

NOTICE OF DECISION
Consent/Land Severance

APPLICATION NO.:	B-25:009	SUBJECT PROPERTY:	879 West 5th Street, Hamilton
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APPLICANTS: Owner: Richard Lewis Smith, Valentina Marita Benacquista
Applicant: Muraca Group c/o Peter Muraca
Agent: A.J. Clarke & Associates Ltd. c/o Franz Kloibhofer & James Thomas

PURPOSE & EFFECT: To permit the conveyance of a parcel of land to create two parcels residential purposes, with one retained parcel. The existing dwelling on the retained parcel will remain and the accessory structure will be removed to facilitate for this land severance.

	Frontage	Depth	Area
SEVERED LANDS (Part 1):	19.06m [±]	30.04 m [±]	550.3 m ²
SEVERED LANDS (Part 2):	11.5 m [±]	30.6 m [±]	347.1 m ²
RETAINED LANDS:	30.57 m [±]	40.48 m [±]	1,240 m ² [±]

Associated Planning Act File(s): N/A

Notes:

i) 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)

ii) 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)

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out above, Approved 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.

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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.
6. The submissions made regarding this matter affected the decision by supporting the granting of the application, with amendments.
7. The submissions made regarding this matter did not affect the decision.

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):

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)

CONDITION #4 REMOVED

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 Tree 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
- 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)

CONDITION #12 REMOVED

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 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).

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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.

CONDITION #17 REMOVED

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.

DATED AT HAMILTON, March 27, 2025.

D. Smith (Chairman)

N. Lauwers

D. Lord

S. Rybarczyk

The date of the giving of this Notice of Decision is **April 3, 2025**. Above noted conditions **MUST** be fulfilled within **TWO (2) YEARS** of the date of this Notice of Decision (April 3, 2027) 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 **April 23, 2025 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

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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.



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

APPEAL INFORMATION – CONSENTS/SEVERANCES

1. **Who may file an appeal of the Decision of the Committee of Adjustment or Consent Authority?**

Please note neighbours and other interested parties not defined are no longer eligible to file Planning Act Section 53(19) appeals. See [Bill 23, More Homes Built Faster Act, 2022](#) for more information.

Planning Act Section 53(19) 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 any “public body” (as defined by Planning Act 1(1)).

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

Planning Act Section 53(19) 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 giving of Notice 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 53(19) 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 53(19) 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.

Questions or Information:

Contact Committee of Adjustment Staff (cofa@hamilton.ca)