



## Planning and Development Services

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**Prepared for:** Committee of Adjustment

**Meeting Date:** December 19, 2024

**Application Number:** B49/24

**Address:** 131 & 135 Gilmore Road, Fort Erie (Southend)

**Owner/Applicant:** Kyle Mallysh Personal Real Estate Corporation (Kyle Mallysh)

### 1. Title

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Consent Application B49/24 for lands located at 131 and 135 Gilmore Road, Fort Erie (Southend)

### 2. Proposal

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The purpose and effect of this Consent application is to facilitate reciprocal easements in perpetuity to secure shared vehicle and pedestrian access to rear parking areas for two adjacent parcels along Gilmore Road.

The intent of Consent Application B49/24 is to create an easement for right-of-way across Part 1 in favour of Parts 2 and 4, and for right-of-way access for Part 2 in favour of Parts 1 and 3.

### 3. Recommendations

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Planning staff recommend **APPROVAL** of Consent Application B49/24 to create reciprocal easements in perpetuity for right-of-way access across Part 1 in favour of Parts 2 and 4 and right-of-way access across Part 2 in favour of Parts 1 and 3, conditional upon the following:

1. That the Applicant's Solicitor and/or Land Surveyor provide the Secretary-Treasurer with a legal description of the subject parcel to be registered on title together with an original and electronic copy (in AutoCAD.dwg and PDF format) of the deposited reference plan if required, for use in the issuance of the Certificate of Consent;
2. That the Owner / Applicant shall provide the Secretary-Treasurer with a copy of the easement documents; and
3. That the final certification fee payable to the "Town of Fort Erie" be submitted to the Secretary-Treasurer. Reminder that the consent is not considered final prior to final consent certificate being issued.

## 4. Analysis

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### 4.1. Site Context

The subject lands are located within the urban boundary in the Southend neighbourhood of the Town of Fort Erie on the south side of Gilmore Road. The subject lands are comprised of two adjacent parcels, municipally known as 131 and 135 Gilmore Road, that share access to parking areas in the rear of each parcel. 131 Gilmore Road is being used as a fourplex dwelling and 135 Gilmore Road is being used as a duplex dwelling. The Owner completed a combined Official Plan and Zoning By-law Amendment application for the subject lands that was approved by Council in 2022 to permit the existing uses. The land uses surrounding the subject lands include:

- North: Gilmore Road, the Fort Erie Public Library Centennial (Central Avenue) Branch and Lions Sugarbowl Park;
- South: Residential uses including single detached dwellings, an apartment dwelling and semi-detached dwellings;
- East: Single detached dwellings and an institutional use;
- West: Commercial buildings and single detached dwellings.

### 4.2. Environmentally Sensitive Areas

There are no environmentally sensitive areas on or in the vicinity of the subject lands as identified on Schedule C – Natural Heritage Features or Schedule C1 – Natural Hazards and Fish Habitat of the Official Plan. No tree removal is being proposed as part of the application.

The Niagara Peninsula Conservation Authority (NPCA) has confirmed that the subject lands are not within their regulated area.

### 4.3. Planning Context

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

Section 2 of the Planning Act requires the Committee of Adjustment to have regard for the Provincial interests.

Section 3(5) of the Planning Act requires decisions to be consistent with the Provincial Planning Statement and Provincial plans.

The application is consistent with the Provincial Planning Statement and Provincial plans and will secure access to rear parking areas for both parcels.

#### Southend Secondary Plan (2018) in the Town of Fort Erie Official Plan, 2021

The subject lands are designated 131 & 135 Gilmore Road (Site Specific Policy Area 40) following approval of the Official Plan Amendment for the subject lands in 2022. The SSPA states that the subject lands shall generally be governed by the Low Density Residential policies of Section 4.21.7 of the Southend Secondary Plan and Section 4.7 of the Official Plan. In addition, the continued use of the existing fourplex located at 131 Gilmore Road and the existing

duplex located at 135 Gilmore Road for residential purposes is permitted. The proposed reciprocal right-of-way easement in perpetuity to secure access for both parcels is consistent with the Secondary Plan and the Town's Official Plan.

#### Comprehensive Zoning By-law No. 129-1990, as amended

The subject lands are zoned "Residential Multiple 1 (RM1-751) Zone", in part, and "Residential Multiple 1 (RM1-752) Zone", in part, in accordance with the Town's Zoning By-law. This zoning was implemented via a Zoning By-law Amendment in 2022 to permit the existing fourplex and duplex as permitted uses and to address the existing zoning deficiencies on the subject lands. The RM1-751 Zone is located on 135 Gilmore Road, and the RM1-752 Zone is located on 131 Gilmore Road. This reciprocal right-of-way easement application is consistent with the zoning of the subject lands.

### **5. Comments from Departments, Community and Corporate Partners**

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#### Community Planning

No comments or objections.

#### Environmental Planning

The subject property is located within the Town's Urban Boundary but not the Natural Heritage system. There are no Natural Heritage features present. The lands are subject to the Town's tree By-law 33-2024. If any trees are proposed to be removed from the lands, the subsequent removal application must be accompanied by a Tree Protection Plan, an Arborist report (ISA Certified Arborist or per the Town's definition in the By-law) and a Landscape Plan (OALA in good standing).

There do not appear to be any trees that will be required for removal however the applicant will be required to confirm this information to waive the conditions:

1. That the owner/applicant submit an Arborist Report and Tree Preservation Plan prepared by a qualified arborist in accordance with the Town's (Tree) By-law No. 33-2024, as amended, to the satisfaction of the Town.
2. That the owner/applicant submit a Landscape Plan prepared by a qualified person, OALA in good standing or equivalent, demonstrating the re-planting using compensation ratios per Table B.I of (Tree) By-law No. 33-2024, or payment of cash-in-lieu at the prevailing rate, to the satisfaction of the Town.
3. That the Applicant/Owner make payment in the amount of \$1,000.00 to the Town of Fort Erie for two boulevard street trees. The Trees will be placed on the road allowance frontage if it is practical o do so, otherwise the tree will be planted elsewhere in the Town to enhance the Tree Canopy Cover.

#### *Staff Response*

Planning staff note that no new development or site alteration will occur as a result of this reciprocal easement application and therefore these conditions of approval are not required in

this instance.

#### Infrastructure Services Comments

No comments or objections. The subject lands are not impacted by any municipal drains.

#### Canadian Niagara Power (CNP)

No comments or objections.

#### Niagara Peninsula Conservation Authority (NPCA)

No objections. The subject lands do not contain any Niagara Peninsula Conservation Authority regulated features.

#### Niagara Region

No objections. The Region notes that the subject lands are located within an area with archaeological potential in the 2022 Niagara Official Plan. The Region has provided an advisory clause to the Applicant as follows:

*“If deeply buried or previously undiscovered archaeological remains/resources are found during development activities on the subject lands, all activities must stop immediately. If the discovery is human remains, contact the Niagara Regional Police and coroner to secure the site. If the discovery is not human remains, the area must be secured to prevent site disturbance. The project proponent must then follow the steps outlined in the Niagara Region Archaeological Management Plan: Appendix C.”*

<https://pre.niagararegion.ca/culture-and-environment/pdf/archaeological-management-plan.pdf>

#### *Staff Response*

Planning staff note that no new development is occurring as a result of this easement request. All buildings and structures on the subject lands exist and no site alteration will result. An archaeological assessment was not requested by the Town or Niagara Region during the previous combined Official Plan and Zoning By-law Amendment. Staff will not require anything further but have included the advisory clause for the Applicant's information.

#### Public Comments

No public comments have been received at the time of writing this report.

#### **Conclusion**

Based on the above analysis, Planning Staff recommend **APPROVAL** of Consent Application B49/24, subject to the recommended conditions.

#### **6. Report Approval**

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Prepared by:

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Reviewed and Submitted by:  
Devon Morton, MCIP, RPP  
Supervisor, Development Approvals

## **7. Attachments**

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Appendix 1 – Application Sketch