

HEARING DATE: March 27, 2025

B-25:009 — 879 West 5th Street, Hamilton

Recommendation:

Approve — Development Planning

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 Municipal Tree Assets located within Municipal Lands undergoing a Land Purchase and Transference are required by Forestry to be appraised and purchased as a condition of the Land Purchase Agreement.

A permit to injure or remove Municipal Tee Assets is a requirement of this application. A Tree Management Plan must be submitted to the Forestry and Horticulture Section c/o urbanforest@hamilton.ca, to address potential conflicts with publicly owned trees.

A Landscape Plan is required by the Forestry and Horticulture Section, depicting the street tree planting scheme for the proposed development. (Forestry)

- 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. West 5th Street is to be 30.480 metres from Mohawk Road to 90 metres South of Stone Church Road. The existing right-of-way at the subject property is approximately ±20 metres. Approximately ±5 metres are to be dedicated to the right-of-way on West 5th Street, as per the Council Approved Urban Official Plan: Schedule C-2 Future Right-of-Way Dedications. All to the satisfaction and approval of the Manager, Transportation Planning



HEARING DATE: March 27, 2025

- 1) 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. (Transportation Planning)
- 2) The Applicant's surveyor is to contact Geomatics and Corridor Management to confirm the right-of-way dedication requirements. https://www.hamilton.ca/build-invest-grow/planning-development/planning-policies-guidelines/road-widening-dedication.
- 3) Subject to the satisfaction and approval of the Manager, Transportation Planning.
- 7. That the owner apply for and receive final approval of the appropriate Planning Act application to address any zoning non-conformities, to the satisfaction of the Director of Development Planning.
- 8. That the owner shall investigate the noise levels on the severed lands and determine and implement the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of Environment, Conservation and Parks (MECP) recommended sound level limits. An acoustical report prepared by a qualified Professional Engineer containing the recommended noise control measures shall be submitted to the satisfaction of the City of Hamilton, Director of Planning and Chief Planner. Should a peer review of the acoustical report be warranted, all associated costs shall be borne by the owner and shall be submitted to the satisfaction of the City of Hamilton, Director of Development Planning.
- 9. That the applicant must lift the Holding 'H' Provision from the portion of the subject lands that front on to Fortissimo Drive, to the satisfaction of the Director of Development Planning.
- 10. That the owner submits and receives approval of a Tree Protection Plan including the review fee as part of the Schedule of Rates and Fees, to the satisfaction of the Manager of Heritage and Urban Design. The Tree Protection Plan is to be prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester, or landscape architect) in accordance with the City's Council adopted Tree Protection Guidelines (revised October 2010). (Development Planning)
- 11. 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. (Development Planning)
- 12. The owner shall receive final and binding approval of Minor Variance application A-24:197 (Planning Division Zoning Review Section).
- 13. The owner / applicant shall submit survey evidence that the lands to be retained, including the location of any existing structure(s), encroachments, accessory buildings, parking, and landscaping, conform with the requirements of the Zoning By-law or alternatively apply for and



HEARING DATE: March 27, 2025

receive final approval of the appropriate Planning Act applications in order to seek relief from the requirements of the Zoning By-law (Planning Division – Zoning Review Section).

- 14. The owner / applicant shall demolish the existing accessory building (shed) on the lands to be conveyed to the satisfaction of the Planning and Economic Development Department (Planning Division Zoning Review Section).
- 15. The proponent demonstrates that they have ownership of a track of land described as Part 4 and Part 5 on 62R-20292, adjacent to the east property line, to the satisfaction of the Director of Development Engineering.
- 16. That the Owner must enter into with the City of Hamilton and register, a Consent Agreement, having an administrative fee of \$5,215.00 (includes grading plan review) to address issues including but not limited to: lot 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 any outstanding servicing cost for the existing municipal services adjacent to the property, street trees (City policy requires one (1) street tree/lot, inspection of grading, stormwater management infrastructure and securities for items that may include: lot grading (\$10,000.00 grading security), water and sewer services inspections, driveway approaches, relocation of any existing infrastructure (such as hydrants) and any damage during construction (unknown costs at this time), to the satisfaction of the City's Director of Development Engineering.
- 17. The Owner/ Applicant shall pay any outstanding servicing charges for the existing municipal services on Fortissimo Drive to the satisfaction of the Director of Development Engineering.

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. (Building Engineering)

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. (Legislative Approvals)



Development Planning:

Background

	Frontage	Depth	Area
SEVERED LANDS	19.06 m±	30.04 m±	550.3 m ² ±
(Parts 2 and 4):			
SEVERED LANDS	11.5 m±	30.6 m±	347.1 m ² ±
(Parts 3 and 5):			
RETAINED LANDS	30.57 m±	40.48 m±	1240 m ² ±
(Part 1):			

The purpose of Consent to Sever application B-25:025 is to permit the conveyance of a parcel of land to create two parcels for residential future development. The existing dwelling is to remain on the retained land, the existing accessory structure is to be removed.

Staff further note that the rear portion of the subject lands that front onto Fortissimo Drive (being Parts 4 and 5) 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.

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 5th 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.



HEARING DATE: March 27, 2025

The proposal is considered residential intensification and has been evaluated against the criteria found in Policies B.2.4.1.4 and B.2.4.2.2. Staff are of the opinion that the proposal is similar to and compatible with the built form, uses and established development pattern within the area. The proposed lots are consistent with the existing lot fabric and the development will maintain as well as enhance the existing streetscape.

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:

- "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:
 - a) The lots comply with the policies of this Plan, including secondary plans, where one exists:
 - b) The lots comply with existing Neighbourhood Plans;
 - c) the lots are in conformity with the Zoning By-law or a minor variance is approved;
 - d) 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;
 - e) The lots are fully serviced by municipal water and wastewater systems; and,
 - f) The lots have frontage on a public road."

Staff note that Parts 2 and 4 will be 550.3 square metres in area and 19.06 metres wide. Parts 3 and 5 will be 347.1 square metres in area and 11.5 metres wide. 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. The severed lands do not meet these requirements. Staff are recommending a condition of approval to address these zoning non-conformities with the appropriate *Planning Act* application.

The retained lands, being Part 1, are to have a lot area of 1,240 square metres and a lot width of 30.57 metres, respectfully. 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. Part 1 will exceed these requirements.



HEARING DATE: March 27, 2025

The proposed severed and retained lots front on a public road and are fully serviced by municipal water and wastewater services. Staff are of the opinion that the proposed severed and retained lands are compatible with the character, scale and established development pattern of the area.

Natural Heritage

The subject lands are located within the boundaries of the Urban Hamilton Official Plan. Based on Schedule B (Natural Heritage System) of the Urban Hamilton Official Plan, Core Areas (i.e., Environmentally Significant Areas, Areas of Natural and Scientific Interest, Significant Woodlands, wetlands, and watercourses) as well as Linkages (natural features that ecologically connect Core Areas) have not been identified within the subject property. As a result, it is anticipated that the proposed development will not further negatively impact the City's Natural Heritage System.

Through aerial photograph interpretation, trees have been identified within and adjacent to the subject property. The City recognizes the importance of trees to the health and quality of life in the community (i.e., canopy cover, energy conservation, mental health benefits) and encourages the protection and restoration of trees (policy C.2.11.1). Based on the proposal, it appears that trees may be impacted. If trees are to be removed, the City requires 1 for 1 compensation to be provided. This is to ensure that existing tree cover is being maintained.

The following conditions should be considered:

- That the owner submits and receives approval of a Tree Protection Plan including the review fee as part of the Schedule of Rates and Fees, to the satisfaction of the Manager of Heritage and Urban Design. The Tree Protection Plan is to be prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester, or landscape architect) in accordance with the City's Council adopted Tree Protection Guidelines (revised October 2010).
- 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.

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.



HEARING DATE: March 27, 2025

Based on the above analysis, staff are of the opinion the proposed severance maintains the general intent of the Urban Hamilton Official 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.

Staff note that the severed lands, being Parts 2 and 4 and Parts 3 and 5, are to have lot areas of 550.3 square metres and 347.1 square metres and lot widths of 19.06 metres and 11.5 metres, respectively. The severed lands would not meet the minimum required lot width of 60 metres or the minimum required lot area of 12,000 square metres. Staff are recommending a condition of approval to address these and other zoning non-conformities.

The retained lands, being Part 1, are to have a lot area of 1,240 square metres and a lot width of 30.57 metres. The retained lands would exceed the minimum required lot width of 12.0 metres and minimum required lot of 360 square metres.

Staff further note that the rear portion of the subject lands that front onto Fortissimo Drive (being Parts 4 and 5) 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 5th 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

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



HEARING DATE: March 27, 2025

(iii) 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 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 <u>staff report PED23069</u>, 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.**

Zoning:

Recommendation:	Comments and Conditions/Notes
Proposed Conditions:	The owner shall receive final and binding approval of Minor Variance application A-24:197 (Planning Division – Zoning Review Section).
	2. The owner / applicant shall submit survey evidence that the lands to be retained, including the location of any existing structure(s), encroachments, accessory buildings, parking, and landscaping, conform with the requirements of the Zoning By-law or alternatively apply for and receive final approval of the appropriate Planning Act applications in order to seek relief from the requirements of the Zoning By-law (Planning Division – Zoning Review Section).
	3. The owner / applicant shall demolish the existing accessory building (shed) on the lands to be conveyed to the satisfaction of the Planning



	and Economic Development Department (Planning Division – Zoning Review Section).
Comments:	Committee of Adjustment applications A-24:197 was heard at a previous meeting to facilitate this application.
	 The owner / applicant should obtain an appropriate municipal address for the proposed parcels from the Legislated Approvals and Staging of Development Section of the Planning and Economic Development Department prior to the issuance of a building permit.
	 In order to clear conditions, the owner will be required to make application for a Zoning Compliance Review and pay the relevant fees.
	4. Please be advised that further Planning Act approvals may be required is a road widening and/or daylight triangle dedication is required as part of this application.
Notes:	

Development Engineering:

Recommendation:	Approve with Conditions
Proposed Conditions:	 The proponent demonstrates that they have ownership of a track of land described as Part 4 and Part 5 on 62R-20292, adjacent to the east property line, to the satisfaction of the Director of Development Engineering.
	2. That the Owner must enter into with the City of Hamilton and register, a Consent Agreement, having an administrative fee of \$5,215.00 (includes grading plan review) to address issues including but not limited to: lot 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 any outstanding servicing cost for the existing municipal services adjacent to the property, street trees (City policy requires one (1) street tree/lot, inspection of grading, stormwater management infrastructure and securities for items that may include: lot grading (\$10,000.00 grading security), water and sewer services inspections, driveway approaches, relocation of any existing infrastructure (such as hydrants) and any damage during construction (unknown costs at this time), to the satisfaction of the City's Director of Development Engineering.



	The Owner/ Applicant shall pay any outstanding servicing charges for the existing municipal services on Fortissimo Drive to the satisfaction of the Director of Development Engineering.
Comments:	According to our records, the existing municipal infrastructure fronting the subject property summarized as follows:
	West 5th Street:
	300mm ø PVC Watermain
	675mm ø Storm Sewer
	300mm ø Sanitary Sewer
	Fortissimo Drive:
	150mm ø PVC Watermain
	525mm ø Storm Sewer
	250mm ø Sanitary Sewer
	Separate and independent services shall be provided for each dwelling constructed within each parcel of land in accordance with the current Sewer and Water By-laws.
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)
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:	West 5 th Street is to be 30.480 metres from Mohawk Road to 90 metres
	South of Stone Church Road. The existing right-of-way at the subject
	property is approximately ±20 metres. Approximately ±5 metres are to be
	dedicated to the right-of-way on West 5 th Street, as per the Council
	Approved Urban Official Plan: Schedule C-2 - Future Right-of-Way



	Dedications. All to the satisfaction and approval of the Manager,
	Transportation Planning
	 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. https://www.hamilton.ca/build-invest-grow/planning-dedication. development/planning-policies-guidelines/road-widening-dedication.
	Subject to the satisfaction and approval of the Manager, Transportation Planning.
Comments:	
Notes:	

Forestry:

Recommendation:	Approve with Conditions
Proposed Conditions:	Municipal Tree Assets located within Municipal Lands undergoing a Land Purchase and Transference are required by Forestry to be appraised and purchased as a condition of the Land Purchase Agreement.
	A permit to injure or remove Municipal Tee Assets is a requirement of this application. A Tree Management Plan must be submitted to the Forestry and Horticulture Section c/o urbanforest@hamilton.ca, to address potential conflicts with publicly owned trees.
	A Landscape Plan is required by the Forestry and Horticulture Section, depicting the street tree planting scheme for the proposed development.
Comments:	An assessment of the information provided shows that there are potential conflicts with publicly owned trees or trees and trees that will cease to be public assets through Land Purchase.
	Conditions of the Forestry and Horticulture Section will be cleared only after receipt of all applicable fees.
	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.
	TREE MANAGEMENT PLAN
	Tree Protection is a measure of efforts to preserve existing trees during against all manner of construction impacts.



The Forestry & Horticulture Section requires that a Tree Management Plan be prepared by a MTCU Qualified Arborist, 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 intentions regarding retention or removal.

Where ownership of trees in proximity to the boundary between public and private lands 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.

It is compulsory that all proposed underground and surface treatment changes within individual tree driplines be accurately depicted on the submission. Including, but not limited to building footprints, driveways, walkways, utility connections, site access, and site hoarding.

The Tree Inventory 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
- Proposed utility construction within individual driplines
- Proposed actions {removal, preserve, or injure}

A Tree Protection Zone Detail showing Tree Preservation Techniques for all retained trees shall be included on the submission as per the Public Tree Preservation and Sustainability Policy. All Healthy trees on municipal property which are found to be in conflict with the proposed development, do not meet our criteria for removal, and all other reasonable alternatives have been explored, are subject to a Loss of Canopy Fee as outlined in the Public Tree Preservation and Sustainability Policy in conjunction with By-Law 15-125.

A Public Tree Permit will be issued upon approval of the Tree Management Plan and receipt of all applicable fees.

LANDSCAPE PLAN

The Forestry and Horticulture Section requires that a detailed Landscape Plan be provided, prepared by a **Registered Landscape Architect**,



HEARING DATE: March 27, 2025

showing the placement of trees to be planted within the public and private lands.

The City of Hamilton's Public Tree Preservation and Sustainability Policy, in conjunction with the Tree By-Law 15-125, requires all new developments to provide payment of \$740.00 +HST per tree for road allowance street trees, as approved through the review of the proposed street tree planting scheme. Spacing guidelines for trees are 8-10 meters on centre for larger species and 4-8 meters on centre for smaller species. All trees shown on municipal road allowance shall be identified as 'Trees to be planted by City of Hamilton Forestry Section.

The Landscape Plan should specifically outline 50mm caliper size and identify hard surface and soft surface areas on the site. Individually planted trees in new sidewalk installations shall include a detail showing 21m³ of soil, and a grouping of 2 or more trees in a soil bed shall include 16m³ of soil per tree. Please see Doing Work Near a Tree | City of Hamilton for further specifications.

Urban Forest Health Technician shall be notified, post-construction, when final grade has been achieved, to facilitate the scheduling of the street tree planting(s) via urbanforest@hamilton.ca.

Forestry's mandate is to increase canopy coverage across the city to promote a robust green infrastructure, and therefore, a healthy community for all residents of Hamilton.

SUMMARY

- Municipal Tree Assets located in public lands to be purchased and developed will be appraised, with Loss of Canopy Fees required to be paid to Forestry as a condition of land severance and purchase.
- There are Municipal Tree Assets on site; a Tree Management Plan is required.
- Landscape Plan required.
- Conditions will be considered cleared, and a Public Tree Permit will be issued, upon approval of the Tree Management Plan and Landscape Plan and receipt of all applicable fees.

Notes:

Legislative Approvals:

Recommendation:	Comments and Conditions/Notes
-----------------	-------------------------------



Proposed Conditions:	
Comments:	The lands to be retained (Part 1) will remain as 879 West 5th Street
	(Hamilton).
	The lands to be conveyed (Part 2 & 3) will be assigned the addresses of
	186 & 178 Fortissimo Drive (Hamilton).
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.

