



Hamilton

STAFF COMMENTS

HEARING DATE: May 21, 2024

B-24:21 – 963 Garden Lane, Flamborough

Recommendation:

Development Planning - Deny both applications.
Source Protection Planning - Deny

Proposed 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 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)
2. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer. (Committee of Adjustment Section)
3. 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)
4. 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 (Planning Division – Zoning Examination Section).
5. The owner 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 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 (Planning Division – Zoning Examination Section).
6. In order to clear conditions, the applicant will be required to make application for a Zoning Compliance Review and pay the relevant fees. (Planning Division – Zoning Examination Section).
7. 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.



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8. 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 of \$5,065.00 (2024 fee) to address issues including but not limited to: 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, , stormwater management infrastructure and securities for items that may include: lot grading (\$10,000.00 grading security), driveway approaches, and any damage during construction (unknown costs at this time). Cash payments mentioned above are subject to change.
9. 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 Section).
10. 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).
11. The existing right-of-way at the subject property is approximately 13.5 metres. Approximately 3.5 metres are to be dedicated to the right-of-way on Garden Lane, as per the Council Approved Rural Official Plan: Schedule C-1 - Future Right-of-Way Dedications. Garden Road is to be 20.117 metres.
12. A survey conducted by an Ontario Land Surveyor and at the Applicant's expense will determine the ultimate dimensions for the right-of-way widening(s).
13. That the owner shall receive final approval of Minor Variance application A-24:84, to the satisfaction of the Director of Development Planning.
14. That the owner submits and receives approval of a Tree Protection Plan including the review fee as per the Schedule of Rates and Fees, prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester or landscape architect) to the satisfaction of the Manager of Heritage and Urban Design.
15. That the owner submits and receives approval of a Landscape Plan that shows the location of compensation trees to the satisfaction of the Manager of Heritage and Urban Design.

Proposed Notes:

The lands to be conveyed will remain as 963 Garden Lane (Flamborough).



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The lands to be retained will be assigned the address of 965 Garden Lane (Flamborough).

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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Development Planning:

Background

	Frontage	Depth	Area
SEVERED LANDS:	24 m±	61 m±	0.15 ha±
RETAINED LANDS:	24 m±	varies m±	2.5 ha±

Consent application B-24:21 is to permit the conveyance of a parcel of land for residential purposes (existing dwelling to remain), and to retain a parcel of land for agricultural and future residential uses (existing garage to be removed). Staff note that Minor Variance application A-24:84 is a concurrent application to facilitate the proposed severance.

Analysis

Rural Hamilton Official Plan

The subject lands are designated “Rural Settlement Area” and “Agriculture” in Schedule D – Rural Land Use Designations. Policies found in Sections C.3.1.4., C.5.1.1 c), D.2.1, F.1.14.2.1, F.1.14.2.2, and F.1.14.2.4, amongst others, are applicable and permit the existing residential and agricultural uses and proposed residential use. The subject lands are also within the Flamborough Centre Rural Settlement Area and are subject to the policies of the Rural Settlement Area in addition to the above policies.

Policy F.1.14.2.1 c) states:

“All proposed severances that create a new lot shall:

- i. Comply with the policies of this Plan including a rural settlement area plan where one exists;*
- ii. Be compatible with and not hinder surrounding agricultural operations;*
- iii. Conform to the Zoning By-law;*
- iv. Only be permitted when both severed and retained lots have frontage on a public road; and,*
- v. Meet the requirements of Section C.5.1, Private Water and Wastewater Services”*

Similarly, Policy F.1.14.2.4 states the following:

“Within designated Rural Settlement Areas all proposed severances that create a new lot and proposed lot additions shall:

- a) Comply with the policies of this plan including a rural settlement area plan where one exists;*



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- b) *Be compatible with and not hinder surrounding agricultural operations;*
- c) *Conform to the Zoning By-law;*
- d) *Be permitted only when both severed and retained lots have frontage on a public road;*
- e) *Meet Minimum Distance Separation requirements; and,*
- f) *Meet the requirements of Section C.5.1, Private Water and Wastewater Services, except as permitted in F.1.14.2.7 d)."*

Policy F.1.14.2.2 b) i) states that the minimum lot size for newly created agricultural lots and retained agricultural lots within the "Agriculture" designation shall be 40.4 hectares (100 acres), except as provided in section D.2.1.

Policy C.5.1.1 c) iii) requires that proposed new lots as a result of a severance, lot addition or draft plan of subdivision with existing or proposed private water and/or wastewater systems have a minimum lot size of 0.4 hectares or 1 acre or are sized appropriately to accommodate a conventional septic system.

Staff note that the severed lot is proposed to have an area of approximately 0.15 hectares (1495 square metres) and the retained lot is proposed to have an area of approximately 2.5 hectares (24,977 square metres). Staff further note the proposed severed and retained lots do not conform with the minimum lot area and lot width requirements of the Agriculture (A1) Zone nor the Settlement Residential (S1) Zone. Minor Variance application A-24:84 is being considered concurrently to address these non-conformities.

Based upon a review of the policies noted above, the proposed retained lot does not meet the minimum lot area requirement of 40.4 hectares for lot creation within the "Agriculture" designation to ensure agricultural lots are economically viable. Additionally, the proposed severed lot does not meet the minimum lot area required of 0.4 hectares for private water and wastewater servicing needs. **Staff recommend denial of the proposed severance.**

Development Planning staff defer to Source Protection Planning staff to determine the compliance of the proposal with private servicing policies found in Section C.5.1, Private Water and Wastewater Services of the Rural Hamilton Official Plan.

Flamborough Centre Rural Settlement Area

The subject lands are designated "Settlement Residential" in Map 6 of the Flamborough Centre Rural Settlement Area plan. Volume 2, Chapter A, Policy 1.3.1 permits the existing and proposed single detached dwellings within the Flamborough Centre Rural Settlement Area.



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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 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.

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](tel: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).”

Cultural Heritage

No comment.

Natural Heritage

The subject property is located within the boundaries of the Rural Hamilton Official Plan (RHOP). Based on Schedule B (Natural Heritage System) of the RHOP, Core Areas (i.e., Environmentally Significant Areas, Areas of Natural and Scientific Interest, Significant Woodlands, wetlands or watercourses) or Linkages (natural areas that ecologically connect Core Areas) have not been identified within the subject property.



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Through aerial photograph interpretation as well as the sketch provided, trees have been identified within the subject property. The City recognizes the importance of trees and woodlands to the health and quality of life in the community and encourages sustainable forestry practices as well as the protection and restoration of trees and forests (policy C.2.10.1).

To facilitate the proposed development, there may be an impact to the existing trees. To ensure that trees are considered in the design, it is recommended that a Tree Protection Plan (TPP) be prepared in accordance with the City's Council adopted Tree Protection Guidelines (revised October 2010). In addition, if there are any trees that a proposed to be removed (10 cm DBH or greater), 1 for 1 compensation is required. This is to ensure that existing tree cover is maintained. This compensation is typically shown on a Landscape Plan. This can be addressed through the following conditions.

- *Condition 1: That the owner submits and receives approval of a Tree Protection Plan including the review fee as per the Schedule of Rates and Fees, prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester or landscape architect) to the satisfaction of the Manager of Heritage and Urban Design.*
- *Condition 2: That the owner submits and receives approval of a Landscape Plan that shows the location of compensation trees to the satisfaction of the Manager of Heritage and Urban Design.*

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

The subject lands are zoned Agriculture (A1) Zone and Settlement Residential (S1) Zone under City of Hamilton Zoning By-law No. 05-200. The existing and proposed single detached dwellings are permitted uses. The severed and retained lands are proposed to have frontages of 24.6 and 24.5 metres and lot areas of approximately 0.15 hectares and approximately 2.5 hectares, respectively. Both proposed lots do not meet the minimum lot width requirement of 30 metres and do not meet the minimum required lot area of 40.4 hectares for lands zoned Agriculture (A1) Zone and 0.4 hectares for lands zoned Settlement Residential (S1) Zone.

Variance 1

1. To permit a minimum lot area of 2.49 hectares on the lands zoned Agriculture (A1) Zone, whereas a minimum lot area of 40.4 hectares is required.

The intent of this provision is to ensure agricultural lots are of a sufficient size to ensure economically viable agricultural operations.



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Staff are concerned that the proposed lot size of the retained parcel would not be large enough to be economically viable to sustain a farm operation and essentially function as a residential lot. Staff are of the opinion that the requested variance does not meet the intent of the Rural Hamilton Official Plan or Zoning By-law. Staff do not support the variance.

Variance 2 and 3

- 2. To permit a minimum lot area of 0.14 hectares on the lands zoned Settlement Residential (S1) Zone, whereas a minimum lot area of 0.4 hectares is required.
- 3. To permit a minimum lot width of 24.5 metres on the lands zoned Settlement Residential (S1) Zone, whereas a minimum lot width of 30.0 metres is required.

The intent of these provisions is to ensure residential lots within Rural Settlement Areas are of a sufficient size to safely and sustainably accommodate private wastewater services.

Regarding Variance 2, staff are of the opinion that the proposed size of the severed lot does not maintain the intent of the Rural Hamilton Official Plan or Zoning By-law as the proposed severed lot does not meet the minimum lot area requirements found in Section C.5.1 of the Rural Hamilton Official Plan. Staff do not support the variance.

Regarding Variance 3, staff are of the opinion that the reduced lot width of the proposed severed lot exacerbates staff concerns regarding minimum lot size as outlined above regarding Variance 2.

Based on the foregoing, staff are of the opinion that the requested variances do not meet the four tests of a minor variance. **Staff recommend denial.**

Zoning:

Recommendation:	Comments and Conditions / Notes
Proposed Conditions:	<p>If the application is approved, we request the following condition(s):</p> <ol style="list-style-type: none"> 1. 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 (Planning Division – Zoning Examination Section). 2. The owner shall submit survey evidence that the lands to be severed and the lands to be retained, including the location of any existing



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	<p>structure(s), 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 (Planning Division – Zoning Examination Section).</p> <p>3. In order to clear conditions, the applicant will be required to make application for a Zoning Compliance Review and pay the relevant fees.</p>
Comments:	
Proposed Notes:	

Development Engineering:

Recommendation:	Approve with Conditions
Proposed Conditions:	<ol style="list-style-type: none"> 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. 2. 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 of \$5,065.00 (2024 fee) to address issues including but not limited to: 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, , stormwater management infrastructure and securities for items that may include: lot grading (\$10,000.00 grading security), driveway approaches, and any damage during construction (unknown costs at this time). Cash payments mentioned above are subject to change.
Comments:	The severed and retained portion of the property are going to be serviced by a private water well and septic system. Therefore, the proponent should submit a Hydrogeological Report prepared by a qualified professional in support of the proposed severance.
Proposed Notes:	

Building Engineering:

Recommendation:	Comments and Conditions / Notes
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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 Section).</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:	<p>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:</p> <ol style="list-style-type: none"> 1. The existing right-of-way at the subject property is approximately 13.5 metres. Approximately 3.5 metres are to be dedicated to the right-of-way on Garden Lane, as per the Council Approved Rural Official Plan: Schedule C-1 - Future Right-of-Way Dedications. Garden Road is to be 20.117 metres. 2. A survey conducted by an Ontario Land Surveyor and at the Applicant's expense will determine the ultimate dimensions for the right-of-way widening(s).
Comments:	
Proposed Notes:	

Forestry:

Recommendation:	Approve
Proposed Conditions:	No conditions required.
Comments:	



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	<p>There are public tree assets located within the property limits of the existing 963 Garden Lane.</p> <p>The retained lot with proposed 1 storey dwelling does not have municipal tree assets on site. The property line bordering the existing lot and severed lot signifies sufficient tree protection of the municipal tree. As a result, no tree management plan is required at this time.</p>
Proposed Notes:	If any work is proposed within the dripline of a municipal tree, a public tree permit is required. Please contact urbanforest@hamilton.ca for additional information.

Legislative Approvals:

Recommendation:	Comments and Conditions / Notes
Proposed Conditions:	
Comments:	<p>The lands to be conveyed will remain as 963 Garden Lane (Flamborough).</p> <p>The lands to be retained will be assigned the address of 965 Garden Lane (Flamborough).</p>
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.

Source Protection Planning:

Recommendation:	Deny
Proposed Conditions:	
Comments:	<p>Source Protection Planning understands the applicant is seeking to sever the existing lot at 963 Garden Lane, with the severed land being 0.15 ha to be used for residential purposes, and the retained land being 2.5 ha to be used for agricultural and future residential purposes. We also understand that the application includes the construction of a 1-storey dwelling on the retained lot. Our comments are as follows:</p> <p>The proposed severed lot size of 0.15 ha is considered insufficient, as it does not meet the Sustainable Private Services policies within Rural Hamilton Official Plan C.5.1. The applicant bears the responsibility of engaging a qualified professional to verify the minimum sustainable lot size in accordance with the City of Hamilton Guideline for Hydrogeological Studies and Technical Standards for Private Servicing</p>

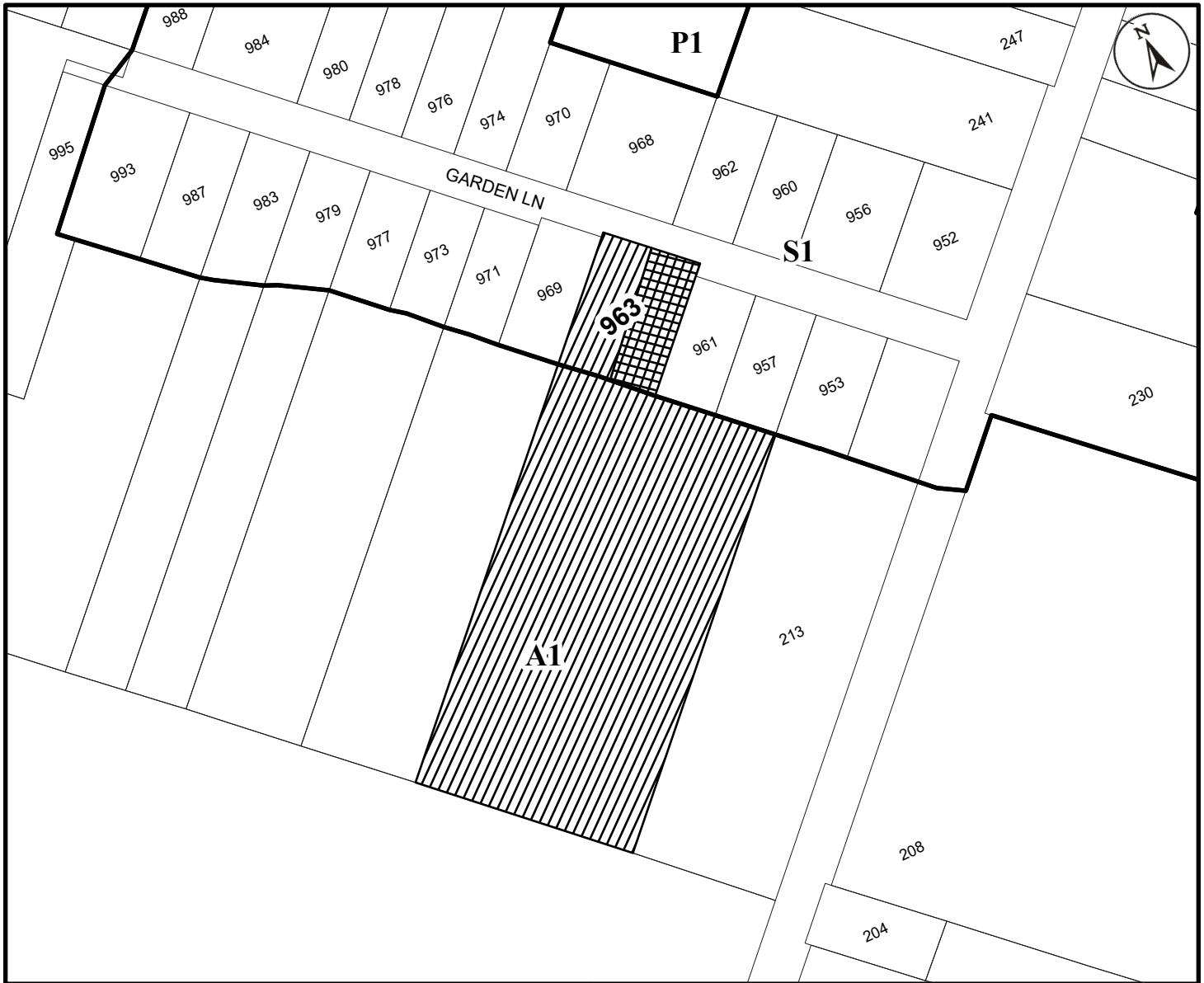


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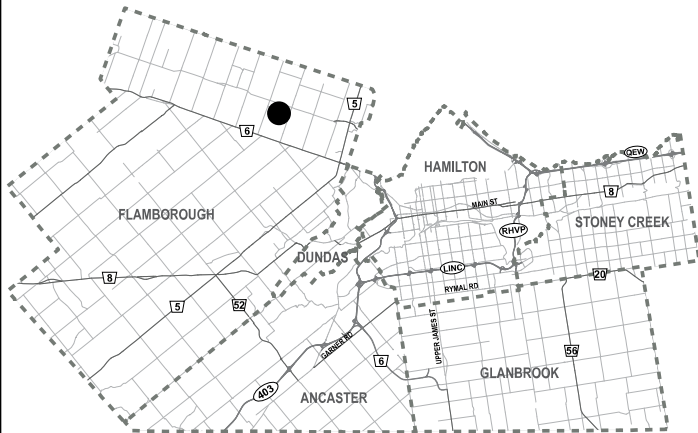
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	<p>(2023, https://www.hamilton.ca/sites/default/files/2023-06/pedpolicies-guidelines-hydrogeological-studies-2023.pdf).</p> <p>Given the proposed severance, Source Protection Planning cannot support the application at this time.</p>
Proposed Notes:	



● Site Location





City of Hamilton

Committee of Adjustment

Subject Property

963 Garden Lane, Flamborough (Ward 15)

-  Lands to be Retained
-  Lands to be Severed

File Name/Number:
FL/B-24:21

Date:
May 8, 2024

Technician:
NB

Map Not To Scale

Appendix "A"



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