

HEARING DATE: September 24, 2024

FL/B-22:72 – 394 Old Brock Road, Flamborough

Recommendation:

Development Planning - Approve

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. A Permit to injure or remove municipal trees is a requirement of this application. A Tree Management Plan must be submitted to the Forestry and Horticulture Section c/o the Urban Forestry Health Technician, to address potential conflicts with publicly owned trees.
- 5. 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).
- 6. 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).
- 7. Transportation Planning has no objection to the severance if the required right-of-way dedication of:
 - a. Approximately ± 3.5 metres is dedicated to the City of Hamilton on Moxley Road as per the Council Approved Rural Official Plan: Chapter C City Wide Systems and Designations, 4.5 Road Network, 4.5.2. Local Roads (Subject to the satisfaction and approval of the Manager, Transportation Planning).



HEARING DATE: September 24, 2024

- b. Approximately ± 3.0 metres is dedicated to the City of Hamilton on Old Brock Road as per the Council Approved Rural Official Plan: Chapter C City Wide Systems and Designations, 4.5 Road Network, 4.5.2. Local Roads (Subject to the satisfaction and approval of the Manager, Transportation Planning).
- c. 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 (Subject to the satisfaction and approval of the Manager, Transportation Planning).
- 8. The Applicant's surveyor is to contact Geomatics and Corridor Management to confirm the rightof-way dedication requirements (Subject to the satisfaction and approval of the Manager, Transportation Planning).
- 9. 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).
- 10. 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 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).
- 11. If a Condition for a road widening and/or daylight triangle dedication is required, the owner/applicant shall submit survey evidence that the [enter either lands to be severed and/or the lands to be retained], including the lot width, lot area, the location of any existing structure(s), parking and landscaping [enter any other regulations which may be applicable for determining zoning compliance], 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).
- 12. 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.
- 13. 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 \$5065.00 (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.



HEARING DATE: September 24, 2024

- 14. That the owner shall receive final approval of Minor Variance application FL/A-22:248, to the satisfaction of the Director of Development Planning.
- 15. That the owner provides written commitment of their adherence to the mitigation measures for registered archaeological site AhGx-819, as recommended in report P1037-0085-2021 prepared by Earthworks Archaeological Services Inc., dated February 21, 2021, including protective buffering, temporary barriers and "no-go" instructions for all on-site crews, as well as any additional measures required by the Ministry of Citizenship and Multiculturalism upon their completion of review of said report, to the satisfaction and approval of the Director of Heritage and Urban Design.
- 16. That the owner provide written commitment to undertake Stage 4 site specific mitigation of AhGx-819, as recommended in report P1037-0085-2021 prepared by Earthworks Archaeological Services Inc., dated February 21, 2021, as well as any additional measures required by the Ministry of Citizenship and Multiculturalism upon their completion of review of said report, prior to any disturbance on the lands to be retained, to the satisfaction and approval of the Director of Heritage and Urban Design.
- 17. That the Ministry of Citizenship and Multiculturalism confirm compliance of the Stage 3 report P1037-0085-0091-2021 and a copy of said confirmation be provided to the City of Hamilton, to the satisfaction and approval of the Director of Heritage and Urban Design.
- 18. That the applicant must lift the Holding 'H' Provision for the severed lands only, to the satisfaction of the Director of Development Planning.

Proposed Notes:

The lands to be retained will remain as 394 Old Brock Road (Flamborough).

The lands to be conveyed will be assigned the address of 424 Old Brock Road (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.



Development Planning:

Background

	Frontage	Depth	Area
SEVERED LANDS:	79.5 m±	Varies m±	7,415.57 m ² ±
RETAINED LANDS:	344.0 m±	Varies m±	39,400.0 m ² ±

To permit the conveyance of a parcel of land to create a new residential building lot and to retain a parcel of land containing a single detached dwelling, to remain. Staff note that Minor Variance application FL/A-22:248 is a concurrent application to facilitate the proposed severance.

Staff note that a Holding 'H' Provision is in place on the subject lands and a Zoning By-law Amendment (Holding Removal) application will be required to lift this Holding 'H' Provision.

Analysis

Greenbelt Plan

The subject lands are designated as "Hamlet" on Appendix II of the Greenbelt Plan. Section 3.4.4.1 of the Greenbelt Plan permits limited growth through infill and intensification of Hamlets subject to appropriate water and sewage services.

Rural Hamilton Official Plan

The subject lands are designated as "Rural Settlement Area" in Schedule – D Rural Land Use Designations of the Rural Hamilton Official Plan. Policies C.3.4.4, C.5.1, D.5.1, F.1.14.2.1 and F.1.14.2.4, amongst others, are applicable and permit the proposed single detached dwelling. The subject lands are also located within the Greensville Rural Settlement Area and are subject to the policies of the Rural Settlement Area.

Development Planning staff defer to Cultural Heritage Planning staff regarding the conformity of the proposal to the Cultural Heritage and Archaeology policies of the Rural Hamilton Official Plan. Development Planning staff defer to Source Protection Planning staff regarding the conformity of the proposal to the private servicing policies of the Rural Hamilton Official Plan.

Policy F.1.14.2.1 a) i) permits severances for residential uses within a Rural Settlement Area and F.1.14.2.1 c) provides general criteria for the creation of new lots:



HEARING DATE: September 24, 2024

"F.1.14.2.1 c) 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."

Policy F.1.14.2.4 reads as follows:

- "F.1.14.2.4 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;
 - 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) (OPA 18)"

Staff note that the proposed severed lot is to have a frontage of 79.5 metres and have an area of 7,415.57 square metres. The proposed retained lot is to have a frontage of 344 metres and an area of 39,400 square metres. The Zoning By-law requires a minimum lot width of 35 metres and a minimum area of 8,000 square metres. The proposed severed lot exceeds the frontage requirement, however,



HEARING DATE: September 24, 2024

does not meet the minimum lot area requirement. The proposed retained lot exceeds these requirements. Both the severed and retained lots would have frontage on Old Brock Road.

Staff further note that Minor Variance application FL/A-22:248 was submitted to address the minimum lot area of the proposed severed lot and to permit a maximum lot coverage of 20%.

Greensville Rural Settlement Area

The subject lands are designated "Settlement Residential" on Map 8a – Greensville Rural Settlement Area Plan. The subject lands are further identified as "Major Development Area A" on Map 8b – Greensville Major Development Areas. Policies 3.5.5.3, 3.5.5.6, 3.5.5.7 and 3.5.13, amongst others, apply and permit the proposed single detached dwelling.

Staff note that Policy 3.5.5.3 states that the predominant form of residential development shall continue to be single detached dwellings. Policy 3.5.5.4 permits infill development by the consent process where it is clear that a Plan of Subdivision is not necessary. Policy 3.5.5.7 requires new residential development to be compatible with the existing residential character of the area, with respect to the scale, massing and height of existing residential uses.

With respect to Variance 2, the applicant is requesting 20% lot coverage for the severed lands as the final proposed built form is not yet decided. Staff have insufficient information to carry out a fulsome review of a potential built form resulting from the requested 20% lot coverage and how it relates to the existing residential character and built form of the area. Therefore, staff are of the opinion that Variance 2 does not meet the intent of Policy 3.5.5.7 regarding.

Staff further note that Policy 3.5.13 provides criteria, in addition to Policy C.5.1 of Volume 1, regarding private servicing requirements for development within the Greensville Rural Settlement Area. Staff defer to Source Protection Planning staff regarding the proposal's conformity to these policies.

Archaeology

The subject property meets three (3) of the ten criteria used by the City of Hamilton and Ministry of Heritage, Sport, Tourism and Culture Industries for determining archaeological potential:

- 1) In an area of sandy soil in areas of clay or stone;
- Within 300 metres of a primary watercourse or permanent waterbody, 200 metres of a secondary watercourse or seasonal waterbody, or 300 metres of a prehistoric watercourse or permanent waterbody; and
- 3) Along historic transportation routes.



HEARING DATE: September 24, 2024

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.

A Stage 3 archaeological report (P1037-0085-0091-2021) has been submitted to the City of Hamilton and the Ministry of Citizenship and Multiculturalism. The Stage 3 report requires mitigation measures for registered archaeological site AhGx-819, including protective buffers, temporary hoarding and "nogo" instructions for any crews on site conducting work on the proposed lands to be severed for development. Further Stage 4 mitigation is required for site AhGx-819, which is located on the lands to be reattained which are not proposed for development at this time. The report has yet to be signed off by the Ministry for compliance with licensing requirements.

Cultural Heritage

No comments.

Former Town of Flamborough Zoning By-law No. 90-145

The subject lands are zoned Settlement Residential (R2-14-H) Zone, Modified, Holding, in Former Town of Flamborough Zoning By-law No. 90-145. The proposed severed lot is to have a frontage of 79.5 metres and have an area of 7,415.57 square metres. The proposed retained lot is to have a frontage of 344 metres and an area of 39,400 square metres. The Zoning By-law requires a minimum lot width of 35 metres and a minimum area of 8,000 square metres. The proposed severed lot exceeds the frontage requirement but does not meet the minimum lot area requirement. The proposed retained lot exceeds these requirements. Both the severed and retained lots would have frontage on Old Brock Road.

Staff note Minor Variance application FL/A-22:248 was submitted to address the minimum lot area of the proposed severed lot and to permit a maximum lot coverage of 20%. Staff further note that while the proposed single detached dwelling is a permitted use, development is prohibited until the Holding 'H' provision in place on the subject lands is lifted.

Holding 'H' Provision

Both the proposed severed and retained lands are subject to a Holding 'H' Provision. Staff note that while Zoning By-law No. 90-145 does not establish specific criteria that must be met before the Holding may be removed, Development Planning staff have interpreted that it may be lifted once an applicant demonstrates that 'orderly development' is achieved. This would include demonstrating adequate private services, access and clearance of any archaeological requirements. Should this



HEARING DATE: September 24, 2024

Consent to Sever Application be approved, staff recommend a condition be added that the applicant must lift the Holding 'H' Provision for the severed portion only.

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. Provided approval from Cultural Heritage Planning and Source Protection Planning staff, Development Planning staff recommend the proposed severance be approved, subject to the recommended conditions.

Variances 1

1. A minimum lot area of 7,415.57 square metres shall be provided for the portion of the lands to be conveyed instead of the minimum required lot area of 8,000 square metres.

The intent of this zoning provision is to ensure that new residential development is compatible in scale and character with existing residential development and that new residential lots are of a sufficient size to sustainably support a private well and septic system. As noted above, Development Planning staff defer to Source Protection Planning staff's comments regarding private servicing.

Staff note that the sizes of existing residential lots along Old Brock Road vary widely in lot area, with some being as small as approximately 1400 square metres and as some as large as approximately 8000 square metres. There are some lots similar in size to the proposed severed lot, at approximately 7,400 square metres in area. Staff are of the opinion that the proposed severed lot is compatible in scale with existing residential lots and is in keeping with the character of the area.

Development Planning staff are of the opinion that, provided Variance 1 receives support from Source Protection Planning staff, the requested variance maintains the intent of the Rural Hamilton Official Plan and Zoning By-law, is desirable for the appropriate development of the lands and is minor in nature.

Variance 2

2. A maximum of 20% lot coverage shall be provided for the portion of the lands to be conveyed instead of the required 10% lot coverage.

The intent of this zoning provision is to prevent the overdevelopment of lots, to maintain a consistent built form and residential character in the area and to ensure sufficient permeable surface is provided to maintain drainage and stormwater infiltration. Development Planning staff defer to Development Engineering staff regarding drainage and stormwater management concerns.



HEARING DATE: September 24, 2024

Staff note that the requested 20% lot coverage would apply as a maximum aggregate limit for all structures or buildings on the property. Staff further note that the proposed lot coverage for the severed lands is 13.2%, but the proposed buildings are conceptual. The applicant is requesting 20% lot coverage for the severed lands as the final proposed built form is not yet decided. Staff have insufficient information to carry out a fulsome review of a potential built form resulting from the requested 20% lot coverage and how it relates to the existing residential character and built form of the area. Therefore, staff are unable to support Variance 2 at this time as staff are concerned that the variance does not maintain the intent of the Rural Hamilton Official Plan and Zoning By-law, is not desirable for the appropriate development of the land and is not minor in nature.

Staff are of the opinion that Variance 1 meets the four tests of a minor variance whereas Variance 2 does not. **Staff recommend approval of Variance 1 and denial of Variance 2.**

Zoning:

Recommendation:	Comments and Conditions / Notes	
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).	
	 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 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). If a Condition for a road widening and/or daylight triangle dedication is required, the owner/applicant shall submit survey evidence that the [enter either lands to be severed and/or the lands to be retained], including the lot width, lot area, the location of any existing structure(s), 	
	parking and landscaping [enter any other regulations which may be applicable for determining zoning compliance], 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).	
Comments:	1. This application is to be heard in conjunction with variance application FL/A-22:248.	



HEARING DATE: September 24, 2024

	2. The appropriate Planning Act approvals [lot area and lot coverage] will be required for zoning compliance of the lands to be conveyed/retained.
	3. 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.
	4. In order to clear conditions, the applicant will be required to make application for a Zoning Compliance Review and pay the relevant fees.
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. 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 \$5065.00 (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
Comments:	mentioned above are subject to change. 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.
Notes:	

Building Engineering:

Recommendation:	Comments and Conditions / Notes
Proposed Conditions:	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).



	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).
Comments:	
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 has no objection to the severance if the required right-of-way dedication of:
	1. Approximately ± 3.5 metres is dedicated to the City of Hamilton on Moxley Road as per the Council Approved Rural Official Plan: Chapter C - City Wide Systems and Designations, 4.5 Road Network, 4.5.2. Local Roads.
	2. Approximately ± 3.0 metres is dedicated to the City of Hamilton on Old Brock Road as per the Council Approved Rural Official Plan: Chapter C - City Wide Systems and Designations, 4.5 Road Network, 4.5.2. Local Roads.
	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.
	The Applicant's surveyor is to contact Geomatics and Corridor Management to confirm the right-of-way dedication requirements.
	Subject to the satisfaction and approval of the Manager, Transportation Planning.
Comments:	
Notes:	

Source Protection Planning:

Recommendation:	Approve with Conditions
Proposed Conditions:	



HEARING DATE: September 24, 2024

Comments:	The application seeks to sever the northern portion of the lot at 394 Old Brock Road, Flamborough. The proposed severed lot is planned to be sold for future development and the retained lot would continue to be used for agricultural purposes.
	Please note that these are partial comments as the review of the latest information is still underway due to the limited review period. In the meantime, our previous request for a stamped design for the water treatment option was not provided and therefore our previous comments still apply:
	1. Public Health is supportive of the severance based on a viable treatment option. The applicant shall provide a signed and stamped design for the water treatment option that would successfully reduce the exceedances in the raw water (TDS, sodium, chloride, hardness).
	2. The water quality exceedances and the water treatment option should be registered on the property title for the awareness of future property owners.
Notes:	

Forestry:

Recommendation:	Approve with Conditions
Proposed Conditions:	A Permit to injure or remove municipal trees is a requirement of this application. A Tree Management Plan must be submitted to the Forestry and Horticulture Section c/o the Urban Forestry Health Technician, to address potential conflicts with publicly owned trees.
Comments:	
	Conditions of the Forestry and Horticulture Section will be cleared only after receipt of all applicable fees.
	An assessment of the information provided shows that there are potential conflicts with publicly owned trees or trees that may become city assets through right of way widening.
	Where existing municipal trees are impacted by development work, are within proximity of the development work or access/egress to the development work, a Public Tree Permit to injure or remove municipal trees is required.
	Where ownership of trees in proximity to the boundary between public and private land is un-certain, the subject trees must be surveyed by the applicant to confirm ownership. Ownership is as per By-law 15-125.



Ownership must be clearly identified on the Tree Management Plan as either municipal or private.

No Landscape plan required.

TREE MANAGEMENT

Tree Protection is a measure of efforts to preserve existing trees during the Planning of New Developments, Infrastructure Enhancements, Utility Upgrades & Residential Improvements.

The Forestry & Horticulture Section requires that a Tree Management Plan be prepared by a MTCU Qualified Arborist, or ISA Certified Arborist, or a Registered Landscape Architect. All trees within this proposed development area must be surveyed, identified and accurately plotted on the plan to determine ownership, including intensions regarding retention or removal.

It is compulsory that all proposed surface treatment changes within individual tree driplines as well as property lines, building footprints, driveways, utility construction corridors and temporary access roads be accurately depicted on the submission.

The Tree Inventory Analysis Table on the Tree Management Plan shall not be considered complete without the following data and recommended action for each tree.

- Species by Botanical and common name
- Diameter at breast height in centimeters or millimeters
- Ownership (> 50% @ ground level = ownership)
- Biological health
- Structural condition
- Proposed grade changes within individual driplines (compulsory)
- Proposed utility construction within individual driplines (compulsory)
- Proposed removals or relocations
- Proposed trees to be protected.

If it is determined and verified that existing trees can remain, a Tree Protection Zone Detail with notes showing Tree Preservation Techniques shall be included on the submission as per the Public Tree Preservation and Sustainability Policy.

The determination of ownership of all trees is the responsibility of the applicant and any civil issues which may exist or arise between property owners with respect to trees, must be resolved by the applicant. The

	ownership of each individual tree inventoried must be clearly stated as municipal or private.
	All Healthy trees on municipal property which are found to be in conflict with this proposed development and do not meet our criteria for removal are subject to a replacement fee as outlined in the Public Tree Preservation and Sustainability Policy in conjunction with By-Law 15-125.
	A permit will be issued upon approval of the Tree Management Plan and applicable fees.
Notes:	

Legislative Approvals:

Recommendation:	Comments and Conditions / Notes
Proposed Conditions:	
Comments:	The lands to be retained will remain as 394 Old Brock Road
	(Flamborough).
	The lands to be conveyed will be assigned the address of 424 Old Brock
	Road (Flamborough).
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.

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

