



Hamilton

**STAFF COMMENTS**

**HEARING DATE: September 24, 2024**

A-24:197 – 885 West 5<sup>th</sup> Street, Hamilton

**Recommendation:**

Development Planning - Approve

**Proposed Conditions:**

**Proposed Notes:**



**Development Planning:**

**Background**

	Frontage	Depth	Area
<b>SEVERED LANDS (Parcel 1):</b>	15.28 m±	33.73 m±	506.11 m <sup>2</sup> ±
<b>SEVERED LANDS (Parcel 2):</b>	15.28 m±	32.66 m±	489.8 m <sup>2</sup> ±
<b>RETAINED LANDS:</b>	15.24 m±	34.55 m±	524.57 m <sup>2</sup> ±

The purpose of Consent to Sever application B-24:52 is to sever the existing residential lot into three parcels, the severed lands will be two vacant residential lots and the retained lands will contain the existing dwelling, which is intended to remain. Staff note that Minor Variance application A-24:197 is a concurrent application to facilitate the proposed severance.

Staff note that the proposed retained lands are referred to as “Part 1” (Part 1 of 62R-10426) and the proposed severed lands are referred to as “Part 3” (Part 3 of 62R-10426 and Part 2 of 62R-20292) and “Part 4” (Part 4 of 62R-10246 and Part 3 of 62R-20292).

Staff further note that the rear portion of the subject lands that front onto Fortissimo Drive (being Parts 2 and 3 of 62R-20292), include a Holding “H” provision. The subject lands are also intended to be included as part of the Mid-Rise Residential Zones project. These are discussed in further detail below.

The Holding ‘H’ Provision was applied through an Ontario Municipal Board decision from January 2016 involving the severances on the adjacent lands to the south. The property owner owns the land affected by the Holding ‘H’ Provision and this area is intended to provide frontage on Fortissimo Drive.

**Analysis**

**Urban Hamilton Official Plan**

The subject lands are identified as “Neighbourhoods” in Schedule E – Urban Structure and are designated as “Neighbourhoods” in Schedule – E-1 Urban Land Use Designations of the Urban Hamilton Official Plan. Policies B.2.4.2.2, B.3.6.3.7, E.3.4.3 and F.1.14.3.1, amongst others, are applicable and permit the proposed and existing single detached dwellings.

Per Policy F.1.14.3.1, the creation of new lots for residential uses in the “Neighbourhoods” designation shall be permitted if the following conditions are met:



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"F.1.14.3.1

Consents for new lot creation, for both the severed and retained lands, for residential uses in the Neighbourhoods designation shown on Map E-1 – Urban Land Use Designation, shall be permitted provided the following conditions are met:

- g) The lots comply with the policies of this Plan, including secondary plans, where one exists;
- h) The lots comply with existing Neighbourhood Plans;
- i) the lots are in conformity with the Zoning By-law or a minor variance is approved;
- j) The lots reflect the general scale and character of the established development pattern in the surrounding area by taking into consideration lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview;
- k) The lots are fully serviced by municipal water and wastewater systems; and,
- l) The lots have frontage on a public road."

Similarly, Policy B.2.4.2.2 provides criteria for development considered residential intensification within the "Neighbourhoods" designation:

"2.4.2.2

When considering an application for a residential intensification development within the Neighbourhoods designation, the following matters shall be evaluated:

- a) the matters listed in Policy B.2.4.1.4;
- b) compatibility with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic, and other nuisance effects;
- c) the relationship of the proposed building(s) with the height, massing, and scale of nearby residential buildings;
- d) the consideration of transitions in height and density to adjacent residential buildings;
- e) the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;



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- f) the provision of amenity space and the relationship to existing patterns of private and public amenity space;
- g) the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations;
- h) the ability to complement the existing functions of the neighbourhood;
- i) the conservation of cultural heritage resources; and,
- j) infrastructure and transportation capacity and impacts.”

Staff note that Parts 3 and 4 are proposed to be 15.28 metres wide and have lot areas of 506.11 and 489.8 square metres, respectively. The Zoning By-law requires a minimum lot width of 60 metres and a minimum area of 12,000 square metres in the “AA” (Agricultural) District. Part 1 is proposed to have a lot width of 15.24 metres and a lot area of 524.57 square metres, whereas the Zoning By-law requires a minimum lot width of 12.0 metres and a lot area of 360 square metres in the “C/S-1822” (Urban Protected Residential) District, Modified. Staff further note that Minor Variance application A-24:197 was submitted to address these and other zoning non-conformities. The proposed severed and retained lots front on a public road and are fully serviced by municipal water and wastewater services.

The properties along West 5<sup>th</sup> Street and Fortissimo Drive range in width and area, with the properties fronting onto West 5<sup>th</sup> Street being generally larger in scale and those fronting on to Fortissimo Drive generally being smaller in scale. Neighbouring lands to the south along West 5<sup>th</sup> Street have undergone similar severances and resulted in severed and retained lots similar to this proposal. For example, the neighbouring lots fronting on to West 5<sup>th</sup> Street have approximate lot widths of 16 metres and lot areas of 550 square metres. The neighbouring lots that front on to Fortissimo Drive have lot widths of approximately 11 metres and areas ranging between 330 and 360 square metres.

Based upon the above analysis, staff are of the opinion that the proposed severed and retained lands are generally compatible with the scale and character of the established development pattern of the surrounding area and conform with Policies B.2.4.2.2 and F.1.14.3.1.

Policy B.3.6.3.7 a) requires a noise feasibility study, detailed noise study or both for residential developments within 100 metres of a minor arterial road, as identified on Schedule C – Functional Road Classification. The subject lands front onto West 5<sup>th</sup> Street, which is identified as a minor arterial road on Schedule C – Functional Road Classification of the Urban Hamilton Official Plan. Therefore, staff are recommending a condition requiring a noise study be provided to confirm conformity with the policies regarding sensitive land use developments.



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### **Kernighan Neighbourhood Plan**

The subject lands are identified as “Single and Double” on Map 7611 of the Kernighan Neighbourhood Plan. The proposed development conforms with the vision of the Kernighan Neighbourhood Plan.

### **Former City of Hamilton Zoning By-law No. 6593**

The subject lands are zoned “C/S-1822” and “C-H/S-1719, S-1822” (Urban Protected Residential) District, Modified, Holding and “AA” (Agricultural) District in Former City of Hamilton Zoning By-law No. 6593. The proposed and existing single detached dwellings are permitted. The severed lands, identified as Parts 3 and 4, are proposed to have lot widths of 15.28 metres and lot areas of 506.11 square metres and 489.8 square metres respectively. The retained lands, identified as Part 1, are proposed to have a lot width of 15.24 metres and an area of 524.57 square metres. Parts 3 and 4 would not meet the minimum required lot width of 60 metres or the minimum required lot area of 12,000 square metres. Part 1 would exceed the minimum required lot width of 12.0 metres and minimum required lot of 360 square metres. Staff note Minor Variance application A-24:197 was submitted to address these and other zoning non-conformities.

Staff further note that the rear portion of the subject lands that front onto Fortissimo Drive (being Parts 2 and 3 of 62R-20292), include a Holding ‘H’ Provision. This Holding ‘H’ Provision was put in place as a result of a settlement of the Ontario Municipal Board (Case No. PL141433), now the Ontario Land Tribunal. The appeal was filed due to a lack of decision by City Council to make a decision regarding Zoning By-law Amendment application ZAC-13-050, which proposed to rezone 893, 897 and 903 West 5<sup>th</sup> Street to facilitate the severance of five single detached dwelling lots that front on to Fortissimo Drive (Consent Applications HM/B-15:123 to 128). The Holding ‘H’ Provision was implemented by City of Hamilton By-law No. 16-076. The Holding ‘H’ Provision reads as follows:

“3. That the ‘H’ symbol shall only be removed conditional upon:

#### Block 2

- (iv) That the owner/applicant pay any outstanding cost recoveries associated with the road and infrastructure work including private services connections.
- (v) That the owner/applicant ensure that each lot has a watermain connection, sanitary sewer connection and storm sewer connection.



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- (vi) Until such time as the lands have been merged in title with the abutting lands to the rear and Consent Applications have been conditionally approved to facilitate lot creation in keeping with the Regulations of the “C/S-1719 Zone provisions.”

In relation to the above Holding ‘H’ Provision, staff note that the “C/S-1719” (Urban Protected Residential) District, Modified requires a minimum lot width of 11 metres and a minimum lot area of 335 square metres. The proposed severed lots, being “Part 3” and “Part 4”, would exceed these requirements.

The subject lands are included as part of the proposed Mid Rise Residential Zones project, which is intended to introduce Mid Rise Residential zones to Hamilton Zoning By-law No. 05-200. The Mid Rise Residential zones will introduce zones to accommodate medium density residential uses throughout the City of Hamilton. The front portion of the property is proposed to be included in the Mid Rise Residential – Small Lot (R3a) Zone. The rear of the property, fronting on Fortissimo Drive, is intended to be brought into the low density residential zones of Zoning By-law No. 05-200 as part of this process.

Further information regarding the draft Mid Rise Residential Zones can be found in [staff report PED23069, from the June 13, 2023 Planning Committee.](#)

Based upon review of the above policies and the materials provided in support of this severance application, staff are of the opinion that the proposed severance meets the intent of the Urban Hamilton Official Plan. **Staff recommend the proposed severance be approved.**

## Variance 1 for Part 1 (“C” District)

1. A rear yard depth of 6.7 metres shall be provided instead of the minimum required rear yard depth of 7.5 metres.

The intent of this provision is to ensure sufficient amenity space is provided in the rear yard of a property and to mitigate privacy and overlook issues with neighbouring properties.

Staff note that the existing dwelling at 885 West 5<sup>th</sup> Street, to be retained on Part 1, would have a rear yard setback of 6.7 metres. Staff also note that the proposed single detached dwellings on the severed lands are to have rear yard setbacks of 7.5 metres. Staff are of the opinion that a 6.7 metre rear yard setback will maintain sufficient rear yard amenity space for the dwelling on Part 1. Additionally, as the proposed dwellings on Parts 3 and 4 are to have rear yard setbacks of 7.5 metres, privacy or overlook concerns are not anticipated between the abutting lots. Therefore, staff are of the opinion that the requested variance maintains the intent of the Urban Hamilton Official Plan



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and Zoning By-law, is desirable for the appropriate development of the land and is minor in nature. Staff support the variance.

### **Variations 1 and 2 for Parts 3 and 4 (“AA” District)**

1. Part 3 shall be permitted to have a lot width of at least 15.0 metres and an area of at least 500.0 square metres instead of the required width of at least 60.0 metres and an area of at least 12,000.0 square metres.
2. Part 4 shall be permitted to have a lot width of at least 15.0 metres and an area of at least 500.0 square metres instead of the required width of at least 60.0 metres and an area of at least 12,000.0 square metres.

The intent of these provisions is to ensure that lots are of a minimum size to be viable developable lots while being compatible with the existing scale, character and prevailing pattern of development in the area.

Staff note that Parts 3 and 4 are to be 15.28 metres wide and have an area of 506.11 and 489.8 square metres, respectfully, whereas the Zoning By-law requires a minimum lot width of 60.0 metres and a minimum area of 12,000 square metres. Adjacent properties are of similar or smaller sizes. The neighbouring lots fronting on to West 5<sup>th</sup> Street have approximate lot widths of 16 metres and lot areas of 550 square metres. The neighbouring lots that front on to Fortissimo Drive have lot widths of approximately 11 metres and areas ranging between 330 and 360 square metres.

Staff further note that, as mentioned above, the subject lands are proposed to be included in the Mid Rise Residential Zones project and the “AA” (Agricultural) District portion of the subject lands is intended to be included in a future City initiated zoning amendment to brought in to Zoning By-law No. 05-200. The proposed severed lots would comply with the requirements of the Low Density Residential (R1) Zone of Zoning By-law No. 05-200.

Staff are of the opinion that the proposed severed lands are generally compatible with the character of the neighbourhood and the scale and established development pattern of the surrounding area. Staff anticipate no negative impacts on neighbouring lands. Therefore, it is staff’s opinion that the requested variances maintain the intent of the Urban Hamilton Official Plan and Zoning By-law, are desirable for the appropriate development of the land and are minor in nature. Staff support the variances.



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**STAFF COMMENTS**

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**Variance 3 for Parts 3 and 4 (“AA” District)**

3. A front yard depth of 6.0 metres shall be provided instead of the minimum required front yard depth of 12.0 metres.
4. A side yard width of 1.2 metres shall be provided instead of the minimum required side yard width of 4.5 metres.
5. A rear yard depth of 7.5 metres shall be provided instead of the minimum required Rear Yard depth of 10.5 metres.

The intent of the minimum front yard provision is to ensure a consistent built form and character within a neighbourhood. The intent of the minimum side yard provision is to ensure sufficient space for access and maintenance purposes. Lastly, the intent of the rear yard provision is to ensure sufficient amenity space is provided in the rear yard of residential properties and to mitigate privacy and overlook issues with abutting properties.

Regarding Variance 3, staff note that single detached dwellings fronting on to Fortissimo Drive commonly have a front yard depth of 6 metres. The proposed single detached dwellings on “Part 3” and “Part 4” are compatible and would be similar in built form and character to the surrounding area. Staff are of the opinion that the requested variance maintains the general intent of the Urban Hamilton Official Plan and Zoning By-law, is desirable for the appropriate development of the land and is minor in nature. Staff support the variance.

Regarding Variance 4, staff note that the proposed 1.2 metre side yard width is consistent with the required side yard width for single detached dwellings in the “C” (Urban Protected Residential) District of Zoning By-law No. 6593 and the Low Density Residential (R1) Zone of Zoning By-law No. 05-200. Staff are of the opinion that the proposed side yard width would provide sufficient space for access and maintenance purposes. Staff are of the opinion that the requested variance maintains the general intent of the Urban Hamilton Official Plan and Zoning By-law, is desirable for the appropriate development of the land and is minor in nature. Staff support the variance.

Regarding Variance 5, staff note that the proposed rear yard depth of 7.5 metres would be consistent with the requirements for single detached dwellings in the “C” (Urban Protected Residential) District of Zoning By-law No. 6593 and the Low Density Residential (R1) Zone of Zoning By-law No. 05-200. Staff are of the opinion that the proposed 7.5 metre rear yard depth will provide sufficient amenity area for the dwellings. Additionally, as noted above in Variance 1 for the retained lands, staff do not anticipate privacy or overlook concerns between the retained and severed lands as a result of the





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requested variance. Therefore, staff are of the opinion that the requested variance maintains the general intent of the Urban Hamilton Official Plan and Zoning By-law, is desirable for the appropriate development of the land and is minor in nature. Staff support the variance.

Staff are of the opinion that the requested variances meet the four tests of a minor variance. **Staff recommend approval.**

**Zoning:**

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	1. Please be advised the variances have been written as requested by the applicant. If zoning conformity cannot be achieved additional variances may be required.
Notes:	

**Development Engineering:**

Recommendation:	No Comments.
Proposed Conditions:	
Comments:	
Notes:	

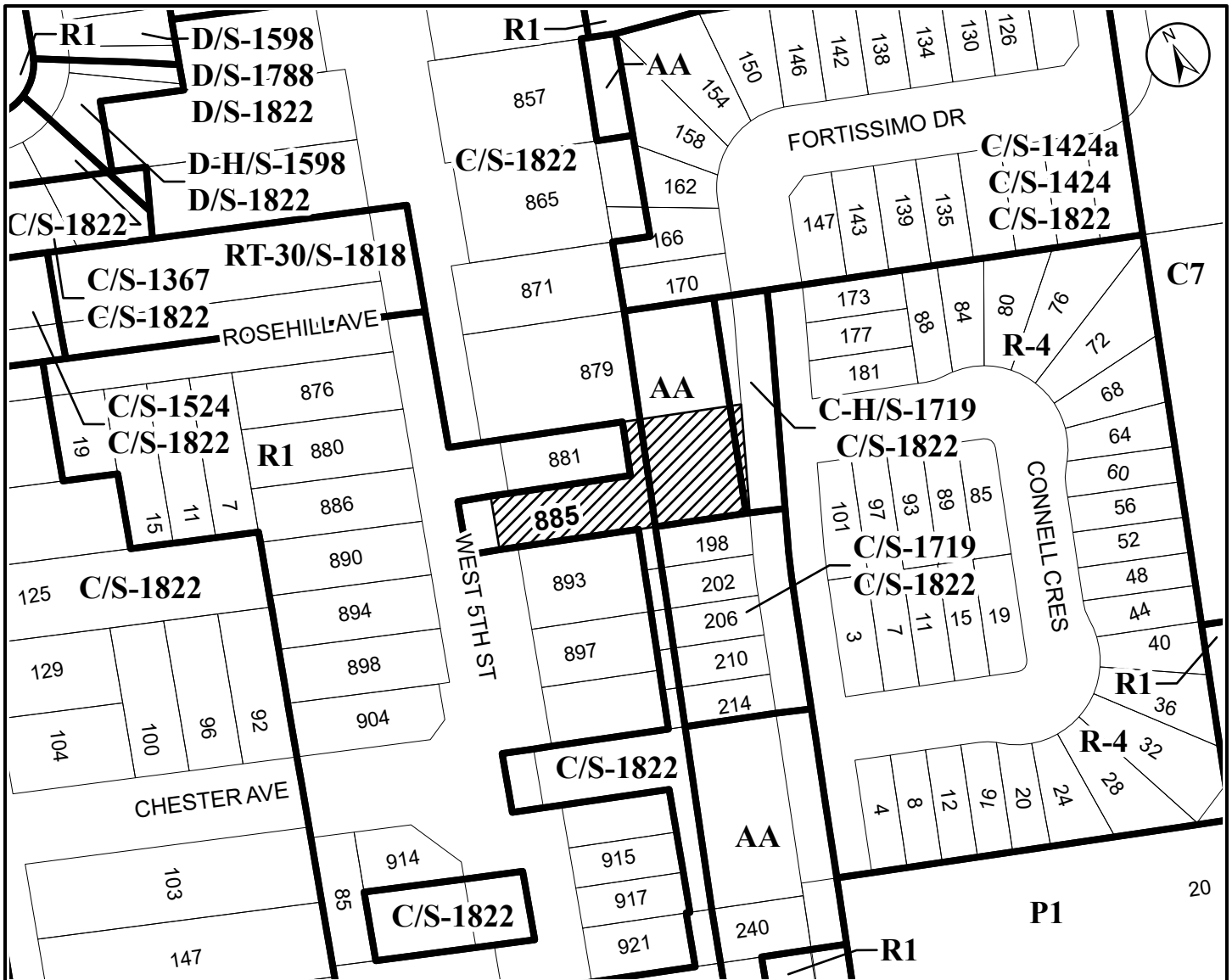
**Building Engineering:**

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	
Notes:	Be advised that Ontario Building Code regulations may require specific setback and construction types.

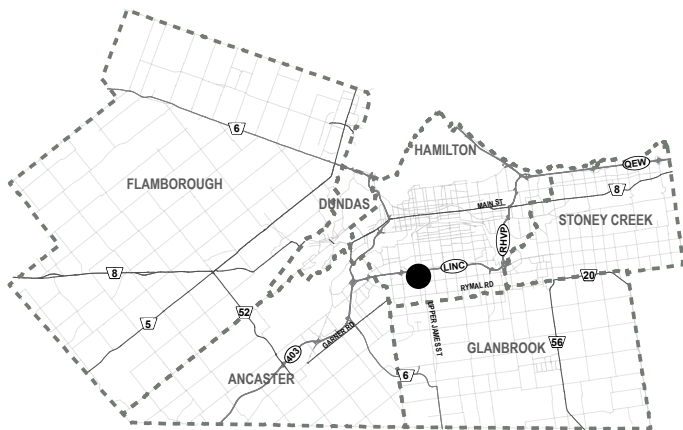
**Transportation Planning:**

Recommendation:	Approve
Proposed Conditions:	
Comments:	
Notes:	

Please Note: Public comment will be posted separately, if applicable.



● Site Location



**City of Hamilton**

## Committee of Adjustments

### Subject Property



885 West 5th Street, Hamilton  
(Ward 8)

File Name/Number:  
A-24:197

Date:  
September 12, 2024

Technician:  
SH

Scale:  
N.T.S.

Appendix "A"



**Hamilton**