwellings planned.

Frontage: 27.5 m

Depth: irregular

Area: 1,415.7 m<sup>2</sup>

Shape: Generally Rectangular

### Surrounding Land Uses to Block 93 (subject property)

North: Vacant, zoned for single detached dwellings

East: Vacant, zoned for street townhouse dwellings

South: Vacant, zoned for street townhouse dwellings

West: Vacant, zoned for street townhouse dwellings

### Agency Comments

This minor variance application was circulated to agencies for comments on December 31, 2024. The following comments were received:

#### **City of Stratford Building and Planning Services Department – Building Division:**

No comments.

#### **City of Stratford Infrastructure Services Department:**

Ensure the proposed structures or foundation drains do not encroach into the existing sight triangle, 3.0 m & 4.6 m storm easements around the south and east property line, nor the existing 0.3 m reserve along Douro Street.

#### **City of Stratford Clerk's Office:**

No concerns in relation to parking.

#### **City of Stratford Community Services Department – Transit Division:**

No concerns.

**Upper Thames River Conservation Authority:**

No objections. Through their Risk Management Official / Risk Management Inspector with respect to Drinking Water Source Protection, the subject lands are not located within a vulnerable area and therefore the property is not designated for restricted land use under S. 59 of the *Clean Water Act, 2006*.

**Festival Hydro:**

No comments.

**Quadro:**

No comments.

**Housing Consortium (Invest Stratford):**

The Housing Consortium is in favour of permitting this reduction in setback to allow the creation of more housing stock. Should the proponent wish to discuss opportunities for affordable housing on the new development, please reach out to [housing@investstratford.com](mailto:housing@investstratford.com)

**City of Stratford Fire Department – Fire Prevention:**

No comments.

**Bell 911:**

Confirmed that their 911 database is updated.

Public Comments

Notice of the requested variance was sent to surrounding property owners on December 31, 2024 in accordance with the *Planning Act*. In addition, notice of the requested variance was published in the Town Crier of the Beacon Herald on January 4, 2025. At the time of writing this report, no comments or concerns were received from the public. Any additional public comments received after the date of completion of the report will be provided to the Committee of Adjustment.

**Analysis:**

Provincial Planning Statement (PPS)

All planning decisions in the Province of Ontario shall be consistent with the Provincial Planning Statement (PPS) which came into effect on October 20, 2024, which is intended to streamline the provincial planning framework and replaces the Provincial Policy Statement (2020) and the Growth Plan for the Greater Golden Horseshoe, with an emphasis on more enabling housing policies. The 2024 PPS provides policy direction on matters of provincial interest relating to Building Homes, Sustaining Strong and Competitive Communities, Infrastructure and Facilities, Wise Use and Management of Resources, and Protecting Public Health and Safety.

Section 2.2 of the PPS states that cities shall provide for an appropriate range and mix of housing options and densities by permitting and facilitating all forms of residential housing required to meet the social, health and well-being requirements of current and future residents. Section 2.3.1.3 states that planning authorities shall support general intensification and redevelopment to support the achievement of complete communities, including by planning for a range and mix of housing options and prioritizing planning and investment in the necessary infrastructure and public service facilities.

Staff are of the opinion that the proposal is consistent with the promotion of intensification policies as well as the appropriate range and mix of housing types and densities set forward by the PPS.

Section 45 of the *Planning Act* allows the Committee of Adjustment to grant relief from zoning by-law requirements subject to four tests, as follows:

Does the request Maintain the Intent and Purpose of the Official Plan?

The property is designated Residential in the Official Plan. The Residential policies allow for a range of dwelling types from single detached and semi-detached dwellings to townhouses and low-rise apartment buildings. The 'Residential' goals and objectives include maintaining essential neighbourhood qualities, privacy, upkeep, public health, safety, and compatibility with the surrounding neighbourhood and to achieve a mix of housing types to provide diversity in the housing stock and more affordable housing opportunities.

The property is also located within Special Policy Area 19 on Schedule 'A' of the Official Plan, being the Stratford East Planning Area. This Special Policy Area provides supplementary policy direction on matters such as medium density residential uses, road access, parkland, compatibility with existing industrial uses and the need for a comprehensive plan of subdivision development process. Considering the subject property is a block in a plan of subdivision and compatibility can be achieved through mitigation measures, the proposed development conforms to Special Policy Area 19.

This proposal will neither negatively impact the subject property nor the surrounding area as the lot will remain sufficiently sized to accommodate the proposed residential development. The Residential goals and objectives of the Official Plan will be maintained, and the development will promote the diversity of housing stock in the City. As such, the requested variance maintains the general intent and purpose of the Official Plan.



Does the request Maintain the Intent and Purpose of the Zoning By-law?

The subject lands are zoned Residential Fourth Density R4(1)-33 under the City of Stratford Comprehensive Zoning By-law 10-2022, which permits street townhouse dwellings. The applicant is requesting to reduce the minimum exterior side yard width from 3.5 m to 2.9 m. The intent of the minimum exterior side yard width provision is to ensure a safe distance between residential dwellings and adjacent roads, as well as to maintain the privacy of residents.

Planning staff are generally satisfied that the requested variance will facilitate development that is considered an efficient use of the land and promotes a mix of residential forms. The requested variance will not negatively impact surrounding properties or their ability to use their property in accordance with the Zoning By-law. As such, Staff are of the opinion that the requested variance will ensure a safe distance between the end townhouse dwelling unit and adjacent Douro Street and maintain the privacy of residents. As such, this variance maintains the intent and purpose of the Zoning By-law.

Is the requested variance desirable for the appropriate development of the lands?

The subject property is designated Residential / Special Policy Area 19 in the City's Official Plan and zoned Residential Fourth Density R4(1)-33 in the City's Zoning By-law. The requested variance is to permit a reduced exterior side yard width of 2.9 m, to facilitate the development of townhouse dwellings. The proposed townhouse dwellings comply to all other applicable zoning requirements. Staff are of the opinion that the requested variance is desirable for the appropriate development of the lands.

Is the requested variance minor in nature?

Whether a variance is minor is based on the impact the proposed development is expected to have on the surrounding neighbourhood. It is not expected that the requested variance will have any adverse impact on the character of the area or the ability of adjacent property owners to use their property in accordance with the Zoning By-law. As such, the requested variance is considered minor in nature.

## **Recommendation:**

**THAT the City of Stratford Committee of Adjustment APPROVE Application A29-24, submitted by Glen Schnarr & Associates (c/o Mark Condello) on behalf of Cachet Developments (Stratford) Inc. (c/o Marcus Gagliardi), for lands known municipally as 3025 Ontario Street, legally described as Part of Lots 41 and 42, Concession 1 (geographic Township of South Easthope), now in the City of Stratford; being Block 93 on the proposed final plan of subdivision, situated on east side of Worth Street and the south side of the extension of Douro Street, as it relates to:**

1. Section 15.4.33 j) of the City of Stratford Comprehensive Zoning By-law requires a minimum exterior side yard width of 3.5 metres whereas a reduced exterior side of 2.9 metres is being requested.

## **Reasons**

The requested relief is consistent with the Provincial Policy Statement.

The requested relief also meets the four tests of a minor variance as set out in Section 45(1) of the *Planning Act* as follows:

The requested relief maintains the intent and purpose of the Official Plan as the proposal meets the Residential and Special Policy Area 19 policies of the Official Plan.

The requested relief maintains the intent and purpose of the City's Comprehensive Zoning By-law as the requested variance will ensure a safe distance between the end townhouse dwelling unit and adjacent Douro Street and maintain the privacy of residents.

The requested relief is desirable for the use of the land as it will facilitate the construction of townhouse dwellings on the subject lands.

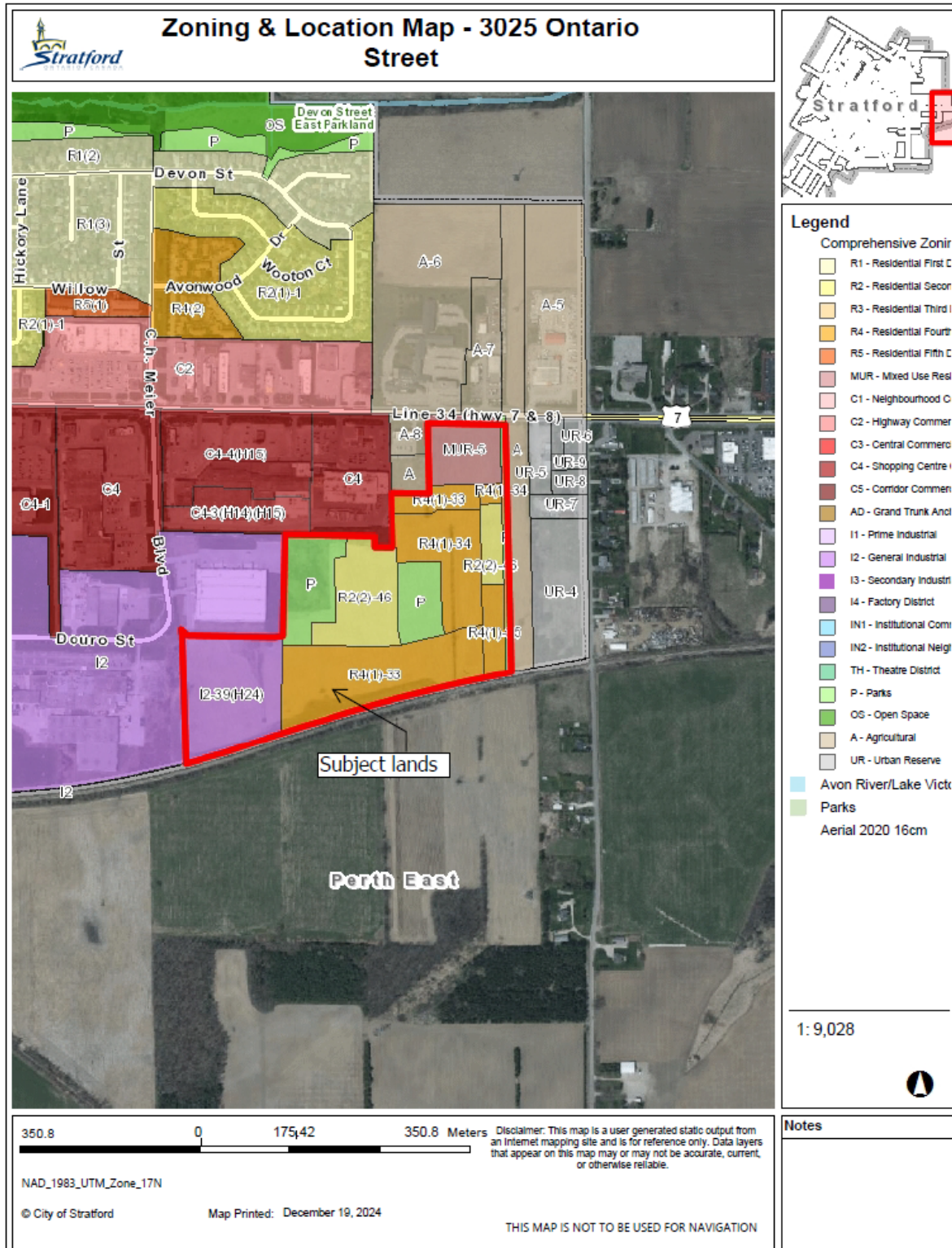
The requested relief is minor in nature as the requested variance will not affect the ability of neighbouring residents to use their land in accordance with the provisions of the Zoning By-law.

**Prepared, Recommended  
& Approved by:**

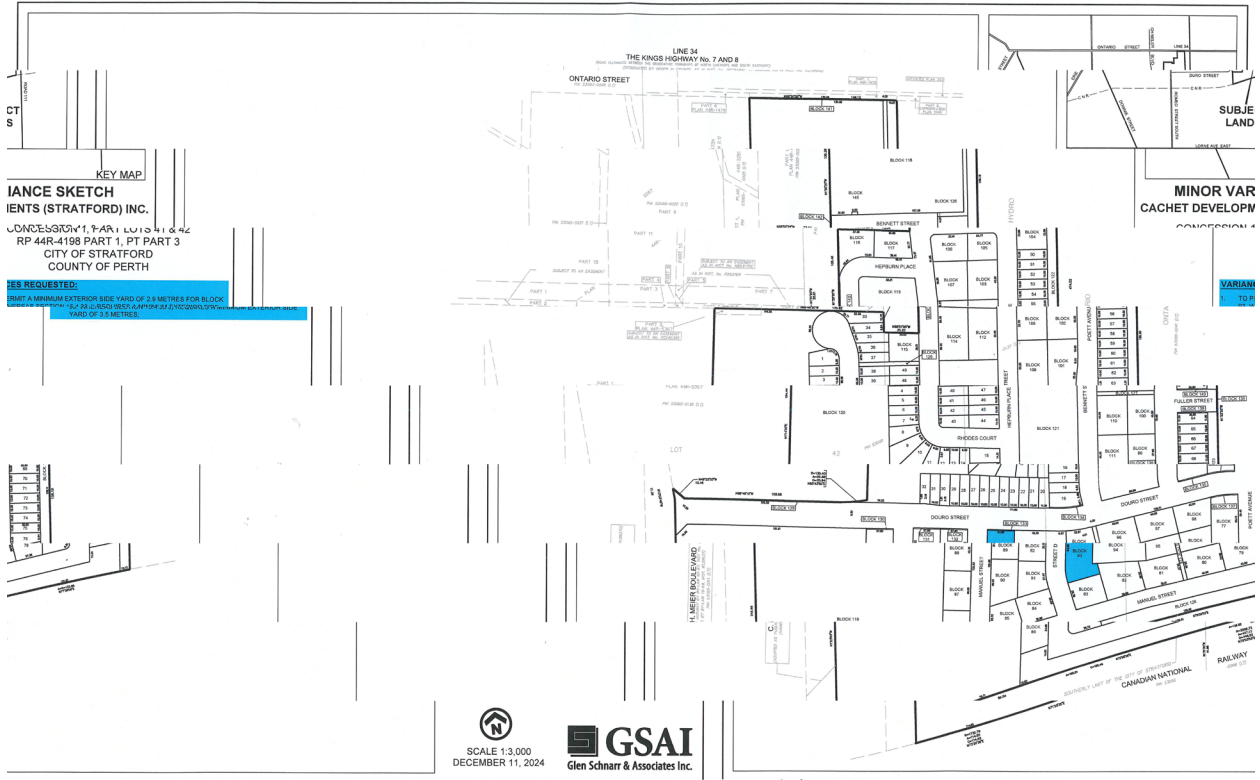
Marc Bancroft, MPL, MCIP, RPP  
Manager of Planning

**Report finalized:** January 16, 2025

**Map 1 – Location & Zoning Map**  
**File #A29-24**  
**Cachet Developments (Stratford) Inc. – Block 93**



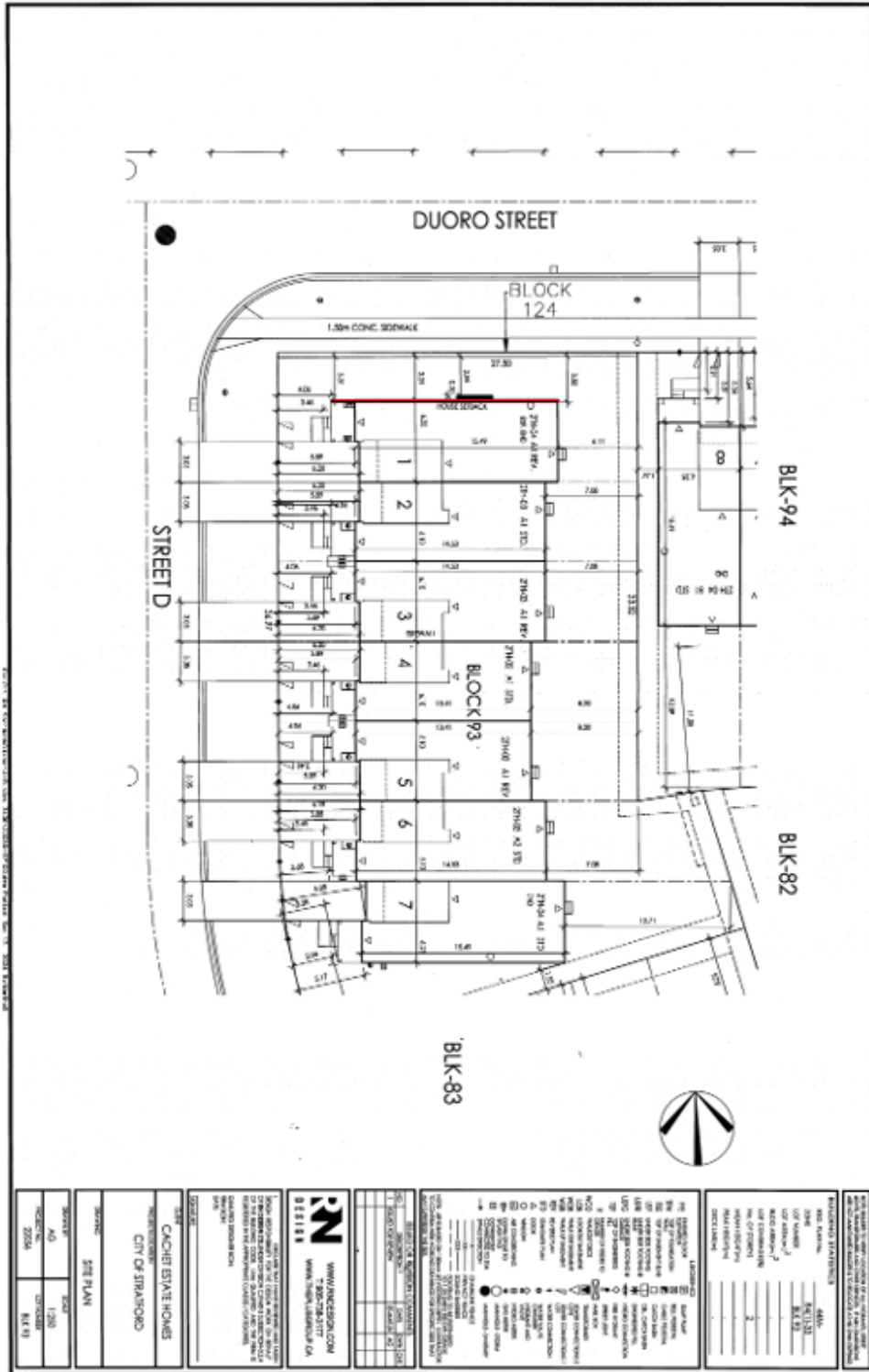
# Map 2 – Minor Variance Sketch File #A29-24 Cachet Developments (Stratford) Inc. – Block 93, Worth Street



**Map 3 – Site Plan**

**File #A29-24**

**Cachet Developments (Stratford) Inc. – Block 93, Worth Street**



## **REPORT TO THE COMMITTEE OF ADJUSTMENT**

**Submitted By: Building & Planning Services Department - Planning Division**

**Application No.: B07-24 & A28-24**

**Meeting Date: January 22, 2025**

**Owner: Bardh & Dardan Investments Corp.**

**Agent: Musli Prebreza**

**Location: 0 Moderwell Street - legally described as PLAN 41 Part MCCULLOCH Street RP 44R814 PART 1 in the City of Stratford.**

**Zoning: Residential Second Density – R2(1)**

**Official Plan Designation: Residential Area**

**Road Classification: Moderwell Street – Local**

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### **Purpose of Application B07-24 & A28-24:**

The purpose and effect of application B07-24 is to sever an 809 m<sup>2</sup> property into two equal parts to create a new residential lot for the purposes of facilitating the development of a semi-detached dwelling on the severed and retained lands. The severed and retained lands are each to contain a semi-detached dwelling unit; the applicant is proposing to include two Additional Residential Units (ARUs) within each semi-detached dwelling unit. ARUs are self-contained residential units containing their own kitchen and bathroom facilities.

In 2019, the Provincial Government amended the Planning Act through Bill 108, being the More Homes, More Choice Act, by mandating municipalities to not prohibit ARUs to a maximum of three (3) units per lot including the primary dwelling unit. In addition, Bill 108 also clarified parking requirements associated with Additional Residential Units.

The purpose and effect of application A28-24 is to reduce the minimum required landscaped open space to facilitate the development and the required parking spaces on-site.

Variance requested:

1. Table 6.4.2 – Regulations in the Residential Second Density Zone: to reduce the minimum landscaped open space requirement from 30% to 26%.

**Background:**

Attachments

- Map 1 – Existing Zoning & Location Map
- Map 2– Severance Sketch
- Figure 1 – Proposed Semi-detached Dwelling Elevations
- Figure 2 – Site Photo

Site Characteristics

Existing Use: Vacant lands  
Frontage: 20.1 m  
Depth: 40.2 m  
Area: 809.0 m<sup>2</sup>  
Shape: Rectangular

Proposal:

	<b>Lands to be Severed</b>	<b>Lands to be Retained</b>
<b>Area</b>	404.5 m <sup>2</sup>	404.5 m <sup>2</sup>
<b>Frontage</b>	10.05 m	10.05 m
<b>Lot Depth</b>	40.2 m	40.2 m
<b>Road Access</b>	Moderwell Street	Moderwell Street

Surrounding Land Uses

North: Single detached dwellings  
East: Semi-detached dwellings  
South: Industrial manufacturing facility  
West: Industrial manufacturing facility

Agency Comments

This severance application was circulated to agencies for comments on November 22, 2024. Subsequently, a minor variance request was added to the application and circulated to agencies on December 31, 2024. The following comments were received:

**City of Stratford Infrastructure Services Department – Engineering Division:**

A damage deposit of \$2,100.00 (plus Administrative Fee and HST) is required prior to construction as per "Schedule E" of the Fees and Charges By-Law 117-2023.

All curb cuts are to be arranged through the Engineering Department and performed by City forces. Deposits are required prior to curb cutting construction being permitted.

Confirm that the existing sanitary and storm services are appropriately sized for the intended use in accordance with the OBC. Provide private service connection (PDC) details to the Engineering Division once available.

New services installed during Moderwell Reconstruction in 2024 as follows:

Sanitary Services:

Unit 1: One (1) – 125mm PVC stubbed at property line with invert = 358.99m.

Unit 2: One (1) – 125mm PVC stubbed at property line with invert = 358.99m.

Storm Services:

Unit 1: One (1) – 150mm PVC stubbed at property line with invert = 359.81m.

Unit 1: One (1) – 150mm PVC stubbed at property line with invert = 359.66m.

Section 6.7.7 – Rainwater Leaders: For infill or redevelopment, rainwater leaders for all buildings shall discharge to grade onto concrete splash pads in landscaped areas and directed to side yard swales, where proper drainage can be achieved and no adverse impact to neighbouring properties will occur.

Adhere to the Private Tree Preservation By-Law #86-2020 regarding the existing tree identified on the property.

**City of Stratford Infrastructure Services Department – Environmental Services Division:**

New water services will be required for both sites (minimum of 1" service). Old service will need to be decommissioned. Estimates prepared by the city and deposits required.

Servicing required to be updated to 1.5" (38mm) if there is development of a Triplex.

**City of Stratford Building and Planning Services Department – Building Services:**

Building permits are required for construction of the new structure, please contact Building Division at 519-271-0250 x 345 or [building@stratford.ca](mailto:building@stratford.ca) for any questions relating to Building Permits.

Development Charges at the current residential rate are applicable for each proposed unit. Redevelopment allowances will be calculated and determined if applicable at time of Building Permit Application.

Building Department reserves the right to provide additional comments on future applications or adjustments to B07-24.



Applicant is to provide all Planning Approvals with their Building Permit Application

**City of Stratford Fire Department:**

No comments or concerns.

**City of Stratford Corporate Services Department – Clerks Services:**

The Clerk’s Office has reviewed the application and have no concerns related to parking.

**Festival Hydro:**

No concerns – service conduit in coordination with the City and Festival Hydro was placed during the recent Moderwell reconstruction. One (1) conduit (per lot) was stubbed near property line for future U/G hydro serving to the proposed semi-detached dwelling. The customer or customers contractor shall reach out the Festival Hydro (Engineering) to obtain a Service Layout for each lot prior to construction.

**Invest Stratford – Housing Consortium:**

As per the request on 0 Moderwell Street, the Housing Consortium is in support of this additional density via a duplex building. Should the proponent wish to discuss opportunities to create affordable or attainable housing please reach out to [housing@stratford.com](mailto:housing@stratford.com)

**Canada Post:**

No objections. Unless the plans are modified this development will be serviced within our current Community Mailbox infrastructure.

**CN Rail:**

It is noted that the subject site is adjacent to CN’s Main Line. CN has concerns of developing/densifying residential uses in proximity to railway operations. Development of sensitive uses in proximity to railway operations cultivates an environment in which land use incompatibility issues are exacerbated. The [Guidelines for New Development in Proximity to Railway Operations](#) reinforce the safety and well-being of any existing and future occupants of the area. Please refer to these guidelines for the development of sensitive uses in proximity to railway operations. These policies have been developed by the Railway Association of Canada and the Federation of Canadian Municipalities.

Since the development is already existing, CN encourages the municipality to pursue the implementation of the following criteria as conditions of subdivision:

1. The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300m of the railway right-of-way:

*"Warning: Canadian National Railway Company or its assigns or successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. 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."*

2. The Owner shall be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.

**Enbridge Gas:**

It is the responsibility of the applicant to verify the existing gas servicing does not encroach on more than one property when subdividing or severing an existing land parcel. Any service relocation required due to a severance would be at the cost of the property owner. For any encroachments, please contact [ONTLands@enbridge.com](mailto:ONTLands@enbridge.com)

Public Comments

Notice of the proposed severance was originally published in the Town Crier of the Beacon Herald on November 23, 2024. After the minor variance application was received, the complete application was republished in the Town Crier on January 4<sup>th</sup>, 2025. Notice of the proposed severance and requested variance was also sent to surrounding property owners on January 3, 2025. At the time of writing this report, no comments have been received.

Any additional public comments received after the date of completion of the report will be provided to the Committee of Adjustment.

**Analysis:**

Planning Act

Section 51(24) of the Planning Act sets forth criteria for the subdivision of land, including conformity to the Official Plan, suitability of the land to be subdivided, the dimension and shape of proposed lots, viability of utilities and municipal services, and determination of public interest. These criteria are evaluated throughout this report in conformity with the City's Official Plan and Zoning By-law.

In September 2019 and November of 2022, the Government of Ontario passed Bill 108, the More Homes, More Choices Act and Bill 23, the More Homes Built Faster Act. As part of these legislations, changes to Ontario's Planning Act were made. One such change created new requirements for permitting Additional Residential Units (ARUs). As per Section 35.1, a maximum of two ARUs are permitted "as-of-right" on properties containing a single detached dwelling, semi-detached dwelling, or townhouse dwelling, without requiring a Zoning By-law Amendment. In addition, tandem parking for ARUs is now permitted.

The application proposes to sever the existing lot, facilitating the development of a semi-detached dwelling on both properties which will each contain two ARU's. In total this would create six dwelling units, three dwelling units on the severed parcel and 3 dwelling units on the retained lot. The City of Stratford's Zoning By-law Section 4.24 - Second Suites – permits a maximum of one ARU per residential lot and restricts required ARU parking from being in tandem with required parking spaces for the principal dwelling. However, because of the changes to the Planning Act, the Zoning By-law can no longer prohibit two ARUs ancillary to a semi-detached dwelling and tandem parking for second suites. As such, the proposal meets the requirements of the Planning Act.

#### Provincial Planning Statement (2024)

All planning decisions in the Province of Ontario shall be consistent with the Provincial Planning Statement (PPS) which came into effect on October 20<sup>th</sup>, 2024, which is intended to streamline the provincial planning framework and replaces the Provincial Policy Statement (2020) and the Growth Plan for the Greater Golden Horseshoe, with an emphasis on more enabling housing policies. The 2024 PPS provides policy direction on matters of provincial interest relating to Building Homes, Sustaining Strong and Competitive Communities, Infrastructure and Facilities, Wise Use and Management of Resources, and Protecting Public Health and Safety.

Section 2.2 of the PPS states that cities shall provide for an appropriate range and mix of housing options and densities by permitting and facilitating all forms of residential housing required to meet the social, health and well-being requirements of current and future residents. In addition, cities shall permit and facilitate all types of residential intensification, development as well as the introduction of new housing options within previously developed areas, and redevelopment, which results in a net increase in residential units in accordance with policy 2.3.1.3. Section 2.3.1.3 states that planning authorities shall support general intensification and redevelopment to support the achievement of complete communities, including by planning for a range and mix of housing options and prioritizing planning and investment in the necessary infrastructure and public service facilities. The policy also supports promotion of densities for new housing which efficiently uses land, resources, infrastructure and public service facilities

and supports the use of active transportation and transit in areas where it exists or is to be developed.

Staff is of the opinion that the proposal to create a new lot is consistent with the PPS as the proposed development will contribute towards the provision of an appropriate range and mix of housing and densities. The application will create a new residential lot in a planned residential area within the City's built boundary, which is a form of gentle intensification and is a more efficient use of land and municipal infrastructure. As such, staff is satisfied that the proposal is consistent with the PPS.

### Official Plan

Section 9.5.1 of the Official Plan provides evaluation criteria for consent applications. The applicable criteria for the evaluation of consent applications are outlined below followed by a staff response:

- a plan of subdivision is not required to ensure the proper and orderly development of the lands, which shall generally be where more than five lots are being created and in accordance with the policies of Section 9.3 of this Plan;

Only one lot is being proposed with to be created to accommodate a future residential use.

- the proposed consents will not adversely affect the financial status of the City;

This consent will result in a more efficient use of land and municipal infrastructure and as such will not adversely affect the City financially.

- the proposed use is compatible with adjacent land uses and in an existing built-up residential area the lot size, frontage and configuration of the severed and retained lots shall generally be in keeping with the existing development in the area;

The proposed semi-detached dwelling on the subject lands is compatible with the surrounding residential area, and the lot frontage and configuration is in keeping with the existing residential neighbourhood.

- the proposed lots front on, and have direct access from, an improved public road which is maintained on a year-round basis and which is of a reasonable standard of construction;

The lands to be severed and retained both have frontage and access onto Moderwell Street being a designated local Road under the City's Official Plan.

- the access to the proposed lot shall not create a traffic hazard or serve to increase an existing traffic hazard as a result of limited sight lines, curves or grades;

The proposed semi-detached dwelling will be accessed by two separate driveways that will comply to the requirements of the City's Zoning By-law. Additionally, there were no concerns in this regard identified by the City's Infrastructure Services Department in the circulation of this proposal.

- the additional lots do not extend or create a strip of development nor limit the potential for development of the retained lands and adjacent lands, and a consent shall be given favourable consideration if it has the effect of infilling;

This proposal is an infill consent request in a residential area.

- the proposed lots can be adequately serviced;

The lands to be severed are capable of being serviced and will be required to as a condition of approval.

- the lot frontage and area of the proposed lots are adequate for the existing and proposed uses and comply with the Zoning By-law. Where it is not possible to meet the standards of the Zoning By-law, an amendment or variance shall be required as a condition of approval, where such action is considered appropriate;

The proposed lot frontage and area meet the requirements of the Zoning By-law for a semi-detached dwelling in the R2(1) zone.

The City of Stratford Official Plan includes development standards within Section 4.5.3.1 for stable residential areas. Intensification is intended to be modest and incremental, occurring through changes such as accessory apartments and other forms of residential housing. The proposed development promotes intensification of the area by creating a new residential lot that will facilitate the development of a semi-detached dwelling on the subject lands. The application encourages the creation of smaller lot sizes within the area which will allow for a more compact building form that can be serviced through existing infrastructure.

Section 45 of the *Planning Act* allows the Committee of Adjustment to grant relief from zoning by-law requirements subject to four tests, as follows:

Does the request Maintain the Intent and Purpose of the Official Plan?

The property is designated "Residential Area" on Schedule "A" of the Official Plan. Moderwell Street is identified as a local street on Schedule "D". The Residential Area policies allow for a range of dwelling types from single detached and semi-detached dwellings to townhouses and low-rise apartment buildings.

The applicant has requested a variance to reduce the minimum landscaped open space in the R2(1) zone from 30% to 26%, to facilitate the development of the proposed semi-detached dwelling on the subject lands. Based on the submitted Site Plan and elevation drawings, the massing and height of the proposed dwelling is consistent with the surrounding neighbourhood and is considered to conform to the Residential policies of Section 4.5.

Staff is of the opinion that the proposal to create a new lot maintains the general intent and purpose of the Official Plan. The application will create a new residential lot in a residential area that meets the Stable Residential policies of the Official Plan. As such, Staff is satisfied that the proposed severance maintains the general intent and purpose of the Official Plan.

Does the request Maintain the Intent and Purpose of the Zoning By-law?

The subject lands are zoned Residential Second Density R2(1) in the City of Stratford Zoning By-law, which permits semi-detached dwellings. The severed and retained lands will continue to comply with the applicable zoning requirements for lot area, lot frontage, and lot depth.

Table 6.4.2: Regulations in the Residential Second Density (R2) Zone – requires a minimum landscaped open space of 30% for a semi-detached dwelling. The proposed development provides 26% landscaped open space for each of the proposed severed and retained lots. However, as the proposal meets the lot dimension requirements for the creation of a new lot, Staff are of the opinion that the consent application meets the general intent of the Zoning By-law.

The subject minor variance seeks to permit a minimum of 26% landscaped open space for the proposed semi-detached dwelling. The purpose of the minimum landscaped open space requirement of the Zoning By-law is to ensure sufficient greenspace is provided on residential properties and that adequate drainage can be accommodated. The proposed semi-detached dwelling does not meet the landscaped open space requirements due to the inclusion of parking spaces in the rear yard. As per Section 4.24.2 a) of the Zoning By-law, ARUs require one additional parking space in addition to the required parking

spaces for the primary dwelling. As a result, four parking spaces in total would be required for each of the severed and retained properties. Eight parking spaces are shown on the proposed plan, meeting the requirements of Section 4.24.2 a). As per *The Planning Act*, tandem parking is permitted for ARUs, which means a revised design could provide the required parking spots in tandem on the proposed driveway and the minimum 30% landscaped open space requirement would be met. However, the applicant has elected to provide dedicated parking spots for the units in the rear yard, to make parking on the property more convenient for future residents. As the proposed development includes landscaping in the front yard consistent with the surrounding neighbourhood and the City's Engineering Division has no concerns with respect to drainage on the property, Staff are satisfied that the requested minor variance maintains the intent of the Zoning By-law. As such, Staff are of the opinion that the proposed application maintains the general intent and purpose of the Zoning By-law.

Is the requested variance desirable for the appropriate development of the lands?

The subject lands are classified as "Residential" in the City's Official Plan and zoned Residential Second Density R2(1) in the Zoning By-law. The severed and retained lands will continue to comply with the applicable zoning requirements for the property. The requested variances are to facilitate the development of a semi-detached dwelling and its associated parking spaces on the vacant subject lands. As such, Staff is of the opinion that the requested variances, subject to conditions, are desirable for the appropriate development of the lands.

Is the requested variance minor in nature?

Whether a variance is minor is evaluated in terms of the impact the proposed development is expected to have on the surrounding neighbourhood. It is not expected that the requested variance will have an adverse impact on the character of the area or the ability of adjacent property owners to use their property in accordance with the Zoning Bylaw.

The requested minor variance would facilitate the development of a semi-detached dwelling on the subject lands after completion of the severance. The requested landscaped open space variance is 4%, and Staff are of the opinion that the variance will not have an adverse impact on the character of the area or the ability of adjacent property owners to use their property. As such, the requested variance is considered minor.

## **Recommendation:**

**THAT the City of Stratford Committee of Adjustment APPROVE Application B07-24, to sever a parcel of land having a lot frontage of 10.05 m and a lot area of 404.5 m<sup>2</sup>, submitted by Barsh & Dardan Investments Corp., for lands legally described as PLAN 41 Part MCCULLOCH Street RP 44R814 PART 1 in the City of Stratford and municipally known as 0 Moderwell Street, subject to the following conditions:**

1. That the Certificate of Consent under Section 53(42) of the Planning Act shall be given within two years of the date of the notice of decision.
2. That satisfactory arrangements be made with the City of Stratford for the payment of any outstanding Municipal property taxes.
3. That minor variance application A28-24 is approved by the Committee of Adjustment.
4. That any outstanding work orders or by-law enforcement issues be resolved to the satisfaction of the City.
5. That prior to the stamping of the deeds, a 5% cash-in-lieu payment for park and public recreational purposes for the severed lands shall be made to the City of Stratford.
6. That prior to the stamping of the deed a municipal address is to be assigned by the City of Stratford. Any costs associated with municipal addressing are the responsibility of the applicant.
7. The prior to the stamping of the deed, the owner shall be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.
8. That prior to the stamping of the deeds, the applicant is required to confirm, to the satisfaction of the City, that new sanitary, storm, and water service connections are provided for both parcels. Any services for the severed parcel shall be located entirely within the severed lands and services for the retained lands shall be located entirely within the retained lands.



9. That prior to the stamping of the deeds, the applicant shall provide to the City a copy of the deposited reference plan in an electronic format compatible with the latest version of AutoCAD referenced to NAD83 UTM Zone 17 Horizontal Control Network for the City of Stratford. This Reference Plan shall be created from survey information utilizing the City's Survey Control Network. It is the responsibility of the applicant to obtain the necessary Reference Sketches and associated information required to complete the survey from the City.
10. That prior to the stamping of the deeds, the applicant shall provide a draft transfer prepared by the applicant's legal representative.
11. Prior to the stamping of the deeds, for the purposes of satisfying any of the above conditions, the Owner shall file with the City of Stratford a complete submission consisting of all required clearances and final plans, and to advise the City of Stratford in writing how each of the conditions has been satisfied. The Owner acknowledges that, in the event that the final approval package does not include the complete information required by The City of Stratford, such submission will be returned to the Owner without detailed review by the City.

### **Reasons**

The proposed consent is consistent with the Provincial Planning Statement.

The proposed consent conforms to the City of Stratford Official Plan.

The requirements of the City of Stratford Comprehensive Zoning By-law are capable of being satisfied through an approved minor variance.

**AND THAT the City of Stratford Committee of Adjustment APPROVE Application A28-24, submitted by Barsh & Dardan Investments Corp., for lands legally described as PLAN 41 Part MCCULLOCH Street RP 44R814 PART 1 in the City of Stratford and municipally known as 0 Moderwell Street, as it relates to:**

1. Table 6.4.2 – Regulations in the Residential Second Density Zone: to reduce the minimum landscaped open space requirement from 30% to 26%.

### **Reasons**

The proposed relief is consistent with the Provincial Planning Statement.

The proposed relief meets the four tests of a minor variance as set out in Section 45(1) of the Planning Act as follows:

The requested relief maintains the general intent and purpose of the Official Plan as the proposal will create a new residential lot to facilitate the development of semi-detached dwelling that meets the policies of the Official Plan.

The requested relief maintains the general intent and purpose of the City's Zoning By-law as the proposal will maintain a consistent streetscape and will not have drainage impacts on neighbouring properties.

The requested relief is desirable for the use of the land as it will facilitate the development of a semi-detached dwelling on the subject lands after completion of the consent process.

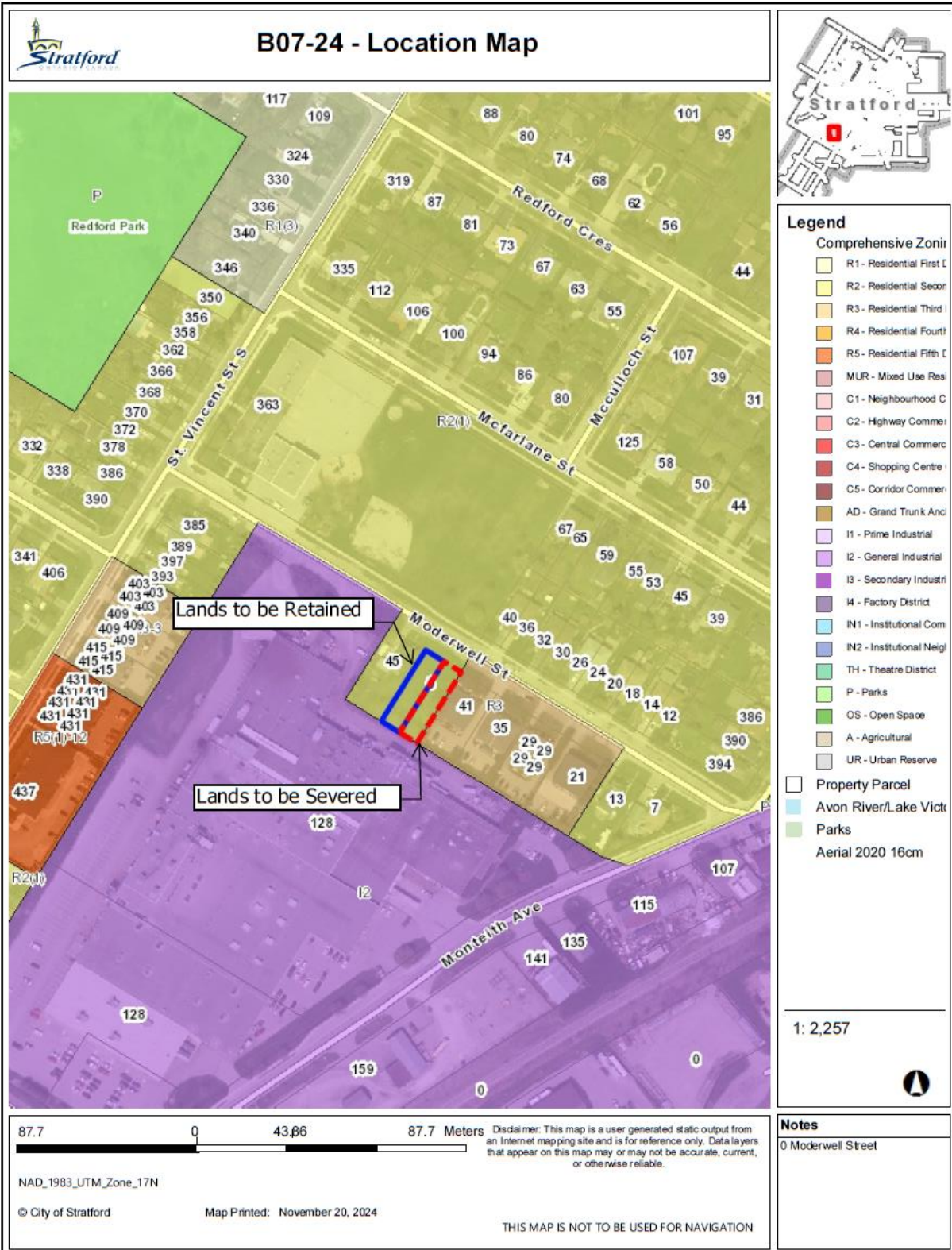
The requested relief is minor, as the requested variances will not affect the ability of neighbouring property owners to use their land in accordance with the provisions of the Zoning By-law.

**Prepared by:** **Alexander Burnett, Intermediate Planner**

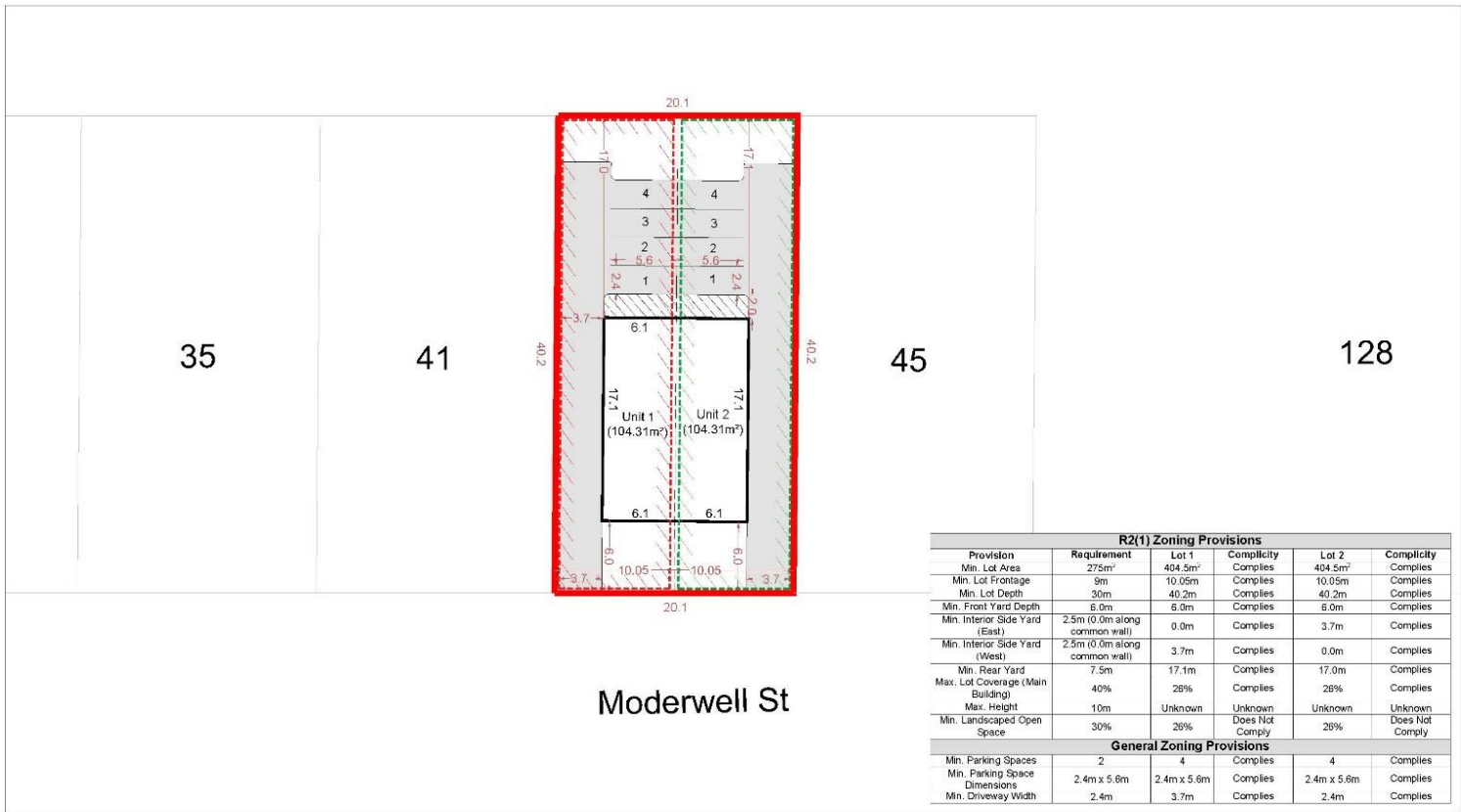
**Recommended & approved by:** **Marc Bancroft, MPL, MCIP, RPP  
Manager of Planning**

**Report finalized:** January 16, 2025

**Map 1 – Location & Zoning Map**  
**File # B07-24 & A28-24**  
**Musli Prebreza – 0 Moderwell Street**





**Map 2 – Severance Sketch  
File # B07-24 & A28-24  
Musli Prebreza – 0 Moderwell Street**



Moderwell St

R2(1) Zoning Provisions					
Provision	Requirement	Lot 1	Compliance	Lot 2	Compliance
Min. Lot Area	275m <sup>2</sup>	404.5m <sup>2</sup>	Complies	404.5m <sup>2</sup>	Complies
Min. Lot Frontage	9m	10.05m	Complies	10.05m	Complies
Min. Lot Depth	30m	40.2m	Complies	40.2m	Complies
Min. Front Yard Depth	6.0m	6.0m	Complies	6.0m	Complies
Min. Interior Side Yard (East)	2.5m (0.0m along common wall)	0.0m	Complies	3.7m	Complies
Min. Interior Side Yard (West)	2.5m (0.0m along common wall)	3.7m	Complies	0.0m	Complies
Min. Rear Yard	7.5m	17.1m	Complies	17.0m	Complies
Max. Lot Coverage (Main Building)	40%	28%	Complies	28%	Complies
Max. Height	10m	Unknown	Unknown	Unknown	Unknown
Min. Landscaped Open Space	30%	28%	Does Not Comply	28%	Does Not Comply
General Zoning Provisions					
Min. Parking Spaces	2	4	Complies	4	Complies
Min. Parking Space Dimensions	2.4m x 5.6m	2.4m x 5.6m	Complies	2.4m x 5.6m	Complies
Min. Driveway Width	2.4m	3.7m	Complies	2.4m	Complies

**Consent Sketch**  
0 Moderwell St, Stratford

-  Lot to be Retained: 404.5m<sup>2</sup> (LOT 1)
-  Lot to be Severed: 404.5m<sup>2</sup> (LOT 2)

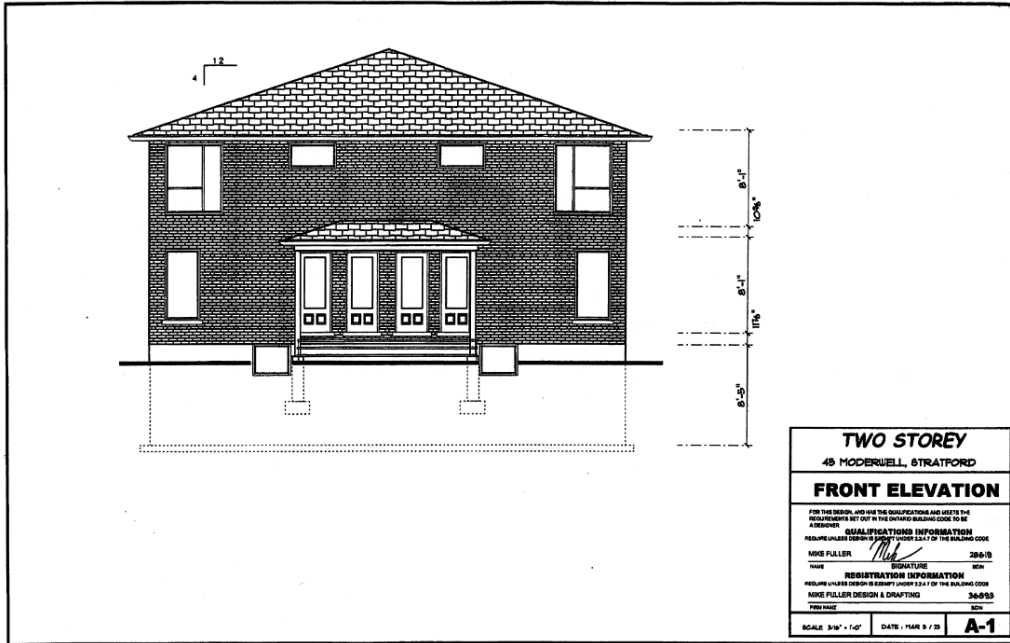


NOTE: This concept should be considered as a preliminary illustration and not a final design. It is subject to change without notice. The number of units, floor levels, parking spaces, and other details are approximate and subject to more detailed design as well as municipal planning approvals.

Scale 1:300 | November 25, 2024 | Project No. 24178 | Drawn By: EF



**Figure 1 - Proposed Semi-detached Dwelling Elevations**  
**File # B07-24 & A28-24**  
**Musli Prebreza – 0 Moderwell Street**



**Figure 2 – Site Photo – January 10<sup>th</sup>, 2025**  
**File # B07-24 & A28-24**  
**Musli Prebreza – 0 Moderwell Street**



## REPORT TO THE COMMITTEE OF ADJUSTMENT

**Submitted By:** Building & Planning Services Department - Planning Division

**Application No.:** B08-24

**Meeting Date:** January 22, 2025

**Owner:** 2007227 Ontario Inc.

**Agent:** MTE c/o Trevor McNeil

**Location:** 270 Lorne Avenue East, located on the north side of Lorne Avenue East between Dufferin Street and Oak Street  
CON 2 PT LOT 3 GORE DOWNIE NOW IN THE CITY OF STRATFORD BEING RP 44R-3943 PARTS 1 & 2

**Zoning:** General Industrial – I2

**Official Plan Designation:** Industrial Area

**Road Classification:** Lorne Avenue East – Arterial Road

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### **Purpose of Application:**

The purpose of this application is to sever the east portion of the subject lands to create a new lot to support a new industrial use. The proposed severed lands would have an approximate frontage of 35.0 metres, an approximate depth of 64.2 metres, and an approximate area of 2,245.5 square metres. The proposed retained lands would have a frontage of approximately 78.1 metres, an approximate depth of 64.2 metres and an approximate area of 5,012.4 square metres. The retained lands are occupied with an existing car wash use whereas the lands to be severed are vacant.

### **Background:**

In 2017, the owner applied for Application for Consent B02-17 which was conditionally approved by the Committee of Adjustment. Considering all conditions were not satisfied within 1 year of the Committee's decision, the consent approval lapsed consistent with the *Planning Act*. (The legislation has since been amended to allow conditions to be satisfied within 2 years as opposed to 1 year.) The owner is now reapplying for the same approval through the current application submission.

Attachments

- Map 1 – Location & Zoning Map
- Map 2 – Severance Sketch
- Figure 1 – Site Photo

Site Characteristics

Existing Use: Car Wash  
Frontage: 113.14 m  
Depth: 64.2 m  
Area: 7,258 m<sup>2</sup>  
Shape: Rectangular

Proposal:

	<b>Lands to be Severed</b>	<b>Lands to be Retained</b>
<b>Area</b>	2,245.5 m <sup>2</sup>	5,012.4 m <sup>2</sup>
<b>Frontage</b>	35 m	78.1 m
<b>Lot Depth</b>	64.2 m	64.2 m
<b>Road Access</b>	Lorne Avenue East	Lorne Avenue East

Surrounding Land Uses

North: Semi-detached dwellings (Residential)  
East: Medical Clinic (Institutional)  
South: Fuel Storage Depot (Industrial)  
West: Manufacturing (Industrial)

Agency Comments

This consent application was circulated to agencies for comments on December 31, 2024. The following comments were received:

**City of Stratford Building and Planning Services Department – Building Division:**

No comments.

**City of Stratford Infrastructure Services Department – Engineering Division:**

The drainage area on the proposed severed parcel of land is greater than the 0.1 ha. As outlined in the Infrastructure Standards and Specifications, Appendix C: City of Stratford CLI-ECA Stormwater Management Criteria, a Stormwater Management Plan will be required for future development when applying for a Site Plan Agreement. The proposed severed parcel will require a servicing report for future sanitary/storm/water servicing for any future development on this parcel of land.

**City of Stratford Clerk’s Office:**

No concerns in relation to parking.

**City of Stratford Community Services Department – Transit Division:**

No concerns.

**Upper Thames River Conservation Authority:**

No objections. Through their Risk Management Official / Risk Management Inspector with respect to Drinking Water Source Protection, the subject lands are not located within a vulnerable area and therefore the property is not designated for restricted land use under S. 59 of the *Clean Water Act, 2006*.

**Festival Hydro:**

If the severance proceeds, customer/owner to contact Festival Hydro to discuss their associated hydro requirements related to servicing.

**Hydro One:**

No concerns or comments.

**Quadro:**

No comments.

**City of Stratford Fire Department – Fire Prevention:**

No comments or concerns.

**Bell 911:**

No comment.

Public Comments

Notice of the requested consent was sent to surrounding property owners on December 31, 2024 in accordance with the *Planning Act*. In addition, notice of the requested consent was published in the Town Crier of the Beacon Herald on January 4, 2025. At the time of writing this report, no comments or concerns were received from the public. Any additional public comments received after the date of completion of the report will be provided to the Committee of Adjustment.



## **Analysis:**

### Provincial Planning Statement (PPS)

All planning decisions in the Province of Ontario shall be consistent with the Provincial Planning Statement (PPS) which came into effect on October 20, 2024, which is intended to streamline the provincial planning framework and replaces the Provincial Policy Statement (2020) and the Growth Plan for the Greater Golden Horseshoe, with an emphasis on more enabling housing policies. The 2024 PPS provides policy direction on matters of provincial interest relating to Building Homes, Sustaining Strong and Competitive Communities, Infrastructure and Facilities, Wise Use and Management of Resources, and Protecting Public Health and Safety.

Section 3.5 of the PPS pertains to land use compatibility between major facilities and sensitive land uses. Major facilities (including industrial uses) may require separation from sensitive land uses (including residential uses). Development of major facilities should avoid or minimize and mitigate any potential adverse effects from odour, noise or other contaminants on sensitive land uses. To ensure compatibility with the adjacent residential uses to the north and the proposed industrial development planned for the lands to be severed, appropriate mitigation measures may need to be implemented at the future site plan approval process. Separation distances may also be required in accordance with the Province's D-6 Compatibility between Industrial Facilities guidelines. As such, the subject application is consistent with the PPS.

### Official Plan

The subject lands are designated Industrial Area according to Schedule A of the City's Official Plan. The primary permitted uses include manufacturing, assembling, repairing, wholesaling or storage, warehousing, truck terminals, data processing and building trades. Secondary permitted uses include uses which do not detract from the area for industrial purposes nor which would conflict with existing or potential future industrial uses, including motor vehicle service establishments. As such, the existing car wash use can be considered a secondary use recognizing that it provides a service for motor vehicles.

The goals and objectives of the 'Industrial Area' designation include maintaining the integrity of industrial areas and discouraging uses which will be detrimental to industrial uses or which reduces the potential attraction of these areas for future industrial development. The subject application would maintain the foregoing policy direction by allowing a future industrial use on the lands to be severed.

The applicable criteria for the evaluation of consent applications are outlined below followed by a staff response:

- a plan of subdivision is not required to ensure the proper and orderly development of the lands, which shall generally be where more than five lots are being created and in accordance with the policies of Section 9.3 of this Plan;

A single lot is being proposed with respect to the easterly third of the subject lands to be severed to accommodate a future industrial use.

- the proposed consents will not adversely affect the financial status of the City;

This consent will result in a more efficient use of land and municipal infrastructure and as such will not adversely affect the City financially.

- the proposed use is compatible with adjacent land uses and in an existing built-up residential area the lot size, frontage and configuration of the severed and retained lots shall generally be in keeping with the existing development in the area;

Compatibility with adjacent land uses is capable of being achieved through site plan control applicable to the lands to be severed. Also, the lotting associated with the lands to be severed and retained would be in keeping with the existing development in the area.

- the proposed lots front on, and have direct access from, an improved public road which is maintained on a year-round basis and which is of a reasonable standard of construction;

The lands to be severed and retained both have frontage and access onto Lorne Avenue East being a designated Arterial Road under the City's Official Plan and designed to handle large volumes of traffic.

- the access to the proposed lot shall not create a traffic hazard or serve to increase an existing traffic hazard as a result of limited sight lines, curves or grades;

Access considerations will be evaluated through the site plan approval process applicable to the lands to be severed to ensure no traffic hazards. Furthermore, there were no concerns in this regard identified by the City's Infrastructure Services Department in the circulation of this proposal.

- the additional lots do not extend or create a strip of development nor limit the potential for development of the retained lands and adjacent lands, and a consent shall be given favourable consideration if it has the effect of infilling;

This proposal is an infill consent request considering the lands to be retained and the adjacent lands to the east are developed in the form of a car wash and medical clinic, respectively.

- the proposed lots can be adequately serviced;

The lands to be severed are capable of being serviced whereas the lands to be retained is currently serviced.

- the lot frontage and area of the proposed lots are adequate for the existing and proposed uses and comply with the Zoning By-law. Where it is not possible to meet the standards of the Zoning By-law, an amendment or variance shall be required as a condition of approval, where such action is considered appropriate;

The lands to be severed and the lands to be retained would comply with the minimum lot frontage and minimum lot area requirements under the General Industrial (I2) Zone, being 30 m and 2,000 m<sup>2</sup>, respectively. The lands to be severed would have a frontage of 35 m and an area of 2,245.5 m<sup>2</sup> whereas the lands to be retained would have a frontage of 78.1 m and an area of 5,012.4 m<sup>2</sup>.

### Zoning By-law

As noted previously, the subject lands are zoned General Industrial (I2) pursuant to the City's Comprehensive Zoning By-law 10-2022. The existing car wash is not listed as a permitted use under the current zoning however it has legal non-conforming status since it predates the current Zoning By-law. The previous Comprehensive Zoning By-law 201-2000 zoned the property as General Industrial (I2) which included a car wash as a permitted use.

Sound land use planning should not encourage the conveyance of lands to legitimize a non-conforming use since such use is intended to cease to exist in the long run. In this case however, the existing car wash complies with the Official Plan being a secondary use permitted under the Industrial Area designation as noted previously. Should this consent be approved and to ensure conformity with the Comprehensive Zoning By-law, it would be appropriate to require a zone change to allow the car wash as permitted use as a condition of consent.

### Other

Typically, the requirement for a reference plan to legally describe the lands to be severed is included as a recommended condition of consent. For the previous consent application now lapsed, a reference plan was undertaken and deposited which is consistent with this current application. A new reference plan is therefore not required.

**Recommendation:**

**THAT the City of Stratford Committee of Adjustment APPROVE Application B08-24, to sever a parcel of land having a lot frontage of 35 m and a lot area of 2,245.5 m<sup>2</sup>, submitted by MTE (c/o Trevor McNeil) on behalf of 2007227 Ontario Inc., for lands legally described as CON 2 PT LOT 3 GORE DOWNIE NOW IN THE CITY OF STRATFORD BEING RP 44R-3943 PARTS 1 & 2 and known municipally as 270 Lorne Avenue East, subject to the following conditions:**

1. That the Certificate of Consent under Section 53(42) of the Planning Act shall be given within one year of the date of the notice of the decision.
2. That satisfactory arrangements be made with the City of Stratford for the payment of any outstanding Municipal property taxes.
3. That a municipal number is to be assigned by the City of Stratford. Any costs associated with the renumbering of properties on the street are the responsibility of the applicant.
4. That the applicant provide 2% cash in lieu of parkland dedication based on a property appraisal conducted for the lands to be severed to the satisfaction of the City.
5. That an approved zone change be required to include a car wash use as an additional permitted use to the zoning of the lands to be retained, or alternatively, that the applicant decommission the existing car wash use to the satisfaction of the City.
6. That the applicant be required to confirm, to the satisfaction of the City that any services for the severed parcel are located entirely within the severed lands and the services for the retained lands are located entirely within the retained lands. If the services are not located entirely within each parcel, the applicant will be required to relocate the existing services or install new services for the retained lands to the satisfaction of the City, and amend the existing site plan agreement accordingly.
7. That the applicant provide a draft transfer prepared by the applicant's legal representative for the City's review and acceptance.
8. That any outstanding work orders or by-law enforcement issues be resolved to the satisfaction of the City.

9. That the applicant file with the City's Manager of Planning a complete submission consisting of all required clearances and final plans, and to advise the City of Stratford in writing how each of the foregoing conditions have been satisfied. The Owner acknowledges that, in the event that the final approval package does not include the complete information required by The City of Stratford, such submission will be returned to the Owner without detailed review by the City.

### **Reasons**

The proposal is consistent with the Provincial Planning Statement.

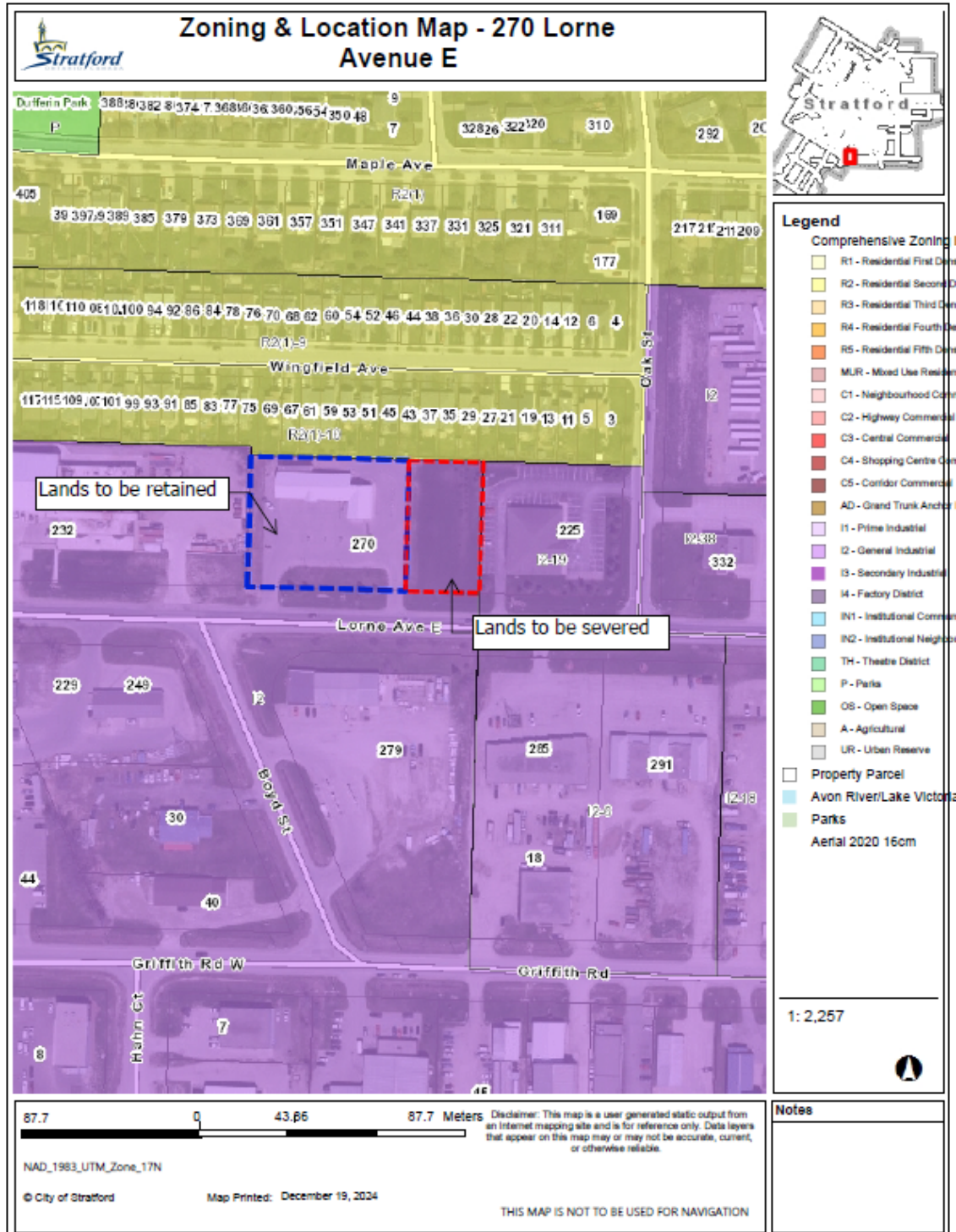
The proposal is in conformity with the City of Stratford Official Plan.

The proposal conforms to the City of Stratford Comprehensive Zoning By-law through an approved zone change.

**Prepared, Reviewed,  
Recommended and Approved by:** Marc Bancroft, MPL, MCIP, RPP  
Manager of Planning

**Report finalized:** January 16, 2025

**Map 1 – Location & Zoning Map**  
**File # B08-24**  
**2007227 Ontario Inc. – 270 Lorne Avenue East**



**SEVERANCE SKETCH**  
 OF PART OF  
**LOT 3**  
**CONCESSION 2**  
 (GEOGRAPHIC GORE OF THE TOWNSHIP OF DOWNIE)  
 IN THE  
**CITY OF STRATFORD**  
 COUNTY OF PERTH

SCALE 1:500  
 0 2 4 6 8 10 20 30 METRES  
**MTE OLS LTD.**  
 ONTARIO LAND SURVEYORS

**METRIC:**  
 DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND  
 CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

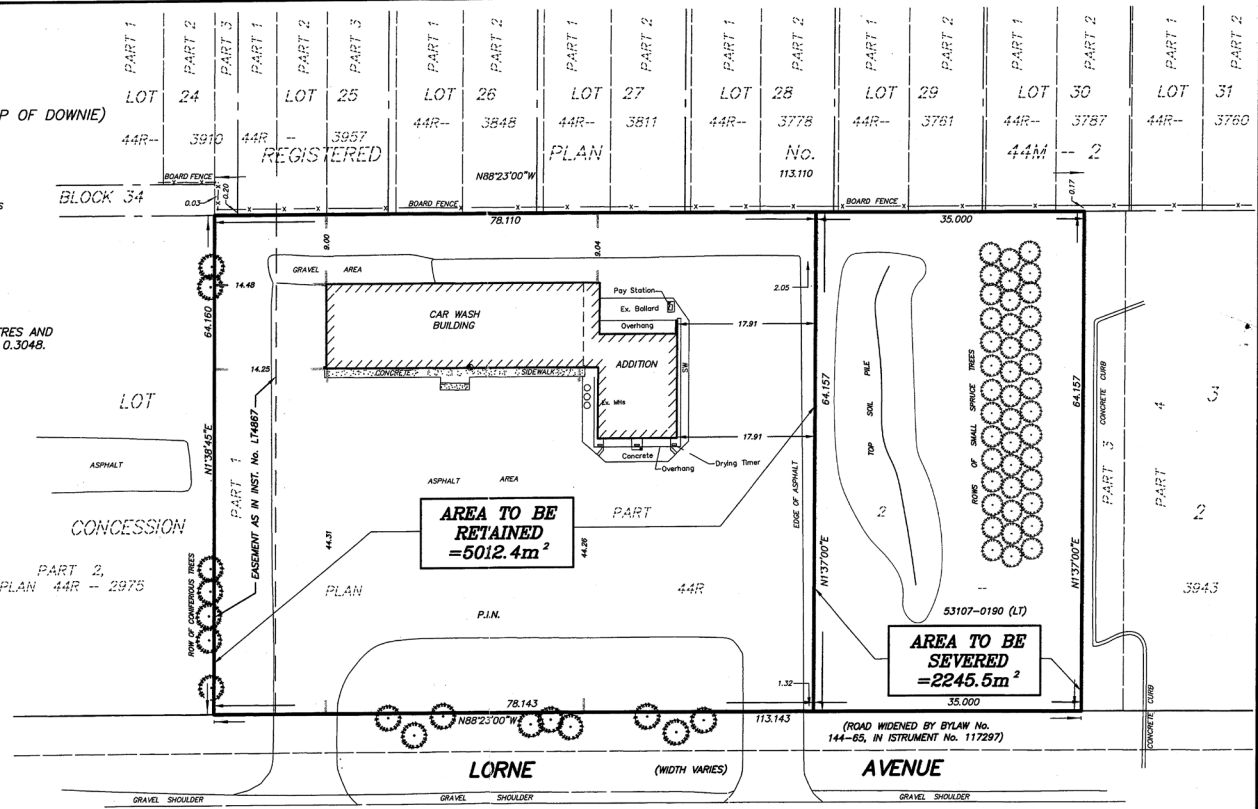


**AREAS:**  
 AREAS SHOWN ON THIS PLAN ARE IN  
 SQUARE METRES AND CAN BE CONVERTED  
 TO ACRES BY DIVIDING BY 4046.8564.

**CAUTION:**  
 THIS IS NOT A PLAN OF SURVEY AND SHALL NOT BE USED  
 EXCEPT FOR THE PURPOSES INDICATED IN THE TITLE BLOCK.

THIS SKETCH IS PREPARED FOR 2007227 ONTARIO INC.  
 DATE : FEBRUARY 1, 2017

© COPYRIGHT 2017, MTE OLS LTD.



**AREA TO BE  
 RETAINED  
 =5012.4m<sup>2</sup>**

**AREA TO BE  
 SEVERED  
 =2245.5m<sup>2</sup>**

THIS SKETCH IS NOT  
 VALID UNLESS IT IS  
 AN EMBOSSED  
 ORIGINAL COPY ISSUED  
 BY THE SURVEYOR

**MTE OLS Ltd.**  
 ONTARIO LAND SURVEYORS  
 385 HOME STREET  
 STRATFORD, ONTARIO, N5A 2A5  
 TEL: (519) 271-7952 FAX: (519) 271-3545

Code File: P:\P\36233\100\36233-100-SV1.DWG CODE: 36233-100-UTMGROUND.ASC  
 Drawn By: M. MASCIOTRA Checked By: T. McNEIL, O.L.S. File No: 36233-100-SV1 (S)

**Figure 1 – Site Photo (January 10, 2025)**  
**File # B08-24**  
**2007227 Ontario Inc. – 270 Lorne Avenue East**





## REPORT TO THE COMMITTEE OF ADJUSTMENT

**Submitted By:** Building & Planning Services Department - Planning Division

**Application No.:** B09-24

**Meeting Date:** January 22, 2025

**Owner:** John Carey-Woodman

**Agent:** Monteith Ritsma Phillips Professional Corporation (c/o Matthew Orchard)

**Location:** 16 Chestnut Street - located on the north side of Chestnut Street between Erie Street and Railway Avenue, legally referred to as PLAN 2 LOT 79, City of Stratford.

**Zoning:** Residential Second Density – R2(1)

**Official Plan Designation:** Residential Area  
Heritage Area  
SPP Significant Threat Area

**Road Classification:** Chestnut Street – Local  
Railway Avenue - Local

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### **Purpose of Application B09-24:**

The purpose of this application is to sever a 490.5 m<sup>2</sup> portion at the rear of the subject property to convey as a lot addition to the northwestern abutting lands, known municipally as 212 Railway Avenue, Stratford. The retained parcel will have a frontage of 20 m and a lot area of approximately 840.9 m<sup>2</sup>. The lot to be enlarged would have an area of approximately 1471.6 m<sup>2</sup>.

### **Background:**

#### Attachments

- Map 1 – Existing Zoning & Location Map
- Map 2 – Severance Survey
- Figure 1 – Site Photo
- Figure 2 – Site Photo

## Site Characteristics

Existing Use: Single detached dwelling  
Frontage: 20 m  
Depth: 66.184 m  
Area: 1331.4 m<sup>2</sup>  
Shape: Rectangular

## Surrounding Land Uses

North: Single detached dwellings  
East: Apartment dwelling  
South: Single detached dwellings  
West: Single detached dwellings

## Agency Comments

This consent application was circulated to agencies for comments on December 31, 2024. The following comments were received:

### **City of Stratford Infrastructure Services Department – Engineering Division:**

Easements will be required over the retained and severed parcels for existing aerial utility wires identified on the submitted Severance Sketch. Coordination with utility owner Bell Canada to obtain easements.

As part of the 2011 road reconstruction project, an existing storm service is stubbed along the frontage of 16 Chestnut Street and one along the frontage of 212 Railway Avenue, if required in the future.

### **City of Stratford Building and Planning Services Department – Building Services:**

No concerns with proposed severance.

### **City of Stratford Corporate Services – Clerks Services:**

The Clerk's Office has reviewed the application and would like to note the following in relation to parking:

- There are no parking restrictions on Chestnut Street
- There is a no parking restriction on the east side of Railway Avenue from the south curb line of Walnut Street to a point 38 meters southerly therefrom
- Due to the road width, parking across driveways is prohibited on Railway Avenue

Our office has no parking concerns in relation to the application however we would like to note that our office has previously received complaints for both Chestnut Street and Railway Avenue related to vehicles parked in a manner which blocks driveway access.

**Festival Hydro:**

No concerns with proposed severance.

**Fire Prevention:**

No comments or concerns.

**Upper Thames River Conservation Authority – Source Water Protection:**

The subject lands are located within a Wellhead Protection Area A 10 to which the policies of the Thames-Sydenham and Region Source Protection Plan apply. The land use proposed at the above noted property has been designated as residential and is not designated for Restricted Land Use under Section 59 of the Clean Water Act, 2006 and will not require any further documentation from the Risk Management Official. We do ask that due to the vulnerability of the area to take steps to protect it, such as; conserving water, properly disposing of hazardous wastes, use non-toxic products where possible, and prevent pollutants from entering into runoff. For more information pertaining to drinking water source protection, please refer to the approved Source Protection Plan <https://www.sourcewaterprotection.on.ca/approved-source-protection-plan/>

**Enbridge Gas Inc:**

It is the responsibility of the applicant to verify the existing gas servicing does not encroach on more than one property when subdividing or severing an existing land parcel. Any service relocation required due to a severance would be at the cost of the property owner. For any encroachments, please contact [ONTLands@enbridge.com](mailto:ONTLands@enbridge.com)

Public Comments

A Public Notice was provided to neighbouring property owners within 60 metres on January 3rd, 2025, in accordance with the provisions of the *Planning Act*. In addition, notice of the proposed severance was published in the Town Crier of the Beacon Herald on January 4th, 2025. At the time of writing this report, one comment from the public has been received, stating no concerns with the application.

Any additional public comments received after the date of completion of the report will be provided to the Committee of Adjustment.

**Analysis:**Provincial Planning Statement (PPS)

All planning decisions in the Province of Ontario shall be consistent with the Provincial Planning Statement (PPS) which came into effect on October 20<sup>th</sup>, 2024, which is intended to streamline the provincial planning framework and replaces the Provincial Policy Statement (2020) and the Growth Plan for the Greater Golden Horseshoe, with an emphasis on more enabling housing policies. The 2024 PPS provides policy direction on

matters of provincial interest relating to Building Homes, Sustaining Strong and Competitive Communities, Infrastructure and Facilities, Wise Use and Management of Resources, and Protecting Public Health and Safety.

Building strong communities is achieved by promoting efficient development and land use patterns that accommodate an appropriate range and mix of residential uses that meet the social, health and well-being requirements and by avoiding development patterns that cause environmental, public health or safety concerns.

There are no Building Strong Healthy Communities, Wise Use and Management of Resources, and Protecting Public Health and Safety matters with the application. As a result, the application is consistent with the Provincial Policy Statement.

### Official Plan

The property is designated "Residential Area" on Schedule "A" of the Official Plan and further identified as being located within a Source Water Protection Plan (SPP) Significant Threat Area on Schedule "C" and within a Heritage Area on Schedule "E" of the City's Official Plan. Chestnut Street and Railway Avenue are identified as local streets on Schedule "D". The Residential Area policies allow for a range of dwelling types from single detached and semi-detached dwellings to townhouses and low-rise apartment buildings. The subject lands. The application encourages the creation of smaller lot sizes within the area which will allow for a more compact building form that can be serviced through existing infrastructure.

The subject property is within the Thames-Sydenham SPP Significant Threat Area on Schedule "C" of the Official Plan and therefore required to conform to the policies of the SPP. As the existing and proposed uses are residential use within a designated residential area, it is exempt from the SPP policies and therefore conforms to the Thames-Sydenham SPP.

Additionally, the subject properties are within a 'Heritage Area' as designated in the Official Plan. Section 3.5.8 states that when proposing infill development in Heritage Areas that the inherent Heritage attributes shall be retained or ideally enhanced. As the proposed lot addition does not constitute development or site alteration, the policy relating to infilling in heritage areas does not apply and therefore conforms to the heritage protection policies in the Official Plan.

Further, all consents shall comply with the consent evaluation criteria in section 9.5.1. The consent evaluation criteria requires that consents shall only be permitted where the lots are in keeping with the existing development in the area, the consent does not limit development potential of the lands, the lands can be adequately serviced and that consents shall generally not be granted within the regulatory flood line on Schedules 'A' and 'B' of the Official Plan when the intended use is the construction of a permanent

building or structure. Section 9.5.1 additionally notes that a consent may also be permitted for a lot boundary adjustment where the lots comply or can be brought into compliance with the Zoning By-law.

The applicant is requesting to sever the northerly portion of the subject lands and consolidate them with lands to the immediate east. The proposed severed lands (when added to 212 Railway Avenue) and retained lands will result in a lot size and configuration that is generally in keeping with the existing lots within the area. The existing lot frontage, proposed lot area and proposed lot depth is adequate for the permitted uses on the subject lands and therefore conforms to the consent evaluation criteria outlined in section 9.5.1 of the Official Plan.

### Zoning By-law

The subject lands are zoned Residential Second Density R2(1) in the City's Zoning By-law. The R2(1) zone permits single detached dwellings and lots with an area of 360 m<sup>2</sup>, lot depth of 30 m, and lot frontage of 12 m. The existing uses of both the lot to be retained and the lot to be enlarged are not proposed to change, and both properties upon completion of the severance, will conform to the requirements of the Zoning By-law.

### **Recommendation:**

**THAT the City of Stratford Committee of Adjustment APPROVE Application B09-24, submitted by John Carey-Woodman, to sever a parcel of land for lot addition purposes having an area of 490.5 square metres for lands legally described as for lands legally described as PLAN 2 LOT 79, City of Stratford and municipally known as 16 Chestnut Street, subject to the following conditions:**

1. That the Certificate of Consent under Section 53(42) of the *Planning Act* shall be given within two years of the date of the notice of decision.
2. That the lands to be severed be merged in the same name and title as the adjacent lot known municipally as 212 Railway Avenue and that Section 50(3) or 50(5) of the *Planning Act* shall apply to any subsequent conveyance or transaction.
3. That satisfactory arrangements be made with the City of Stratford for the payment of any outstanding Municipal property taxes.
4. That any outstanding work orders or by-law enforcement issues be resolved to the satisfaction of the City.
5. That the applicant provide an easement in favour of Bell Canada for the existing utility wires to the satisfaction of Bell Canada.

6. That prior to the stamping of the deeds, the applicant shall provide to the satisfaction of the City a copy of the deposited reference plan to legally describe the lands to be conveyed and in general conformity with the Committee's decision, in an electronic format compatible with the latest version of AutoCAD referenced to NAD83 UTM Zone 17 Horizontal Control Network for the City of Stratford. This Reference Plan shall be created from survey information utilizing the City's Survey Control Network. It is the responsibility of the applicant to obtain the necessary Reference Sketches and associated information required to complete the survey from the City.
7. That prior to the stamping of the deeds, the applicant shall provide a draft transfer prepared by the applicant's legal representative for the City's review and acceptance.
8. Prior to the stamping of the deeds, for the purposes of satisfying any of the above conditions, the Owner shall file with the City of Stratford a complete submission consisting of all required clearances and final plans, and to advise the City of Stratford in writing how each of the conditions has been satisfied. The Owner acknowledges that, in the event that the final approval package does not include the complete information required by The City of Stratford, such submission will be returned to the Owner without detailed review by the City.

### **Reasons**

The proposed severance is consistent with the Provincial Planning Statement.

The proposed severance conforms to the City's Official Plan as the proposal meets the policies of the Official Plan.

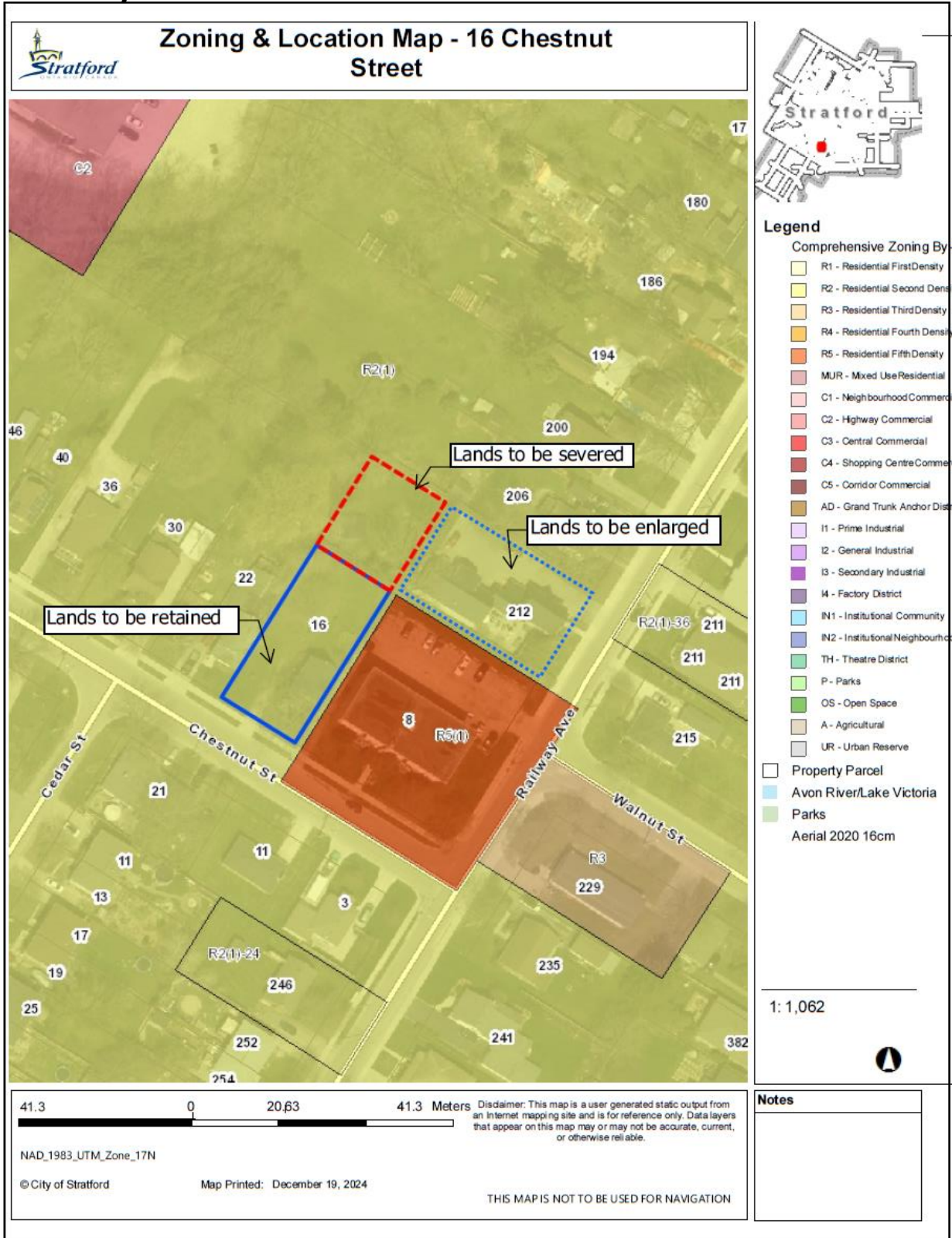
The proposed severance maintains compliance with the City's Zoning By-law as the subject lots meet the standards of the Zoning By-law.

**Prepared by:** Alexander Burnett, Intermediate Planner

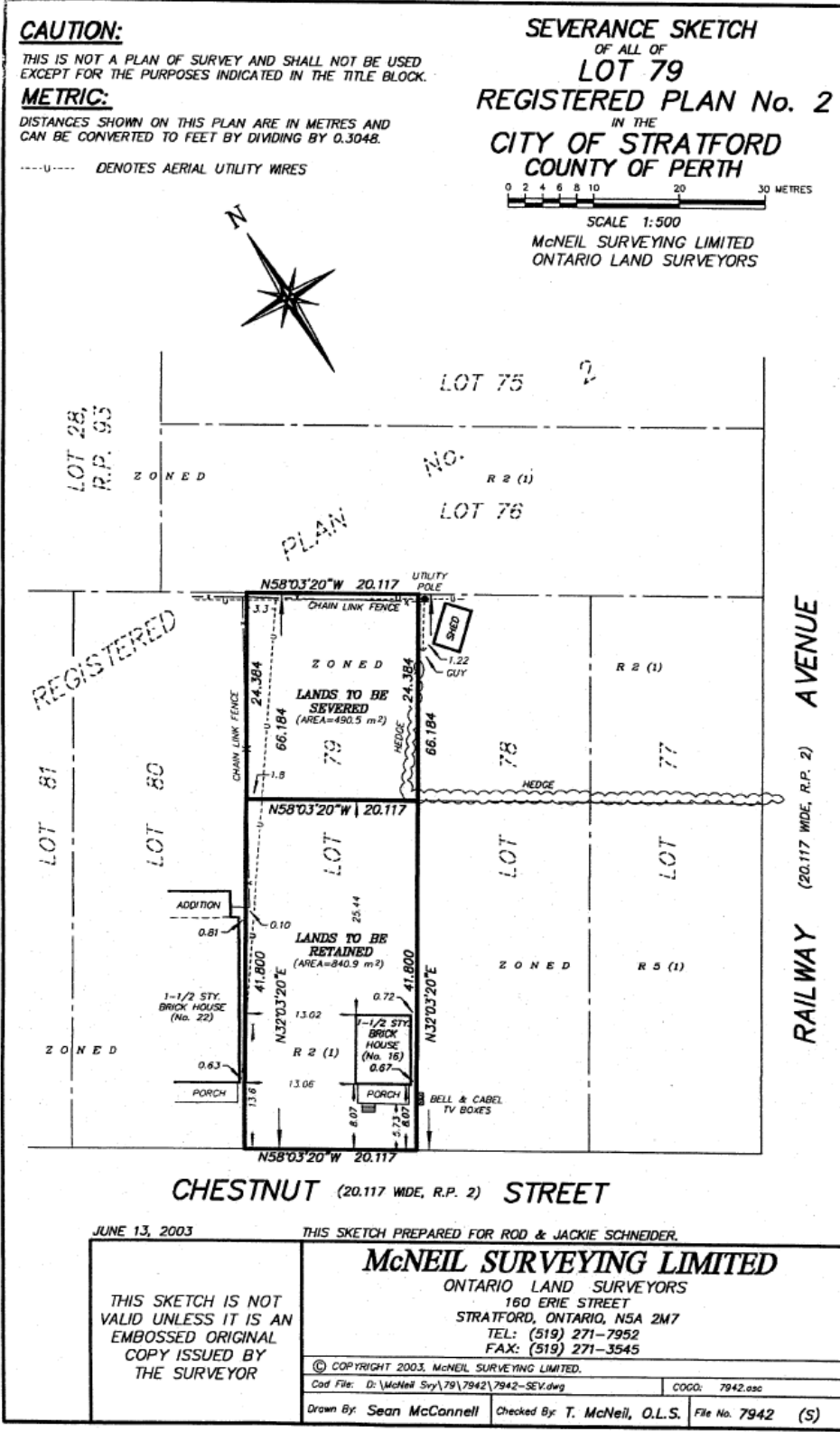
**Reviewed, recommended & approved by:** Marc Bancroft, MPL, MCIP, RPP  
Manager of Planning

**Report finalized:** January 15, 2025

**Map 1 – Location & Zoning Map**  
**File # B09-24**  
**John Carey-Woodman – 16 Chestnut Street**



**Map 2 – Severance Survey**  
**File # B09-24**  
**John Carey-Woodman – 16 Chestnut Street**





**Figure 1 – Site Photo – 16 Chestnut Street (January 10, 2025)**  
**File # B09-24**  
**John Carey-Woodman – 16 Chestnut Street**



**Figure 2 – Site Photo – 212 Railway Avenue (January 10, 2025)**  
**File # B09-24**  
**John Carey-Woodman – 16 Chestnut Street**



Public Comments Received

B09-24 – 16 Chestnut Street

**From:** [Maryna Korniienko](#)  
**To:** [Planning Division](#)  
**Subject:** App No. B09-24 loc 16 Chestnut St  
**Date:** Friday, January 10, 2025 2:56:31 PM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Me and my husband Volodymyr Mostipan have received Committee of Adjustment notice app No. B09-24 regarding loc 16 Chestnut St.

If the owner of the property at 16 Chestnut street has agreed to sell/transfer portion of his property and ok with it, in this case we do not have any concerns with this adjustment.

Please let us know by email or phone if you have any questions.

Thank you,

Sincere,

Maryna Korniienko and Volodymyr Mostipan  
11 Cedar Street  
