



Hamilton

COMMITTEE OF ADJUSTMENT

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

Telephone (905) 546-2424, ext. 4221

E-mail: cofa@hamilton.ca

NOTICE OF DECISION
CORRECTED
Consent / Land Severance

APPLICATION NO.:	FL/B-22:72	SUBJECT PROPERTY:	394 Old Brock Road, Flamborough
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APPLICANTS: Owner: Tracy Kowalchuk
Agent: Urban in Mind c/o Terrance Glover

PURPOSE & EFFECT: 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.

	Frontage	Depth	Area
SEVERED LANDS:	79.5 m [±]	Varies m [±]	7,359 m ^{2±}
RETAINED LANDS:	344.0 m [±]	Varies m [±]	39,400.0 m ^{2±}

Associated Planning Act File(s): FL/A-22:248

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out above, Approved as Amended with Conditions, for the following reasons:

1. The proposal does not conflict with the intent of the Urban/Rural Hamilton Official Plan.
2. The proposal does not contravene Zoning By-law requirements.
3. The Committee considers the proposal to be in keeping with development in the area.
4. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
5. The submissions made regarding this matter affected the decision by supporting the granting of the application, with amendments.

Having regard to the matters under subsection 51(24) of the Planning Act, R.S.O. 1990, c.P. 13, the said application shall be subject to the following condition(s):

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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 \pm 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).
 - b. Approximately \pm 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).

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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 (To the satisfaction of the Manager of Development Engineering).
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.
19. That the applicant completes a noise study with Lafarge Canada providing comments on the study to the satisfaction of the Director of Development Planning.

DATED AT HAMILTON, September 24, 2024.

D. Smith (Chairman)

R. Reid

L. Gaddy

N. Lauwers

S. Rybarczyk

M. Switzer

The date of the giving of this Notice of Decision is **September 27, 2024**. Above noted conditions **MUST** be fulfilled within **TWO (2) YEARS** of the date of this Notice of Decision (September 27, 2026) or the application shall be deemed to be REFUSED (Planning Act, 53(41)).

NOTES:

1. THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO LAND TRIBUNAL (OLT) MAY BE FILED IS **October 17, 2024 at 4:30pm**. A Notice of Appeal must be filed with the Secretary-treasurer of the Committee of Adjustment, must set out the reasons for the appeal and must be accompanied by the applicable fee. See Appeal Information Consents/Severances for more information.
2. **This Decision is not final and binding unless otherwise noted and must not be acted upon until the period of appeal has expired.**
3. The Decision does not release any persons from the necessity of observing the requirements of building regulations, the license by-law, or any other by-law of the City of Hamilton.



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APPEAL INFORMATION – MINOR VARIANCES

1. Who may file an appeal of the Decision of the Committee of Adjustment?

Please note neighbours and other interested parties not defined are no longer eligible to file Planning Act Section 45(12) appeals. See [Bill 23, More Homes Built Faster Act, 2022](#) for more information.

Planning Act Section 45(12) appeals may be filed by the applicant, the Minister of Municipal Affairs and Housing, a “specified person” (as defined by Planning Act 1(1)), and a “public body that has an interest in the matter” (as defined by Planning Act 1(1)).

2. When must an appeal be received to be considered?

Planning Act Section 45(12) appeals must be received no later than the end of business on the last date of appeal listed on the Notice of Decision. The last date of appeal is 20 days from the date of the Decision. Please see Notice of Decision for exact date and time.

3. Where must the appeal be filed to be considered?

Planning Act Section 45(12) appeals must be received in one of the following formats:

Hardcopy: at City Hall and addressed to the Secretary-Treasurer of the Committee of Adjustment, Hamilton City Hall, 5th Floor, 71 Main Street West, Hamilton, ON, L8P 4Y5. Do not address appeals to any other departments or locations. Appeals received by the office of the Committee of Adjustment after the last date of appeal as a result of second-hand mailing will be time barred and of no effect.

Electronic copy: by email delivered to cofa@hamilton.ca. Do not address appeals to any other departments or locations. Appeals received by the office of the Committee of Adjustment after the last date of appeal as a result of incorrectly addressed emails will be time barred and of no effect. If the information submitted will include large file sizes not able to be sent in one email, please contact cofa@hamilton.ca in advance to request a file sharing link.

E-file Portal: By filing an appeal through the OLT E-file Portal at <https://olt.gov.on.ca/e-file-service/> to Hamilton (City) – Committee of Adjustment and Consent Authority (select appropriate approval body as outlined on the Notice of Decision). Appeals received by the office of the Committee of Adjustment after the last date of appeal as a result of incorrectly chosen approval authority will be time barred and of no effect.

Please note only one of the above options needs to be completed. If your preferred method of appeal is not available at the time of appeal, the appeal must be filed with one of the other two

options. Appeals received after the date of appeal as a result of one of the methods being unavailable will be time barred and of no effect.

4. What information must be submitted for the appeal to be considered?

Planning Act Section 45(12) appeals must include:

- Notice of appeal, the Ontario Land Tribunal (OLT) Appeal Form, this can be found by contacting Committee of Adjustment staff at the 5th floor of City Hall or at the OLT website <https://olt.gov.on.ca/appeals-process/forms/>, a cover letter, etc. may also be submitted if there is not sufficient room in the form;
- Filing fee, the fee is currently \$400 (subject to change) and must be paid as outlined on the OLT Appeal Form or OLT E-file Portal;
- All other information as required by the Appeal Form.