



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

|                           |   |
|---------------------------|---|
| <b>TO:</b>                | Chair and Members<br>Planning Committee   |
| <b>COMMITTEE DATE:</b>    | April 16, 2024  |
| <b>SUBJECT/REPORT NO:</b> | Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) |
| <b>WARD AFFECTED:</b>     | Ward 13   |
| <b>PREPARED BY:</b>       | David Bonaventura (905) 546-2424 Ext. 3364  |
| <b>SUBMITTED BY:</b>      | Anita Fabac<br>Acting Director, Planning and Chief Planner<br>Planning and Economic Development Department  |
| <b>SIGNATURE:</b>         |   |

**RECOMMENDATION**

That Council gives approval to the following actions, as detailed in Report PED24034, respecting Committee of Adjustment Consent application FL/B-23:82 and Minor Variance application FL/A-23:312 submitted by Arcadis c/o Mike Crough, on behalf of Theresa and William Slemko (owners), for the lands located at 764 Valens Road, Flamborough, as shown on Appendix "A" attached to Report PED24034, granted by the Committee of Adjustment but 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 FL/B-23:82 and Minor Variance application FL/A-23:312;
- (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 FL/B-23:82 and Minor Variance application FL/A-23:312.

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 2 of 10**

---

**EXECUTIVE SUMMARY**

The applicant, Arcadis c/o Mike Crough, on behalf of Theresa and William Slemko (owners), submitted Consent application FL/B-23:82 and Minor Variance application FL/A-23:312 to permit the severance of a parcel of land for residential purposes and to vary the minimum lot area for the severed and retained lands as well as to reduce the side yard setback to recognize an existing barn, on lands municipally known as 764 Valens Road in Flamborough, as shown in the location map attached as Appendix “A” to Report PED24034.

The severed lands are proposed to have an area of 0.25 hectares while the retained lands will have an area of 26.2 hectares. There is an existing single detached dwelling located on the severed lands and the retained lands are used for agricultural purposes. The application indicated that the Consent to Sever was required to re-establish two lots that had inadvertently merged on title as a result of a previous Consent application in 2005. This application (FL/B-05:231) transferred a portion of the subject lands to a parcel immediately to the south municipally known as 674 Valens Road.

Staff recommended that the Consent and Minor Variance applications be denied at the January 18, 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 PED24034 for staff comments).

The Committee of Adjustment granted approval of Consent application FL/B-23:82 and Minor Variance application FL/A-23:312 at the January 18, 2024, hearing without applying recommended conditions from staff that were included in staff comments to the Committee of Adjustment if they were to grant the Consent application (refer to Appendix “B” attached to Report PED24034).

Under the *Planning Act*, appeals must be filed within 20 days of the date of giving notice of the decision. As such on February 5, 2024, Planning and Economic Development 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. Staff recommend proceeding with the appeal. A hearing date has been not yet been set.

**Alternatives for Consideration – See Page 10**

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 3 of 10**

---

**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**

The applicant, Arcadis c/o Mike Crough, on behalf of Theresa and William Slemko (owners), submitted Consent application FL/B-23:82 and Minor Variance application FL/A-23:312 to permit the severance of a parcel of land for residential purposes on lands municipally known as 764 Valens Road in Flamborough, as shown in the location map attached as Appendix “A” to Report PED24034. The severed lands, identified as Lands to be Severed on the submitted Severance Sketch attached as Appendix “C” to Report PED24034, have a frontage of 50.3 metres and lot area of 0.25 hectares. The retained lands, identified as Lands to be Retained on the submitted Severance Sketch, have a frontage of 468.1 metres and lot area of 26.2 hectares.

On November 10, 2023, the applicant submitted concurrent Consent to Sever and Minor Variance applications to permit the conveyance of a parcel of land to re-establish two parcels that were inadvertently merged in title. The applicants noted the parcels merged in title as a result of a previous Consent application (FL/B-05:231) in 2005. In Consent application FL/B-05:231, a portion of the subject lands was transferred to neighbouring lands to the south, known municipally as 674 Valens Road and as Part 1 on Reference Plan 62R-17432. The proposed severed residential parcel, being Part 4 on Reference Plan 62R-17114 and Part 1 on Reference Plan 62R-8514, and which was previously severed from the farm parcel in 1987, was merged on title with the adjacent farm parcel, being Parts 1, 2 and 3 on Reference Plan 62R-17114.

The proposed retained and severed lands do not conform to the minimum required lot areas for single detached dwellings or agricultural uses within the Rural (A2) Zone and the existing barn structure does not meet the minimum 15.0 metre side yard setback.

---

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 4 of 10**

---

Staff comments recommended the Consent to Sever and Minor Variance applications be denied as the proposal did not meet Section 51(24) and 45(1) of the *Planning Act* and did not comply with the policies of the Rural Hamilton Official Plan (see Appendix “B” attached to Report PED24034). The Committee of Adjustment granted approval of Consent and Minor Variance applications FL/B-23:61 and FL/A-23:312 on January 18, 2024, notwithstanding the recommendations by staff in the staff report, including potential conditions of approval (refer to the decision attached as Appendix “B” to Report PED24034).

On February 5, 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, 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

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 5 of 10**

---

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;
- (d) The suitability of the land for the purposes for which it is to be subdivided;
- (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."

Staff are of the opinion that the effect of the application to sever a parcel of land for the purposes of residential uses does not comply with the policies of the Rural Hamilton Official Plan. Through the review of the Consent to Sever application, staff determined the proposed severed parcel would not be an appropriate size to support typical daily sewage flows from a residential dwelling as it is proposed to be serviced by private water and wastewater services.

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* and should be denied. Similarly, the Minor Variance application does not meet the four tests of a minor variance described by the *Planning Act* and should be denied.

## **Provincial Policy Framework**

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (2020). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the Provincial Policy Statement (2020).

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.

## **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;
  - b) Severances that create a new lot(s) may be permitted for only the following purposes:

---

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 7 of 10**

---

- vii) In the Rural designation only, non-agricultural uses which may only be permitted in accordance with Sections D.4.1, F.1.14.2.1, and F.1.14.2.3;
- 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.1.14.2.3 In the Rural designation, severances that create a new lot, except surplus farm dwelling severances, may be considered only for agricultural uses, agriculture-related uses, existing rural resource-based commercial uses, existing rural resource-based industrial uses, and existing rural institutional uses, provided all of the relevant conditions of Section D.4.1 and the following conditions are met.

- a) New lots for agricultural uses and agriculture-related uses shall demonstrate by a report prepared by an accredited professional knowledgeable in farm economics, such as an agrologist or agronomist, that the proposed agricultural lot(s) is(are) of sufficient size and nature to be reasonably expected to:
  - i) Sustain a commercially viable farm operation;
  - ii) Allow farm operators the flexibility to change the existing and proposed farm operation in the event of business failure; and,
  - iii) Allow farm operators the flexibility to diversify and intensify the production of agricultural commodities in response to changing economic conditions and trends in agriculture;
- b) The City may request comments on the report required in F.1.14.2.3 a) from the Province or an independent peer reviewer, at the expense of the applicant, prior to consideration of the new lot for severance approval.

---

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 8 of 10**

---

- 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)
- c) The minimum size for a new lot proposed in an application for a severance, lot addition or draft plan of subdivision with an existing or proposed private water system and/or existing or proposed private sewage disposal system shall:
    - i) Be the size required to accommodate the water system and sewage disposal system with acceptable on-site and off-site impacts;
    - ii) Shall include sufficient land for a reserve discharge site or leaching bed, as determined by the requirements in Policies C.5.1.1 a) and b); and,
    - iii) Not be less than 0.4 hectare (one acre) in size. The maximum lot size shall be in accordance with Policy F.1.14.2.1 f). (OPA 26)”

Staff note that the proposed Consent to Sever application is to re-establish two parcels of land that were merged in title as a result of a previous Consent application (FL/B-05:231) in 2005, where the proposed severed parcel (Part 4 in Reference Plan 62R-17114 and Part 1 in Reference Plan 62R-8514) merged with the farm parcel (Parts 1, 2 and 3 in Reference Plan 62R-17114). Staff note that the Rural Hamilton Official Plan does not contain a policy that speaks to the inadvertent merging of lands within the rural area of the City of Hamilton other than in the case of a dwelling made surplus as a result of farm consolidation. Due to the length of time passed since the merging of the lands, staff have reviewed the consent through the existing policy framework of the “Rural” land use designation. In addition to Development Planning comments provided for the Consent to Sever application, Source Protection Planning were also not in support.

Noting Policy C.5.1 of the Rural Hamilton Official Plan, Source Protection Planning deemed the proposed lot area of 0.25 hectares to be insufficient to meet policies within Section C.5.1 of the Rural Hamilton Official Plan and would put neighbouring properties at an increased risk regarding water quality and other health risks. Source Protection Planning staff determined that the minimum sustainable lot area would be 0.55 hectares, based upon the site specific surficial geology and typical wastewater flows from a three-bedroom dwelling, which is supported by a Scoped Hydrogeological Report completed by a qualified professional (P.Eng or P.Geo.).

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 9 of 10**

---

As such, staff are of the opinion that the Consent application does not maintain the general intent of the Rural Hamilton Official Plan policies that prohibit the creation of a new lot for residential purposes in the “Rural” designation except when a dwelling may be severed as a result of a farm consolidation or is located within a Rural Settlement Area. The proposed consent does not meet the criteria.

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

The subject lands are zoned Rural (A2) Zone and Conservation / Hazard Land - Rural (P6) Zone. Staff note that the minimum lot area for a single detached dwelling within the Rural (A2) Zone and Conservation / Hazard Land - Rural (P6) Zone is 0.4 hectares and 40.4 hectares for agricultural uses. Staff note that the proposed severed and retained parcels do not conform to the zoning requirements for minimum lot area. Staff also note that the existing barn structure on the retained lands does not conform to the minimum required side yard setback of 15.0 metres. Staff further note that the proposed conditions, if approved, require a Tree Protection Plan and Landscape Plan prepared by qualified professionals were not included in the final decision.

**RELEVANT CONSULTATION**

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

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The proposed Consent to Sever application and associated Minor Variance application do not have sufficient regard for the criteria of Section 51(24) of the *Planning Act* on the basis that the proposal negatively affects matters of provincial interest by further fragmenting agricultural lands, does not represent the orderly development of safe and healthy communities and presents a public health and safety concern as the proposed severed lands are of an insufficient size to support the septic system. Staff are also of the opinion that the proposal does not comply with the policies of the Rural Hamilton Official Plan related to lot creation in rural areas, and does not provide adequate services, as demonstrated through the policy analysis above.

Staff further note conditions that were requested by staff to be added to the approval of the application, in the case that the application was approved, were not included by the Committee of Adjustment.

Staff further note that the proposed conditions, if approved, require a Tree Protection Plan and Landscape Plan prepared by qualified professionals were not included in the final decision.

**SUBJECT: Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-23:82 and Minor Variance Application FL/A-23:312, for Lands Located at 764 Valens Road, Flamborough (PED24034) (Ward 13) – Page 10 of 10**

---

Based on the foregoing, it is appropriate for the City to appeal the Committee of Adjustment's approval of Consent to Sever application FL/B-23:82 and Minor Variance application FL/A-23:312 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.

**APPENDICES AND SCHEDULES ATTACHED**

- Appendix "A" to Report PED24034 – Location Map
- Appendix "B" to Report PED24034 – Staff Comments for FL/B-23:82 and FL/A-23:312
- Appendix "C" to Report PED24034 – Severance Sketch
- Appendix "D" to Report PED24034 – FL/B-23:82 and FL/A-23:312 Committee of Adjustment Decisions
- Appendix "E" to Report PED24034 – FL/B-23:82 Consent Application
- Appendix "F" to Report PED24034 – FL/A-23:312 Minor Variance Application

DB/sd