



Office of the Commissioner of Economic
Development
Planning & Building Department
Committee of Adjustment

MISSION STATEMENT:

“Our City is built on relationships – between citizens and their government, businesses and public institutions, city and region – all interconnected, mutually supportive, and focused on the brightest future we can create together.”

Author’s Name: Simona Simion	File No.: A-042/24
Author’s Phone: (519) 255-6543 ext. 6397	Report Date: July 18, 2024
Author’s E-mail: ssimion@citywindsor.ca	Committee Meeting Date: July 25, 2024

To: Committee of Adjustment

Subject Application: Relief from the provisions of the By-law 8600

Owner: 2832765 Ontario Inc/Giovanni and Rita Miceli

Agent: Jackie Lassaline

Location: 1609 Tecumseh Rd W

Legal Description: Plan 1342 Lot 131 To Lot 132

1. RECOMMENDATION:

That the Minor Variance application of 2832765 Ontario Inc/Giovanni and Rita Miceli for relief from the provisions of the By-law 8600 to construct a multiple dwelling with reduced parking area separation from interior lot line and reduced minimum number of dwelling units, for the property municipally known as 1609 Tecumseh Rd W, **BE GRANTED** with conditions:

- I. Matters directed by City Council in recommendation II of Council Resolution CR324/2023 (attached as Appendix C) be imposed as conditions of the minor variance to be fulfilled within **two (2) years** of approval, to the satisfaction of the City Planner;
- II. That the Owner enter into an agreement with the City of Windsor, relating to the fulfillment of conditions to the satisfaction of the City Planer regarding content and to the satisfaction of the City Solicitor regarding form; and
- III. That the agreement be registered against the land to which it applies to the satisfaction of the City Solicitor.

2. THE REQUESTED VARIANCES:

The construction of a multiple dwelling with reduced parking area separation from interior lot line and reduced minimum number of dwelling units, thereby requesting the following relief:

Section S.20(1)474 – Southwest corner of Tecumseh Rd W and Mark Ave - an additional permitted use

By Law Requirements	Proposed
Multiple dwelling with a min of 11 units	Multiple dwelling with a min of 8 units

25.5.20.3 – Minimum Parking Area Separation from an interior lot line

By Law Requirements	Proposed
0.90 m	0.35 m

*Note: The approved variance is valid for **two (2) years** and must be acted upon before the expiration date. If a granted variance is not used within required timeline, the application is deemed to be null and void. A new Committee of Adjustment application will be required for any expired application.*

3. PLANNING ANALYSIS:

The subject property identified as Plan 1342 Lot 131 To Lot 132 consists of vacant land. The applicant is seeking relief from Zoning By-law 8600 to construct multiple dwelling with reduced parking area separation from interior lot line and reduced minimum number of dwelling units, for the property municipally known as 1609 Tecumseh Rd W.

A planning application (Zoning Bylaw Amendment) Z-036-2022 was approved by City council on August 8, 2023. The Council Resolution CR324/2023 DHSC 520 (attached as Appendix C) permits a multiple dwelling with 11 or more dwelling units and minimum one (1) parking space per unit.

“474 SOUTHWEST CORNER OF TECUMSEH ROAD WEST AND MARK AVENUE
For the land comprising Lots 131 and 132, Registered Plan 1342 [PIN 01208-0145 LT], a Multiple Dwelling with 11 or more dwelling units shall be an additional permitted use and the following shall apply:

1. *The provisions in section 15.2.5, save and except for sections 15.2.5.10 and 15.2.5.15*
2. *Building setback from an exterior lot line abutting Tecumseh Road West – minimum 5.0 m*
3. *Parking Area separation from the south lot line – minimum 1.2 m (to be maintained as a landscaped open space)*
4. *Parking - per Dwelling Unit – minimum 1 parking space per unit*
5. *Parking is prohibited in any front yard [ZDM 4; ZNG/6897]”*

The scope of the of proposed development has changed since Council approved the above-mentioned Zoning Bylaw Amendment. The applicant is proposing now only eight (8) units. Multiple dwelling units with ten (10) or less units are no longer required to obtain approval under Site Plan Control. Without Site Plan Control and no holding symbol in place, the matters directed by Council to be implemented via Site Plan Control must be addressed as conditions of the minor variance application.

Official Plan policies allow the Committee of Adjustment to attach conditions as it deems necessary to the approval of the application for a minor variance. The Committee may require the owner of the land to enter into agreements with the Municipality. An agreement may be registered against the land to which applies and the Municipality is entitled to enforce the agreement against the owner and, subject to the Registry Act and the Land Titles Act.

PLANNING ACT

Subsection 45(1) of the Planning Act states that the Committee of Adjustment “*may, despite any other Act, authorize minor variance from the provisions of the by-law, in respect of the land building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.*”

Section 45 (9.1) provides authority to require an owner of land to enter into one or more agreements with municipality dealing with some or all of the conditions of a decision.

Section 45 (9.2) provides authority to require the agreement to be registered against the land to which it applies.

PROVINCIAL POLICY STATEMENT (PPS) 2024

The Planning Staff has reviewed the relevant policies of the PPS - “Healthy, livable and safe communities” (Policy statement 1.1.1 of the PPS). The requested minor variance is consistent with these policies promoting cost-effective development.

OFFICIAL PLAN (OP)

The Minor Variance Policies in Section 11.6.6 are hereto attached as **Appendix A**. Section 11.6.6.2 outlines the evaluation criteria for minor variance applications. The general intent and purpose of the Official Plan is maintained with the proposed development; the requested variances are minor in nature and desirable for the subject property.

The subject land is designated Mixed Use per the Official Plan. The proposed development is permitted and conforms to the associated objectives and policies. Therefore, the requested variances meet the general intent and purpose of the Official Plan per Section 11.6.6.2 (a).

The proposed development is permitted and conforms to the zoning bylaw provisions with the exception of the variances being requested. Therefore, the general intent and purpose of the by-law being varied is maintained as per Section 11.6.6.2(b).

The proposal will have minimal impact on the properties in the immediate neighbourhood. Therefore, the variances are minor in nature as per Section 11.6.6.2(c).

The variances are desirable for the appropriate use of the land per Section 11.6.6.2(d) promoting housing development with an appropriate number of parking spaces.

ZONING BY-LAW 8600

The subject land is zoned Commercial District CD 2.2 (CD2.2), S.20(1)474 as per By-law 8600.

The requested variances will not result in undue hardship on the owner, adjoining properties or the public realm; therefore, the variances are minor in nature. The proposed minor variances meet the intent of Zoning Bylaw 8600.

COMMENT

Engineering: Right of way permits must be obtained for any work within the right of way.

4. PLANNER’S OPINION:

The requested variances are minor in nature and maintain the general intent and purpose of the Official Plan and Zoning By-Law 8600. Therefore, the variances are consistent with section 45 (1) of the Planning Act. The Planning Division recommends approval of the applicant’s request with conditions.



Simona Simion, MCIP RPP

Planner II – Research and Policy Support

I concur with the above comments and opinion of the Planner II.



Greg Atkinson, MCIP RPP
Manager of Development

CONTACT:

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APPENDICES:

- Appendix “A” - Excerpts from the Official Plan Volume I
- Appendix “B” - Comments received by the Secretary Treasurer of the Committee of Adjustment
- Appendix “C” - Council Resolution CR324/2023 – approved August 8, 2023

APPENDIX “A”
Excerpts From Official Plan Volume I

11.6.6 Minor Variance Policies

*COMMITTEE OF
ADJUSTMENT*

11.6.6.1 Council has appointed a Committee of Adjustment pursuant to the Planning Act to consider applications for minor variance from the Zoning By-law(s) and/or any other bylaw that implements the Official Plan.

*EVALUATION
CRITERIA*

11.6.6.2 When reviewing an application for minor variance the Committee of Adjustment shall be satisfied that:

- (a) The general intent and purpose of the Official Plan is maintained;
- (b) The general intent and purpose of the By-law being varied is maintained;
- (c) The variance is minor in nature; and
- (d) The variance is desirable for the appropriate use of the land, building or structure.

*TERMS &
CONDITIONS*

11.6.6.3 The Committee of Adjustment may attach such terms and conditions as it deems appropriate to the approval of the application for a minor variance.

*AGREEMENTS
WITH
MUNICIPALITY*

11.6.6.4 The Committee of Adjustment may require the owner of the land to enter into one or more agreements with the Municipality dealing with some or all of the terms and conditions of its decision. An agreement may be registered against the land to which it applies and the Municipality is entitled to enforce the agreement against the owner and, subject to the Registry Act and the Land Titles Act, against any and all subsequent owners of the land.

APPENDIX “B”

Comments Received by the Secretary Treasurer of the Committee of Adjustment

PLANNING DEPARTMENT - ZONING

Required Minor Variances

1. S.20(1)474 Southwest corner of Tecumseh Rd W and Mark Ave - an additional permitted use
 - a. multiple dwelling with a minimum of 11 units (Required)
 - b. multiple dwelling with a minimum of 8 units (Provided)
2. Parking Area Separation from Interior Lot Line (25.5.20.3)
 - a. 0.90m (Required)
 - b. 0.35m (Provided)

Conner O'Rourke, Zoning Coordinator

PUBLIC WORKS DEPARTMENT - ENGINEERING AND GEOMATICS

The department has no objection to the proposed application. Comments remain consistent with ZNG-036-22*. Right of way permits must be obtained for any work within the right of way.

*

***Sewers** The site may be serviced by a 300mm concrete combined sewer located within the Tecumseh Road West right-of-way and a 600mm reinforced concrete pipe sewer located within rear alley. If possible existing connections should be utilized. Any redundant connections shall be abandoned in accordance with the City of Windsor Engineering Best Practice B.P 1.3.3.*

A sanitary sampling manhole may be required on any new sanitary connection at the property line to the satisfaction of the City Engineer, if one does not already exist.

A functional servicing study is required to analyze the impact of the increased flow to the existing municipal combined sewer system.

The applicant will be required to submit site servicing drawings and storm detention calculations restricting storm water runoff to pre-development levels, as per the Windsor Essex Regional Stormwater Management Standards Manual:

<https://essexregionconservation.ca/wp-content/uploads/2018/12/WE-Region-SWM-Standards-Manual.pdf>.

Right of-Way

Tecumseh Road West is classified as Class II Arterial Road with a required right-of-way width of 33m according to the Official Plan. The current right-of-way width is 26m, therefore, a conveyance of 3.5 meters is required along the frontage of this property. Mark Avenue is classified as Local Road with a required right-of-way width of 20m according to the Official Plan. The current right-of-way width is sufficient, therefore, no conveyance is required. Furthermore, a 4.6m x 4.6m corner cut-off conveyance will be required at the corner of Tecumseh Road West and Mark Avenue intersection.

The alley at the rear of the property is unpaved and is not used by any of the adjacent properties for access. Owner shall apply to the Street and Alley Closing Committee to close the existing alley adjacent to the subject property as well as obtain any easements required due to the closure (storm sewer).

The curb and gutters along Mark Avenue do not meet current City of Windsor Standards. Owner to construct, at their own expense, new curb and gutters along entire Mark Avenue frontage as per AS-208.

In summary we have no objection to the proposed development, subject to the following requirements:

***Corner Cut-Off** – The owner(s) agrees, prior to the issuance of a construction permit, to gratuitously convey a 4.6 m x 4.6 m (15' x 15') corner cut-off at the intersection of Tecumseh Road West and Mark Avenue in accordance with City of Windsor Standard Drawing AS-230.*

***Land Conveyance** – Prior to the issuance of a construction permit, the owner (s) shall agree to gratuitously convey to the Corporation, land sufficient to create a 33 metre wide right-of-way on Tecumseh Road West. This conveyance shall be approximately 3.5 metres along the entire Tecumseh Road West frontage of the subject lands.*

Sanitary Servicing Study - The owner agrees, at its own expense, to retain a Consulting Engineer to provide a detailed servicing study report on the impact of the increased flow to the existing municipal sewer system, satisfactory in content to the City Engineer and prior to the issuance of a construction permit. The study shall analyze the sanitary flow from the proposed development and recommend mitigation measures and implementation of those measures.

Curbs and Gutters – The Owner further agrees, at the discretion of the City Engineer, to construct at their own expense and according to City of Windsor Standard Specifications, a concrete curb and gutter along the entire Mark Avenue frontage of the subject lands. All work to be to the satisfaction of the Corporation's City Engineer;

It will be up to the discretion of the City Engineer whether a cash contribution will be allowed in lieu of curb and gutter construction by the Owner.

Lea Marshall, Technologist

PUBLIC WORKS DEPARTMENT - TRANSPORTATION PLANNING

Transportation planning has no comments.

Elara Mehrilou, Transportation Planner

PARKS & FACILITIES

No objections from a landscape architectural or urban design perspective.

Stefan Fediuk, Landscape Architect

WINDSOR POLICE SERVICES

None of the other applications being considered present outcomes that will negatively impact public safety or the ability of the Windsor Police Service to provide proper and adequate response to incidents and other service delivery requirements. As such, we have no concerns or objections with any of the remaining applications on the July 25th meeting agenda.

Barry Horrobin, Director of Planning & Physical Resources

HERITAGE PLANNING

Built Heritage

There is no apparent built heritage concern with this property.

Archaeology

The subject property is located on an area of low archaeological potential. Nevertheless, the Applicant should be notified of the following archaeological precaution.

1. Should archaeological resources be found during grading, construction or soil removal activities, all work in the area must stop immediately and the City's Planning & Building Department, the City's Manager of Culture and Events, and the Ontario Ministry of Citizenship and Multiculturalism must be notified and confirm satisfaction of any archaeological requirements before work can recommence.
2. In the event that human remains are encountered during grading, construction or soil removal activities, all work in that area must be stopped immediately and the site secured. The local police or coroner must be contacted to determine whether or not the skeletal remains are human, and whether the remains constitute a part of a crime scene. The Local police or coroner will then notify the Ontario Ministry of Citizenship and Multiculturalism and the Registrar at the Ministry of Government and Consumer Services if needed, and notification and satisfactory confirmation be given by the Ministry of Citizenship and Multiculturalism.

Contacts:

Windsor Planning & Building Department:

519-255-6543 x6179, ktang@citywindsor.ca, planningdept@citywindsor.ca

Windsor Manager of Culture and Events (A):

Michelle Staaedegaard, (O) 519-253-2300x2726, (C) 519-816-0711,
mstaadegaard@citywindsor.ca

Ontario Ministry of Citizenship and Multiculturalism

Archaeology Programs Unit, 1-416-212-8886, Archaeology@ontario.ca

Windsor Police: 911

Ontario Ministry of Government & Consumer Services

A/Registrar of Burial Sites, War Graves, Abandoned Cemeteries and Cemetery Closures, 1-416-212-7499, Crystal.Forrest@ontario.ca

Kristina Tang, Planner III

APPENDIX “C”

Council Resolution CR324/2023 – approved August 8, 2023

City Council Decision

August 8, 2023

Moved by: Councillor Kieran McKenzie

Seconded by: Councillor Mark McKenzie

Decision Number: CR324/2023 DHSC 520

- I. That Zoning By-law 8600 **BE AMENDED** by changing the zoning of the land located on the southwest corner of Tecumseh Road West and Mark Avenue, described as Lots 131 and 132, Registered Plan 1342 [PIN 01208-0145 LT], from CD2.1 to CD2.2, subject to the following site-specific zoning provisions:

“474 SOUTHWEST CORNER OF TECUMSEH ROAD WEST AND MARK AVENUE

For the land comprising Lots 131 and 132, Registered Plan 1342 [PIN 01208-0145 LT], a *Multiple Dwelling with 11 or more dwelling units* shall be an additional permitted use and the following shall apply:

1. The provisions in section 15.2.5, save and except for sections 15.2.5.10 and 15.2.5.15
 2. Building setback from an exterior lot line abutting Tecumseh Road West – minimum 5.0 m
 3. Parking Area separation from the south lot line – minimum 1.2 m (to be maintained as a *landscaped open space*)
 4. Parking - per Dwelling Unit – minimum 1 parking space per unit
 5. Parking is prohibited in any front yard [ZDM 4; ZNG/6897]”
- II. That the Site Plan Approval Officer **BE DIRECTED** to incorporate the following, as required, in the Site Plan Approval and the Site Plan Agreement for the proposed development on the subject land:
 - a) Sanitary Sampling Manhole;

- b) Corner Cut-Off - 4.6 m x 4.6 m (15' x 15') corner cut-off required at the intersection of Tecumseh Road West and Mark Avenue per City of Windsor Standard;
- c) Land Conveyance – convey approximately 3.5 metres along the entire Tecumseh Road West frontage of the subject land for road widening;
- d) Sanitary Servicing Study - retain a Consulting Engineer to provide a detailed servicing study report;
- e) Curbs and Gutters – construct new concrete curb and gutter along the entire Mark Avenue frontage of the subject land;
- f) Parkland dedication of 5% (cash-in-lieu) of the subject vacant parcel;
- g) Tree Survey to determine appropriate tree preservation for the site
- h) Noise mitigation measures as recommended in a Noise Impact Study that will be submitted at the time of Site Plan Control application;
- i) Railway Warning clause (s. 4.7.1.9 (d), South Cameron Planning Area, OP Vol. II);
- j) Enbridge Gas minimum separation requirements;
- k) Adequate clearance from existing ENWIN’s pole lines and power lines;
- l) Canada Post multi-unit policy; and
- m) Record of Site Condition.

Carried.

Report Number: SCM 190/2023 & S 73/2023
 Clerk’s File: Z/14571 8.10

Anna Ciacelli

Deputy City Clerk

July 18, 2024

Department Distribution

Name	Title
Greg Atkinson	Manager, Development
Justina Nwaesei, MCIP, RPP	Senior Planner - Subdivisions
Neil Robertson for Thom Hunt	City Planner
Wira Vendrasco	Deputy City Solicitor
Jelena Payne	Commissioner of Economic Development & Innovation
Joe Mancina	Chief Administrative Officer