

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



ISSUE DATE: May 09, 2019

CASE NO(S): PL180921

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: | James Swick |
| Applicant: | John DeFaveri |
| Subject: | Consent |
| Property Address/Description: | 572 Fifty Road |
| Municipality: | City of Hamilton |
| Municipal File No.: | B-90/18 |
| LPAT Case No.: | PL180921 |
| LPAT File No.: | PL180921 |
| LPAT Case Name: | Swick v. Hamilton (City) |

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

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| Appellant: | James Swick |
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| Subject: | Consent |
| Property Address/Description: | 572 Fifty Road |
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| Municipal File No.: | B-91/18 |
| LPAT Case No.: | PL180921 |
| LPAT File No.: | PL180922 |

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

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|-------------------------------|----------------|
| Appellant: | James Swick |
| Applicant: | John DeFaveri |
| Subject: | Minor Variance |
| Variance from By-law No.: | 3692-92 |
| Property Address/Description: | 572 Fifty Road |

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|---------------------|------------------|
| Municipality: | City of Hamilton |
| Municipal File No.: | A-244/18 |
| LPAT Case No.: | PL180921 |
| LPAT File No.: | PL180923 |

Heard: April 26, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

John DeFaveri

James Swick

Counsel

A. Toumanians

Self-represented

DECISION DELIVERED BY HELEN JACKSON AND ORDER OF THE TRIBUNAL

[1] John DeFaveri (the “Applicant”) applied for two consents to sever and a minor variance for his lands at 572 Fifty Road in the City of Hamilton (the “City”). The subject property is a large through lot with 40.4 metres (“m”) of frontage on Fifty Road and 40.4 m of frontage on Sandbeach Drive. It has a lot depth of 109.73 m. The purpose of the first consent was to sever the parcel in two with the severed lot fronting onto Fifty Road and the retained lot fronting onto Sandbeach Drive. The purpose of the second consent was to sever one interior lot and retain two exterior lots resulting in three lots with 13.46 m of frontage on Fifty Road. The purpose of the minor variance application was to facilitate the second severance application by providing relief from the by-law provisions for lot frontage from the required 15.0 m to 13.46 m.

[2] The City Committee of Adjustment (the “COA”) approved the three applications. The neighbour to the north, James Swick (the “Appellant”), appealed the COA decision.

[3] At the commencement of this hearing, counsel for the Applicant advised the Tribunal that the parties had come to a settlement in this matter. Counsel further advised the Tribunal that the City did not take an interest in the appeal or the settlement.

[4] Anna Toumanians explained that the settlement requests approval of the second severance for two lots rather than three; one with frontage of 16.2 m and the other with frontage of 24.2 m. These two frontages comply with the zoning by-law provision of 15 m minimum frontage; therefore, the request for a minor variance is no longer required. The depth of these lots that front onto Fifty Road is also proposed to be increased by a small amount, being 2.95 m. This amended application is outlined in a sketch showing the proposed two severances and is appended to this Decision as Attachment A. The Conditions of Approval for Provisional Consent for the two severances are also appended as Attachments B and C.

[5] Sections 53(35) of the *Planning Act* allows the Tribunal to make a decision on an amended Consent Application, and pursuant to s. 53(35.1) of the *Planning Act*, no notice is required if the Tribunal determines that the amendments to the original application are minor. In this instance, the Tribunal finds that the amendments from the original applications are minor.

[6] As was agreed to by the parties, Matt Johnston provided expert land use planning opinion evidence in support of the settlement. No other persons requested status at the hearing.

EVIDENCE

[7] Mr. Johnston testified that the requested two severances will provide for intensification that is respectful of the existing lot fabric that has variable frontage and depth of lots, and will provide for lots that are compatible with the surrounding area. He referenced the Provincial Policy Statement, 2014 (“PPS”) that states that intensification should meet the development standards, which this proposal does. His opinion is that this ‘gentle’ intensification implements PPS policy direction, and meets the intensification policy direction of the Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan”). He opined that the proposal conforms to the Growth Plan and is consistent with the PPS.

[8] Mr. Johnston stated that this proposal helps to meet the City's intensification targets in a compatible manner. He noted that the Urban Hamilton Official Plan ("UHOP") requires 40% of residential intensification to occur within the areas designated as Neighbourhoods, such as this area. He testified that this proposal meets the criteria of s. 2.4.1.4 as the settlement has regard to the neighbourhood, the varied lot fabric, and the Appellant's lot. The resultant lots are also compatible in scale, form, and character. This resultant lot fabric, which proposes that the larger lot will be adjacent to Mr. Swick's property, provides for a more compatible situation as Mr. Swick's property is also a large through lot.

[9] 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. Johnston testified that no plan of subdivision is required in this case. Mr. Johnston addressed each of the criteria set out in s. 51(24) and determined that they are met by this proposal.

Findings

[10] The Tribunal finds that the two proposed consents will fit in with the existing context and conform to the UHOP. The size and configuration of the new lots will be compatible with the adjacent lots, including the larger lot of the Appellant, located immediately to the north of the subject property.

[11] The Tribunal finds that the development will not adversely affect any of the matters of provincial interest referred to in s. 2 of the *Planning Act*. The new lots will provide for gentle intensification in an existing built-up area as contemplated by the Growth Plan and the PPS. The Tribunal accepts Mr. Johnston's opinion evidence that the proposed development satisfies all of the criteria in s. 51(24) of the *Planning Act* and finds that the proposed development is in the public interest.

[12] Accordingly, the Tribunal finds that the applications for consent meet the criteria

set out in s. 51(24) of the *Planning Act*.

CONCLUSIONS

[13] The Tribunal allows the appeals. The Tribunal accepts the expert planning opinion evidence of Mr. Johnston that the requested consents meet the criteria for the subdivision of land under s. 51(24) of the *Planning Act*. The amended applications do not require relief from the zoning by-law, and therefore the application for variance relief was withdrawn.

ORDER

[14] The Tribunal dismisses the application for Minor Variance.

[15] The Tribunal orders that provisional consent is to be given as set out in Attachments A, B, and C to this Order.

"Helen Jackson"

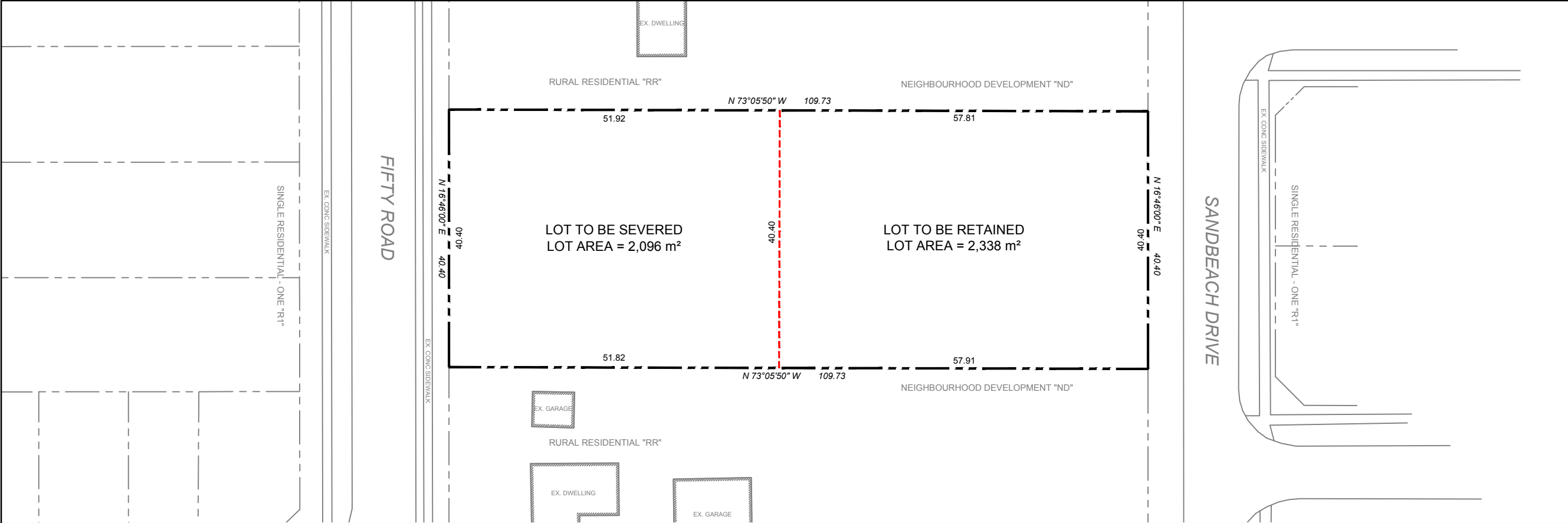
HELEN JACKSON
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

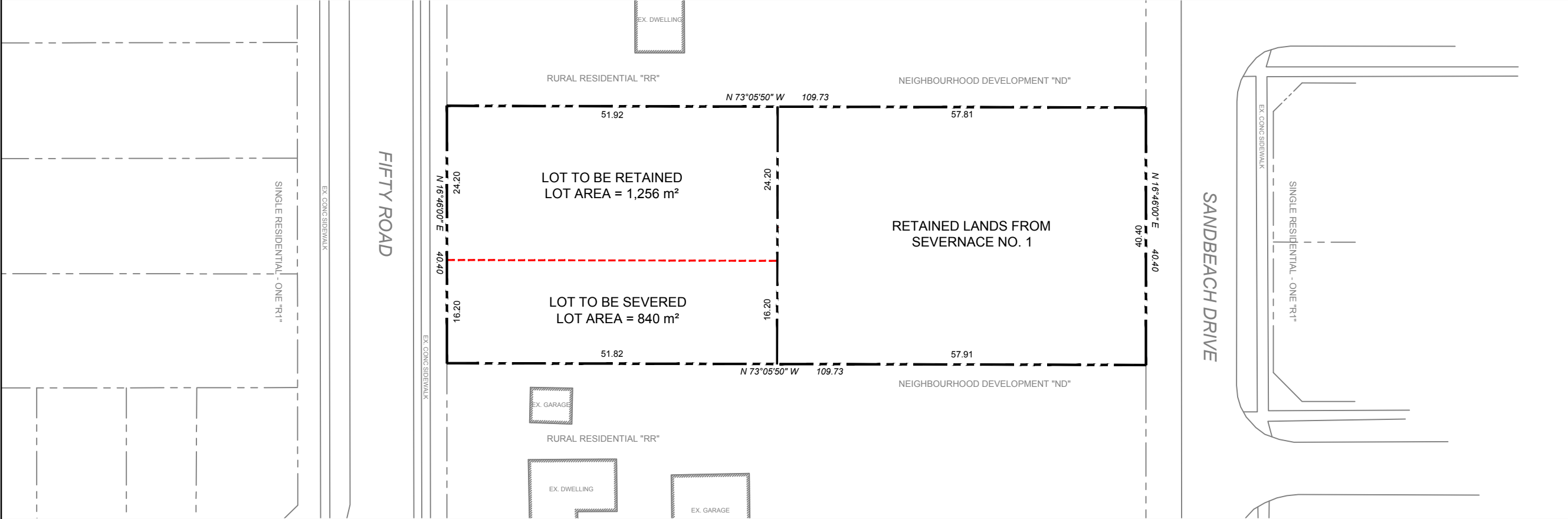
Local Planning Appeal Tribunal

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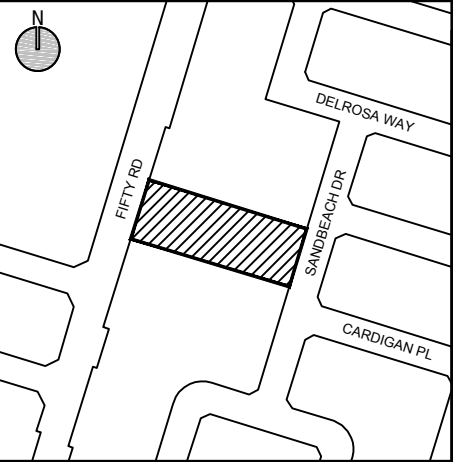
ATTACHMENT A



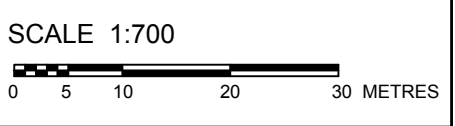
SEVERANCE NO. 1 - SCALE 1:700



SEVERANCE NO. 2 - SCALE 1:700



KEY MAP - N.T.S.



NOT FOR CONSTRUCTION
ISSUED FOR REVIEW & COMMENTS ONLY

NOTES:
ALL DIMENSIONS SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

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| DESIGN BY: M. GOWANS | CHECKED BY: M. JOHNSTON |
| DRAWN BY: M. GOWANS | DATE: APRIL 16, 2019 |

UrbanSolutions
Planning & Land Development Consultants Inc.

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HAMILTON, ON L8N 1G6
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PROJECT:
**572 FIFTY ROAD
CITY OF HAMILTON**

CLIENT:
**DEFAVERI CONSTRUCTION
INC.**

TITLE:
**COMMITTEE OF
ADJUSTMENT SKETCH**

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| U/S FILE NUMBER: 286-18 | SHEET NUMBER: 1 |
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ATTACHMENT B

Severance File SC/B-18:90 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 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. Prior to issuing a permit to demolish the existing dwelling, the existing accessory structure shall be removed to the satisfaction of the Chief Building Official.
3. The existing dwelling shall be removed to the satisfaction of the Chief Building Official.
4. The owner/applicant pay the required commutation amount of Local Improvement charges to Budgets & Finance City of Hamilton.
5. The owner shall receive final approval of any necessary variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Division - Zoning Section).
6. The owner shall submit survey evidence that the lands to be retained, including the location of any existing structure(s), parking and landscaping etc., conform to the requirements of the Zoning By-Law or alternatively apply for and receive final approval of any variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Building Division - Zoning Section).
7. That the Owner enters into and registers into an External Works Agreement [Consent] with the City of Hamilton to deal with and address issues including, but not limited to: grading and drainage; cash payment requirements for items such as trees, cost recoveries for existing above and/or underground services, inspection of grading and services to be installed; securities for items such as; estimated cost of services to be installed, lot grading, retaining walls, new driveway approaches, removal of existing driveway approaches/ private sewer/water services (if necessary), and any damages to the existing City infrastructure or public property during construction; which are necessitated by the development of the subject lands to the satisfaction of the Manager of Development Engineering Approvals.
8. That the applicant provides a road widening dedication to the City in order to establish the property line 13.10m (43 feet) from the original centreline of Fifty Road across the frontage of both the severed and remnant lands. All costs

associated with the preparation and registration of a reference plan and legal documents must be borne by the applicant.

9. That the applicant removes the 0.3m reserve to the satisfaction of Growth Management.
10. The owner submit to the Committee of Adjustment office an administration fee of \$35.40 (\$17.70 per new lot) payable to the City of Hamilton to cover the costs of setting up a new tax account for the newly created lot.
11. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

Notes:

1. **“Caution:** Notwithstanding current surface conditions, the property has been determined to be an area of archaeological potential. Although an archaeological assessment is not required by the City of Hamilton, the proponent is cautioned that during development activities, should deeply buried archaeological materials be found on the property the Ontario Ministry of Tourism, Culture and Sport (MTCS) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MTCS and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).”

ATTACHMENT C

Severance File SC/B-18:91 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 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. That the applicant receives final approval for Consent Application SC/B-18:90 and registers the documents.
3. That the Owner enters into and registers into an External Works Agreement [Consent] with the City of Hamilton to deal with and address issues including, but not limited to: grading and drainage; cash payment requirements for items such as trees, cost recoveries for existing above and/or underground services, inspection of grading and services to be installed; securities for items such as: estimated cost of services to be installed, lot grading, retaining walls, new driveway approaches, removal of existing driveway approaches/ private sewer/water services (if necessary), and any damages to the existing City infrastructure or public property during construction; which are necessitated by the development of the subject lands to the satisfaction of the Manager of Development Engineering Approvals.
4. That the applicant provides a road widening dedication to the City in order to establish the property line 13.10m (43 feet) from the original centreline of Fifty Road across the frontage of both the severed and remnant lands. All costs associated with the preparation and registration of a reference plan and legal documents must be borne by the applicant.
5. That the applicant removes the 0.3m reserve to the satisfaction of Growth Management.
6. The owner/applicant pay the required commutation amount of Local Improvement charges to Budgets & Finance City of Hamilton.
7. The owner shall receive final approval of any necessary variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Division - Zoning Section).
8. The owner submit to the Committee of Adjustment office an administration fee of \$35.40 (\$17.70 per new lot) payable to the City of Hamilton to cover the costs of setting up a new tax account for the newly created lot.

9. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

Notes:

1. The applicant should be notified that any new driveway or an access entrance, relocation of an existing driveway and/or the access entrance, or required alteration to a driveway design or the access entrance, will require a Residential Access Permit. The applicant is responsible for the application fee of the Access Permit, as well as the installation of any new approach ramp/access and or any modification to any existing approach ramp. Abandoned driveway approach ramps must be restored to curb/sidewalk at the expense of the applicant. Further information and applications are available from the Parking Investigator at Hamilton Municipal Parking System (905-546-2424 x 4578 or parkingq@hamilton.ca).