



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 14, 2025
SUBJECT/REPORT NO:	Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application B-24:42 and Minor Variance Application A-24:171 for Lands Located at 1248 Concession 6 West, Flamborough (PED25023) (Ward 13)
WARD AFFECTED:	Ward 13
PREPARED BY:	David Bonaventura (905) 546-2424 Ext. 3364
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Council gives approval to the following actions, as detailed in Report PED25023, respecting Committee of Adjustment Consent application B-24:42 and Minor Variance application A-24:171 submitted by The Angrish Group c/o Ruchika Angrish, on behalf of Phil and Marlene Elgersma (owners), for the lands located at 1248 Concession 6 West, Flamborough, as shown in Appendix "A" attached to Report PED25023, granted by the Committee of Adjustment and recommended for denial by the Planning and Economic Development Department:

- (a) That Council of the City of Hamilton proceed with the appeal to the Ontario Land Tribunal against the decision of the Committee of Adjustment to approve Consent application B-24:42 and Minor Variance application A-24:171; and,
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Ontario Land Tribunal hearing in opposition to the decision of the Committee of Adjustment to approve Consent application B-24:42 and Minor Variance application A-24:171.

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EXECUTIVE SUMMARY

The applicant, The Angrish Group c/o Ruchika Angrish, on behalf of Phil and Marlene Elgersma (owners), submitted Consent to Sever Land application B-24:42 and Minor Variance application A-24:171 to create a non-farm parcel for a surplus farm dwelling as the result of a non-abutting farm consolidation on lands municipally known as 1248 Concession 6 West, shown on the location map attached as Appendix “A” to Report PED25023. The applicants own and operate a farm nearby (954 Westover Road, Hamilton) with an existing habitable dwelling on the property that is included in the consolidated farm operation. Minor Variance application A-24:171 is seeking relief of the required minimum lot area for the retained lands.

The Consent application would result in the severed lands having an area of one hectare and are proposed to contain the existing single detached dwelling, barn structure, a frame shed and chicken coop, while the retained lands include the surrounding agricultural land and have an area of 28.58 hectares. The applicants submitted a Minor Variance application to permit a minimum lot area of 28 hectares for the retained lands whereas the Zoning By-law requires a minimum lot area of 40.4 hectares for agricultural purposes. The retained agricultural lands are part of a non-abutting farm consolidation that includes a 39 hectare farm operation, as a result the existing dwelling on the subject lands is considered surplus. However, staff are of the opinion that the proposed severance results in a 1.0 hectare parcel that is larger than the minimum area required to accommodate the single detached dwelling and private services. As a result, the proposed Consent to Sever Land application removes more land from agricultural production than is necessary.

The Committee of Adjustment granted approval of Consent application B-24:42 and Minor Variance application A-24:171 at the August 20, 2024, hearing without the recommended conditions identified by Source Protection Planning staff (refer to Appendix “B” attached to Report PED25023).

Planning staff recommended that the Consent to Sever and Minor Variance applications be tabled at the August 20, 2024, Committee of Adjustment hearing as the proposal did not have sufficient regard for Section 51(24) and Section 45(1) of the *Planning Act* nor did it comply with the policies of the Rural Hamilton Official Plan (refer to Appendix “B” attached to Report PED24196 for staff comments). Staff requested the applications be tabled to provide additional time for staff to work with the applicant to address the policy concerns related to the application as submitted, which included reducing the proposed severed lot area.

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On September 9, 2024, Development Planning staff appealed the decision of the Committee of Adjustment to the Ontario Land Tribunal. A hearing date has not yet been set.

Alternatives for Consideration – See Page 12

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning staff has submitted the required fee of \$800 to the Minister of Finance to begin the appeal process. Other than this one-time fee, the costs for the Hearing are covered by the respective Departmental Work Programs/Budgets.

Staffing: One representative from Legal Services, one representative from the Development Planning Section, and one representative from Source Protection Planning would be required for the preparation and attendance at the Ontario Land Tribunal hearing.

Legal: No legal implications are expected.

BACKGROUND

On July 19, 2024, the applicant, The Angrish Group c/o Ruchika Angrish, on behalf of Phil and Marlene Elgersma (owners), submitted concurrent Consent to Sever Land application B-24:42 and Minor Variance application A-24:171 to permit the severance of a surplus farm dwelling as a result of a non-abutting farm consolidation and to seek relief of the minimum lot area for the retained lands proposed for agricultural purposes, on lands municipally known as 1248 Concession 6 West in Flamborough, shown on the location map attached as Appendix “A” to Report PED24196.

The effect of the applications would permit the severance of a surplus farm dwelling parcel containing an existing dwelling, barn structure, frame shed and chicken coop. The severed lands identified as “Lands to be Severed” on the submitted Severance Sketch attached as Appendix “C” to Report PED25023 have a frontage of 50.71 metres and lot area of one hectare. The retained lands, identified as “Lands to be Retained” on the submitted Severance Sketch, have a frontage of 300 metres and lot area of 28.58 hectares. The retained lands include the surrounding land, intended to be utilized for agricultural purposes, do not conform to the required minimum lot area of 40.4 hectares for agricultural uses within the Agricultural (A1) Zone.

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Staff comments recommended the Consent to Sever and Minor Variance applications be tabled as the proposal did not have sufficient regard for Sections 51(24) and 45(1) of the *Planning Act*, Provincial Planning Statement, 2020 and 2024, and did not comply with the policies of the Rural Hamilton Official Plan (see Appendix “B” attached to Report PED25023). While the lands to be retained as part of a non-abutting farm consolidation do not meet the minimum land size threshold of 40.1 hectares for agricultural purposes, staff took issue with the 1.0 hectare size of the severed parcel as it is larger than the minimum lot area required for such severances and includes farm buildings which are not suitable to be used as accessory structures to a residential use. Staff requested additional time to work with the applicant to ensure the severed parcel did not remove excess land from the retained agricultural land than was necessary, in accordance with City policies, for the provision of private servicing. The Committee of Adjustment granted approval of Consent to Sever and Minor Variance applications B-24:42 and A-24:171 on August 20, 2024, without the recommended conditions in the staff report. The Committee of Adjustment did not impose Source Protection Planning staff’s recommended condition to ensure the long term sustainability of the ground water. Please refer to the Decision attached as Appendix “B” to Report PED25023.

Under the *Planning Act*, Consent appeals must be filed within 20 days of the date of giving notice of the decision while Minor Variance appeals must be filed within 20 days of the date of decision. As such on September 9, 2024, Development Planning staff submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council’s approval/ratification.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENT

Planning Act

The application has been reviewed with respect to the criteria of the *Planning Act*.

Powers of the Committee of Adjustment

“44(1) If a municipality has passed a by-law under section 34 or a predecessor of such section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, as the council considers advisable. R.S.O. 1990, c. P.13, s. 44 (1).

45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38,

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or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

Plan of Subdivision Approvals

51(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (c) Whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (f) The dimensions and shapes of the proposed lots;
- (i) The adequacy of utilities and municipal services.

Consents

53(1) An owner, chargee or purchaser of land, or such owner's, chargee's or purchaser's agent duly authorized in writing, may apply for a consent as defined in subsection 50(1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. 2021, c. 25, Sched. 24, s. 4 (1).

53(12) A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51 (24) and has the same powers as the approval authority has under subsection 51 (25) with respect to the approval of a plan of subdivision and subsections 51 (26) and (27) and Section 51.1 apply with necessary modifications to the granting of a provisional consent. 1994, c. 23, s. 32.”

Through the review of the submitted Consent application, staff noted that the retention of the agricultural buildings on the severed surplus farm dwelling lands, as well as the size and depth of the severed lands, do not comply with the policies of the Rural

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Hamilton Official Plan regarding surplus farm dwelling severances. The policies require that the lot size proposed be the minimum size required to accommodate the proposed residential use and private servicing and generally not exceed a maximum lot depth of 122 metres (400 feet). Staff note that the condition recommended by Source Protection Planning, to require a scoped hydrogeological study was intended to ensure the severed lands could meet the private water servicing policies of the Rural Hamilton Official Plan, was removed from the conditions of approval for Consent to Sever application B-24:42 by the Committee of Adjustment. Based on the foregoing, the Consent to Sever application does not have regard for the criteria for the subdivision of land under the *Planning Act*.

Minor Variance application A-24:171 would facilitate the removal of additional agricultural land from a farming operation that could support agricultural production. As submitted, the proposed minor variance does not meet the intent of the Rural Hamilton Official Plan nor City of Hamilton Zoning By-law No. 05-200.

Provincial Policy Framework

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Planning Statement (2020).

It is noted that the Provincial Planning Statement (2024) came into effect, and the Provincial Policy Statement (2020) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe were repealed, on October 20, 2024. Any decisions made on or after October 20, 2024, shall be consistent with the new Provincial Planning Statement. As the decision of the Committee of Adjustment was made prior to this effective date, the policies of the Provincial Policy Statement apply.

The mechanism for the implementation of the Provincial plans and policies is through the Official Plan. Through the preparation, adoption and subsequent Ontario Land Tribunal approval of the City of Hamilton Official Plans, the City of Hamilton has established the local policy framework for the implementation of the Provincial planning policy framework. As such, matters of provincial interest (e.g., protection of agricultural resources, orderly development, efficiency of land use and balanced growth) are reviewed and discussed in the Rural Hamilton Official Plan analysis below.

Section 4.6.1 f) of the Greenbelt Plan (2017) permits the severance of a residence surplus to a farming operation as a result of a farm consolidation if the severance is limited to the minimum size needed to accommodate the residential use and appropriate sewage and water services. Staff are of the opinion that the severed lot is larger than the minimum required to accommodate the single detached dwelling and

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private services. As a result, the proposed Consent to Sever application removes more land from agricultural production than is necessary for the proposed residential use.

Rural Hamilton Official Plan

The subject site is designated “Rural” within Schedule D – Rural Land Use Designation. The following policies, amongst others, apply to the proposal.

“F.1.14.2.1 The following policies shall apply to all severances and lot additions, including minor lot line adjustments and boundary adjustments in the Agriculture, Rural, Specialty Crop, and Open Space designations, and designated Rural Settlement Areas, as shown on Schedule D – Rural Land Use Designations: (OPA 18)

- a) Severances that create a new lot for the following purposes shall be prohibited:
 - i) Residential uses except in accordance with:
 - 1) Policies F.1.14.2.1 b) iii) and F.1.14.2.8, where a dwelling may be severed as a result of a farm consolidation; and,
 - 2) Policies F.1.14.2.1 b) iv) and F.1.14.2.4, where a dwelling within a designated Rural Settlement Area may be severed;
 - 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 where 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.

F.1.14.2.8. 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:

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- 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 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 dwelling 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,

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2. Generally not exceed a depth of 122 metres (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 purposes.
 - 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.
- 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 Speciality 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 Speciality Crop in 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 landowner shall apply for and receive final approval to rezone the farm parcel to prohibit the construction of a dwelling unit; or

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2. The landowner 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 to the City, the City shall rezone the farm parcel to prohibit the construction of any dwelling unit.

- C.5.1.1 No draft, conditional, or final approval of development proposals shall be granted by the City for any development in Rural Hamilton that could impact existing private services or involves proposed private services until the development proposal has complied with all of the following: (OPA 23)(OPA 26)
- a) Prior to or at the time of application for a proposal that could impact existing private services or involves proposed private services, development proponents shall submit complete information regarding existing or proposed private water and wastewater services. This information shall be complete to the satisfaction of the City. Where sufficient information is not available to enable a full assessment of on-site and off-site water supply and/or sewage disposal impacts or if the proponent does not agree with the City's calculations, the proponent shall be required to submit a hydrogeological study report completed in accordance with Section F.3.2.5 – Hydrogeological Studies of this Plan and Hydrogeological Study Guidelines as maybe approved or amended from time to time.(OPA 23)
 - b) Any information submitted, or study required in Policy C.5.1.1 a) shall be completed to the satisfaction of the City in accordance with Section F. 3. 2.5 of this Plan and Hydrogeological Study Guidelines as may be amended from time to time. The City may request or conduct a peer review of the study or servicing information, which shall be completed by an agency or professional consultant acceptable to the City and retained by the City at the applicant's expense. (OPA 23)
 - e) The private water supply and sewage disposal systems shall be capable of sustaining the proposed and existing uses within acceptable levels of on-site and off-site water quantity and quality impacts, including nitrate impact;

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- g) The existing or proposed water supply system shall include a well with sufficient quantity of water and with potable water supply to sustain the use. A cistern system that meets current accepted standards, may, to the satisfaction of the City, be an additional component of the water supply system. (OPA 26)”

Policy F.1.14.2.8 of the Rural Hamilton Official Plan provides the criteria with which to evaluate proposed surplus farm dwelling severances as a result of non-abutting farm consolidations. Staff note that the proposed severance does not comply with several of the criteria found in Policy F.1.14.2.8. Specifically, in the absence of any justification for the 1.0 hectare lot size from a hydrogeological perspective, the proposed severance: removes more land from agricultural production than is necessary (F.1.14.2.8 a) iv)) as the proposed severed lands exceeds the minimum lot size required to accommodate the use; as well as the maximum lot depth of 122 metres (F.1.14.2.8 a) vi)), and; includes farm buildings as accessory to the residential use (F.1.14.2.8 a) vii)). In staff's opinion, there is an opportunity to readjust the lot lines to reduce the size of the severed parcel, subject to the necessary hydro geological investigation being undertaken. In addition, the applicant has not demonstrated that the private water supply on the subject lands complies with Section C.5.1 (F.1.14.2.8 a) v)).

Source Protection Planning staff comments noted that there are no concerns regarding private wastewater servicing as no new dwellings or expansion of the existing dwelling are proposed. A lot size of 1 hectare is considered sufficient from a private wastewater service perspective. However, Source Protection Planning staff recommended a condition of approval requiring the submission of a Scoped Hydrogeological Report completed by a qualified professional (P.Eng, P.Geo) prepared in accordance with the City of Hamilton Guidelines for Hydrogeological Studies and Technical Standards for Private Servicing. The purpose of the study is to demonstrate the sustainability of the applicant's private water supply and could result in informing the lot size and shape. The condition was recommended as Condition #7, as shown in Appendix “B” attached to Report PED25023 since the investigation of the sustainability of the private services was not completed at the time of the submission of the applications. However, the condition was not included as a condition of approval of the Committee of Adjustment, as shown in Appendix “D” attached to Report PED25023.

As such, staff are of the opinion that the Consent to Sever application does not maintain the general intent of the Rural Hamilton Official Plan as it does not comply with policies regarding the severance of a surplus farm dwelling as the result of a non-abutting farm consolidation. The recommended Condition #7 was not included in the conditions of approval applied by the Committee of Adjustment; therefore, the applicant has not

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demonstrated that the proposal meets the requirements regarding sustainable private water services found in Section C.5.1.

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

The subject lands are zoned Agriculture (A1) Zone and Conservation / Hazard Land - Rural (P6) Zone. Staff note that the minimum lot area for agricultural uses within the Agriculture (A1) Zone is 40.4 hectares. The proposed retained land, being 28.58 hectares in area, does not meet this requirement. Minor Variance application A-24:171 was submitted to seek relief from the minimum lot area of the retained lands.

RELEVANT CONSULTATION

- Corporate Services Department, Legal Services Division; and,
- Source Protection Planning.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The proposed Consent and associated Minor Variance applications do not have regard for the criteria of Section 51(24) and Section 45(1) of the *Planning Act* on the basis that the proposal negatively affects matters of provincial interest by further fragmenting agricultural lands and does not demonstrate that the existing private water supply of the severed lands can sustainably and safely support the residential use. Staff are also of the opinion that the proposal does not comply with the policies of the Rural Hamilton Official Plan related to surplus farm dwelling severances, and does not provide adequate services, as demonstrated through the policy analysis above. Staff note that the Committee of Adjustment did not include staff's recommended Condition #7 in the approval.

Based on the foregoing, it is appropriate for the City to appeal the Committee of Adjustment's approval of Consent to Sever application B-24:42 and Minor Variance application A-24:171 to the Ontario Land Tribunal.

ALTERNATIVES FOR CONSIDERATION

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the Ontario Land Tribunal. Provided that no further appeals are filed; this option would allow the Committee of Adjustment's decision to permit the Consent and Minor Variance applications.

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APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED25023 – Location Map

Appendix “B” to Report PED25023 – Staff Comments for FL/B-23:82 and FL/A-23:312

Appendix “C” to Report PED25023 – Severance Sketch

Appendix “D” to Report PED25023 – FL/B-23:82 and FL/A-23:312 Committee of Adjustment Decisions

Appendix “E” to Report PED25023 – FL/B-23:82 Consent Application

Appendix “F” to Report PED25023 – FL/A-23:312 Minor Variance Application

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