



Hamilton

**DN/A-24:43 – 26 Tally Ho Drive, Dundas**

Recommendation:

Approve

Proposed Conditions:

1. That the owner submits and receives approval of a Tree Protection Plan including the review fee as per the Schedule of Rates and Fees, prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester or landscape architect) to the satisfaction of the Manager of Heritage and Urban Design.
2. 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.

Proposed Notes:



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Development Planning:

**Background**

The applicant is seeking to permit the enlargement of the legal non-conforming footprint on the subject property to facilitate the construction of a new single detached dwelling, the existing single detached dwelling is to be removed. The existing non-conformity is the building footprint of the existing dwelling. The applicant is seeking to expand the non-conforming area within the OS zone on the subject property and to change the non-conformity from the building footprint to landscaping, retaining walls and stairs.

Staff note that a permit for the proposal has been issued by the Hamilton Conservation Authority, dated February 13, 2024. This Minor Variance application is being assessed using Section 45(2) of the *Planning Act*.

**Analysis**

**Urban Hamilton Official Plan**

The subject lands are designated as “Neighbourhoods” in Schedule E-1 – Urban Land Use Designations and are identified as “Neighbourhoods” in Schedule E – Urban Structure of the Urban Hamilton Official Plan. As this application is regarding legal non-complying uses, Policy F.1.12.9, among others, is applicable. In staff’s opinion the proposed uses maintain the general intent of the Urban Hamilton Official Plan.

Core Areas, being a Significant Woodland, the Dundas Valley Environmentally Significant Area and a watercourse, are located within and adjacent to the subject lands, per Schedule B – Natural Heritage System of the Urban Hamilton Official Plan. Staff defer to Natural Heritage planning staff regarding Natural Heritage concerns.

**Archaeology**

The subject property meets the criteria used by the City of Hamilton and Ministry of Citizenship and Multiculturalism for determining archaeological potential. 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.

If this variance is granted, the City does not require an archaeological assessment, but the proponent must be advised in writing by the Committee of Adjustment as follows:



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**“Acknowledgement Note:** The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances. If archaeological resources are encountered, the proponent may be required to conduct an archaeological assessment prior to further impact in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Site-specific Assessment and Stage 4 Mitigation of Development Impacts may be required as determined by the Ontario Ministry of Citizenship and Multiculturalism (MCM). All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the MCM.

Should deeply buried archaeological materials be found on the property during any of the above development activities the MCM should be notified immediately ([416-212-0036](tel:416-212-0036)) In the event that human remains are encountered during construction, the proponent should immediately contact both MCM and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-212-7499).”

### **Cultural Heritage**

The subject property is located adjacent to (739 Sulphur Springs Rd) a property designated under Part IV of the *Ontario Heritage Act* and a “protected heritage property” under the Provincial Policy Statement. Accordingly, Section 2.6.3 of the Provincial Policy Statement applies.

The proponent proposes to permit a minor enlargement of the existing legal non-conforming footprint to build a new single detached dwelling.

Notwithstanding, staff have reviewed the application and do not anticipate any impacts to the protected heritage property. Staff have no further comments on the application as circulated.

### **Natural Heritage**

The subject property is located within the boundaries of the Urban Hamilton Official Plan (UHOP). Based on Schedule B (Natural Heritage System) of the Urban Hamilton Official Plan, Core Areas have been identified within and adjacent to the subject property. In this case, the Core Areas have been identified as Significant Woodland, Dundas Valley Environmentally Significant Area (ESA), and watercourse. The watercourse is also regulated by the Hamilton Conservation Authority



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(HCA). These features have also been zoned as Open Space – Conservation (OS) Zone within the former Town of Dundas Zoning By-law No. 3581-86.

Core Areas are to be preserved and enhanced and any development or site alteration within or adjacent to them shall not negatively impact their natural features or their ecological functions (policy C.2.3). Since encroachment into the Open Space – Conservation (OS) Zone has already occurred, the area has been disturbed. It is anticipated that the proposed landscaping will not further negatively impact the features or their functions.

Through aerial photograph interpretation and the Site Plan provided, trees have been identified within 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).

The proposed house may impact the trees on site. To ensure that trees are considered, it is recommended that a Tree Protection Plan (TPP) be prepared in accordance with the City's Council adopted Tree Protection Guidelines (revised October 2010). If trees are to be removed, it is recommended that a Landscape Plan (showing the required compensation be provided). This can be addressed through the following conditions.

- Condition 1: That the owner submits and receives approval of a Tree Protection Plan including the review fee as per the Schedule of Rates and Fees, prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester or landscape architect) to the satisfaction of the Manager of Heritage and Urban Design.
- Condition 2: 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.

**Former Town of Dundas Zoning By-law No. 3581-86**

The subject lands are zoned Single Detached Residential (R1) Zone and Open Space – Conservation (OS) Zone under Former Town of Dundas Zoning By-law No. 3581-86. The existing residential use is permitted within the R1 zone. The OS zone does not permit a single detached dwelling or its accessory uses.

**Variance**



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STAFF COMMENTS

HEARING DATE: April 9, 2024

To permit a minor enlargement of the existing legal non-conforming footprint, non-conformity changed from dwelling footprint to proposed landscaping, retaining walls and stairs. Staff note that this application is being made in accordance with Section 45(2)(a)(ii) of the *Planning Act*, which reads:

*“(ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee;”*

Staff are of the opinion that the proposed uses are compatible with the existing residential use, natural features on the subject lands and neighbouring properties. Based on the foregoing, **staff recommend approval.**

Zoning:

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	1. Please be advised that a portion of this property is under Conservation Management. Please contact Hamilton Conservation Authority at 905-525-2181 prior to any development.
Proposed Notes:	

Development Engineering:

Recommendation:	No comments
Proposed Conditions:	
Comments:	Provided the existing drainage pattern is maintained, Development Approvals has no comments.
Proposed Notes:	

Building Engineering:

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	Be advised that Ontario Building Code regulations may require specific setback and construction types.  A building permit is required for the construction of a new single detached dwelling.
Proposed Notes:	



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**STAFF COMMENTS**

**HEARING DATE: April 9, 2024**

Transportation Planning:

Recommendation:	No comments.
Proposed Conditions:	
Comments:	
Proposed Notes:	

**April 9, 2024 - CoA - HCA Comments for DN/A-24:43 for 26 Tally Ho Drive, Dundas**

Jeff Tweedle <jtweedle@conservationhamilton.ca>

Thu 3/28/2024 1:39 PM

To:Committee of adjustment <cofa@hamilton.ca>

Cc:jwebb@webbplanning.ca <jwebb@webbplanning.ca>

**External Email:** Use caution with links and attachments

Good afternoon,

The Hamilton Conservation Authority (HCA) has reviewed the Committee of Adjustment Agenda for April 9, 2024 in accordance with HCA's responsibilities under the *Conservation Authorities Act* relating to provincial interests for natural hazards and offer the following comments for DN/A-24:43 for 26 Tally Ho Drive, Dundas. HCA has cc'd the applicant's agent on this email for their information.

**DN/A-24:43 – 26 Tally Ho Drive, Dundas**

The subject property is approximately 0.42 ha (1.04 ac) in size, located with the Spencer Creek watershed and within the Spring Creek sub-watershed. Spring Creek is located within the valley directly south of the subject property and flows from west to east. The subject property is predominantly located on the table lands north of the Spring Creek valley system, with the rear portion of the property being partially within the valley slope. The valley slope adjacent to the proposed development is approximately 25-26m high. The property is regulated by HCA pursuant to *Ontario Regulation 161/06* (HCA's Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses) made under the *Conservation Authorities Act, R.S.O. 1990*. The regulated area is associated with the erosion hazard produced by Spring Creek and the adjacent valley slope. Written permission from HCA is required for any construction, site alteration, or grading completed within the regulated portion of the subject site. HCA has reviewed and issued a permit for the proposed development (Permit 2024-07). Based on a review of the materials included in the minor variance application, they are consistent with the plans reviewed and approved by HCA. HCA is satisfied that the application is consistent with the natural hazard policies of the PPS and staff have no objections to the granting of the requested minor variance.

Please contact the undersigned if there are any questions regarding the provided comments.

There will be no fee for HCA's review of this application.

Regards,

**Jeff Tweedle**

Conservation Planner

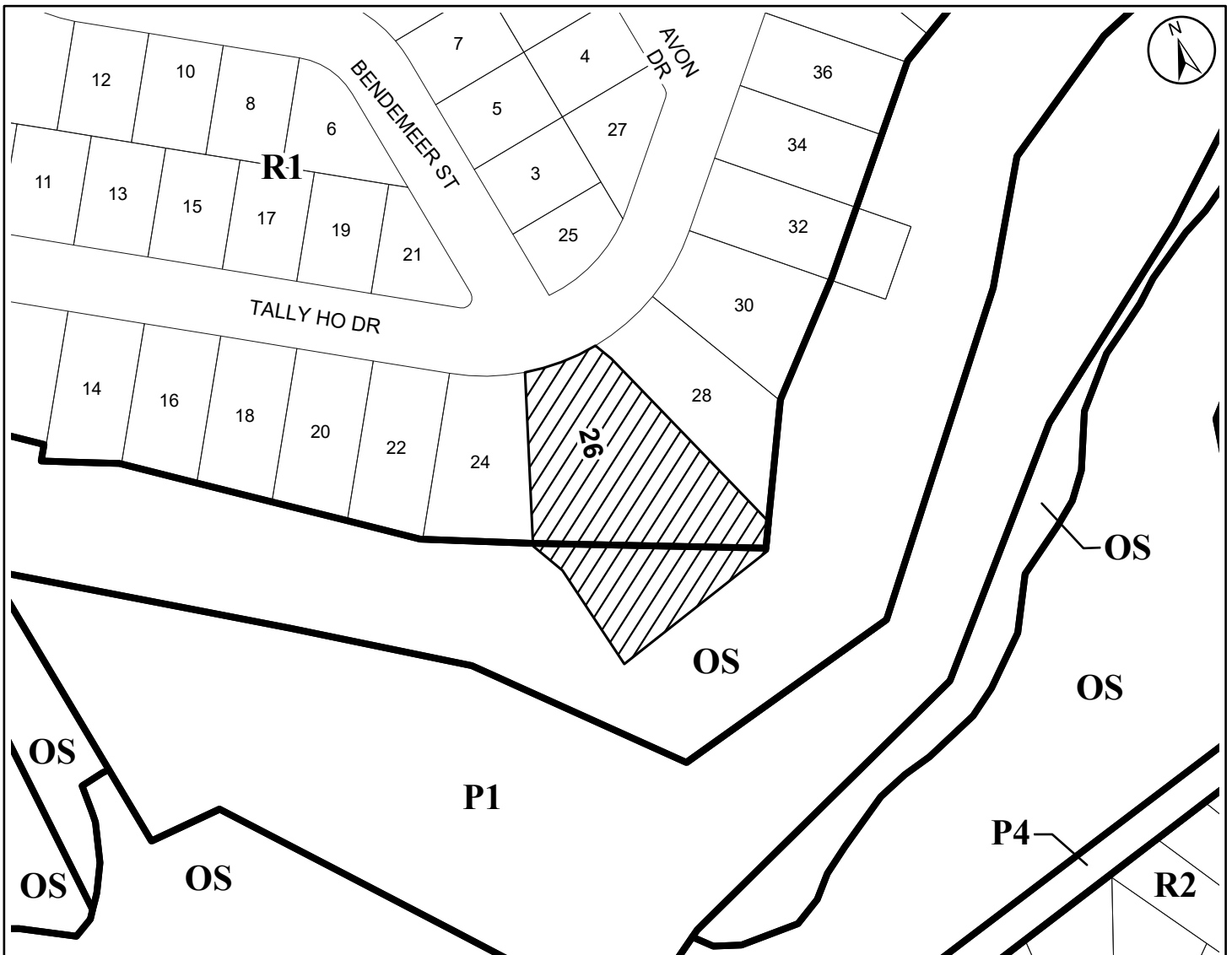
Hamilton Conservation Authority

838 Mineral Springs Road, P.O. Box 81067

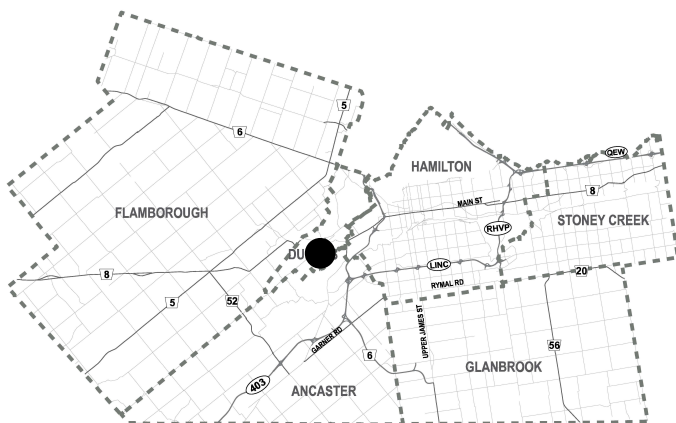
Ancaster, ON L9G 4X1

**Phone:** 905-525-2181 Ext. 164

**Email:** [jtweedle@conservationhamilton.ca](mailto:jtweedle@conservationhamilton.ca)



## ● Site Location



**City of Hamilton**

## Committee of Adjustments

### Subject Property

 26 Tally Ho Drive, Dundas (Ward 13)

**File Name/Number:**

DN/A-24:43

**Date:**

March 18, 2024

**Technician:**

AL

**Scale:**

N.T.S.

**Appendix "A"**



**Hamilton**

Planning and Economic Development Department