

A G E N D A

THE THIRD MEETING OF THE COMMITTEE OF ADJUSTMENT OF THE CITY OF ST. THOMAS 2026

VIA ZOOM/ROOM # 304

10:00 A.M.

FEBRUARY 26th, 2026

DISCLOSURE OF INTEREST

MINUTES

Confirmation of the minutes of the meeting held on February 12, 2026.

HEARING OF APPLICATIONS

A02-26 – 232 Elm Street **Pages 2-15**

Planning Report – A02-26 **Pages 16-25**

NEW BUSINESS

Next Meeting

To Be Determined.

ADJOURNMENT

CONFIRMATION OF AN APPLICATION FOR MINOR VARIANCE

January 23, 2026

Secretary-Treasurer, Committee of Adjustment
Attention: Sherry Steadman

Pursuant to By-Law 30-2015, a consultation meeting was held on December 17, 2025, with city staff and the applicant.

An application for a minor variance, regarding 232 Elm Street, was filed on January 23, 2026, and the required fee under Section 69 of the Planning Act has been provided.

Please contact the Planning & Building Services Department if you have any questions.

Yours truly,



Michelle Knieriem, MCIP, RPP
Manager of Planning Services



Clear Form

CORPORATION OF THE CITY OF ST THOMAS

COMMITTEE OF ADJUSTMENT

APPLICATION FOR MINOR VARIANCE OR FOR PERMISSION

(Section 45 of the Planning Act, RSO, 1990, as amended)

OFFICE USE:	Date Application Received: <u>Jan 23/26</u>	Consultation Date: <u>December 17, 2025</u>
	Date Application Deemed Complete: <u>Jan 23/26</u>	

Application #: A02-26

APPLICATION IS HEREBY MADE TO:

City of St. Thomas Committee of Adjustment Meeting February 26 2026
 545 Talbot Street
 St. Thomas ON N5P 3V7
 Tel: (519) 631-1680 ext 4138 Fax: (519) 633-9019
 Email: ssteadman@stthomas.ca

Please note that in accordance with By-Law 30-2015, consultation with the Planning and Building Services Department must take place prior to the submission of an application. After consultation, the application will be filed with the Assistant Secretary-Treasurer, together with the sketch referred to in Note 1 and \$900 made payable to the City of St. Thomas. All information and materials submitted for the application shall be made available to the public, as indicated by Section 1.0.1 of the Planning Act, R.S.O. 1990.

Personal information contained on this form is collected under the authority of the Planning Act, R.S.O. 1990, as amended, and Ontario Regulation 200/96 and will be used for the purpose of processing this application.

1. Name of Owner(s) The Elm by Koko Moa Living Inc. (Liam DeAth & Malachi DeAth)
 Address 1094 Derry Road, Burlington ON
Liam (289) 208-7775 liam@de-aths.com Malachi (905) 577-7474 malachi@de-aths.com
 Postal Code L7P 0E2 Tel: see above e-mail: see above
2. Name of Authorized Agent (if any) Braxx Inc. and Strano Property Management (SPM)
 Address 1 Bathurst Street, London ON
Dave Strano (owner) 519-878-3410 dave@braxx.ca
 Postal Code N6B 3R2 Tel: 519-601-6799 e-mail: savannah@braxx.ca

Note: Please specify to whom all communications should be sent: Owner ☒ Agent ☒

3. Nature and extent of relief from the Zoning By-law applied for:
To permit 25 (0.96 PDU) parking spaces, Zoning By-law requires a minimum 30
(1.25 PDU) parking spaces.
4. Reason why the proposed use cannot comply with the provisions of the Zoning By-law:
To preserve the existing mature trees and green space, which contribute positively to the
character and aesthetics of the property and surrounding neighbourhood.
5. Location of Land:
 Concession No. _____ Lot(s) 4,5,6 and 7, part Registered Plan No. 65 Lot(s) _____
 Reference Plan No. PLAN 65 BLK 62 LOTS 4-7 A Part(s) _____

Geographic/Former Township St Thomas

Name of Street Elm Street

Street No. 232

6. Dimensions of land affected:

Frontage 74.5m Depth 33.7m

Area 2509.05 sq m Width of Street 13m

7. Access to the subject land is by:

- ☐ a Regional Road ☐ a private road
- ☒ a Municipal road that is maintained all year
- ☐ a Municipal road that is maintained seasonally

8. Particulars of all buildings and structures on or proposed for the subject land (Specify ground floor area, gross floor area, number of storeys, width, length, height). Please specify use of existing structures.

Existing:

C

USE Apartment (23 Dwelling Units)

Proposed:

See attached plans accompanying the application

9. Location of all buildings and structures on or proposed for the subject land (Specify distance from side, rear and front lot lines). Please specify use of proposed structure.

Existing:

See attached plans accompanying the application.

Proposed:

Adding a 24th unit. See attached plans accompanying the application

USE

10. Date of acquisition of subject land: August 7th, 2025

11. Date of construction of all buildings and structures on subject land: 1954

Substantial interior and building system renovations completed circa 2024–2025.

12. Existing uses of the subject land:

Residential Apartment (23 Dwelling Units).

13. Existing uses of abutting lands:

North: Residential East: Doctors Office (commercial)

South: Hospital (commercial) West: Doctors Office (commercial)

14. Length of time the existing uses of the subject land have continued:

1954

15. Services available (check appropriate space or spaces):

Water:

☒ Municipally owned and operated Other (Specify) _____
 piped water system

Sewage Disposal:

☒ Municipally owned and operated Other (Specify) _____
 sanitary sewer system

Storm Drainage

☒ Storm sewers Other (Specify) _____

16. Present Official Plan designation of the subject land:

Residential Designation

17. Present Zoning of the subject land:

Fifth Residential Zone – R5

18. Has the owner previously applied for relief (minor variance) under Section 45 of the Act in respect of the subject property?

yes ☐ no ☒

If the answer is yes, describe briefly (and if known, quote Application #)

19. Is the subject property the subject of a current application for a consent under Section 53 or a plan of subdivision under Section 51 of the Planning Act, 1990?

yes ☐ no ☒ If so, state Application # and status _____

APPLICANT DECLARATION

By making this application, permission is hereby granted to any Municipal staff members and Municipal Planning Consultant to enter upon the premises described in this application at a reasonable time for the purpose of inspecting the property in relation to the proposed application and for distributing information concerning the same. This information is being collected pursuant to the Planning Act, Municipal Act, and Freedom of Information Act. The information contained herein will be distributed to bodies and agencies prescribed by legislation and regulation and also to interested parties.

If this application is signed by an agent or solicitor on behalf of an applicant, the owner's written authorization must accompany the application (**Appendix A**). If the applicant is a corporation acting without an agent or solicitor, the application must be signed by an officer of the corporation and the corporation's seal (if any) must be affixed.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Application information is collected under the authority of the Planning Act, R.S.O. 1990, c.P.13. In accordance with that Act, it is the policy of the City of St. Thomas to provide public access to all Planning Act applications and supporting documentation submitted to the City.

I Malachi Death & Liam Death, the Owner or Authorized Agent, hereby agree and acknowledge
(Print name of Owner or Authorized Agent)
that the information contained in this application and any documentation, including reports, studies and drawings, provided in support of the application, by myself, my agents, consultants and solicitors, constitutes public information and will become part of the public record. As such, and in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M. 56, I hereby consent to the City of St. Thomas making this application and its supporting documentation available to the general public, including copying and disclosing the application and its supporting documentation to any third party upon their request.

Collection of Personal Information:

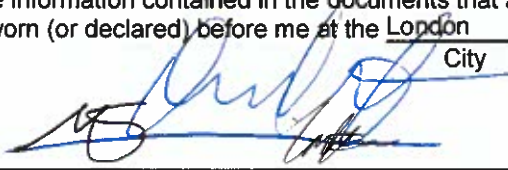
Personal information on this form is collected under the authority of Section 41 of the *Planning Act*, R.S.O. 1990 and Sections 8 (1) and 10 of the *Municipal Act*, 2001, as amended, and will be used to contact the owner, applicant and/or agent regarding the Committee of Adjustment Application. Questions about this collection should be directed to the City Clerk, 545 Talbot Street, St. Thomas, Ontario, N5P 2T9 (519) 631-1680.

AFFIDAVIT OR SWORN DECLARATION

I, Dave Strano of London in the province of Ontario,
name of applicant City

make oath and say (or solemnly declare) that the information required under Schedule 1 of Ontario Regulation 545/06 and provided by the applicant in this application is accurate, and that the information contained in the documents that accompany this application is accurate.

Sworn (or declared) before me at the London on this 14 day of January, 2026.
City Day Month Year



Signature of Owner or Authorized Agent

Jan 14th, 2026 Jan 23/2026
Date



Signature of Commissioner of Oaths, etc.

Jan 23/26
Date

APPENDIX A – AUTHORIZATION OF OWNER

If the applicant is not the owner of the subject lands, please complete the owner authorization concerning personal information as set out below.

I, Malachi Death & Liam Death, am the owner of the subject lands, and I authorize Braxx Inc. & Strano Property Manag, to act on our behalf as the agent for the submissions required for all matters relating to the subject lands, and to provide any of my personal information that will be included in this application or collected during the planning process.

Jan 14th, 2026

Date



Signature of Owner

APPENDIX B – ACKNOWLEDGEMENT OF LEGAL AND PLANNING FEES

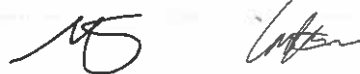
In addition to the application fees listed in this application package, please note that where the City requires assistance from its solicitors or other technical or professional consultants in the processing of this application, the applicant shall be responsible for reimbursing all fees incurred by the City.

***Please note, Appendix B must be completed by the owner, not the authorized agent.**

I, Malachi Death & Liam Death, am the owner of the subject lands, and I understand that further fees may be incurred by the City throughout the planning process and that I am responsible for reimbursing all fees.

Jan 14th, 2026

Date



Signature of Owner

NOTES:

1. Each copy of this application must be accompanied by a Sketch. The Sketch need not necessarily be to scale, but dimensions must be accurate, and showing the following:
 - (a) The boundaries and dimensions of the subject land;
 - (b) The location, size and type of all existing and proposed buildings and structures on the subject land, indicating the distance of the buildings or structures from the front yard lot line, rear yard lot line and the side yard lot lines;
 - (c) The approximate location of all natural and artificial features on the subject land and on land that is adjacent to the subject land that, in the opinion of the applicant, may affect the application. Examples include buildings, driveways, swimming pools, roads, railways, drainage ditches, wells, septic tank and tile bed, and trees;
 - (d) The current uses on land that is adjacent to the subject land;
 - (e) The location, width and name of any roads within or abutting the subject land, indicating whether it is an unopened road allowance, a public traveled road, a private road or a right-of-way;
 - (f) If access to the subject land is by water only, the location of the parking and docking facilities to be used;
 - (g) The location and nature of any restrictive covenant or easement affecting the subject land;
2. The Committee of Adjustment may require that a preliminary drawing be prepared, signed and dated by an Ontario Land Surveyor.
3. If this application is signed by an agent or solicitor on behalf of an applicant, the owner's written authorization must accompany the application. If the applicant is a corporation acting without agent or solicitor, the application must be signed by an officer of the corporation and the corporation's seal (if any) must be affixed.

Planning and Building Services Department
City of St. Thomas
545 Talbot Street
St. Thomas, ON N5P 3V7

January 15, 2026

232 Elm Street Apartment, St. Thomas – Engineering Letter

Koko Moa Living Inc. has retained co-elevate to conduct an engineering review in support of a parking reduction minor variance application for a single additional dwelling unit for the existing apartment complex located at 232 Elm Street in St. Thomas, Ontario.

Existing Conditions

Based on the existing conditions, the subject site is comprised of an existing 23-unit apartment building with associated parking, drive aisles and green amenity space to the west. The green amenity area provides opportunity for raised garden beds, a gazebo BBQ area, and picnic tables for residents.

Stormwater Management

From a stormwater management perspective, the existing landscaped area provides meaningful infiltration, evapotranspiration, and runoff attenuation. Converting this area to hard surface parking will increase impervious cover, resulting in higher peak runoff rates, reduced groundwater recharge, and increased loading on downstream storm infrastructure.

According to the City of St. Thomas DGM, converting the area of 177 m² of open space (Runoff Coefficient C=0.25) to asphalt parking (Runoff Coefficient C=0.9) would increase the AC from 44 to 159. Using the City of St. Thomas IDF curves, this will result in an increase in 3,790 L of additional run-off under the 2-year storm event and 8,260 L of additional excess run-off under the 100-year storm. This would be the increase in downstream run-off for each storm event.

City of St. Thomas - Parameters for Intensity Duration Frequency Curves

Return Period	2 yr	5 yr	10 yr	25 yr	50 yr	100 yr
A	23.600	31.100	36.000	42.300	46.900	51.500
B	-0.699	-0.699	-0.699	-0.699	-0.699	-0.699

The landscaped area also contributes to low impact development (LID) objectives and aligns with current municipal and provincial policies that encourage green infrastructure, climate resilience, and reduced reliance on conventional piped systems. Removing this area would be counter to these objectives and diminish the site's ability to manage stormwater sustainably, particularly during more frequent extreme rainfall events.

Existing Parking

The subject property has operated successfully for well over a decade with 24 on-site parking spaces serving both residents and visitors, without giving rise to operational, safety, or neighbourhood compatibility concerns. Through reorganization of the existing parking area to reflect current dimensional standards, the site can formally and safely accommodate 25 on-site parking spaces which is more than sufficient to accommodate the needs of the site.

We trust that you will find this satisfactory. If you should have any questions or require additional information, please do not hesitate to contact the undersigned.

co-elevate,



Robert Johnston, P. Eng.
Senior Engineer



[illegible]

SECOND FLOOR
530 SF

GROSS AREA PLAN - SECOND FLOOR
2,726 - 1'-0"

MAIN FLOOR
530 SF

GROSS AREA PLAN - MAIN FLOOR
3,216 - 1'-0"

BASEMENT
530 SF

GROSS AREA PLAN - BASEMENT
3,289 - 1'-0"

EXISTING
400 SF

PROPOSED BACHELOR UNIT
318 SF

PROPOSED MECHANICAL SUITE
340 SF

PROPOSED EXIST. UNIT RENOV.
362 SF

PUBLIC CORR.
28 SF

PROPOSED BASEMENT AREA PLAN
3,788 - 1'-0"

Directed to: Members of the Committee of Adjustment

Meeting Date: 02/26/2026

Department: Planning & Building Services Department

Prepared by: Steve Craig, Senior Planning Technician

Attachment: Location Plan,
Aerial Photograph (2020),
Parking and Preservation of
Green Space Letter and
Legal Correspondence,
Cardinal Law

Location: 232 Elm Street, City of St. Thomas

Applicant: The Elm by Koko Moa Living Inc.

Subject: Request for a minor variance pursuant to Section 45(1) of the Planning Act, R.S.O.

Recommendation:

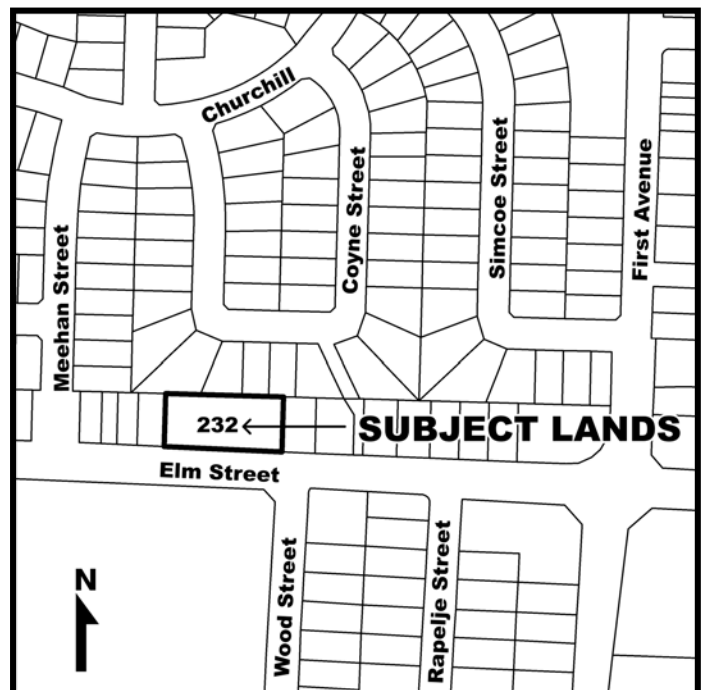
That: Report COA2-2026 relating to an application for a minor variance at 232 Elm Street be received for information.

Background:

Minor Variance Application COA2-2026 has been filed for the purpose of facilitating the conversion of part of the basement in the existing twenty-four (24) dwelling unit apartment building into one (1) bachelor dwelling unit, for a total of twenty-five (25) dwelling units, as shown on the plans accompanying the application.

Requested Variance:

To permit a minimum of 1 parking space per dwelling unit for an apartment dwelling (total of 25 parking spaces), whereas Table 1 to Subsection 9.4, Column No. (4), Item No. 14. of the Zoning By-law requires a minimum of 1.25 parking spaces per dwelling unit (total of 32 parking spaces).



Provincial Planning Statement, 2024 (PPS):

- The Provincial Planning Statement (PPS 2024) provides directions on matters of Provincial interest related to land use planning and development.
- Decisions by planning authorities (i.e., Committee of Adjustment) that require approval under the Planning Act must be consistent with the PPS.
- The proposed development is consistent with the policies of the PPS with respect to:
 - ✓ Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected needs of current and future residents of the regional market area by permitting and facilitating all types of residential intensification (2.2 Housing).
 - ✓ Settlement areas shall be the focus of growth and development, and land use patterns should be based on densities and a mix of land uses which: efficiently use land and resources (2.3.1 General Policies for Settlement Areas).
- The requested variance is consistent with the Provincial Planning Statement (PPS 2024).

St. Thomas Official Plan:

- The subject lands are within the Residential designation, as shown on Schedule A (Land Use Plan) to the Official Plan for the City of St. Thomas.
- The Goals (5.1.2) of the Residential designation include:
 - ✓ To maintain and/or improve the present quality of residential areas in the City (5.1.2(i));
 - ✓ to encourage the provision of housing that is affordable to moderate- and lower-income households on a City-wide basis (5.1.2(v)); and
 - ✓ to encourage residential intensification, infill and redevelopment activity in the City to provide appropriate housing for families, seniors and other special needs groups (5.1.2(viii)).
- The Residential designation means the predominant use of land shall be for low, medium, and high-density residential use (5.1.3.1 Residential).
- High density residential use shall mean a residential use of greater than seventy-five (75) residential dwelling units per net hectare. The main permitted uses shall be apartments or other forms of multiple dwellings exceeding four storeys in height. The addition of one (1) bachelor dwelling unit will increase density on the site to 100 dwelling units net per hectare, which does not exceed the maximum permitted density of 250 units per net hectare (5.1.3.4).
- The Housing (6.1) policies of the Official Plan provide:
 - ✓ Council will attempt to ensure that there is an adequate provision of a variety of dwelling and tenure types at affordable prices in St. Thomas (6.2.1); and
 - ✓ Council shall recognize both infilling of vacant land and the intensification or redevelopment of existing buildings as potential contributors to the City's future housing stock (6.2.16).
- The requested variance is in conformity with the general intent and purpose of the Official Plan.

St. Thomas Zoning By-Law 50-88:

- The subject lands are within the Fifth Residential Zone (R5), Zoning Map 21, in accordance with the City of St. Thomas Zoning By-Law 50-88, as amended.
- Permitted uses of the R5 zone include an apartment dwelling (1.1(b)). Apartment dwelling means a building containing three or more dwelling units, each of which has an entrance through a common hall, common vestibule or other common entrance (1.24).
- The applicable zoning regulations for an apartment dwelling include (Table 1 to Subsection 9.4, Column No. (4)):
 - ✓ Maximum number of dwelling units - 250 dwelling units per hectare (*Conforms, proposed 25 dwelling units / 0.25 hectares = 100 dwelling units per hectare*).
 - ✓ Minimum dwelling unit floor area bachelor - 28sqm (*Conforms, proposed bachelor dwelling unit 35sqm*).
 - ✓ Minimum number of parking spaces – 1.25 per dwelling unit (Minor variance, 1 parking space per dwelling unit).
- The requested variance is in conformity with the general intent and purpose of the Zoning By-law.



Legislative Framework for a Minor Variance (Four (4) Tests):

In considering this application, the Committee shall have regard to the following criteria and determine whether the:

- general intent and purpose of the Official Plan will be maintained;
- general intent and purpose of the Zoning By-law will be maintained;
- variance is desirable for the appropriate development or use of the land, building or structure; and
- the requested variance is minor in nature.

Comments:

- City records confirm that a building permit was issued for the existing apartment building in 1953, which predates the current City of St. Thomas Zoning By-Law 1988 (April 18, 1988) and the former City of St. Thomas Zoning By-law 68-63 (March 8, 1966).
- An approved site plan was not found in City records to confirm the number of dwelling units or parking spaces at the time the building permit was issued in 1953.
- Based on the age (73 years) of the existing apartment building it's reasonable to concede that the existing parking deficiency (1 per dwelling unit) is legal non-complying.
- Aside from requested variance to resolve the parking deficiency, the addition of one (1) bachelor dwelling unit in the existing apartment building conforms with the City's Zoning By-law.
- In support of the minor variance application the applicants obtained the services of a qualified professional (co-elevate engineering group) to conduct a parking review.
- According to the letter prepared by co-elevate engineering group the subject property has operated successfully for well over a decade with twenty-four (24) on-site parking spaces serving both residents and visitors, without giving rise to operational safety, or neighbourhood compatibility concerns. Through reorganization of the existing parking area to reflect current dimensional standards, the site can formally and safely accommodate twenty-five (25) on-site parking spaces which is more than sufficient to accommodate the needs of the site.
- While there is sufficient area on the west side of the existing apartment building to construct an additional seven (7) parking spaces, in conformity with the Zoning By-law the applicants are proposing to maintain the area as an outdoor amenity space for the tenants of the building.
- Accompanying the planning report is a letter from the applicants/owners, Parking and Preservation of Green Space Letter, December 17, 2025, in support of establishing and maintaining the outdoor amenity area.
- Since purchasing the property in 2025, the applicants have made several improvements to the site, including exterior/interior renovations to the existing apartment building and reconfiguring the parking lot, which resulted in an increase of one (1) parking space, for a total of 25 parking spaces.

- Approval of the variance would provide confirmation of the legal non-complying status of the existing parking deficiency (1 per dwelling unit), and the additional parking space that was created through the reconfiguration of the parking lot can be used to accommodate the new bachelor dwelling unit.
- Through the consultation process, City staff questioned the legal status (separate conveyable lot?) of the grass area on the west side of the existing apartment building.
- Accompanying the planning report is correspondence from the applicant's solicitor, Cardinal Law, dated January 12, 2026, indicating that this area (existing grassed area) cannot be conveyed separately without a severance under the Planning Act (i.e. approval of a consent/severance application through the Committee of Adjustment).
- If additional tenant/guest parking is required in the future for the ongoing operation of the existing apartment building the owner(s) of the subject lands will have the option to convert part of the outdoor amenity area into additional parking.
- Based on the legal opinion of Cardinal Law, any future conveyance of the existing grass area will require the approval of a consent application through the Committee of Adjustment, at which time the applicant(s) would be required to demonstrate that off-street parking for both the severed lot and retained lot are adequate, based on the specific details of the proposal.
- In Staff's opinion the requested variance meets the general intent and purpose of the Official Plan, Zoning By-law, is minor in nature, and is desirable and appropriate for the use of the lands, thereby satisfying the four tests, as set out in Section 45 of the Planning Act. Planning staff recommend that Minor Variance application COA2/2026 be approved.

Respectfully submitted,

Steve Craig,

Sr. Planning Technician

Dec 17, 2025

Re: 232 Elm Street, St. Thomas – Parking and Preservation of Green Space

Dear Mr. Craig,

We are writing in support of our minor variance application for 232 Elm Street to explain why we are seeking to maintain the existing green space on the site rather than converting it into additional parking.

The building has operated successfully for well over a decade with 24 on-site parking spaces serving residents and visitors, without creating operational or neighbourhood issues. By repainting and organizing the parking layout to meet current dimensional standards, we have been able to formalize and safely accommodate 25 parking spaces on site. This modest improvement means that, in conjunction with the addition of one new residential unit, we are effectively adding one new parking stall for one new bachelor unit, and the functional operation of the site remains unchanged.

Our intention is to modestly increase the local housing supply while preserving a high-quality landscaped amenity area for current and future tenants. The existing green space provides meaningful day-to-day benefits: opportunities for residents to spend time outdoors, space for informal seating and light recreation, and an attractive setting that supports mental well-being and a sense of community. The area is programmed to function as an outdoor extension of the living environment, with features such as in-unit laundry reducing demand for common utility space, and the flexibility to accommodate elements like raised garden beds, a gazebo and BBQ area, picnic tables, and a defined pet relief area over time as the site continues to be improved.

Landscaped open spaces contribute to more livable, healthy environments by mitigating heat, improving stormwater infiltration, and enhancing overall neighbourhood character. Paving this green area for additional parking would significantly diminish these benefits without meaningfully improving site operations, given the building's long history of functioning adequately with essentially the same parking supply. Maintaining the green space also aligns with contemporary planning objectives that seek to balance vehicle accommodation with quality outdoor amenity areas and more sustainable site design.

For these reasons, we respectfully request the City's support for our proposal to retain the existing green space as an amenity area while recognizing the updated supply of 25 properly dimensioned parking spaces as sufficient for the building's needs. We would be pleased to provide any further information or clarification that may assist in your review.

Thank you for your time and consideration.

Sincerely,

Malachi, Liam, and Sam DeAth

Founders

The Elm by Koko Moa Living Inc.

malachi@de-aths.com | liam@de-aths.com | sam@de-aths.com

Monday, January 12, 2026 at 8:40:49 AM Eastern Standard Time

Subject: FW: 232 Elm St. Inquiry about property severance
Date: Monday, January 12, 2026 at 8:40:48 AM Eastern Standard Time
From: Sam DeAth
To: Sam DeAth
Attachments: 11R1586 marked up.pdf

From: Shawn Quigg <shawn@cardinallaw.ca>
Date: Monday, January 12, 2026 at 8:00 AM
To: Sam DeAth <sam@de-aths.com>
Cc: Liam DeAth <liam@de-aths.com>, Dave Strano <dave@stranoproperties.ca>, Malachi DeAth <malachi@de-aths.com>
Subject: Re: 232 Elm St. Inquiry about property severance

Gentlemen, this is one of the more complex searches I've ever seen.

I have completed a focused review of title for PIN 35120-0111 (the “**Subject Lands**”) to address two issues:

1. Whether any portion of the Subject Lands is separately conveyable (i.e., whether individual lots can be sold or transferred without a severance), and
2. Whether there are any easements currently registered against the property.

Below is a summary of my findings and the applicable legal framework.

1. Conveyability of the Lots

The Subject Lands are made up of whole Lots 4, 5, 6, and 7, and part of Lot 3, all within Block 62, Plan 65. This distinction, between whole lots and part lots, is important under Ontario’s *Planning Act*. Generally, the *Planning Act* prohibits the conveyance of part of a property without consent from the local land division authority unless a statutory exemption applies. One commonly relied-upon exemption is found in section 50(3)(a), which allows for the conveyance of a whole lot or block on a registered plan of subdivision without consent, so long as there has been no merger with adjoining land and no prior *Planning Act* violations.

Although Lots 4-7 are whole lots, they are full occupied by the existing apartment building and are not practically severable or conveyable without significantly affecting the existing structure. As such, those lots are not relevant to the current conveyancing inquiry.

The area you have identified for potential conveyance and development is a grassy strip located along the western edge of the Subject Lands, as shown in the marked-up reference plan (Plan 11R-1586). This area lies entirely within Lot 3. The legal description confirms that this area forms only a portion of Lot 3, and is not a whole lot on Plan 65. The legal description also confirms that the area labelled “Part 1” on the plan is not owned by The Elm by Koko Moa Inc., and therefore not part of the Subject Lands. As such, the only potentially developable area in question is the grassy strip located within Lot 3.

Under the *Planning Act*, a portion of a lot, even where it is clearly delineated on a reference plan, cannot be conveyed on its own without consent. The exemption in section 50(3)(a) applies only to whole lots or blocks. Because the proposed conveyance involves only part of a lot, it is not eligible for the exemption under section 50(3)(a) of the *Planning Act*. A severance application under section 53 will be required in order to convey or otherwise deal with this portion of Lot 3.

2. The Status of Plan 65

The Subject Lands are laid out on Plan 65, which was deposited in 1872. Plan 65 shows a series of defined lots and blocks, including Lot 3 and Lots 4 to 7, within Block 62. For *Planning Act* purposes, the exemption under section 50(3)(a) applies only to the conveyance of whole lots or blocks on a registered plan of subdivision. As noted above, the area proposed to be conveyed is only a portion of Lot 3. Accordingly, the exemption does not apply, and a consent to sever under section 53 is required.

3. Easements

As part of the review, I examined instruments registered prior to July 1965 (i.e., 40 years before the property’s conversion into Land Titles in 2005), as well as all conveyances of the Subject Lands from 1965 through to the date of conversion. No easements were identified in these documents, and none are listed on the parcel register. However, I did not review charges (older mortgages may have contained easement clauses, particularly before 1984), abutting parcels (which could benefit from reciprocal or implied rights), or investigate potential prescriptive easements.

4. Recommendations and Next Steps

Because Lots 4 to 7 are fully occupied by the existing apartment building, they are not practically capable of being conveyed or severed, regardless of their technical status under the *Planning Act*. As a result, the conveyability analysis is primarily relevant to the portion of Lot 3 identified in the marked-up plan as the grassy area near the western boundary of the property. This area is only a part of Lot 3, and therefore cannot be conveyed separately without a severance under the *Planning Act*. I recommend proceeding with an application for consent to sever.

Holiday Notice: We're sneaking out for the holidays at noon on Dec 24. Back Jan 5... slightly more jolly. Wishing you and yours a safe and joyful holiday season!

**Shawn Quigg**

The REI's Lawyer

t. 613-935-5919

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Modern law for a changing world

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"CAUTION"

THIS PLAN IS NOT A PLAN
OF SUBDIVISION WITHIN THE
MEANING OF SECTION 29, 32
OR 33, OF THE PLANNING ACT.

I REQUIRE THIS PLAN TO BE
DEPOSITED UNDER PART II
OF THE REGISTRY ACT.
DATE - AUG. 10, 1978

Donald I. Houghton
DONALD I. HOUGHTON

RECEIVED AND DEPOSITED AS

PLAN IIR-1586

DATE - 11 Aug. 1978

Donald I. Houghton
DEPUTY LAND REGISTRAR

FOR THE REGISTRY DIVISION OF
ELGIN, No. II.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT -
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE
WITH THE SURVEYS ACT AND THE REGISTRY ACT AND THE
REGULATIONS MADE THEREUNDER.
2. THE SURVEY WAS COMPLETED ON THE 28TH. DAY OF JULY, 1978.

Donald I. Houghton
DONALD I. HOUGHTON
ONTARIO LAND SURVEYOR

AUG. 10, 1978
ST. THOMAS, ONT.

NOTES

ALL HANGING LINES SHOWN ON THIS PLAN HAVE BEEN VERIFIED.

- ⊕ - DENOTES 1" x 1" x 4'0" STANDARD IRON BAR
- ⦿ - DENOTES 3/4" ROUND IRON BAR
- FD. - DENOTES FOUND WIT. - DENOTES WITNESS

BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE SOUTH
LIMIT OF ELM ST (N 86° 40' 30" W) AS SHOWN ON PLAN D-1057,
REGISTERED IN THE LAND REGISTRY OFFICE FOR THE REGISTRY
DIVISION OF ELGIN, No. II.

SCHEDULE

PART	LOCATION	OWNER	INST. N°	AREA
1	PART OF LOT 3, BLOCK 62 R.P. 65	ACORN PROPERTY MANAGEMENT LIMITED.	187276	0.142 AC.
2	PART OF LOTS 3 AND 4 BLOCK 62, R.P. 65	ACORN PROPERTY MANAGEMENT LIMITED	187276	0.121 AC.

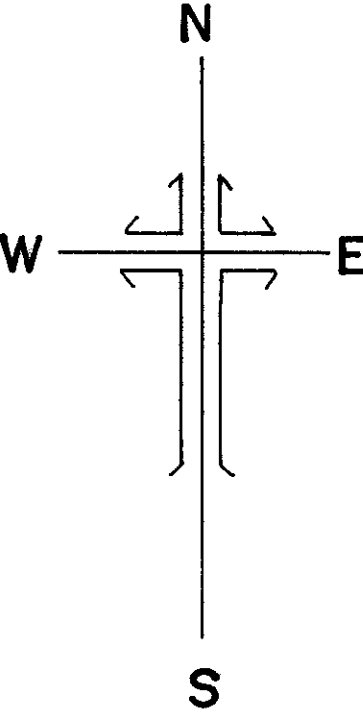
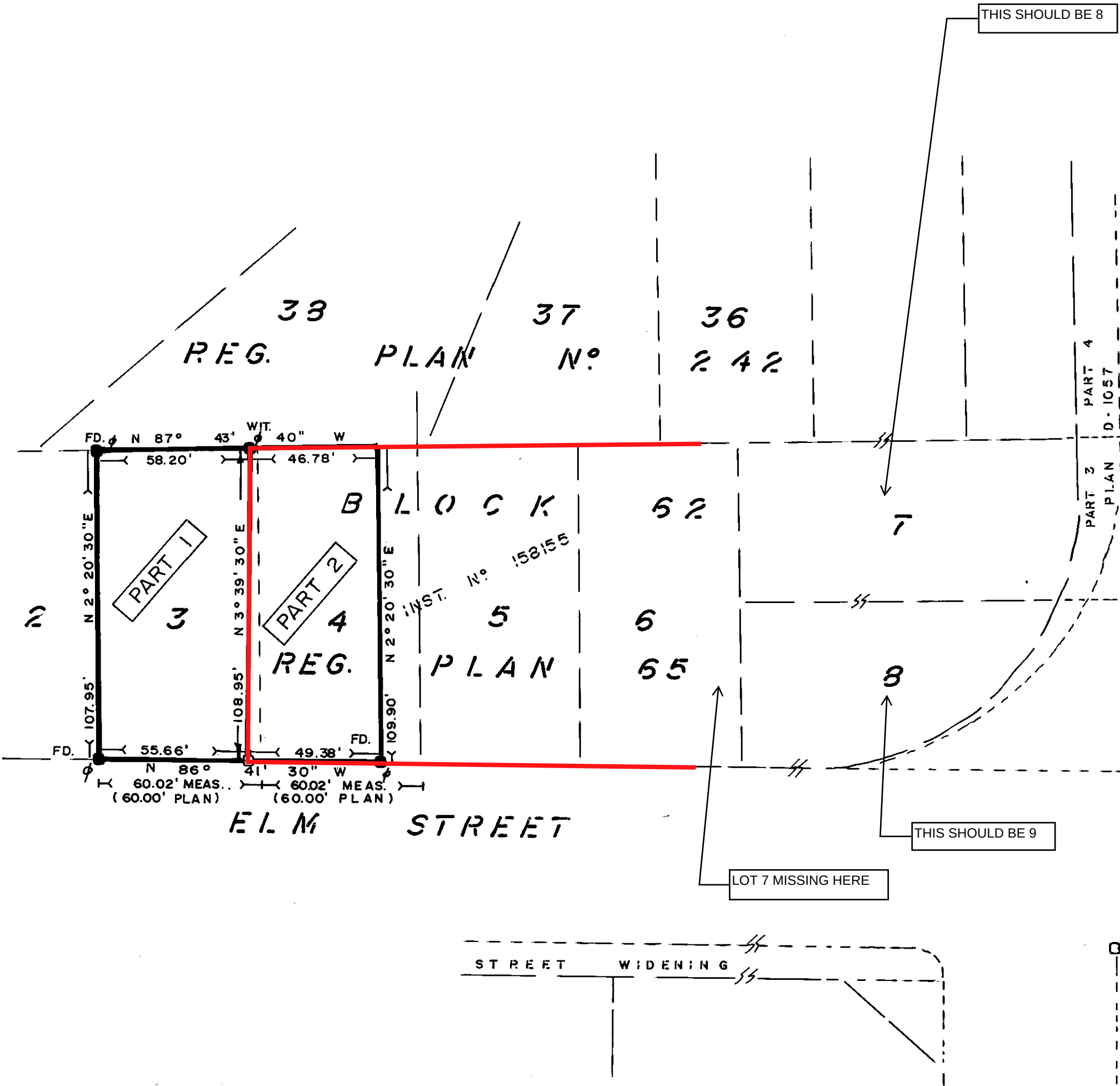
CITY OF ST. THOMAS

PLAN OF SURVEY OF PART OF
LOT 4 AND ALL OF LOT 3
BLOCK 62 - REG. PLAN 65
CITY OF ST. THOMAS
COUNTY OF ELGIN

SCALE 1" = 40'
1978

BELL, LEMON and HOUGHTON
ST. THOMAS, ONTARIO 634-24

G. GORDON



NO EASEMENTS NOTED
IN SCHEDULE RE: PART 2
(OR PART 1)

