



Hamilton

COMMITTEE OF ADJUSTMENT

City Hall, 5th floor, 71 Main Street West, Hamilton, ON L8P 4Y5

Telephone (905) 546-2424, ext. 4221

Fax (905) 546-4202

E-mail: cofa@hamilton.ca

NOTICE OF PUBLIC HEARING

Application for Change of Conditions

APPLICATION NUMBER: HM/B-20:06

SUBJECT PROPERTY: 893 West 5th St., Hamilton

You are receiving this notice because you are either:

- Assessed owner of a property located within 60 metres of the subject property
 - Applicant/agent on file, or
 - Person likely to be interested in this application
-

APPLICANT(S):

Owner: Paul Silvestri

Agent: SimpsonWigle c/o Timothy Bullock

PURPOSE OF APPLICATION: To change conditions for a previously granted consent, see attached letter for detail.

The Committee of Adjustment will hear this application on:

DATE: Thursday, June 17th, 2021

TIME: 1:10 p.m.

PLACE: Via video link or call in (see attached sheet for details)

To be streamed at

www.hamilton.ca/committeeofadjustment

for viewing purposes only

PUBLIC INPUT

Written: If you would like to submit written comments to the Committee of Adjustment you may do so via email or hardcopy. Please see attached page for complete instructions, including deadlines for submitting to be seen by the Committee.

Orally: If you would like to speak to this item at the hearing you may do so via video link or by calling in. Please see attached page for complete instructions, including deadlines for registering to participate.

MORE INFORMATION

For more information on this matter, including access to drawings illustrating this request:

- Visit www.hamilton.ca/committeeofadjustment
- Call 905-546-CITY (2489) or 905-546-2424 extension 4221, 4130, or 3935
- Email Committee of Adjustment staff at cofa@hamilton.ca

DATED: June 1st, 2021

Jamila Sheffield,
Secretary-Treasurer
Committee of Adjustment

Information respecting this application is being collected under the authority of the Planning Act, R.S.O., 1990, c. P. 13. All comments and opinions submitted to the City of Hamilton on this matter, including the name, address, and contact information of persons submitting comments and/or opinions, will become part of the public record and will be made available to the Applicant and the general public.



1 Hunter Street East, Suite 200
Hamilton, Ontario L8N 3W1
P.O. Box 990, Hamilton, Ontario L8N 3R1
Tel: 905-528-8411 Fax: 905-528-9008
www.simpsonwigle.com

T. Bullock
Tel: 905-528-8411 Ext. 354
E-mail: bullockt@simpsonwigle.com

May 31, 2021

Committee of Adjustment
Hamilton City Hall
71 Main Street West
5th Floor
Hamilton, ON L8P 4Y5

Attention: Jamila Sheffield

Dear Madam:

RE: Application for Consent
Application No. HMB-20:06
Submission No. B-06/20
Subject Property: 893 West 5th Street, Hamilton, ON
Applicant/Owner: Paul Silvestri
Agent: Webb Planning Consultants c/o James Webb
Purpose of Application is to permit the conveyance of a parcel of land to create a new residential lot. The existing dwelling will be demolished to facilitate the Application to be heard in conjunction with HMB-20:05 and HM/A-2023

We are lawyers for the Applicant/Owner and are writing with respect to the Notice of Decision in the above matter dated the 28th day of May, 2020. The one-year period to satisfy conditions expires June 23, 2021. There was an extension from May 28th as a result of the amendment to Planning Act, O Reg 149/29. The period from May 28th, 2020, to June 22nd, 2020 is not to be recounted in the period of time to fulfill conditions.

We are writing to request pursuant to Sec. 53(23) of the Planning Act a change to the conditions of the decision.

The Applicant cannot at this time satisfy conditions 2., 4. or 5. as the existing tenant cannot be evicted from the home during the present Provincial Lockdown Order which is anticipated to expire June 14th, 2021. Due to the lockdown the Sheriff's office will not act upon any eviction orders. An eviction order has been obtained and cannot be acted on. A copy of the order is attached. The tenant has been and continues to be in arrears of rent, continues to occupy the premises and accordingly it is not possible to demolish with the tenant occupying the premises. As a result, it is impossible to satisfy the conditions.

P.D. MILNE (RETIRED)
T. BULLOCK
P.A. RAMACIERI**
G. LIMBERIS*
A.M. STONE
S.A. REGO

L.W. MATTHEWS (RETIRED)
D.A. SCHMUCK**
B.C. LANGLOTZ
G. NALSOK
C.L. DILTS
A.T. HALL

J.N. ROSENBLATT
J.C. MONACO*
C.A. OLSIAK
M. DURDAN
B.Z. MIRZA
S. SAJOOKI

J.C. BROWN
B.J. FOREMAN
S.R. LEE
B. SARSH*
D.R. LILKO
R. TAYLOR

D.J.H. JACKSON
K.I. OSBORNE
H.A. HAMDANI*
P.J. DEMARCO
R.M. WALLIK

J.M. WIGLE
R.A. FISHER*
E. SAVAS**
K.R. MITCHELL
E.J. HARRINGTON

We believe at a minimum conditions 2., 4 and 5 should be amended.

A consent certificate is to be issued, however, new conditions would provide the buildings are to be demolished and removed prior to any transfer pursuant to the issued Consent Certificate. Further, the Consent Agreement that has been executed by the Applicant to be amended to reflect these changes in conditions. The time within which the buildings can be demolished could be up to two years to match the time to transfer the lands. The time frame could be much shorter, depending on any further lockdown. The suggestion of two years matches the time to transfer the lands after a Certificate has been issued.

Conditions 2, 4 and 5 could be deleted and new conditions inserted respecting demolishing prior to any transfer, mortgage or lease that may utilize the consent. The Consent Agreement would reflect the above requirements. Upon being demolished the lands will be vacant, the spatial separation requirements can be achieved through the submission for future building permits, at that time the consent certificate would be utilized.

Yours very truly,


SimpsonWigle LAW LLP

Timothy Bullock

TB/bm



Tribunals Ontario
Landlord and Tenant Board

Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-16544-20

In the matter of: 893 WEST 5TH STREET
HAMILTON ON L9C5R4

Between: Paul Silvestri

and

I hereby certify this is a
true copy of an Order dated

29/03/2021

LL
Landlord and Tenant Board

Landlord

Tenant

Paul Silvestri (the 'Landlord') applied for an order to terminate the tenancy and evict (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard via videoconference on February 23, 2021 at 1:30 p.m.

Only the Landlord, Paul Silvestri attended the hearing. The Tenant, [REDACTED] was not present or represented at the hearing though being properly served with the Notice of Hearing by the Board.

The hearing proceeded without the Tenant at 3:35 p.m.

Determinations:

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from April 1, 2020 to February 28, 2021. Because of the arrears, the Landlord served a Notice of Termination effective June 26, 2020.
2. The Tenant was in possession of the rental unit when the application was filed.
3. The monthly rent is \$1,220.00.
4. The Landlord collected a rent deposit of \$1,200.00 from the Tenant and this deposit is still being held by the Landlord.
5. Interest on the rent deposit is owing to the Tenant for the period from January 25, 2017 to June 26, 2020.
6. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the

hearing to present evidence or submissions in support of granting relief from eviction and no circumstances were disclosed at the hearing or appeared in the Board file.

It is ordered that:

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 9, 2021.
2. The Tenant shall pay to the Landlord \$16,929.20*, which represents the amount of rent owing and compensation up to March 29, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$40.11 per day for compensation for the use of the unit starting March 30, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing* on or before April 9, 2021, the Tenant will start to owe interest. This will be simple interest calculated from April 10, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before April 9, 2021, then starting April 10, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord, on or after April 10, 2021.
8. If the Tenant wishes to void this order and continue the tenancy, the Tenant must pay to the Landlord or to the Board in trust:
 - i) \$18,486.00 if the payment is made on or before March 31, 2021, or
 - ii) \$19,706.00 if the payment is made on or before April 9, 2021**.

If the Tenant does not make full payment in accordance with this paragraph and by the appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

9. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after April 10, 2021 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: SOL-16544-20

A. Amount the Tenant must pay if the tenancy is terminated:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	January 1, 2020 to June 26, 2020	\$7,139.58
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	June 27, 2020 to March 29, 2021	\$11,070.36
Less the rent deposit:		-\$1,200.00
Less the interest owing on the rent deposit:	January 25, 2017 to June 26, 2020	-\$80.74
Amount owing to the Landlord on the order date: (total of previous boxes)		\$16,929.20
Additional costs the Tenant must pay to the Landlord:		\$186.00
Plus daily compensation owing for each day of occupation starting March 30, 2021:		\$40.11 (per day)
Total the Tenant must pay the Landlord if the tenancy is terminated:		\$17,115.20 + \$40.11 per day starting March 30, 2021

B. Amount the Tenant must pay to void the eviction order and continue the tenancy:

1. If the payment is made on or before March 31, 2021:

Reasons for amount owing	Period	Amount
Arrears:	January 1, 2020 to March 31, 2021	\$18,300.00
Additional costs the Tenant must pay to the Landlord:		\$186.00
Total the Tenant must pay to continue the tenancy:	On or before March 31, 2021	\$18,486.00

2. If the payment is made after March 31, 2021 but on or before April 9, 2021:

Reasons for amount owing	Period	Amount
Arrears:	January 1, 2020 to April 30, 2021	\$19,520.00
Additional costs the Tenant must pay to the Landlord:		\$186.00
Total the Tenant must pay to continue the tenancy:	On or before April 9, 2021	\$19,706.00

File Number: SOL-16544-20

March 29, 2021
Date Issued



Peter Pavlovic
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on October 10, 2021 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

- * Refer to section A on the attached Summary of Calculations.
- ** Refer to section B on the attached Summary of Calculations.



Committee of Adjustment
Hamilton City Hall
71 Main Street West, 5th floor
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
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COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENT LAND SEVERANCE

APPLICATION NO. HM/B-20:06
SUBMISSION NO. B-06/20

APPLICATION NUMBER: HM/B-20:06

SUBJECT PROPERTY: 893 West 5th St., Hamilton

APPLICANT(S): Owner: Paul Silvestri
Agent: WEBB Planning Consultants c/o James Webb

PURPOSE OF APPLICATION: To permit the conveyance of a parcel of land to create a new residential building lot. The existing dwelling will be demolished to facilitate this application. To be heard in conjunction with HM/B-20:05 and HM/A-20:23.

Severed lands:
11.74m[±] x 34.07m[±] and an area of 397m^{2±}

Retained lands:
11.74m[±] x 34.07m[±] and an area of 400.6m^{2±}

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 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 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 for the parcel to be severed and the parcel to be retained (Building Division – Plan Examination Section and Building Engineering Section).

3. The owner shall receive final and binding approval of Minor Variance application HM/A-20:23 and Consent Application HM/B-20-05.
4. The owner shall demolish the existing single family dwelling straddling the proposed property line, to the satisfaction of the Planning and Economic Development Department (Building Division – Zoning Section). This shall be subject to a demolition permit issued in the normal manner.
5. The owner shall demolish the detached garage on the lands to be retained to the satisfaction of the Planning and Economic Development Department (Building Division – Zoning Section) or the owner shall receive final approval of any necessary variances from the requirements of the Zoning By-law in order for the accessory building (detached garage) to remain when no principal use is existing (Building Division – Zoning Section). This shall be subject to a demolition permit issued in the normal manner.
6. The owner shall submit survey evidence that the lands to be severed and the lands to be retained, including the location of any existing structures, parking and landscaping, 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 enter into with the City of Hamilton and register on title of the lands, a Consent Agreement, having an administrative fee of \$4,310.00 (2020 fee) 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 and securities for items that may include: lot grading (\$10,000.00 grading security), water and sewer service inspections, driveway approaches, relocation of any existing infrastructure (such as hydrants) and any damage during construction (unknown costs at this time). Cash payments mentioned above are subject to change.
8. That final and binding approval of Minor Variance application HM/A-20:23 be received, to the satisfaction of the Manager of Development Planning, Heritage and Design.
9. The owner submits to the Committee of Adjustment office an administration fee of \$60.00 payable to the City of Hamilton to cover the costs of setting up tax accounts for the newly created lots.
10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

DATED AT HAMILTON this 28th day of May 2020.

M. Dudzic (Chairman)

D. Serwatuk

L. Gaddye

M. Smith

B. Charters

N. Mleczko

T. Lofchik

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS May 28th, 2020.
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE
OF THIS NOTICE OF DECISION (May 28th, 2021) OR THE APPLICATION SHALL BE
DEEMED TO BE REFUSED (PLANNING ACT, SECTION 53(41)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE LOCAL PLANNING
APPEAL TRIBUNAL (LPAT) MAY BE FILED IS **June 17th, 2020.**

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

Note: Based on these applications being approved and all the conditions being met, the
owner/applicant should be made aware that the following addresses will be
assigned: **889 West 5th Street, Hamilton (Part 1), 893 West 5th Street, Hamilton
(Part 2), 202 Fortissimo Drive, Hamilton (Part 4 and 6) and 198 Fortissimo Drive
(Part 3 and 5).**