

**FL/B-24:10 – 446 Orkney Road, Flamborough**

Recommendation:

Denial

Proposed Conditions:

1. The owner/applicant shall receive final approval of the appropriate Planning Act application in order to seek relief from the requirements of the Zoning By-law (Planning Division – Zoning Review Section).
2. The owner/applicant shall submit survey evidence that the lands to be severed and 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 the appropriate Planning Act application in order to seek relief from the requirements of the Zoning By-law (Planning Division – Zoning Review Section).
3. 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 –Plan Examination.
4. The owner shall submit survey evidence from a BCIN Qualified Designer (Part 8 Sewage System) or Professional Engineer that the existing septic system complies with the clearance requirements of Part 8 of the Ontario Building Code for the lands to be severed and or retained, to the satisfaction of the Planning and Economic Development Department (Building Division – Plan Examination Section.
5. That, the owner submits a Hydrogeological Report prepared by a qualified professional in support of the proposed severance to the satisfaction of City's Source Protection Section.
6. Highway 5 is to be 36.567- 45.720 metres from West City Limits to Former RR 52 (Peter's Corners), as per the Council Approved Rural Official Plan: Schedule C-1 - Future Right-of-Way Dedications. (Subject to the satisfaction and approval of the Manager, Transportation Planning.)
7. A survey conducted by an Ontario Land Surveyor and at the Applicant's expense will determine the ultimate dimensions for the right-of-way widenings (Subject to the satisfaction and approval of the Manager, Transportation Planning.)



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8. The Applicant's surveyor is to contact Geomatics and Corridor Management to confirm the required dedication (Subject to the satisfaction and approval of the Manager, Transportation Planning.)
9. 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 pdf and also submitted in CAD format, drawn at true scale and location and tied to the City corporate coordinate system. (Committee of Adjustment Section)
10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer. (Committee of Adjustment Section)
11. The owner submits to the Committee of Adjustment office an administration fee, payable to the City of Hamilton, to cover the costs of setting up a new tax account for each newly created lot. (Committee of Adjustment Section)
12. That the Owner/Applicant submit and receive final approval of a Zoning By-law Amendment application for the retained lands to prohibit a residential dwelling as a permitted use, subject to the approval of the Director of Planning.
13. That the Owner/Applicant submit proof that no livestock is being held on the retained lands within the existing barns and/or that the proposed severed lands comply with the Minimum Distance Separation requirements, subject to the approval of the Director of Planning.
14. That the Owner/Applicant submit a Hydrogeological Assessment prepared by a qualified professional demonstrating the need for an increase in lot size above the minimum 0.4 hectare requirement for the lands to be serviced.

Proposed Notes:

**"Acknowledgement Note:** The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances. If archaeological resources are encountered, the proponent may be required to conduct an archaeological assessment prior to further impact in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Site-specific Assessment and Stage 4 Mitigation of Development Impacts may be required as determined by the Ontario Ministry of Citizenship and Multiculturalism (MCM). All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the MCM.



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**STAFF COMMENTS**

**HEARING DATE: April 9, 2024**

Should deeply buried archaeological materials be found on the property during any of the above development activities the MCM should be notified immediately (416-212-0036) In the event that human remains are encountered during construction, the proponent should immediately contact both MCM and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416- 212-7499)."



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Development Planning:

### Background

The purpose of this application is to facilitate the creation of a new non-farm parcel (for residential purposes) with the existing dwelling and shed to remain on the severed lands, and to retain a parcel of land for agricultural purposes (existing barn to remain on the retained parcel).

**SEVERED LANDS: Frontage:** 62 m± **Depth:** 104 m± **Area:** 0.7 ha±

**RETAINED LANDS: Frontage:** 348 m± **Depth:** 705 m± **Area:** 24.47 ha±

### Rural Hamilton Official Plan

The subject lands are designated “Agriculture” Schedule D – Rural Land Use Designations in the Rural Hamilton Official Plan. Policies found in Sections D.2.1, F.1.14.2.1, and F.1.14.2.8, amongst others, are applicable. The proposed residential and agricultural uses are permitted.

The subject property is located within the boundaries of the Rural Hamilton Official Plan (UHOP). Based on Schedule B (Natural Heritage System) of the RHOP, a Core Area has been identified within the subject property. In this case, the Core Area is a Significant Woodland. In addition, a portion of the property is located within the Greenbelt Natural Heritage System.

As the Core Area is currently located within the agricultural portion of the property, and as the proposed lot line does not dissect a Core Area, it is anticipated that there will be no further negative impacts on the feature and its functions as development is not proposed within the Core Area.

Policy F.1.14.2.2 states the following:

*Severances that create a new lot in the Agriculture and Specialty Crop designations, except surplus farm dwelling severances, shall be permitted providing the following conditions are met:*

- b) The minimum lot size for newly created agricultural lots and retained agricultural lots within the:*
  - i. Agriculture designation shall be 40.4 hectares (100 acres), except as provided in Section D.2.1.*

### Surplus Farm Dwelling Severances – All Lands

Policy F.1.14.2.8 states the following:

*An existing farm dwelling that is a residence surplus to a farming operation as a result of a farm consolidation may be severed provided all of the following conditions are met:*



- a) *In all cases where surplus farm dwellings are to be severed the following shall apply:*
- i. *The farm consolidation shall have been completed prior to the time of the application;*
  - ii. *The farm dwelling shall be determined to be surplus to the farm operation for no reason other than the farm dwelling is surplus to the needs of the farm consolidation. Farm dwellings that have been determined to be surplus to a farm operation prior to December 16, 2004 and prior to the acquisition of the additional farm parcel(s), or as a result of changing agricultural operations, are deemed not to be surplus farm dwellings for the purposes of Section F.1.14.2.8.*
  - iii. *The proposed surplus farm dwelling: 1) shall have been built on or before December 16, 2004; and, 2) shall be habitable on the date of the application for the surplus farm dwelling severance and shall meet the City's standards for occupancy without requiring substantial demolition and new construction.*
  - iv. *The surplus lot shall be a minimum of 0.4 hectares (1 acre), or such larger area as may be required by Section C.5.1 Private Water and Wastewater Services of this Plan. The maximum size of the surplus dwelling lot shall be the size required for servicing in accordance with Section C.5.1, with as little acreage as possible taken out of agricultural production.*
  - v. *A private water well and private sewage disposal system shall be provided in accordance with Section C.5.1 Private Water and Wastewater Services of this Plan.*
  - vi. *The Shape and dimensions of the surplus farm dwelling lot shall: 1) not impair agricultural operations on the retained land and 2) generally not exceed a depth of 122 m (400 feet).*
  - vii. *The surplus dwelling lot shall not include barns or other farm buildings which are not suitable to be used as accessory structures to a residential use prescribed by the Zoning By-law, and no such buildings or structures shall be used for industrial or commercial purpose.*
  - viii. *Where a barn or other farm building exists within the immediate vicinity of the surplus residence, the City may require demolition of the barn.*

#### Surplus Farm Dwelling Severances – Lands Not Merged in Title

- c) *In cases of a farm dwelling made surplus as a result of acquisition as part of a farm operation that does not result in the merging in title of parcels of land, applications for severance of the surplus dwelling shall comply with the following conditions:*
- i) *The owner and operator of the farm maintains an existing dwelling on land that is also part of the consolidated farm operation;*
  - ii) *The parcels of land comprising the consolidated farm operation shall generally be a minimum of 38.4 hectares (95 acres) in total in the Agriculture and Rural designations and 14.2 hectares (35 acres) in the Specialty Crop designation; (OPA 30)*



- iii) *The parcel of land from which the surplus dwelling is severed shall generally be a minimum of 8.1 hectares (20 acres) in size for lands designated Specialty Crop on Schedule D – Rural Land Use Designations, or 16.2 hectares (40 acres) in size for lands designated Agriculture or Rural on Schedule D – Rural Land Use Designations;*
- iv) *Prior to granting of final consent, one of the following conditions shall be met for the retained farm parcel as a result of a surplus farm dwelling severance:*
  - 1. *The land owner shall apply for and receive final approval to rezone the farm parcel to prohibit the construction of a dwelling unit; or*
  - 2. *The land owner shall grant in favour of the City, a restrictive covenant which prohibits the construction of any dwelling unit.*

*If the landowner grants a restrictive covenant in favour of the City, the City shall rezone the farm parcel to prohibit the construction of any dwelling unit.*

#### *F.1.16 Minimum Distance Separation I and II*

The Minimum Distance Separation Formulae are a tool to establish distances between a livestock facility and another lands use. The objective is to prevent land use conflicts as well as to minimize nuisance complaints.

Policy F.1.16.1 states that new land uses, including the creation of lots, and new or expanding livestock facilities and expansion to existing uses permitted by the policies of this Plan shall comply with the Minimum Distance Separation (MDS) Formulae. The formulae for calculating required minimum distance separation between land uses shall be implemented in the Zoning By-law.

Per Policy F.1.16.3, Where the required Minimum Distance Separation distance, according to MDS I, is not met for a severance and lot addition, a decision regarding variation of the Minimum Distance Separation shall be made prior to a decision on the severance. (OPA 5)”

The applicant has not provided any information indicating that a farm consolidation has occurred, per policy F.1.14.2.8 a) i). The address listed as the “consolidation property” on the application form is the address of the lands to be severed. Rural Hamilton Official Plan policy requires that a surplus farm dwelling severance only be considered as the result of a farming operation consolidation. The applicant has not provided any information to Staff to support a consolidation occurring.

Per Policy F.1.14.2.8, the proposed severance does not conform with policy F.1.14.2.8 a) vii) as the severed parcel includes a large accessory structure that appears to be used for agricultural purposes. Only accessory buildings suitable for residential use are to be included on the severed lands. Staff do not have enough information to confirm whether or not the proposed accessory structure is of a size that is appropriate for residential use. Similarly, Policy F.1.14.2.8 a) viii) may require this farm building to be demolished. With regard to F.1.14.2.8. a) iv) and vi), the applicant has not demonstrated the need



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**STAFF COMMENTS**

**HEARING DATE: April 9, 2024**

for the proposed lot to exceed the minimum 0.4 hectare requirement for private water/wastewater servicing. Accordingly, the proposed residential lot configuration removes more land from agricultural production than can be justified.

Policy F.1.14.2.1 e) requires all proposed severances to comply with the Minimum Distance Separation (MDS) requirements in accordance with Section F.1.16 Minimum Distances Separation I and II and the Zoning By-law's requirements. Staff note that MDS calculations were not provided by the applicant. Accordingly, staff are unable to determine whether or not the proposed new lot is meeting MDS setback requirements.

In accordance with Policy F.1.14.2.8 c) i) and ii) the owner has not provided any information related to the other lands that would comprise the consolidated farm operation. Accordingly, staff cannot confirm whether the owner and operator of the farm operation maintains an existing dwelling on the other land, nor can we confirm the parcel size requirements of lands that form the consolidation.

The proposed severance does not conform to the surplus farm dwelling severance policies of Rural Hamilton Official Plan.

**Archaeology:**

The subject property meets the criteria used by the City of Hamilton and Ministry of Citizenship and Multiculturalism for determining archaeological potential. These criteria define the property as having archaeological potential. Accordingly, Section 2 (d) of the Planning Act and Section 2.6.2 of the Provincial Policy Statement apply to the subject application.

If this severance is granted, the City does not require an archaeological assessment, but the proponent must be advised in writing by the Committee of Adjustment as follows:

**“Acknowledgement Note:** The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances. If archaeological resources are encountered, the proponent may be required to conduct an archaeological assessment prior to further impact in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Site-specific Assessment and Stage 4 Mitigation of Development Impacts may be required as determined by the Ontario Ministry of Citizenship and Multiculturalism (MCM). All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the MCM.

Should deeply buried archaeological materials be found on the property during any of the above development activities the MCM should be notified immediately (416-212-0036) In the event that human





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remains are encountered during construction, the proponent should immediately contact both MCM and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416- 212-7499)."

#### Cultural Heritage:

The subject property is located adjacent to 428 Orkney Rd, a property designated under Part IV of the *Ontario Heritage Act* and a "protected heritage property" under the *Provincial Policy Statement*. Accordingly, Section 2.6.3 of the *Provincial Policy Statement* and Section B.3.4.1.4 of the Rural Hamilton Official Plan, Volume 1, apply.

The proponent proposes the creation of a new non-farm parcel (for residential purposes) with the existing dwelling and shed to remain, and to retain a parcel of land for agricultural purposes (existing barn to remain).

Notwithstanding that the subject property is adjacent to a protected heritage property, staff are of the opinion that the cultural heritage value of the heritage property will be conserved. Staff have no further comments on the application as circulated.

#### City of Hamilton Zoning By-law No. 05-200

The subject lands are zoned Agricultural (A1) Zone for which the use of a single detached dwelling and agriculture is permitted. For an agricultural use, a minimum lot area of 40.4 hectares is required. For a single detached dwelling, a minimum lot width of 30 metres and a minimum lot area of 0.4 hectares is required. The proposed severed lands meet these requirements, but the retained lands do not.

#### **Analysis**

Based on the foregoing, the Applicant has not demonstrated that the proposed surplus farm dwelling severance is the result of a farm consolidation, nor have they provided sufficient information to satisfy the general conditions associated with surplus farm dwelling severances outlined in the Rural Hamilton Official Plan. Accordingly, the proposed severance does not conform to the Rural Hamilton Official Plan.

In conclusion, Staff are not supportive of the proposed Consent to Sever application as the proposal does not meet the policies regarding the consent to sever of a surplus farm dwelling as a result of farm consolidation in the Rural Hamilton Official Plan. Staff recommends that the applications be **denied**.





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**Conditions (if approved)**

1. That the Owner/Applicant submit and receive final approval of a Zoning By-law Amendment application for the retained lands to prohibit a residential dwelling as a permitted use, subject to the approval of the Director of Planning.
2. That the Owner/Applicant submit proof that no livestock is being held on the retained lands within the existing barns and/or that the proposed severed lands comply with the Minimum Distance Separation requirements, subject to the approval of the Director of Planning.
3. That the Owner/Applicant submit a Hydrogeological Assessment prepared by a qualified professional demonstrating the need for an increase in lot size above the minimum 0.4 hectare requirement for the lands to be serviced.

**Zoning:**

Recommendation:	Comments and Conditions/Notes
Proposed Conditions:	<ol style="list-style-type: none"><li>1. The owner/applicant shall receive final approval of the appropriate Planning Act application in order to seek relief from the requirements of the Zoning By-law (Planning Division – Zoning Review Section).</li><li>2. The owner/applicant shall submit survey evidence that the lands to be severed and 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 the appropriate Planning Act application in order to seek relief from the requirements of the Zoning By-law (Planning Division – Zoning Review Section).</li></ol>
Comments:	<ol style="list-style-type: none"><li>1. Approval of the appropriate Planning Act application is required to permit the accessory structures to remain on the retained lands when no main use/building has been established.</li><li>2. The applicant should obtain an appropriate municipal address for the proposed parcel(s) from the Legislated Approvals and Staging of Development Section of the Planning and Economic Development Department prior to the issuance of a building permit.</li><li>3. All or an appropriate portion of the building straddling the proposed property line shall be demolished in order to achieve zoning compliance, or the applicant shall receive final approval of the required minor variances.</li></ol>



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	4. In order to clear conditions, the applicant will be required to make application for a Zoning Compliance Review and pay the relevant fees.
Proposed Notes:	

**Development Engineering:**

Recommendation:	Approve with Conditions
Proposed Conditions:	1. That, the owner submits a Hydrogeological Report prepared by a qualified professional in support of the proposed severance to the satisfaction of City's Source Protection Section.
Comments:	
Proposed Notes:	

**Building Engineering:**

Recommendation:	Comments and Conditions/Notes
Proposed Conditions:	<p>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 –Plan Examination.</p> <p>The owner shall submit survey evidence from a BCIN Qualified Designer (Part 8 Sewage System) or Professional Engineer that the existing septic system complies with the clearance requirements of Part 8 of the Ontario Building Code for the lands to be severed and or retained, to the satisfaction of the Planning and Economic Development Department (Building Division –Plan Examination Section</p>
Comments:	
Proposed Notes:	In order to clear conditions, the applicant will be required to make application for Ontario Building Code compliance and pay the relevant fees.

**Transportation Planning:**

Recommendation:	Approve with Conditions
Proposed Conditions:	Transportation Planning can support the severance of the lands if the following dedication to the Municipal right-of-way are provided from both severed and retained portions:



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**HEARING DATE: April 9, 2024**

	<p>Highway 5 is to be 36.567- 45.720 metres from West City Limits to Former RR 52 (Peter's Corners), as per the Council Approved Rural Official Plan: Schedule C-1 - Future Right-of-Way Dedications.</p> <p>a. A survey conducted by an Ontario Land Surveyor and at the Applicant's expense will determine the ultimate dimensions for the right-of-way widenings.</p> <p>b. The Applicant's surveyor is to contact Geomatics and Corridor Management to confirm the required dedication.</p> <p>c. Subject to the satisfaction and approval of the Manager, Transportation Planning.</p> <p>The Council Approved Rural Official Plan: Chapter C - City Wide Systems and Designations, 4.5 Road Network Functional Classification, 4.5.2. Collector Roads shall be 36 metres. Orkney Road is a Collector Road and require a right-of-way of 36 metres.</p> <p>a. A survey conducted by an Ontario Land Surveyor and at the Applicant's expense will determine the ultimate dimensions for the right-of-way widenings.</p> <p>b. The Applicant's surveyor is to contact Geomatics and Corridor Management to confirm the required dedication.</p> <p>c. Subject to the satisfaction and approval of the Manager, Transportation Planning.</p> <p>Highway 5 is an Arterial Road and Orkney Road is a Collector Road. The Applicant is to dedicate a 12.19 metres x 12.19 metres Daylighting Triangle to the right-of-way, as per the Council Approved Urban Official Plan: Chapter C - City Wide Systems and Designations 4.5 Road Network Functional Classification; Daylighting Triangles 4.5.7.</p>
Comments:	
Proposed Notes:	

**Legislative Approvals:**

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	The lands to be conveyed will remain as 446 Orkney Road (Flamborough). The lands to be retained will be assigned the address of 434 Orkney Road (Flamborough).



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Proposed Notes:	We ask that the Owner agrees to physically affix the municipal numbers or full addresses to either the buildings or on signs in accordance with the City's Sign By-law, in a manner that is clearly visible from the road.
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## COMMITTEE OF ADJUSTMENT

City Hall, 5<sup>th</sup> floor, 71 Main Street West, Hamilton, ON L8P 4Y5

Telephone (905) 546-2424, ext. 4221

E-mail: [cofa@hamilton.ca](mailto:cofa@hamilton.ca)

**To:** Jamila Sheffield, Secretary-Treasurer, Committee of Adjustment

**From:** Sam Brush, Urban Forest Health Technician – Forestry

**Email:** Sam.Brush@hamilton.ca

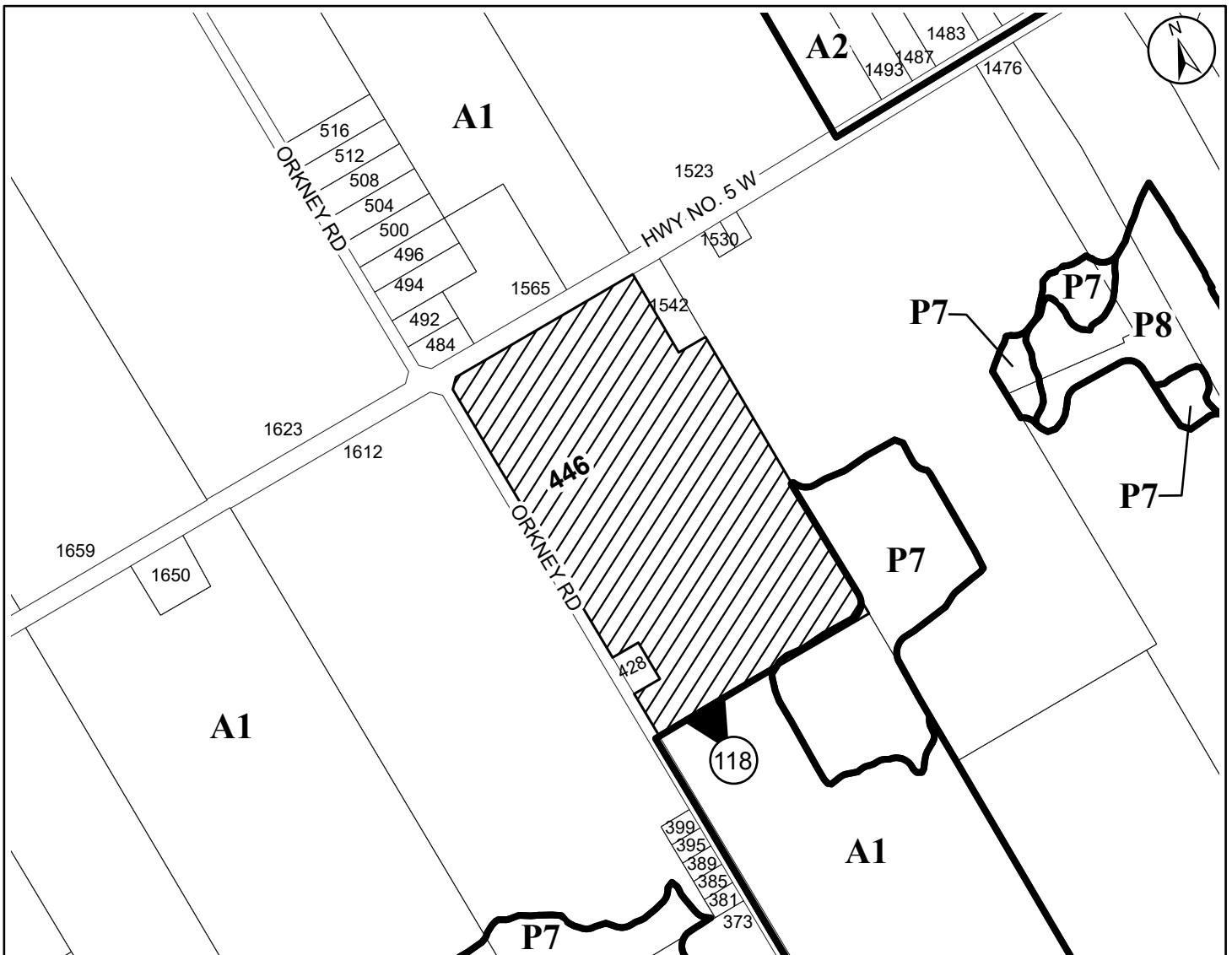
**File Number:** FL/B-24:10

**Address:** 446 Orkney Road, Flamborough

**Subject:** Committee of Adjustment File Comments – April 9, 2024

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Recommendation	Approve
Proposed Conditions:	No conditions required.
Comments:	The public tree assets on site are not impacted by the proposed conveyance.
Notes:	



● Site Location



**City of Hamilton**

## Committee of Adjustments

### Subject Property



446 Orkney Road, Flamborough  
(Ward 12)

File Name/Number:

FL/B-24:10

Date:

March 18, 2024

Technician:

AL

Scale:

N.T.S.

Appendix "A"



**Hamilton**

Planning and Economic Development Department