

THE MUNICIPALITY OF LAMBTON SHORES

Report PL 41-2021

Council Meeting Date: November 9, 2021

TO: Mayor Weber and Members of Council

FROM: Will Nywening, Senior Planner

RE: Site Plan Approval Application SP-05/2021
E ½ Lot 399, W ½ Lot 399, Lots 1 and 3, Lot 2, and Lot 4, Plan 24 (GB)
9, 11, 13, and 15 Main Street West and 2 Kitchener Ave, Grand Bend
Bar Down (Grand Bend)

RECOMMENDATION:

THAT Report PL 41-2021 being a report respecting a Site Plan Application for the development of a new mixed commercial residential building on lands known as 9, 11, 13, and 15 Main Street West and 2 Kitchener Ave, Grand Bend be received; and

THAT By-Law 80 of 2021 being a by-law to allow the collection of cash in lieu of parkland dedication in the amount of \$66,000.00 for the redevelopment of the lands be approved; and

THAT Council provide direction respecting the amount of money the Applicant must pay to the party that reconstructed portions of Kitchener Avenue; and

THAT the Site Plan Agreement between the Corporation of the Municipality of Lambton Shores and Bar Down (Grand Bend) Entertainment Inc. be approved; and

THAT By-Law 81 of 2021 be approved to execute a Site Plan Agreement between the Corporation of the Municipality of Lambton Shores and Bar Down (Grand Bend) Entertainment Inc. for lands known as 9, 11, 13, and 15 Main Street West and 2 Kitchener Ave, Grand Bend, subject to the inclusion of a payment towards Kitchener Ave construction costs in the amount of \$_____.

SUMMARY

This report relates to a request by Bar Down (Grand Bend) Entertainment Inc. to obtain site plan approval for a new mixed commercial/residential building on lands known as 9, 11, 13, and 15 Main Street West and 2 Kitchener Ave in Grand Bend.

In support of the proposed development, the applicant has submitted:

- Architectural drawings including site plan, interior layouts of each floor, elevations, and renderings.
- Civil Drawings for servicing, grading, erosion control, etc.
- A site servicing brief and geotechnical report
- Landscaping plan
- Photometric plan of site lighting

In order to address the change in grade from west to east, there will be a retaining wall in the northeast corner, abutting the Gables.



Most of the plans included in the draft site plan agreement Schedules have been revised from the original site plan application submission based on discussions with Staff respecting parking and direction from Council respecting cash-in-lieu of parking fees. In particular, the applicant has revised the main floor's ceiling height and footprint. They have also acquired 2 Kitchener Ave to provide additional surface parking to meet the zoning by-law's parking requirements. The site plan and civil drawings attached to the agreement have been updated accordingly. The landscaping plan and photometric plan have not been updated to reflect the added parcel and a clause is included in the draft agreement to address this (section 4 I).

Planning Document Designations: The subject properties and other abutting properties on Main St West and directly across Kitchener Ave are designated "Downtown Commercial" in the Lambton Shores Official Plan. Properties to the north are designated "Residential". Corresponding Zone designations in By-law 1 of 2003 are the "Commercial-10 (C10) Zone" and "Residential-4 (R4) Zone". The C10 Zone is the downtown-type commercial zone that applies to Main St West in Grand Bend. Permitted residential-type uses in the C10 Zone include dwelling units located above a commercial use.

Minor Variances: The applicant obtained minor variances from the Committee of Adjustment (Application A-18/2021, August 25, 2021) for the following:

1. To treat Main Street as the front yard, whereas Kitchener Ave is the shorter lot line. This allowed the building to be oriented to Main St with the building built at the side walk and along the whole width of the Main St frontage.
2. To reduce the rear yard setback from 7.5m to 4m where (the upper floors of) the proposed building abuts the Gables parking lot to the north.
3. To increase the permitted height from 10m to 11.7m. This was intended to allow a little more ceiling height on each level and enough ceiling height on the main level for stacked parking, not a 4th floor.
4. To clarify what uses are permitted on the roof (above the maximum height). This includes mechanical rooms, stairwells, and a roof top patio facing Main St.

Conditions of approval include entering into a site plan agreement with the Municipality and paying towards the costs related to the recent reconstruction of Kitchener Ave.

Kitchener Ave Reconstruction: The draft site plan agreement includes a clause for the applicant to pay an amount to the third party that recently constructed Kitchener Ave (section 8 e). This would be in compensation for the costs the third party spent that benefit others. The amount in the draft agreement is blank. Staff and the Applicant require Council's direction on what that amount should be. According to a 2019 "best efforts" agreement between the Municipality and the third party, the Municipality should be asking for as much as \$67,713.32. The applicant has indicated they are willing to contribute \$4,000.00.

Kitchener Ave was recently constructed by a third party in order to develop 11 residential lots they owned on the unopened portion of that street. In a development agreement, the Municipality required that this third party also reconstruct the street and some of the infrastructure within the portion of the street abutting the lands that are the subject of the current site plan approval. This brought this portion of Kitchener Ave and services therein up to a standard that allowed connection with their development. It included the creation of stormwater management facilities in the boulevards. The third party was also required to pay \$50,000 to another developer in relation to costs to construct Centre St, which created a secondary access benefiting Kitchener Ave.

The agreement between the Municipality and the third party that developed Kitchener Ave states:

56. SPECIAL PROVISIONS

(a) Cost Recovery

The Municipality acknowledges that the works the Developer is required to complete under this Agreement may benefit other property owners and also that the construction of a portion of Centre Street to which the Developer has contributed \$50,000.00 may also benefit other property owners. Where property abutting Kitchener Avenue requires Municipal approvals under the Planning Act and it is deemed by the Municipality, at its sole discretion, that the development proposed or permitted by such approval would have required the completion of the

aforementioned works or has benefited appreciably by the completion of the aforementioned works, then the Municipality will impose a condition of said approval that requires the owner of said property to reimburse the Developer for a proportionate share of the costs of the works benefiting the owner. With respect to works the Developer is required to complete under this agreement, the Municipality will impose a condition of said approval that requires the owner of such lands pay a percentage of the cost of the works that is equal to half the percentage that the land's frontage makes up of 440 feet (the total length of Kitchener Avenue from Main St West to Centre St). With respect to the construction of Centre Street east of Queens Avenue, the Municipality will impose a condition of said approval that requires the owner of such lands pay a percentage of \$50,000.00 that is equal to half the percentage that the land's frontage makes up of 440 feet. The Developer acknowledges that such potentially benefiting owners are not parties to and have not consented to this agreement. The Developer will not hold the Municipality liable in any way for the Municipality failing to negotiate the reimbursement described herein in full or in part for any reason whatsoever including but not limited to oversight, changes in Municipal staff, or differing opinions on whether or the extent to which the works benefit other lands [emphasis added].

The Municipality's only obligation to the third party is one of good faith. The present development has 160 feet of frontage on Kitchener Ave. By the calculations noted in that agreement, it would be responsible for 18.18% of the Kitchener Ave and Centre St costs, or \$67,713.32. Staff has looked more closely however at the cost estimates for the Kitchener Ave development, and there is a breakdown of the costs for the works "external" to their lands (those that benefit others). The current application's lands extend from Main St to the third party's lands, one side (50%) of the street for the full length of the portion "external" to the third party's lands. This would suggest a reasonable share of the cost to reconstruct the portion of Kitchener Ave adjacent to this site would be \$51,393.53. In addition, 18.18% of the \$50,000 the third party paid towards Centre Street construction would be another \$9090.00, a total of \$59,090.00.

The applicant's planning consultant has provided an explanation of the amount they are willing to pay:

It is acknowledged that our client is required to "contribute an amount to be approved by Council representing a fair share of the costs of the recent construction of Kitchener Avenue and Centre Street", as per the conditions set out in the approved Minor Variances for the subject lands. In terms of Kitchener Avenue improvements, our client has completed its own Engineering study on the infrastructure costs (see drawing attached). As it relates to the contribution for infrastructure already built, underneath Kitchener Avenue, the proposed development only benefits from sanitary sewer and water; it is not benefitting from storm, hydro, or gas services. The distance required for water connection is approximately 8 metres from the main and approximately 10 metres for sanitary. The proposed development will access hydro and gas from Main Street at a cost in excess of \$100,000.00 for hydro.

Based on the above, our client believes it is fair to offer \$4,000.00 towards contribution to existing infrastructure on Kitchener.

Staff seeks Council's direction with respect to what this amount should be but notes several things. The third party had to complete this work in support of their development regardless of what benefiting properties may or may not do. The applicants were not a signatory to that agreement. The applicants will be making use of the actual road as well as sanitary and water, but it is not so much the existing infrastructure that this site plan will make use of. Rather, it is the fact that if Kitchener Ave not already been reconstructed by others, the current developers would be responsible at its own cost for bringing the street adjacent to their lands up to urban standard, as a condition of the current site plan approval.

Parking: The Zoning By-law requires 44 parking spaces for the uses proposed by the development, and the site plan provides 44 parking spaces. Requirements are calculated as follows:

- Commercial: 407m² of retail space at 1 space/37m² gross floor area = 11 spaces
- Residential: 22 apartments at 1.5 spaces per multiple dwelling unit = 33 spaces
- Total required spaces: 11 + 33 = 44 parking spaces

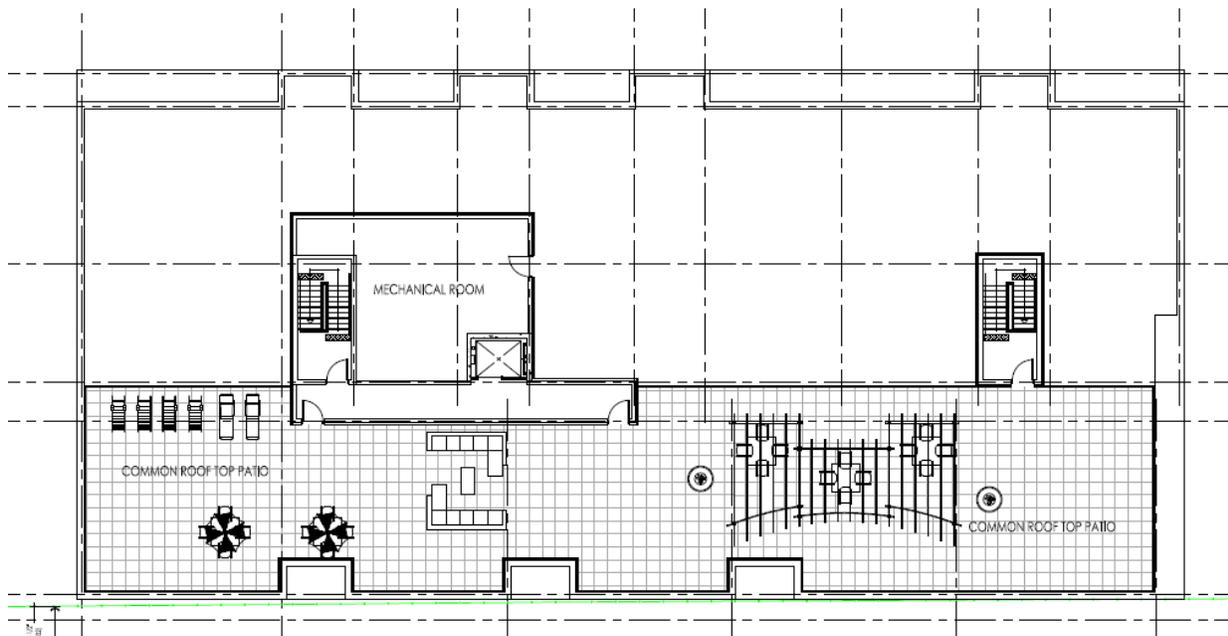
Staff notes that 5 of the parking spaces are tandem, meaning one has to pass through another parking space (and possibly move a vehicle) to get to it. The Zoning By-law is silent with respect to the use of tandem spaces, however the site provides 39 direct access spaces, enough to meet the commercial parking requirements and provide each dwelling unit with at least one direct access parking space. As noted on the site plan drawings, tandem spaces will be assigned to the same apartment as the space one has to pass over to get them. In this way, if a vehicle needs to be moved, it is a vehicle of an occupant of the same apartment. In this way it would be similar to a household in a single detached dwelling with multiple vehicles parked in a single-wide driveway.

In earlier concepts for developing the lands (before the applicant acquired 2 Kitchener Ave), they proposed lift systems for stacked parking. Staff is concerned about safety standards, long-term maintenance, and the practicality and reliability of using such units. While Staff does not object to the applicants using such units if they can find a lift suitable (and legal) for use in this application, Staff is not supportive of counting lifts as parking spaces for the purpose of satisfying zoning requirements. The applicant has revised the site plan to provide all the required parking at grade, but the draft agreement does contain a provision allowing use of lifts, should the applicants choose to do so in addition to already having satisfied parking requirements (section 4 a).

Height: The Official Plan sets a height limit of "generally" 3 storeys for downtown Grand Bend. The proposed building complies with this. The maximum permitted height in the C10 Zone is 10m (32.8 feet), which allows 3 storeys. The applicants obtained a minor variance to allow 11.7m (38.4 feet) in order to allow additional ceiling height, not an additional floor, and the use of a car lift system for stacked parking. The initial building plans had a main floor ceiling of 15 feet for the type of car lifts proposed at that time and

an overall building height of 38.3 feet. With the removal of the original car lift proposal, the applicant has lowered the height to 13 feet on the main floor and 36.3 feet overall. This would potentially allow the use of alternate car lift technology as noted above. Section 3.16 exempts certain features from height; the minor variance clarified/allowed the mechanical rooms, stairwells, and features associated with a roof top patio on the roof as in the plans submitted.

Roof-top Patio: A portion of the roof would be developed as an outdoor amenity area with sitting areas and structures for protection from the sun. The layout of the roof top patio is shown in the architectural plans that are to be attached to the agreement. It is located at the side of the building facing Main St, away from residential areas further north. A provision in the agreement requires that the owner take steps to restrict access to the roof top areas to building residents only and to limit activities to passive recreation. The owner is required to post contact information on site in event of emergency or nuisance situations, and more particularly, to post noise by-law and prohibited activity notices in the roof-top area (sections 3 i) to k).

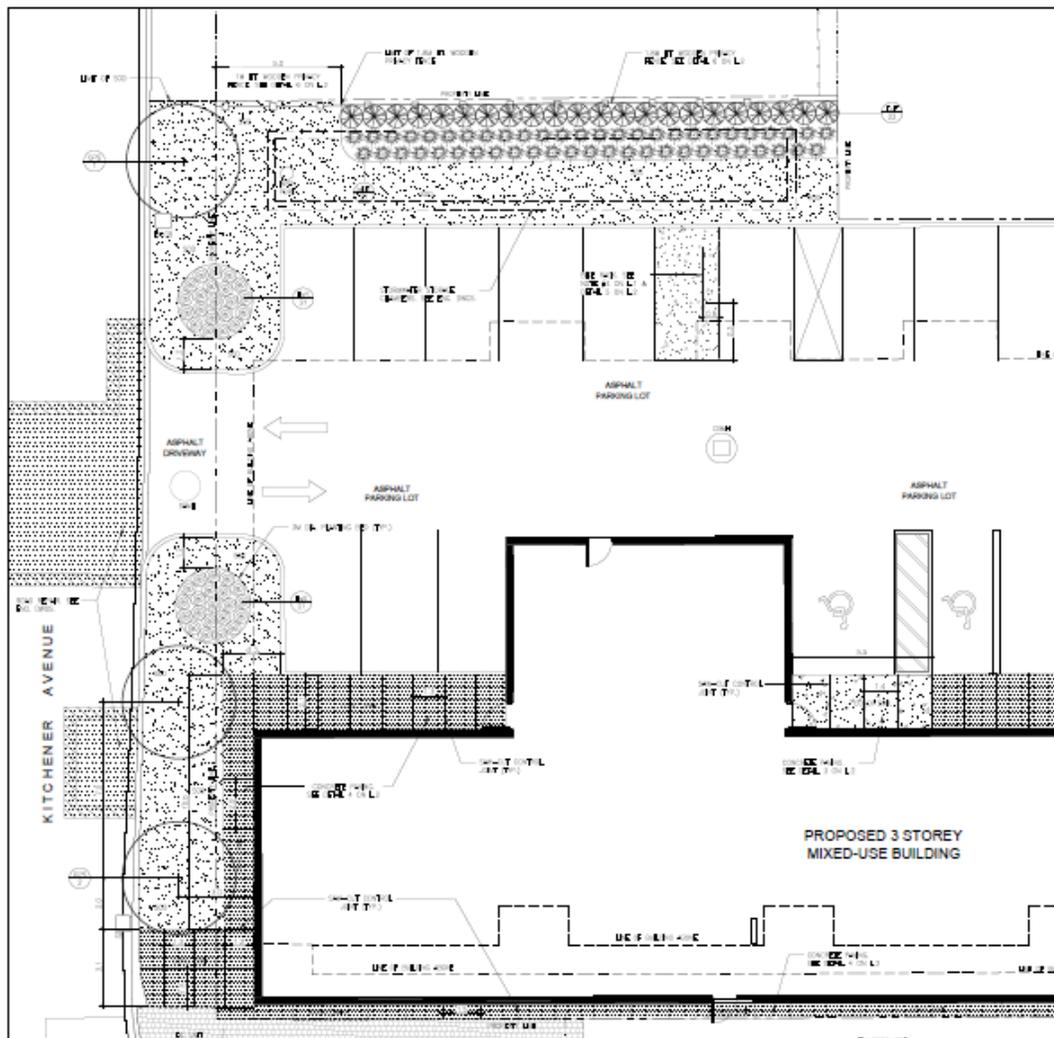


Services: The applicants have provided a servicing report respecting storm water management and expected water and sanitary service needs in comparison with the estimated actual use of the previous uses. Community Services Staff have reviewed the report. Staff have determined that the sanitary sewage collection and treatment system is able to accommodate the proposed development (section 4 h). Stormwater will be directed to an underground infiltration chamber under the parking lot.

Hydro: The property has hydro lines along Main St. The Ontario Building Code requires setbacks based on voltage and swing allowance. The upper floors are stepped back from the hydro lines. The applicant has designed the building in consultation with Hydro One to determine their required setbacks (section 4 f).

Garbage: The proposal includes a garbage storage area within the main floor of the building. Staff has also included a provision in the draft agreement requiring that garbage be kept indoors until garbage day or the preceding evening (section 2 f).

Landscaping: The landscaping plan shows a solid board fence, cedar hedge and ornamental grass along the north lot line. The applicant would also plant boulevard trees and ornamental grasses along the Kitchener Ave boulevard/property line. As the landscaping plan and photometric plan have not been updated to reflect the acquisition of 2 Kitchener Ave, the agreement includes a note that the landscaping will be shifted to the north and an additional boulevard tree and street lighting added, as necessary (section 4 l).



Parkland Dedication: The Agreement also includes a provision for the payment of cash-in-lieu of parkland dedication in the amount of \$66,000.00 (section 8 d). The *Planning Act* permits the Municipality to take cash-in-lieu of parkland dedication at a rate of 2% of the pre-development value of the land for commercial development and 5% for residential. Section 42(1) of the *Planning Act* also allows the Municipality to take park

dedication as a condition of development or redevelopment of an existing lot, but only where the Municipality has passed a by-law allowing such. The Municipality has in the past passed a site-specific parkland dedication by-law for major site redevelopments such as this.

A By-law for the collection of \$66,000 cash-in-lieu of parkland dedication is included in the By-laws section of Council's agenda. The amount is based on what the applicant has paid for the properties. The development consists of 1 commercial floor and 2 residential floors. The cash-in-lieu payment on 9, 11, 13, and 15 Main St is therefore based on charging the 2% commercial rate on one third of the value of those 4 parcels and the 5% residential rate on two thirds the value. 2 Kitchener Ave is strictly used for surface parking, so its cash-in-lieu payment is based on charging the 2% commercial rate on the full value of that parcel.

Lot Mergers: The proposed development occupies 5 properties that will need to be merged. For 9 and 11 Main St to merge, the Municipality will need to accept a thin road widening to break the effect of a previous consent that created those lots. It will need to be dedicated as part of the road by by-law. A reference plan for this already exists from the previous owner. 2 Kitchener Ave will require a deeming by-law be passed pursuant to Section 50(4) of the Planning Act. 13 and 15 Main St have previously had such a deeming by-law passed. These requirements will be at the applicant's cost (section 4 g). The required legal deposit has been doubled for this reason (section 8 b).

Previous Agreement: the Municipality approved a site plan agreement May 28, 2019 with a previous owner of 9 and 11 Main St for the development of those lots. The development never proceeded. This agreement would rescind all previous agreements.

Draft Site Plan Agreement: Staff has prepared a Site Plan Agreement for Council's consideration which is attached to the By-laws section of the agenda. The agreement contains the standard site plan agreement provisions as well as provisions unique to this development as noted above. It also contained provisions related to development in Grand Bend (see sections 4 b) to e):

- Restrictions on road and sidewalk closures from May 15 to September 5
- Requirements to comply with Municipal Noise By-laws, provide the Municipality with contact numbers for emergencies and complaints, and take measures to prevent activities that could be a public nuisance.
- Provisions for pedestrian safety

Summary: Staff has prepared by-laws to authorize the collection of cash-in-lieu of parkland dedication and for the clerk and mayor to execute the site plan agreement as drafted. Staff has no objection to Council's approval of the site plan agreement as drafted. Staff is satisfied that the proposed development complies with applicable policies and regulations and addresses Municipal and public concerns subject to the provisions contained in the draft site plan agreement. Staff however requires Council's

direction regarding the amount the Applicant should pay towards the costs of Kitchener Ave's recent reconstruction adjacent to the subject lands.

ALTERNATIVES TO CONSIDER

None at this time.

RECOMMENDED ACTIONS

That Council:

- receive Report PL 40-2021;
- approve a By-law to collect a \$66,000.00 parkland dedication fee;
- give Staff direction on the amount of money the applicant must pay to a third party towards their recent reconstruction of Kitchener Ave;
- approve the draft site plan agreement; and
- approve a By-law to authorize the execution of the site plan agreement subject to the insertion of the amount Council determines is payable respecting Kitchener Ave's recent reconstruction.

FINANCIAL IMPACT

The Developer has paid a Site Plan Application fee of \$2,000.00.

The Site Plan Agreement requires the Developer to provide to the Municipality:

- an engineering review deposit of \$4000.00
- a legal fee deposit of \$2000.00;
- a cash-in-lieu parkland dedication fee of \$66,000.00; and
- a security deposit equal to the value of any works being done on the Municipal road allowances.

CONSULTATION

John Knifton (Agent) and Harry Froussios (Planning Consultant) for Applicants
Steve McAuley, Director, Community Services Department
Nick Verhoeven, Engineering Specialist, Community Services Department

Attachment 1 – Subject Lands



Subject Lands