

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** April 25, 2019

**CASE NO(S):** PL180711

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Joel Hughes  
Applicant: Mike Tzekas  
Subject: Consent  
Property Address/Description: 271 Beach Boulevard  
Municipality: City of Hamilton  
Municipal File No.: B-35/18  
LPAT Case No.: PL180711  
LPAT File No.: PL180711  
LPAT Case Name: Hughes v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Joel Hughes  
Applicant: Mike Tzekas  
Subject: Minor Variance  
Variance from By-law No.: 6593  
Property Address/Description: 271 Beach Boulevard  
Municipality: City of Hamilton  
Municipal File No.: A-92-18  
LPAT Case No.: PL180711  
LPAT File No.: PL180712

**Heard:** January 8, 2019 in Hamilton, Ontario

**APPEARANCES:****Parties****Counsel**

Joel Hughes (“Appellant”)

Self-represented

Coastal Land Development Inc.  
 (“Applicant”)

Chris Tzekas

**DECISION DELIVERED BY PAULA BOUTIS AND ORDER OF THE TRIBUNAL****INTRODUCTION**

[1] The Committee of Adjustment (“Committee”) gave provisional consents and authorized minor variances for property located at 271 Beach Boulevard (“Subject Property”). Joel Hughes appealed the decision. The Applicant is Coastal Land Development Inc.

[2] The City of Hamilton (“City”) did not participate in the proceedings and was not a party.

[3] Jim Howlett sought participant status both for himself and the Hamilton Beach Community Council (“HBCC”), with him as representative, which the Tribunal granted. It did not become clear until his cross-examination, however, that he had not been active with HBCC for eight months. So, while the Tribunal granted status to HBCC upon Mr. Howlett confirming that is an incorporated entity he is involved with, the Tribunal is of the view that it is possible that Mr. Howlett may have had no formal authority from the organization to speak on its behalf. Nonetheless, the Tribunal heard about the work HBCC had done both generally and in respect of this matter and considered all that evidence.

[4] Mr. Howlett also sought participant status as a representative for the “Hamilton Beach Master Plan Implementation Committee”. Mr. Howlett indicated it was not incorporated, however. As a result, the Tribunal could not grant status to this

Committee.

[5] No one else sought participant status and no one sought party status.

[6] On behalf of the Applicant, the Tribunal heard evidence from Joseph Sanseverino, who was summonsed by the Applicant. Mr. Sanseverino authored a report supportive of the application on behalf of the City (Exhibit 1, Tab 7) and prepared two consolidation reports indicating the recommended conditions for the minor variance authorization and the provisional consent, if given (Exhibit 1, Tabs 5 and 6).

[7] Mr. Sanseverino testified he is a Registered Planning Technician with the Canadian Association of Certified Planning Technicians and his work is reviewed by the Senior Project Manager at the City. He indicated his work relates to severances, minor variances and site plans. For the purposes of this hearing, the Tribunal qualified him to provide opinion evidence in the area of land use planning specifically for minor variances and severances. This was the first time Mr. Sanseverino was qualified to provide expert evidence before the Tribunal. The Tribunal orally reviewed the "Acknowledgement of Expert's Duty" with Mr. Sanseverino, which he indicated he understood and acknowledged.

[8] Also on behalf of the Applicant, David Falletta testified. Mr. Falletta is a land use planner. The Tribunal qualified him to provide opinion evidence in the area of land use planning. He had, as required, prepared and signed a written Acknowledgement of Expert's Duty.

[9] The Appellant testified on his own behalf.

[10] Mr. Howlett gave a statement in opposition to the proposal.

[11] After careful review of the evidence, the Tribunal concludes it will dismiss the appeal. It gives the provisional consent and authorizes the minor variances requested to reduce the frontage by 2 metres ("m") from the zoning by-law standard (Zoning By-law No. 6593, "ZBL"), all as reflected in the decisions of the Committee at Exhibit 1, Tab 4.

## EVIDENCE AND ANALYSIS

### *Planning Act Obligations and Issues*

[12] The *Planning Act* ("Act") places several obligations on the Tribunal when it makes a decision.

[13] The Act requires that every decision of the Tribunal be consistent with the Provincial Policy Statement, 2014 ("PPS"). In this instance, it also requires that every decision of the Tribunal conform to the Growth Plan for the Greater Golden Horseshoe, 2017 ("2017 Growth Plan").

[14] Under s. 2, the Tribunal must have regard to matters of provincial interest, including the orderly development of safe and healthy communities and the adequate provision of a full range of housing. These and other broad issues are further captured within the PPS and the 2017 Growth Plan.

[15] For minor variances, the Tribunal must be satisfied the requested variances meet the four-part test under the Act. The proposed minor variances must:

- a) maintain the general intent and purpose of the official plan;
- b) maintain the general intent and purpose of the ZBL;
- c) be desirable for the appropriate development or use of the land; and
- d) be minor.

[16] Item c) relates to desirability in the public interest, not that of an applicant. Regarding item d), the main concern is unacceptable adverse impacts.

[17] The particular issue raised by the Appellant in his Notice of Appeal was the following:

The Consent/Land Severance was granted on three points, the second being "The Committee considers the proposal to be in keeping with development in the area".

Documents presented at the Consent hearing indicated that the requested lot width was in keeping with the Hamilton Beach Neighbourhood Plan. We argue that referenced section 1.2.1 regarding smaller lot infill widths of approximately 10.0 metres does not apply to the subject lands and was referenced in error. The higher density areas of the Hamilton Beach Plan in this area apply to the Bay side only. Also, this section clearly states that smaller lot infills are only applicable to existing smaller lots; the subject lot is not an existing smaller lot.

## **The Proposal**

[18] Mr. Sanseverino described the proposal as severing the existing parcel into three residential building lots. The severed lot will have a lot size of 10.10 m by 71.40 m for a total of area of 723.91 square metres ("sq m"). The severed lot is the centre lot of the three. Each of the retained lots will have a lot size of 10.10 m by 71.98 m for a total area of 726.81 sq m (most westerly lot) and 10.10 m by 71.12 sq m for a total area of 721.06 sq m (most easterly lot) (Exhibit 1, Tab 8).

[19] The related minor variance application seeks only variances to frontage from the required 12 m in the zone to 10 m.

[20] The Committee gave the consent and authorized the frontage variance, subject to the conditions recommended by Mr. Sanseverino.

[21] In respect of the consent application, a total of 12 conditions were imposed. Generally, these are the following:

- a. Requiring an Ontario Land Surveyor's reference plan;
- b. Requiring final and binding approval of the variance application;
- c. Submission of a Documentation and Salvage Report prior to demolition;
- d. That any historic fabric be removed and be salvaged and re-used, where feasible;
- e. Demolition of all or an appropriate portion of any buildings straddling the proposed property lines;
- f. Providing survey evidence that the location of existing structures conforms

to the requirements of the zoning by-law or alternatively apply for and receive approval for any additional variances as determined by the Planning and Economic Development Department;

- g. Compliance with the Ontario Building Code regarding spatial separation distances of any structures;
- h. A permit to injure or remove municipal trees, which will require the submission of a Tree Management Plan;
- i. The required permit fee and possible additional fees related to the injury or removal of municipal trees;
- j. A landscape plan;
- k. Payment of any outstanding realty taxes or other charges owing;
- l. An administration fee to set up a new tax account for newly created lots;

[22] In respect of the variance application, two conditions were imposed. Generally, they are the following, which are also required as consent conditions:

- a. Submission of a Documentation and Salvage Report on the buildings on the subject property prior to demolition;
- b. Any historic fabric to be removed be salvaged for reuse, where feasible.

[23] Mr. Falletta advised that the Subject Property is also subject to a site plan control process, including for detached dwellings. As a result, if this proposal is approved, it must still undergo a site plan control process.

[24] The Subject Property had previously been the subject of a rezoning application to permit a single detached dwelling and two semi-detached dwellings. Though it was supported by staff, it was denied by City Council and the Ontario Municipal Board.

[25] The Tribunal raises the previous rezoning application as the participant seemed

to confuse the two applications in his evidence. Ultimately, Mr. Howlett indicated that he had not spoken to the Applicant about this proposal, only the previous rezoning application. Unfortunately, due to HBCC making an error regarding the Committee hearing location, the HBCC missed the Committee hearing and did not register its opposition at that time. The Appellant, Mr. Hughes, indicated they had submitted a letter in opposition in respect of this proposal, but none existed in the file and he did not have a copy with him at the hearing.

### **Site Context**

[26] Mr. Falletta testified about the Hamilton Beach Neighbourhood (“Beach”) history, as referenced in the Hamilton Beach Neighbourhood Plan (“Plan”). The Beach has a rich history and its formation as a permanent residential community occurred during the decades following 1920 when summer homes evolved into permanent residences.

[27] The Beach experienced flooding and septic tank malfunctions in 1973 and the area residents asked the City to consider purchasing their homes. The Hamilton Region Conservation Authority and City acquired 174 properties from 1976 to 1985. Additional lands were purchased by the province related to the widening of the Queen Elizabeth Way Highway (“QEW”) and by 1985, 269 (or 40 percent) of properties were in public hands. The remaining 60 percent were in private hands. Acquisition was halted in 1985 and a plan was created to direct development.

[28] Mr. Falletta indicated that lands kept in public hands were ultimately used for public uses and are still maintained for that purpose today. The City did sell some lands back to development proponents and families, as well. Following the servicing of the area, development started to occur. He indicated that a variety of development has occurred over the last forty years. He indicated we were starting to see more and more development in this part of the City.

[29] Mr. Falletta indicated that the Beach is made up of several smaller districts. He indicated the Subject Property falls within an approximately 1 kilometre long portion of the Beach extending from Fletcher Avenue (east) to the Ontario Correctional Service

College Training Centre (west). In cross-examination, Mr. Falletta referred to it as the Subject Property being within “Beach Centre”, which is specifically referenced in the policies of the Plan.

[30] Mr. Falletta described the immediate context of the Subject Property as having a variety of built forms and building sizes. He indicated it was predominantly low rise at grade. There is a mix of uses: residential, parks and recreation, institutional, and neighbourhood commercial uses. It is linearly focused on Beach Boulevard, a collector road. Other local streets which intersect Beach Boulevard are short, given the natural boundary of the lake. Along the lake is a recreational trail. The Subject Property is accessed from Beach Boulevard and there is also a pedestrian exit out the back directly onto the recreational trail.

[31] Mr. Falletta provided several photographs of the area. He characterized the area as having widely varying lot patterns, from large regular shaped lots to small and irregular flag shaped lots; single detached residential lot sizes ranging from about 124 sq m to 2,171 sq m. Frontages for residential lots ranged from about 3.66 m (common driveway) to 30.48 m, which is the Subject Property itself. The Subject Property has the largest lot area and frontage in the local neighbourhood.

[32] Mr. Falletta indicated that the Subject Property has excellent access to the QEW and that it is well served by public transit.

[33] In sum, he indicated the neighbourhood is generally linear, centred on Beach Boulevard, with an inconsistent lot pattern. The streetscape includes a mix of building sizes with inconsistent setbacks and gaps of undeveloped or large landscape areas. The majority of the lots in the neighbourhood have frontages greater than 12 m, but a total of 28 frontages have 10.1 m or less, with some fronting onto side streets rather than Beach Boulevard; and 26 have frontages of 10.2 m to 12 m, some of which also front onto side streets, rather than Beach Boulevard.

[34] In the immediate vicinity to the Subject Property, one lot across the street has a frontage similar to those proposed and to the north on the same side as the Subject

Property (the second and third lot north of the Subject Property), are two more lots with frontages of 10.1 m or less.

[35] Mr. Sanseverino described the area as a developing area with a lot of larger homes being built. The older homes are significantly smaller. Lot areas and sizes are varied. It was his opinion that there was no consistent development pattern. There were both very big lots and very small lots.

[36] The Subject Property itself is heavily vegetated with the building quite setback. As a result, Mr. Falletta indicated that the property did not contribute to the streetscape and it read as a “gap”. On this point, however, Mr. Hughes noted in his testimony that when this particular lot was maintained, it won Royal Botanical Garden awards for its landscaping. He indicated it brought a lot of character and viewing pleasure to the streetscape. But since it has been “in limbo” it has lost some of its appeal.

### **Planning Framework**

#### *Consent Analysis, Consistency with the PPS and Conformity with the 2017 Growth Plan*

[37] Section 51(24) of the Act sets out numerous requirements that must be considered when granting a consent. The section requires having regard to several matters including s. 2 of the Act, which sets out in high level terms matters of provincial interest, only a few of which typically apply to a particular situation.

[38] In this case, Mr. Falletta opined that the proposal has sufficient regard to s. 2 matters, which include orderly development of safe and healthy communities and the appropriate location of growth and development. He drew this conclusion following his analysis of the PPS and the 2017 Growth Plan, which more specifically addresses particular provincial goals such as efficient use of lands and infrastructure through intensification in appropriate locations.

[39] In that context, it was Mr. Falletta’s opinion that the proposal was consistent with the PPS and conformed to the 2017 Growth Plan by allowing for the intensification of an underutilized site within the settlement area or built-up area (as those terms are defined)

and create new housing options and opportunities for the community.

[40] Section 51(24) also requires having regard to conformity with the Urban Hamilton Official Plan (“UHOP”), which, based on the planning evidence, the Tribunal concludes that it does, which is further discussed below under the Official Plan Policy section.

[41] Further, Mr. Falletta was of the opinion that sufficient regard has been given to other relevant sections of s. 51(24), specifically that the land is suitable for the purposes for which it is to be subdivided; the proposed lot frontages and areas are appropriate and consistent with the surrounding area; flood control will be dealt with through site plan; there are adequate utilities and municipal services; it develops an underused site in a modest form of intensification allowing for the efficient use of the land; and will be subject to site plan control.

*Local Framework – Official Plan and Zoning By-law*

[42] Under the UHOP, Policy F.1.14.3.1 (“Consent Policy”) permits consents within Neighbourhoods on specific conditions:

- a) The lots are to comply with the policies of the UHOP, including secondary plans if they exist;
- b) The lots are to comply with existing Neighbourhood Plans;
- c) The lots are in conformity with the ZBL or a minor variance is approved;
- d) The lots reflect the general scale and character of the established development pattern in the surrounding area by taking into consideration lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview;
- e) The lots are fully serviced by municipal water and wastewater systems; and
- f) The lots have frontage on a public road.

*Is the Subject Property within an existing smaller lot area under the Hamilton Beach Neighbourhood Plan?*

[43] As noted the main issue for the Appellant was that the proposal did not comply with the Policy 1.2.1 of the Plan. The Consent Policy specifically indicates that the proposed consent is to comply with the Plan.

[44] Policy 1.2.1 of the Plan states, in part, the following:

- Permitted uses will include one and two family dwellings, similar uses and accessory uses as specified by the zoning by-law for individual districts.
- Larger lot infill with lot widths of approximately 15 m will be located in areas of existing larger lots, particularly at the Canal (north) end of the Beach.
- Smaller lot infill with lots widths of approximately 10 m will be located in areas of existing smaller lots, especially on the Bay (west) side of Beach Boulevard and close to the Beach Centre. This is the mixed-use area located on both sides of Beach Boulevard from Arden Avenue to Kirk Road. Modified zoning would be required to permit smaller lots. ...

[45] Mr. Sanseverino indicated that in his opinion, the proposal was in keeping with Policy 1.2.1 regarding smaller lot infill. He indicated that the Subject Property is on the lake side of Beach Boulevard (east side of the road), but that smaller infill lots are permitted on both sides of Beach Boulevard.

[46] It was Mr. Falletta's view that the Subject Property falls within an area "of existing smaller lots". He noted in cross-examination that there are a variety of lot sizes including some smaller lots nearby.

[47] Policy 1.2.1 also notes that "larger lot fill" would be located in areas of existing larger lots, particularly at the Canal, which is at the north end.

[48] In cross-examination, Mr. Falletta was asked, "How would anyone interpret to suggest a lot is within an area of larger lots – we can see the majority are large lots – where do we draw the line?" In response, Mr. Falletta indicated, more or less, "Good question. The policy specifically talks about an area in the north region near the Canal as a larger lot segment. But you don't look at one bullet. You look comprehensively. There is a desire for a range and mix of lot sizes and development has a variety of lot

sizes. [The Subject Property area] is not an area of large lot fabric.”

[49] Mr. Falletta agreed with Mr. Hughes’ suggestion in cross-examination that this was the mixed use area known as the Beach Centre.

[50] Mr. Falletta, like Mr. Sanseverino, indicated that while there is an emphasis on the Bay side for infill, it is not exclusive to it and it refers to the “mixed use area located on both sides of Beach Boulevard from Arden Avenue to Kirk road”, in which the Subject Property is located.

[51] In looking at the lot fabric visual (Exhibit 2, page 11), there are a smattering of small lots with 10.1 m or less in frontage onto Beach Boulevard, and they are on both sides of Beach Boulevard, including some near the Subject Property.

[52] Mr. Hughes commented in his evidence that with the Subject Property being the largest lot in the area, and surrounded, for the most part by large lots, that it should constitute a large lot area, not a small lot area.

[53] In terms of the Beach Centre, Mr. Howlett, who had had an extensive history with the area and its planning history, indicated the following:

When we were drawing up the original neighbourhood plan for the community we identified Beach Centre as Kirk Road to Arden Avenue. We noticed distinctions between west and east side lots (Bay and Lake side). We noticed larger lots on the Lake side. The community indicated they wanted larger lots retained and felt the infill should go on the Bay side. There was one proviso for that, Dynes Hotel, where they went for medium density development. That’s the towns that are now there. It was a commercial block of property.

[54] The Tribunal can certainly appreciate Mr. Hughes’ concern and view point. Just looking at the lot fabric visual, it would be hard to distinguish obviously what is an area of existing small lots as compared to an area of existing larger lots, as the smaller lots exist from along Fletcher Avenue past Lakeside Avenue with the Subject Property right in its centre.

[55] In considering Mr. Howlett’s evidence, the Tribunal understands that the community is of the view that there are “larger lots on the Lake side”, hence the emphasis of infill on the Bay side in the policy. Looking again at the visual, it appears

the vast majority of the lots on the Bay side are also large lots, so it is hard to understand this particular point.

[56] Mr. Howlett also indicated in his evidence that smaller homes on larger lots means you could then see the lake and “it helped to have a sea side atmosphere”. Particularly the Tribunal surmises this refers to the view through the lots fronting Beach Boulevard, as these are through lots to the waterfront recreational trail.

[57] The Tribunal accepts that infill on Lake side lots would result in more built form which may mean less of a clear view to the lake from the road. However, the policy does not prohibit lot infill on the Lake side. The policy itself defines the small lot area as “the mixed use area located on both sides of Beach Boulevard from Arden Avenue to Kirk Road.” It notes that especially small lot infill will be located on the Bay side and close to Beach Centre, but does not prohibit it on the Lake side.

[58] Ultimately, the Tribunal is persuaded, given the overall language of the Plan’s policy and the planning opinion evidence, that the Subject Property does represent an existing small lot area in which small lot infill with frontages of about 10 m are contemplated. Such lots exist near the Subject Property and the Subject Property is within the mixed use area identified.

#### *Precedent*

[59] Mr. Falletta was asked in his examination-in-chief whether or if the creation of three lots with 10.1 m frontages would constitute a precedent. He indicated that in his view, a precedent means setting a new standard. It was his opinion that there is a range in the area and some are significantly smaller. He did not feel it would set a new standard or precedent.

[60] Mr. Hughes indicated in his closing submissions that his concern was less about this lot than about the “other developers waiting in the wings”. His concern is that the larger lots that are there now will be lost.

[61] Beyond the general proposition that each application is to be decided on its own

merits, the Tribunal notes that the concern about whether this location is an area of existing smaller lots or existing larger lots is essentially answered by the Plan's policy language itself. That is, the Plan contemplates that there will be smaller infill lots developed from time to time with frontages of about 10 m in a particular area defined as "existing small lot area", i.e. the mixed use area located on both sides of Beach Boulevard from Arden Avenue to Kirk Road. It is not outside the Plan's contemplation that smaller lot infill will occur in this location, though, especially, it is intended to occur on the Bay side. In this context, it cannot be viewed as setting an undesirable precedent.

[62] The Tribunal now turns to the broader planning analysis.

#### Official Plan Policy

[63] By way of reminder, in respect of the consent provisions of the Act, the Act requires that the proposal have regard to a number of items, including conformity with applicable official plans. In respect of the minor variances, one part of the four-part test is that the proposal is to maintain the general intent and purpose of the UHOP.

[64] The Subject Property is identified as "Neighbourhoods" in the Urban Structure and the Urban Land Use Designation schedules of the UHOP.

[65] Mr. Sanseverino indicated that the UHOP allowed for a severance at the Subject Property as long as it was in keeping with existing patterns in the neighbourhood. Also, among other things, it allows it if the property fronts onto a public road and it is fully serviced.

[66] Mr. Sanseverino was of the opinion that both the severed and retained lots would be within the range for areas and frontages in the neighbourhood. He advised that based on the drawings before him and through his analysis, he had concluded that the proposal satisfied the UHOP.

[67] Mr. Falletta took the Tribunal through the policies of the UHOP regarding urban structure, the neighbourhood policies, general policies which apply, the low density

policies, policies regarding intensification, urban design policies, lot creation in neighbourhoods, cultural heritage resource policies and finally the Plan for the Beach.

[68] It was Mr. Falletta's opinion that, along with the conditions imposed for the consent and the minor variances, the proposal conformed to the applicable UHOP policies and met the general intent and purpose of the UHOP.

[69] Mr. Falletta noted that the Urban structure policies indicate that Neighbourhoods will see some physical change over time and evolve, for example, as older residents move out and younger residents and families move in, homes are renovated or rebuilt, and infill development occurs. Residential intensification will occur over time and it can happen at a range of scales and densities provided it is compatible with the character of the surrounding neighbourhood. Under the UHOP, "compatibility" is a defined term, defined as meaning land uses and building forms that are mutually tolerant and capable of existing together in harmony within the area. It should not be narrowly interpreted to mean "the same as" or as "being similar to".

[70] The Tribunal does not reproduce all the policies referenced at the hearing or in Mr. Falletta's witness statement, but highlights some of these. The UHOP, for example, requires the following within the Neighbourhood, Low Density Residential, Urban Design and Intensification policies:

- a. The development of compact, mixed use, transit-supportive and active transportation friendly neighbourhoods;
- b. Development of complete communities;
- c. A range of housing types;
- d. Support and promotion of residential intensification of appropriate scale in appropriate locations throughout the neighbourhoods;
- e. Residential intensification is to be compatible with the scale and the character of existing residential neighbourhood;

- f. Development in areas dominated by low density residential are discouraged from having direct access from lots to adjacent major or minor arterial roads;
- g. Development should be encouraged to be designed to have a mix of lot widths and sizes compatible with streetscape character;
- h. Residential intensification shall be encouraged throughout the entire built-up area, in accordance with the UHOP;
- i. 40 percent of the residential intensification target is anticipated to occur in Neighbourhoods;
- j. Residential intensification is to be evaluated on numerous criteria, which is to be a “balanced evaluation” of various criteria listed in B.2.4.1.4, including
  - i. The relationship of the proposal to the existing neighbourhood character;
  - ii. The compatible integration of the development with the surrounding area in terms of use, scale form and character; and
  - iii. The development’s contribution to achieving the planned urban structure.
- k. Numerous items are to be considered for residential intensification within Neighbourhoods including:
  - i. Compatibility with adjacent land uses, including matters such as shadow and overlook;
  - ii. The relationship of the proposed lots with the lot pattern and configuration within the neighbourhood;
  - iii. The ability to respect and maintain or enhance the streetscape patterns; and

iv. The infrastructure and transportation capacity and impacts.

- I. Numerous urban design policies which, like other policies, require that new development be compatible with and enhance the character of existing environment and locale; and promote intensification that is compatible in form and function.

[71] Regarding Cultural Heritage Resource policies, the UHOP notes the following, including:

- a. New development is to be contextually appropriate and maintain the integrity of all cultural heritage resources; and
- b. New development shall protect and conserve cultural heritage landscapes.

[72] Mr. Falletta opined the following regarding the review of each of the category of policies in relation to the proposed development:

- a. It conforms to the Urban Structure policies. It is for single detached residential lots, which is an appropriate form of intensification that is envisioned in Neighbourhoods and is compatible with the surrounding residential dwellings;
- b. It conforms to the Neighbourhood policies including because:
  - i. detached dwellings are permitted;
  - ii. the proposed intensification is of a scale that is modest and appropriate and provide more housing options in the neighbourhood;
  - iii. it will enhance the existing gap with new dwellings and does not seek to change the required front and side yard setbacks required under the zoning;
  - iv. other than for frontage, it will also comply with the zoning by-law

requirements for height, massing and arrangement of the buildings to ensure compatibility;

- v. it creates appropriate density (it is well below the maximum permitted under the UHOP); and
- vi. it will not have direct access to an arterial road

[73] Mr. Falletta is also of the view that the proposal conforms to the intensification policies including because:

- a. It assists the City to reach its minimum intensification target of 40 percent in the built-up area within Neighbourhoods;
- b. It provides for new housing opportunities that are compatible;
- c. It supports the existing infrastructure and transportation capacity; and
- d. It provides for a lot pattern that is generally larger and consistent with the variety of lot frontages found in the UHOP.

[74] The proposal conforms to the Urban Design Policies for the UHOP including because:

- a. The proposed detached lots are compatible with the size and lot frontages in the neighbourhood;
- b. It is modest intensification with a lot pattern and built form that is consistent with the neighbourhood;
- c. It offers new modern building stock and will enhance the streetscape; and
- d. It will not impact the shadowing or light of adjacent properties and the public realm.

[75] The proposal conforms to the Consent Policies of the UHOP including because:

- a. The lots conform to the applicable UHOP policies;
- b. The lots conform to the Hamilton Beach Neighbourhood Plan;
- c. The lots will comply if the minor variance is authorized; and
- d. The lots reflect the general scale and character of the development pattern in the neighbourhood.

[76] Regarding cultural heritage, the Committee added two conditions to the minor variance and severance applications: (1) requiring the filing of a “Documentation and Salvage Report”; and (2) that any historic fabric be removed and salvaged for re-use where feasible. Therefore Mr. Falletta was of the view that the proposal conforms to cultural heritage policies, and in addition, the required future site plan application will ensure conformity with cultural heritage policies.

[77] Regarding the Plan, Mr. Falletta indicated that the proposal conforms including because:

- a. The proposed detached dwellings are permitted;
- b. The proposed 10.1 m infill lot widths are within what the Plan envisions; and
- c. The long and narrow shape and configuration of the lots reflects the density and configuration in the immediate vicinity and the existing zoning will ensure the building sizes and setbacks are consistent with the surrounding neighbourhoods.

[78] In sum, it was Mr. Falletta’s opinion that the proposal conforms to the UHOP and, similarly, it maintains the general intent and purpose of the UHOP, which includes compliance with the Plan.

#### Zoning By-law

[79] The ZBL indicates that frontage is required to be 12 m, applicable across the City

in “C” districts, of which this is one.

[80] The purpose and intent of the ZBL is to require minimum lot widths in order to create a consistent lot fabric and streetscape in the zoning district.

[81] Mr. Falletta opined that the proposed lot sizes and widths are consistent with the lot fabric in the neighbourhood area. Streetscape character is created by lot sizes, building locations and setbacks between the street and buildings. It was Mr. Falletta’s opinion that the proposal will enhance the streetscape by allowing new built form development along the Beach Boulevard frontage that will animate the street, unlike the existing landscaping and large front yard that currently exists on the subject site.

[82] On this point, the Tribunal notes Mr. Hughes’ comment that in past times, the existing lot had award winning landscaping. In this regard, the Tribunal concludes the proposal will, in a different way, enhance the streetscape. The Tribunal accepts that in its past glory, the existing lot contributed to the streetscape as well.

#### Desirability and Minor Nature of Proposal

[83] Mr. Falletta was of the opinion that the development is desirable for the appropriate development and use of the land as it maintains the detached character through modest infill. This will create new housing in a form that enhances the streetscape from its current condition, improving the animation along the streetscape.

[84] Mr. Falletta’s opinion is that no adverse impacts will be created by the proposal to the surrounding area. As a result the proposal can be said to be minor.

[85] On the basis of the planning evidence, the Tribunal concludes the proposal meets the four-part test.

#### The Conditions

[86] It was Mr. Falletta’s opinion that the consent conditions were reasonable and the conditions imposed on the minor variance were also appropriate.

## **Summary**

[87] In sum, it was Mr. Falletta's opinion that, with the conditions imposed, the consent proposal satisfied the requirements of s. 51(24), including s. 2 matters, is consistent with the PPS, and conforms to the 2017 Growth Plan; and similarly, with the conditions imposed, the minor variance application is consistent with the PPS, conforms to the 2017 Growth Plan and meets the four-part test for variances. He concluded the proposal represented both good planning and was in the public interest.

[88] Mr. Sanseverino continued to support the application with the recommended conditions.

[89] The Tribunal accepts and adopts the evidence as presented by both Mr. Sanseverino and Mr. Falletta in respect of both the consent application and the minor variance application. It is satisfied the Subject Property is within an existing smaller lot area as the Hamilton Beach Neighbourhood Plan contemplates; that the consent and minor variance applications meet the required tests under the Act; and that it represents good planning and is in the public interest.

## **ORDER**

[90] The appeal of the decision relating to the provisional consent is dismissed and provisional consent is given, subject to the same conditions as were provided in the May 10, 2018 decision of the Committee, a certified true copy of which is found at Exhibit 1, Tab 4, all of which is appended as Attachment 1 to this decision.

[91] The appeal of the decision relating to the minor variance is dismissed and the variance to Zoning By-law No. 6593 is authorized, subject to the same conditions as provided for in the May 10, 2018 decision of the Committee, a certified true copy of which is found at Exhibit 1, Tab 4, all of which is appended as Attachment 2 to this decision.

*"Paula Boutis"*

PAULA BOUTIS  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Tribunals Ontario - Environment and Land Division  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248



Committee of Adjustment  
 Hamilton City Hall  
 71 Main Street West, 5<sup>th</sup> floor  
 Hamilton, ON L8P 4Y5  
 Telephone (905) 546-2424, ext. 4221  
 Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT  
NOTICE OF DECISION

APPLICATION FOR CONSENT/LAND SEVERANCE

APPLICATION NO. HM/B-18:35  
 SUBMISSION NO. B-35/18

APPLICATION NUMBER: HM/B-18:35

SUBJECT PROPERTY: 271 Beach Blvd., City of Hamilton

APPLICANT(S): Agent Bousfields Inc. (c/o David Falletta) on behalf of the owner Mike Tzekas

PURPOSE OF APPLICATION: To sever the existing parcel into three residential building lots.

Severed lands:  
 10.10m<sup>±</sup> x 71.40m<sup>±</sup> and an area of 723.91m<sup>2±</sup>

Retained lands:  
 10.10m<sup>±</sup> x 71.98m<sup>±</sup> and an area of 726.81m<sup>2±</sup>

Retained lands:  
 10.10m<sup>±</sup> x 71.12m<sup>±</sup> and an area of 721.06m<sup>2±</sup>

NOTE:

This application is scheduled to be heard in conjunction with minor variance application HM/A-18:92.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, IS APPROVED, for the following reasons:

1. The proposal does not conflict with the intent of the Urban Hamilton Official Plan.
2. The Committee considers the proposal to be in keeping with development in the area.
3. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.

Having regard to the matters under subsection 51(24) of the Planning Act, R.S.O. 1990, c.P. 13, the said application shall be subject to the following conditions:

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. The

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 SECRETARY-TREASURER

reference plan must be submitted in hard copy and also submitted in CAD format, drawn at true scale and location and tied to the City corporate coordinate system.

2. The owner shall receive final and binding approval of minor variance application HM/A-18:92.
3. That the applicant shall submit a Documentation and Salvage Report on the buildings on the subject property prior to any demolition to the satisfaction and approval of the Manager of Development Planning, Heritage and Design.
4. Any historic fabric to be removed, including windows and doors, be salvaged for re-use, where feasible. Documentation regarding the salvage of these features shall be included in the Documentation and Salvage Report to the satisfaction and approval of the Manager of Development Planning, Heritage and Design.
5. The owner shall demolish all or an appropriate portion of any buildings straddling the proposed property line(s), to the satisfaction of the Planning and Economic Development Department (Building Division – Zoning Section). May be subject to a demolition permit issued in the normal manner.
6. The owner shall submit survey evidence that the location of any existing structures(s), conform to the requirements of the Zoning By-law or alternatively apply for and receive final approval of any additional variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Division – Zoning Section).
7. The applicant shall ensure compliance with Ontario Building Code requirements regarding spatial separation distances of any structures to the satisfaction of the Planning and Economic Development Department (Building Division – Plan Examination Section).
8. A Permit to injure or remove municipal trees is a requirement of this application. Therefore, a Tree Management Plan must be submitted to the Forestry and Horticulture Section c/o the Urban Forestry Health Technician, to address potential conflicts with publicly owned trees.
9. Permit fee of \$293.91 (including taxes) is required. If municipal tree assets are injured or proposed for removal as part of this development, additional fees will be applied to compensate for the loss of tree canopy. A Permit will not be issued without receipt of payment.
10. A Landscape Plan must be submitted to the Forestry and Horticulture Section c/o the Urban Forestry Health Technician, depicting the street tree planting scheme for the proposed development.
11. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
12. The owner submit to the Committee of Adjustment office an administration fee of \$35.40 (\$17.70 per lot created) payable to the City of Hamilton to cover the costs of setting up a new tax account for the newly created lot.

DATED AT HAMILTON this 10th day of May, 2018.

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M. Dudzic (Chairman)

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D. Serwatak

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L. Gaddy

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D. Smith

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W. Pearce

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V. Abraham

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P. Mallard

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N. Mieczko

\_\_\_\_\_  
M. Smith

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS May 17th, 2018.  
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE  
OF THIS NOTICE OF DECISION (May 17th, 2019) OR THE APPLICATION SHALL BE  
DEEMED TO BE REFUSED (PLANNING ACT, SECTION 53(41)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL  
BOARD MAY BE FILED IS June 6th, 2018.

**NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.**

Note: Based on this application being approved and all conditions being met, the owner / applicant should be made aware that the lands to be retained to the south will remain as 271 Beach Boulevard, the lands to be conveyed will be assigned the address of 275 Beach Boulevard and the lands to be retained to the north will be assigned the address of 279 Beach Boulevard.



Hamilton

Committee of Adjustment  
Hamilton City Hall  
71 Main Street West, 5<sup>th</sup> floor  
Hamilton, ON L8P 4Y5  
Telephone (905) 546-2424, ext. 4221  
Fax (905) 546-4202

**COMMITTEE OF ADJUSTMENT**  
**DECISION OF THE COMMITTEE**

APPLICATION NO. HM/A-18:92  
SUBMISSION NO. A-92/18

APPLICATION NO.: HM/A-18:92

APPLICANTS: Agent Bousfields Inc. (c/o David Falletta) on behalf of the owner Mike Tzekas

SUBJECT PROPERTY: Municipal address 271 Beach Blvd., City of Hamilton

ZONING BY-LAW: Zoning By-law 6593, as Amended by By-Law Number 99-169

ZONING: C/S-1435 (Urban Protected Residential) district

PROPOSAL:

To permit the creation of three (3) separate lots through consent application HM/B-18:35 notwithstanding that:

1. A minimum lot width of 10.0m shall be provided for each lot instead of the minimum required lot width of 12.0m.

NOTES:

- i. Insufficient information has been provided with respect to any proposed development on the subject lands. The applicant shall ensure any new buildings conform to the applicable provisions of the Hamilton Zoning By-law 6593, otherwise further variances may be required.
- ii. The variance is necessary to facilitate Consent Application #HM/B-18:35.

THE DECISION OF THE COMMITTEE IS:

That the variance, as set out in paragraph three above, is GRANTED for the following reasons:

1. The Committee, having regard to the evidence, is of the opinion that the relief granted is of a minor nature.
2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee, having regard to the evidence, is satisfied that there will be no adverse impact on any of the neighbouring lands.

That the said application is GRANTED subject to the following conditions:

1. That the applicant shall submit a Documentation and Salvage Report on the buildings on the subject property prior to any demolition to the satisfaction and approval of the Manager of Development Planning, Heritage and Design.

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2. Any historic fabric to be removed, including windows and doors, be salvaged for re-use, where feasible. Documentation regarding the salvage of these features shall be included in the Documentation and Salvage Report to the satisfaction and approval of the Manager of Development Planning, Heritage and Design.

DATED AT HAMILTON this 10th day of May, 2018.

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M. Dudzic (Chairman)

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N. Mieczko

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P. Mallard

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D. Serwatak

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M. Smith

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W. Pearce

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D. Smith

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L. Gaddy

\_\_\_\_\_  
V. Abraham

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS May 30th, 2018.

NOTE: This decision is not final and binding unless otherwise noted.