

MEMORANDUM OF ORAL DECISION DELIVERED BY M.A. SILLS ON SEPTEMBER 20, 2021 AND ORDER OF THE TRIBUNAL

[1] Adam and Lucas Colalillo (“Applicants/Owners”) have appealed from the refusal of the City of Hamilton (“City”) Committee of Adjustment (“COA”) of Consent and minor variance applications for the property located at 322 Mount Albion Road (the “subject lands/Site”).

[2] The subject lands are located in the Red Hill Neighbourhood, south of King Street East and east of the Red Hill Valley Parkway. The Site is generally rectangular in shape and comprises an area of approximately 0.26 hectares (“ha”), with frontage along Mount Albion Road (43.62 metres (“m”)) and Glen Forest Drive (39.61 m).

[3] The Site is a former generational farm property and is currently developed with a 2 ½-storey two family dwelling and a detached garage. The dwelling was constructed *circa* 1891 and is identified as an Inventoried Heritage Building in the Municipal Heritage Inventory as a non-designated property.

[4] The subject lands are designated “Neighbourhoods” in Schedule E-1 – Urban Land Designations of the Urban Hamilton Official Plan (“UHOP”), and are zoned Urban Protected Residential, Etc. “C/S-1162” District, by the former City of Hamilton Zoning By-law No. 6593 (“ZBL”), as amended.

[5] The Owners are proposing to retain the existing two-family dwelling on the retained parcel (Part 1) and to create four (4) additional single-detached dwellings on the severed parcels (Parts 2 – 5). Three of the proposed single detached dwellings will have frontage along Glen Forest Drive (Parts 3, 4 and 5), with the fourth having frontage along Mount Albion Road (Part 2). Mount Albion Road is a collector road and Glen Forest Avenue is a local road. The existing detached garage is proposed to be demolished.

[6] The Consent applications result in the creation of five (5) “C/S-1162” District lots. In order to facilitate the severances and regularize the existing two-family dwelling, permissions for variations to the zoning standards are required, as follows:

1. to allow a maximum height of 2 ½ storeys for the existing two-family dwelling, whereas the maximum permitted is 2 ½ storeys and 11 m (Retained - Part 1);
2. to allow a minimum rear yard depth of 1.2 m for the existing two-family dwelling, whereas a minimum depth of 7.5 m is required. (Retained - Part 1);
3. to allow a minimum lot area of 310.0 square metres (“sq m”), whereas a minimum lot area of 360.0 sq m is required (Severed - Parts 3, 4 and 5).

[7] Staff of the City’s Planning and Economic Development Department provided a detailed planning analysis and report to the COA, which concluded with the following recommendation being made:

Based on the preceding information, staff recommends that the proposed severances and requested variances be approved as the proposal conforms to the intent of the Urban Hamilton Official Plan and former City of Hamilton Zoning By-law No. 6593.

[8] The COA denied the applications on the basis that, among other things, the “relief requested is undesirable for the appropriate development of the land and building”.

Requests for Status

[9] The Tribunal did not receive any Party or Participant Status Request Forms in advance of the hearing. However, at the start of the hearing Chad Collins identified himself as the Ward Councillor and asked to speak on behalf of constituents that are opposed to the applications.

[10] It is the long-standing position of the Tribunal that a municipal councillor does not have standing to represent or to otherwise speak on behalf of a municipal Council or a constituent(s) in a matter before the Tribunal. Although a municipal elected official can request party or participant status in a hearing as a private citizen and on their own behalf, the Tribunal rules stipulate that a participant may only participate in writing by way of a participant statement (Rule 7.7). The participant statement is to accompany a Request for Status Form which is expected to be submitted to the Tribunal 10-days in advance of the hearing. This information and instruction is included in the Notice of Hearing which was provided electronically to Councillor Collins and other members of the public on September 20, 2021.

[11] Mr. Collins confirmed that he did not file a Request Form and/or a participant statement. The Tribunal denied his request that he be permitted to speak at the hearing.

Planning Evidence

[12] Edward Fothergill is an experienced professional planner and Member of the Canadian Institute of Planners and the Ontario Professional Planners Institute. He was qualified by the Tribunal to proffer professional land use planning evidence and opinion in regard to the applications.

[13] It is Mr. Fothergill’s professional opinion that the redevelopment of the subject lands as is being proposed is consistent with the intensification policies of the Provincial Policy Statement, 2020 (“PPS”), the Growth Plan for the Greater Golden Horseshoe, 2020 (“GP”) and the UHOP, all of which permit intensification generally throughout the built up Urban Area.

[14] The criteria to assess the appropriate level of intensification for each property is based on policies in the UHOP. Policy B.2.4 recognizes that intensification will bring change and achieves a number of public policy objectives. Intensification initiatives are evaluated, in part, on the basis to which they are compatible with the surrounding area in terms of scale, form and character. The UHOP provides the following definition:

Compatibility/Compatible: means land uses and building forms that are mutually tolerant

and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean “same as” or even as “being similar to”.

[15] Based on his review of the development proposed and in consideration of the resulting lotting pattern, it is Mr. Fothergill’s professional opinion that the proposal meets the compatibility and intensification criteria in the UHOP. Compatibility with the UHOP is further illustrated by the extent to which the lot pattern conforms with zoning regulations that implement official plan policies and are deemed to comply with the UHOP.

[16] The proposed redevelopment of four (4) additional lots within the Red Hill Neighbourhood aligns with the City’s Community and Neighbourhood policies established by the UHOP. The Neighbourhoods designation permits low density residential development within the interior of neighbourhoods. Low density residential in the form of single-detached and semi-detached dwellings are permitted uses. The re-development proposal provides for low density residential development utilizing a low-density built form with appropriate scale and setbacks to the existing residential built-form character of the neighbourhood.

[17] The UHOP identifies residential intensification as a key component of the City’s strategy to meet its growth targets. Residential intensification is encouraged within established Neighbourhoods where it is compatible with the scale and character of the existing neighbourhood. All new development is required to be appropriate to maintain the integrity of on-site and/or adjacent cultural heritage resources.

[18] The development proposal provides appropriate residential intensification on underutilized lands by creating lots that can accommodate single detached dwellings that respect the neighbourhood character and the culturally significant two-family dwelling. The existing dwelling has a semi-detached built form and each unit’s primary entrance is accessed from the side yard. As such, the side yards are proposed to function as rear yards and private amenity space for each unit. The reduction in rear yard depth is required in order to recognize the rear yard as a functional side yard.

[19] The UHOP encourages a range of housing types and densities. The proposal provides for appropriate intensification on the subject lands and will contribute to the City’s housing stock. Policies E.3.1.4 and E.3.1.5 promote design which enhances and respects the character of existing neighbourhoods and promotes residential intensification of appropriate scale in suitable locations. The proposed redevelopment scheme aligns with the existing lotting patterns in the established neighbourhood by proposing lot widths and yard setbacks that maintain the general character of the streetscape, while respecting the existing culturally significant dwelling on the retained parcel.

[20] The UHOP also encourages compact development in transit-supportive and active transportation friendly neighbourhoods. The subject lands are located along a local transit route with a bus stop located within less than a one-minute walk, and Mount Albion Road has been identified for a planned bike lane in the Hamilton Transportation Master Plan.

[21] The requested variances are necessary to facilitate the infill residential development

uses being proposed. The intent of the building height zoning standard (Variance 1) is to ensure appropriate scale in the established neighbourhood and to ensure privacy for surrounding properties. The variance for building height (Variance 1) affects the existing two-family dwelling on the retained parcel (Part 1) only. In this case, approval of the variance simply serves to regularize an existing condition, and therefore, the variance is minor and technical in nature.

[22] The intent of the rear yard depth zoning provision is to provide a private amenity space for the dwelling unit. The variance for rear-yard depth (Variance 2) also relates only to the existing two-family dwelling on the retained parcel (Part 1) - the proposed severed lots (Parts 2 – 5) have sufficient depth to allow the future dwellings to meet the requisite rear yard setback.

[23] By way of explanation; the severance proposal will allow for the creation of residential development along Glen Forest Drive, on lands that are currently contained within the rear yard of the existing two-family dwelling. This dwelling is significantly setback from Mount Albion Road. Although, the existing dwelling could be demolished and/or relocated on the retained parcel as-of-right, the Owners and the City's Cultural Heritage staff prefer that it be retained in situ in order to maintain its central landmark presence on the street. City staff have indicated that there is sufficient remaining space within the side and front yards of Part 1 to function as amenity space for the existing dwelling.

[24] Mr. Fothergill pointed out that the layout of the existing two-family dwelling logically allows for the side yards to function as private amenity space for each unit, which would more typically be in the rear yard. In this case, the proposed 1.2 m rear yard is intended to function as the side yard of the existing dwelling. The lot layout proposes a minimum side yard setback of 7.5 m for the existing units, which is consistent with the standard rear yard setback requirement for a "C" District zone. The existing dwelling is two and a half storeys in height and has no windows to a habitable room along the rear wall, and therefore, the reduced rear yard setback will not impact the privacy of existing neighbouring properties.

[25] The variances for reduced lot area (Variance 3) relates to the three (3) severed lots fronting onto Glen Forest Drive (Parts 3, 4 and 5). These lots can provide front, side and rear yard setbacks that meet the zoning standards and can accommodate a dwelling footprint that reflects the character of the existing homes and is consistent with the lotting pattern in the surrounding neighbourhood.

[26] It is Mr. Fothergill's opinion that the reduction in lot area being proposed is minor as the impacts of the residential infill will be mitigated with appropriate setbacks. The single-detached dwellings being proposed will have a maximum height of 11 m and the building footprint and low-density built form generally conforms with the existing dwellings on the block. Since the frontage of the lots are consistent with those in the neighbourhood, the slight reduction in lot area will not be noticeable from the public perspective.

[27] In conclusion of his planning analysis, it is Mr. Fothergill's professional opinion that the

proposed redevelopment of the subject lands will assist in achieving general intensification targets in a way which will enhance the prevailing built form of the residential neighbourhood by continuing to define the streetscape with low density residential development. The proposal continues the established lot pattern of the neighbourhood in a manner which is consistent with the existing zoning.

[28] In his opinion, the severance applications are consistent with the Provincial Policy Statement, help to implement the Growth Plan and the UHOP, and achieve a redevelopment form that is compatible with the neighbourhood and meets the tests of the *Planning Act* while conserving an existing two-family dwelling.

[29] The requested variances maintain the intent and purpose of the UHOP and the ZBL, are minor in nature and are desirable for the appropriate development of the Site. The proposed development represents good land use planning.

CONCLUSIONS AND DISPOSITION

[30] In deciding these applications, the Tribunal has taken into account the concerns raised by the Ward Councillor and two local residents as identified in the Minutes of the COA meeting. Their concerns collectively generally relate to traffic and parking; over intensification of the Site; impact on the existing heritage home; incompatibility with the existing neighbourhood; loss of trees; and the lack of transparency.

[31] The Tribunal accepts and relies on the uncontradicted land use planning evidence and expert opinions of Mr. Fothergill to find that the overall development proposal aligns with the principles of good land use planning, is in the greater public interest, and warrants approval.

[32] The proposed intensification of underutilized lands in an established residential neighbourhood with available servicing infrastructure, adequate road network and public transit services conforms to the land use planning directives of the Province and the policies of the UHOP. The overall proposal results in a more efficient use of lands and enhances the supply, range and mix of housing in an area that is targeted for residential intensification.

[33] The development form being proposed is consistent with, and complementary to, the existing development and established character found within this stable residential neighbourhood. The proposal on whole does not interfere with or otherwise adversely impact adjacent properties or the larger neighbourhood as a whole. The preservation of the heritage home is a desirable aspect of the development scheme.

[34] The Tribunal is satisfied there are no conflicts with matters of Provincial interest, and that the relevant criteria enumerated in s. 51(24) of the *Planning Act* have been duly regarded. In accordance with s. 53(1) of the *Planning Act*, a plan of subdivision is not required for the orderly development of the municipality. Lastly, the Tribunal is satisfied that the criteria established in s. 45(1) of the *Planning Act* is met.

ORDER

[35] The Tribunal orders that the appeals are allowed, and provisional consent is to be given subject to the Conditions set out in Attachment 1 to this Order.

[36] The Tribunal orders that the variances to Zoning By-law No. 6593 are authorized.

"M.A. Sills"

M.A. SILLS
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

Conditions of Consent Approval

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 proponent shall carry out an archaeological assessment on each new lot and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning confirming that all archaeological resource concerns have met conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI).
3. That the applicant submits a Tree Protection Plan or Tree Management Plan to the satisfaction of the Manager of Development Planning, Heritage and Design, if required.
4. The owner shall comply with Ontario Building Code requirements regarding spatial separation distances of any structures. Compliance to be confirmed by the Planning and Economic Development Department (Building Division – Examination Section).
5. 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).
6. The applicant must enter into and register on title of the lands, a **Consent Agreement**, to address issues including but not limited to: lot grading and drainage to a suitable outlet on the conveyed and retained parcels (detailed grading plan required), erosion and sediment control measures (to be included on the grading plan); cash payment requirements for items such as street trees (City policy requires one (1) street tree/lot, inspection of grading, stormwater management infrastructure as required and securities for items that may include: lot grading (\$10,000.00 grading security), driveway approaches and culverts, relocation of any existing infrastructure (hydro poles, etc.) and any damage to municipal infrastructure during construction (unknown costs at this time), all to the satisfaction of the Manager of Development Engineering Approvals.
7. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.