

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



**ISSUE DATE:** May 09, 2019

**CASE NO(S):** PL180917

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

Applicant and Appellant: 1923944 Ontario Inc.  
Subject: Consent  
Property Address/Description: 213-223 Balsam Avenue South  
Municipality: City of Hamilton  
Municipal File No.: B-92/18  
LPAT Case No.: PL180917  
LPAT File No.: PL180917  
LPAT Case Name: 1923944 Ontario Inc. v. Hamilton (City)

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

Applicant and Appellant: 1923944 Ontario Inc.  
Subject: Minor Variance  
Variance from By-law No.: Zoning By-law 05-200  
Property Address/Description: 213-223 Balsam Avenue South  
Municipality: City of Hamilton  
Municipal File No.: HM/A-18:245  
LPAT Case No.: PL180917  
LPAT File No.: PL180918

**Heard:** April 24, 2019 in Hamilton, Ontario

**APPEARANCES:**

<b><u>Party</u></b>	<b><u>Representative</u></b>
1923944 Ontario Inc. (Jeff Varcoe)	Michael Barton

**MEMORANDUM OF ORAL DECISION DELIVERED BY HELEN JACKSON ON  
APRIL 24, 2019 AND ORDER OF THE TRIBUNAL**

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[1] 1923944 Ontario Inc. (the “Applicant”) has appealed a decision of the City of Hamilton (the “City”) Committee of Adjustment (the “COA”) which modified and approved applications for consent and minor variances with respect to property located at 213 to 223 Balsam Avenue South (the “subject property”). The original applications intended to sever the existing parcel into three lots, each having a duplex on the property after the connection/conversion of the existing structures. The COA modified the proposal so that the properties will contain one single family dwelling on each property to be used for residential purposes. The Applicant appealed the COA decision that modified the proposal for single family dwellings instead of the requested duplexes.

[2] The Applicant was represented at the hearing by his planner Michael Barton. Mr. Barton was qualified by the Tribunal to give land-use planning opinion evidence. The City did not appear at the hearing. Jess Smith, a neighbour, spoke in regards to the parking situation in the neighbourhood.

[3] At the hearing on April 24, 2019, the Tribunal allowed the appeals. This Decision sets out the Tribunal’s reasons.

**THE CONSENT APPLICATION**

[4] The Applicant intends to sever the existing lot, which contains three existing buildings, into three lots, each with a single building located on it. The lots merged on title as the previous use of the lands was a residential care facility, the Balsam Lodge Facility, which was under one owner. The proposed severance will re-establish the previously established lot line boundaries and the Applicant intends to maintain and

reuse the existing buildings as residential duplex rental homes.

[5] The severed lands known as 219 Balsam Avenue South will be 6.89 metres (“m”) by 22.22 m for a total lot area of 153.3 square metres (“sq m”). The retained lands to the north of the severed lands are municipally known as 213 Balsam Avenue South and will be 6.98 m by 22.25 m for a total lot area of 142.76 sq m. The retained lands to the south of the severed lands are municipally known as 223 Balsam Avenue South and will be 6.55 m by 22.25 m for a total lot area of 158.06 sq m.

[6] Mr. Barton described the planning context of this proposal. The area is designated “Neighbourhoods” on Schedule E – Urban Structure in the Urban Hamilton Official Plan (“UHOP”) and is designated “Neighbourhoods” on Schedule E -1 Urban Land Use Designations. The proposed severance is permitted in accordance with UHOP policy F.1.14.3.1, and the use of a duplex dwelling is permitted in accordance with UHOP Policy E.3.4.3. Mr. Barton indicated that City staff supported the proposal and stated in their report that the proposed lots reflect the general scale and character of the established lot pattern in the neighbourhood and therefore conform to the general intent and purpose of the UHOP.

[7] Mr. Barton testified that this is a dense and compact residential neighbourhood east of the downtown core near Gage Park. He testified that many of the buildings have encroachments and there is limited opportunity for additional floor area or open space on the existing lots. Many properties lack on-site parking. The neighbourhood has sidewalks, and there is bus service on Gage Avenue South and Maplewood Avenue.

[8] Mr. Barton stated that Places to Grow – Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) encourages new growth in built-up areas of the community through intensification and the Provincial Policy Statement (“PPS”) promotes efficient land-use and development patterns and a full range of housing that minimizes land consumption. He opined that the proposal to allow duplexes at each of the three residential buildings conforms to the Growth Plan and is consistent with the PPS.

[9] Mr. Barton reviewed each of the criterion in s. 51(24) of the *Planning Act* and testified that the proposed severance satisfies them, including criteria on the public interest, conformity with the official plan, suitability of the land, the dimensions and shapes of the proposed lots, and the adequacy of utilities and municipal services. He stated that under the UHOP, neighbourhoods should remain stable but that change is permissible as long as development is respectful and reinforces the existing physical character of the area. He stated that the proposed development conforms to the UHOP's "Neighbourhoods" policies, which allow for duplex dwellings. He opined that the proposed development is suitable, adequately serviced by roads, schools and utilities, will not affect the conservation of natural resources, and no site plan is required for this development.

### **Findings**

[10] Under s. 53 of the *Planning Act*, the Tribunal must have regard to the criteria for the subdivision of land set out in s. 51(24) of the *Planning Act*, including whether the consent conforms to the official plan and adjacent plans of subdivision. Mr. Barton stated that a plan of subdivision of the lands is not necessary for the orderly development of the lots.

[11] The Tribunal finds that the proposed severance will not change the existing physical character of the neighbourhood given that the proposal will re-establish the previous lot pattern compatible with the surrounding neighbourhood. The Tribunal finds that the size and configuration of the lots will fit in with the existing context and conform to the UHOP.

[12] The purpose of the proposal, being to provide duplex housing, will also provide for an additional range of housing in the neighbourhood in a manner that maintains the neighbourhood character. As such, the proposal is compatible and is consistent with the UHOP.

[13] The Tribunal finds that the proposal will not adversely affect any of the matters of

provincial interest referred to in s. 2 of the *Planning Act*. It optimizes the use of existing infrastructure to support growth in a compact, efficient form and increases intensification in existing built-up areas as contemplated in the Growth Plan and the PPS. The proposed duplex residential use for the lots is appropriate and the proposed dwellings are already on full municipal services, contributing to the efficient use of infrastructure. The Tribunal accepts Mr. Barton's opinion evidence that the proposal satisfies all of the criteria in s. 51(24) of the *Planning Act* and finds that the proposal is in the public interest.

[14] Accordingly, the Tribunal finds that the application for consent meets the criteria set out in s. 51(24) of the *Planning Act*.

### **THE APPLICATION FOR VARIANCES**

[15] The subject property is zoned "Institutional 1 (I-1)" under the City's Zoning By-law No. 05-200, as amended. The proposed variances are required for the three properties known municipally as 213 Balsam Avenue South, 219 Balsam Avenue South and 223 Balsam Avenue South, to legalize the structures that currently exist in regards to setbacks and the like once the existing lot is severed into three lots.

[16] The requested variances are:

#### *Variances for 213 Balsam Avenue South*

1. Lot area proposed 142.7 sq m, required 360.0 sq m;
2. Lot width proposed 6.9 -m, required 15.0 m;
3. Front yard setback proposed 1.2 m, required 4.5m;
4. Porch encroachment proposed 0.81 m into the front yard, required 0.6 m maximum;

5. Southerly side yard setback proposed 0.6 m, required 1.2 m minimum;
6. Chimney breast encroachment proposed 0.6 m into the required southerly side yard, required 0.3 m maximum;
7. Flankage yard proposed 0.0 m, whereas the required is 3.0 m minimum;
8. Rear yard setback of 5.5 m, required 7.0 m minimum;
9. Rear deck (including stairs) projection of 3.7 m into the rear yard, required 1.5 m maximum; and
10. Onsite parking space proposed 0, whereas 2 are required.

*Variances for 219 Balsam Avenue South*

1. Lot area proposed 153.1 sq m, required 360.0 sq m;
2. Lot width proposed 6.8 m, required 12.0 m;
3. Front yard setback proposed 1.7 m, required 4.5 m;
4. Porch encroachment proposed 1.1 m into the front yard, required 0.6 m maximum;
5. Side yard setback proposed 0.6 m, required 1.2 m minimum;
6. Southerly side yard deck (including stairs) encroachment proposed 0.6 m, required 0.3 m maximum;
7. Rear yard setback of 5.5 m, required 7.0 m minimum;
8. Rear deck (including stairs) projection of 3.7 m into the rear yard, required 1.5

m maximum; and

9. Onsite parking space proposed 0, whereas 2 are required.

*Variances for 223 Balsam Avenue South*

1. Lot area proposed 158.0 sq m., required 330.0 sq m;
2. Lot width proposed 6.5 m, required 12.0 m;
3. Front yard setback proposed 1.7 m, required 4.5 m;
4. Porch encroachment proposed 1.1 m into the front yard, required 0.6 m maximum;
5. Northerly side yard setback proposed 0.6 m, required 1.2 m minimum;
6. Northerly side yard deck encroachment proposed 0.6 m into the northerly side yard, required 0.3 m maximum;
7. Southerly side yard setback proposed 0.4 m, required 1.2 m minimum;
8. Rear yard setback of 5.5 m, required 7.0 m minimum;
9. Rear deck (including stairs) projection of 3.7 m into the rear yard, required 1.5 m maximum; and
10. Onsite parking space proposed 0, whereas 2 are required.

[17] Section 45(1) of the *Planning Act* sets out the requirements to be met for variances to be authorized. In the opinion of the Tribunal, a variance must:

- maintain the general intent and purpose of the Official Plan;

- maintain the general intent and purpose of the relevant zoning by-law;
- be desirable for the appropriate use of the land, building or structure; and
- be minor.

[18] The Tribunal applies each of these tests below.

**1. Whether the proposed variances maintain the general intent and purpose of the UHOP**

[19] Mr. Barton reviewed the UHOP policies regarding Neighbourhoods. He testified that the City encourages intensification throughout the built up area in the City, in accordance with the City's criteria for intensification. UHOP Policy 2.4.1.3 states that 40% of the intensification in the City is to occur in areas designated "Neighbourhoods". His opinion is that the proposal appropriately balances the criteria for intensification as provided in s. 2.4.1.4, particularly:

- b) the relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built form;
- c) the development's contribution to maintaining and achieving a range of dwelling types and tenures;
- d) The compatible integration of the development with the surrounding area in terms of use, scale, form and character. In this regard, the City encourages the use of innovative and creative urban design techniques; and
- f) infrastructure and transportation capacity; ....

[20] Mr. Barton stated that UHOP policies require that development respect and



reinforce the pattern of lots; heights, massing, scale of nearby residential properties; prevailing building types; and setbacks. Mr. Barton testified that neighbourhoods should be stable, but not static. He said that the proposal is consistent with the physical character of the neighbourhood.

[21] Mr. Smith expressed concern that this proposal would further impact the difficult parking situation in the neighbourhood. He indicated that many residents have more than one car, and with the recent loss of parking on some streets to provide bike lanes, the issue of finding street parking has been made worse.

[22] Mr. Barton indicated that the City staff were not concerned that parking would not be provided by the proposal. He explained that many of the homes in this neighbourhood do not have on-site parking, and that the residents rely on street parking. He indicated that street parking is available in the area. He also indicated that the current I-1 zoning requires eight parking spaces based on the zoning calculation, whereas the three proposed duplexes would require six parking spaces, a reduction of two spaces. In any case, it was his view that these duplex units would be attractive to residents who depend on public transit for their transportation needs rather than residents with cars.

## **2. Whether the proposed variances maintain the general intent and purpose of the relevant zoning by-laws**

[23] Mr. Barton testified that the zoning by-law implements the official plan, including the policies related to intensification and growth in an urban area. In his opinion, by allowing the variances as requested, this will permit the re-establishment of lots of a similar character to the neighbourhood with structures that are similar in built form to the neighbourhood. In his view, the authorization of the requested variances will ensure that the policies of the official plan are upheld.

**3. Whether the proposed variances are desirable for the appropriate use of the land, building or structure**

[24] Mr. Barton opined that the proposal is desirable, as it re-establishes the lot pattern that was present prior to the establishment of the care facility, and the provision of duplexes provides for additional intensification in the area.

**4. Whether the proposed variances are minor**

[25] Mr. Barton stated that the proposed variances are minor in nature and would cause no undue adverse impact on adjacent landowners. He said the proposed development would not change the look of the area.

**Findings on the Four Tests of the *Planning Act***

[26] The Tribunal has considered Mr. Barton's evidence and Mr. Smith's testimony and finds that the minor variances as proposed would maintain the general intent and purpose of the UHOP. The intent of the zoning by-laws is to achieve orderly, compatible development with a lot character and built form that fits within the neighbourhood. The proposal will not change the existing physical character of the neighbourhood but will re-establish the existing lots and structures. The proposed duplex built form provides intensification that is compatible with the neighbourhood and provides an additional range of housing types.

[27] The Tribunal finds that the proposal meets the general intent and purposes of the Zoning By-law No. 05-200.

[28] The Tribunal accepts Mr. Barton's evidence and finds that the proposed variances are desirable for the appropriate use of the subject property and finds that the proposed variances are minor.

## Summary

[29] Based on the evidence presented at this hearing, which includes the opinion evidence of Mr. Barton and references the planning reports from City staff, as well as the comments provided by Mr. Smith, the Tribunal finds that the requested consent to sever the land as described into three lots should be approved. The proposal does not conflict with the official plan and it is in keeping with the development in the area, and a plan of subdivision is not necessary for the proper and orderly development of the lands. The division of lands meets the criteria in s. 51(24) of the *Planning Act*. This is subject to the conditions of provisional consent as provided in evidence in Exhibit 1, Tab Q. The Tribunal finds the purpose of the severance to provide duplex residential buildings to be appropriate.

[30] The provision of a duplex built form is consistent with the policies of the PPS and conforms with the Growth Plan and the UHOP. These planning documents encourage intensification in the built up area that is compatible with the existing built form. The concern regarding parking in this neighbourhood would exist whether the housing form is a single family or a duplex form. The provision of duplex housing provides an additional housing mix, and will attract tenants who are more likely to use public transit and other modes of active transportation.

[31] Having reviewed the relevant planning documents, including the official plan policies that are relevant to this application, and considered the opinion evidence of Mr. Barton, and Mr. Smith's concerns, and having regard to the Committee's decision, the Tribunal finds that the requested variances, subject to the conditions required by the COA, meet the four tests of the *Planning Act*. The renewal of these three buildings will provide a positive development in the neighbourhood.

## CONCLUSIONS

[32] The Tribunal allows the appeals. The Tribunal accepts the expert planning opinion evidence of Mr. Barton that the requested consent meets the criteria for the

subdivision of land under s. 51(24) and that the requested variances meet the four tests under s. 45(1) of the *Planning Act* and should be authorised.

## **ORDER**

[33] The Tribunal orders that the appeals are allowed.

[34] The Tribunal orders that provisional consent is to be given as set out in the COA Decision provided in Exhibit 1 Tab Q; however, the Purpose of the Application is modified as follows:

To sever the existing lot, which contains three existing buildings into three lots, each with a duplex dwelling to be located on it for residential purposes.

[35] The requested minor variances from Zoning By-law No. 05-200, as set out in paragraph [16] above, are authorized, subject to the following condition:

1. The Owner separates the shared deck at 219 and 223 Balsam Avenue South and comply to the side yard encroachment requirements within the Zoning By-law to the satisfaction of the Manager of Development Planning, Heritage and Design.

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

If there is an attachment referred to in this document,  
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### **Local Planning Appeal Tribunal**

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