



**COMMITTEE OF ADJUSTMENT  
OF THE CITY OF OTTAWA**

**DECISION  
CONSENT**

(Section 53 of the *Planning Act*)

**Date of Decision:** October 28, 2022  
**File No.:** D08-01-22/B-00135  
**Owner:** Adrian Besharat  
**Location:** 1842 Kingsdale Avenue  
**Ward:** 10-Gloucester-Southgate  
**Legal Description:** Lots 968 to 973, Registered Plan 326  
**Zoning:** R1WW  
**Zoning By-law:** 2008-250

Notice was given and a Public Hearing was held on **October 19, 2022**, as required by the *Planning Act*.

**PURPOSE OF THE APPLICATION**

The Owner wants to subdivide his property into three separate parcels for the construction of two detached dwellings. The existing detached dwelling is to remain.

**CONSENT IS REQUIRED FOR THE FOLLOWING**

The Owner requires the Consent of the Committee for a Conveyance. The property is shown as Parts 1 and 3 on a Draft 4R-Plan filed with the application, and the separate parcels will be as follows:

File No.	Frontage	Depth	Area	Part Nos.	Municipal Address
B-00135	16.04m	30.51m	489.3 sq. m	1	1840 Kingsdale Ave.
B-00135	14.77m	30.50m	450.4 sq. m	2	1842 Kingsdale Ave.
B-00135	14.78m	30.49m	450.3 sq. m	3	1844 Kingsdale Ave.

Approval of this application will have the effect of creating three separate parcels of land. The retained parcel will not be in conformity with the requirements of the Zoning By-law and therefore, Minor Variance Application (D08-02-22/A-00117) has been filed and will be heard concurrently with this application.

## **PUBLIC HEARING**

The Chair administered an oath to Adrian Besharat, Agent for the Applicant, who confirmed that the statutory notice posting requirements were satisfied.

The Committee asked the Mr. Besharat to confirm that there is already an existing driveway which services the property. Mr. Besharat confirmed this to be the case, and explained that the minor variance is to relocate the driveway from the side of the property, where it is compliant, to the front of the property, as front-yard parking is not permitted by the Zoning By-law in this area.

Siobhan Kelly, from the City's Planning, Real Estate and Economic Development Department, was also in attendance. Upon questioning from the Committee, Ms. Kelly confirmed that parking is required in this location. Ms. Kelly explained that the severance being proposed is what would initiate the removal of the existing garage, and the relocation of the existing driveway, which in turn creates the illegal front-yard parking condition. Ms. Kelly acknowledged that front-yard parking is an existing condition for a number of properties in the area, and added that the staff report notes that there would not be any impacts to the streetscape [if the proposed minor variance were approved].

The Committee asked Ms. Kelly if maintaining the parking in its existing location would preclude intensification on the lot on the eastern side. Ms. Kelly confirmed that maintaining the parking in its existing location would result in the applicant not being able to sever the additional lot.

## **DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED**

The Committee considered any written and oral submissions relating to the application in making its Decision.

Under the *Planning Act*, the Committee has the power to grant a consent if it is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. Also, the Committee must be satisfied that an application is consistent with the Provincial Policy Statement and has regard for matters of provincial interest under section 2 of the Act, as well as the following criteria set out in subsection 51(24):

**Criteria**

(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,

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

(b) whether the proposed subdivision is premature or in the public interest;

(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;

(d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;

(e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;

(f) the dimensions and shapes of the proposed lots;

(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on

the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

The Committee notes that the City's Planning Report raises "concerns" regarding the application, with respect to the resulting non-compliance of the driveway. The planning report does acknowledge, however, that "the proposed lots represent orderly development in a manner that is consistent with comparable properties in the surrounding area".

Based on the evidence, the Committee is satisfied that the proposal is consistent with the Provincial Policy Statement that promotes efficient land use and development as well as intensification and redevelopment within built-up areas, based on local conditions. The Committee is also satisfied that the proposal has adequate regard to matters of provincial interest, including the orderly development of safe and healthy communities; the appropriate location of growth and development; and the protection of public health and safety. Additionally, the Committee is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. Moreover, the Committee is satisfied that the proposal has adequate regard for the criteria specified under subsection 51(24) of the *Planning Act* and is in the public interest.

The Committee therefore grants the provisional consent, subject to the following conditions, **which must be fulfilled within a two-year period from the date of this Decision:**

1. That the Owner(s) provide evidence that payment has been made to the City of Ottawa for cash-in-lieu of the conveyance of land for park or other public recreational purposes, plus applicable appraisal costs. The value of land otherwise required to be conveyed shall be determined by the City of Ottawa in accordance with the provisions of By-Law No. 2022-280.
2. That the Owner(s) satisfy the **Chief Building Official, or designate**, by providing design drawings or other documentation prepared by a qualified designer, that as a result of the proposed severance to the existing detached dwelling on part 2 of Draft Plan 4R shall comply with the Ontario Building Code, O. Reg. 332/12 as amended, in regard to the limiting distance along the westerly and easterly side of the proposed property line. If necessary, a building permit shall be obtained from Building Code Services for any required alterations.
3. The Owner/Applicant(s) shall prepare and submit a tree planting plan, prepared to the satisfaction of the **Development Review Manager of the relevant Branch within the Planning, Real Estate and Economic Development Department, or his/her designate**, showing the location of one new 50mm tree

to be planted on the property frontage or right-of-way of each lot following construction, to enhance the urban tree canopy and streetscape.

4. That the Owner(s) provide evidence (servicing plan), to the satisfaction of the General Manager within Planning, Real Estate and Economic Development Department, or his/her designate, to be confirmed in writing from the Department to the Committee, that both the severed and retained parcels have their own independent water, sanitary and sewer connection, as appropriate, and that these services do not cross the proposed severance line and are connected directly to City infrastructure. If they do cross the proposed severance line, or they are not independent, the Owner(s) will be required to relocate or construct new services from the city sewers and/or watermain at his/her own costs.
5. That the Owner(s) provide evidence to the satisfaction the General Manager within Planning, Real Estate and Economic Development Department, or his/her designate, to be confirmed in writing from the Department to the Committee, that the accessory structure has been demolished in accordance with the demolition permit or relocated in conformity with the Zoning By-law.
6. That the Owner(s) shall provide evidence that a grading and drainage plan, prepared by a qualified Civil Engineer licensed in the Province of Ontario, an Ontario Land Surveyor or a Certified Engineering Technologist, has been submitted to the satisfaction of the General Manager within Planning, Real Estate and Economic Development Department, or his/her designate to be confirmed in writing from the Department to the Committee. The grading and drainage plan shall delineate existing and proposed grades for both the severed and retained properties, to the satisfaction of the General Manager within Planning, Real Estate and Economic Development Department, or his/her designate.
7. That the Owner(s) enter into a Development Agreement with the City, at the expense of the Owner(s) and to the satisfaction of the General Manager within Planning, Real Estate and Economic Development Department, or his/her designate, to require that an asphalt overlay will be installed, at the Owner(s) expense, on Kingsdale Ave., fronting the subject lands, over the entire public driving surface area within the limits of the overlay, if the approved Site Servicing Plan shows three or more cuts within the pavement surface. The overlay must be carried out to the satisfaction of the General Manager within Planning, Real Estate and Economic Development Department, or his/her designate. The Committee requires a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title.

If the General Manager within Planning, Real Estate and Economic Development Department, or his/her designate determines that a Development Agreement requiring an asphalt overlay is no longer necessary, this condition shall be deemed as fulfilled.

8. That the Owner enter into an Agreement with the City, at the expense of the Owner, which is to be registered on Title to deal with the covenants/notices that shall run with the land and bind future owners on subsequent transfers;

“The property is located next to lands that have an existing source of environmental noise (arterial road, highway, airport, etc) and may therefore be subject to noise and other activities associated with that use”

The Agreement shall be to the satisfaction of **Development Review Manager of the relevant Branch within the Planning, Real Estate and Economic Development Department, or his/her designate**. The Committee requires a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title.

9. That the Owner(s) file with the Committee a copy of the registered Reference Plan prepared by an Ontario Land Surveyor registered in the Province of Ontario, and signed by the Registrar, **confirming the frontage and area of the severed land. If the Registered Plan does not indicate the lot area, a letter from the Surveyor confirming the area is required**. The Registered Reference Plan must conform substantially to the Draft Reference Plan filed with the Application for Consent.
10. That the Owner(s) provide evidence that the accompanying Minor Variance Application (D08-02-22/A-00117) has been approved, with all levels of appeal exhausted.
11. That upon completion of the above conditions, and **within the two-year period outlined above**, the Owner(s) file with the Committee, the “electronic registration in preparation documents” for a Conveyance for which the Consent is required.

**The Consent lapses two years from the date of this Decision.**

All technical studies must be submitted to Planning, Real Estate and Economic Development Department a minimum of **40 working days** prior to lapsing date of the consent. Should a Development Agreement be required, such request should be initiated **15 working days** prior to lapsing date of the consent and should include all required documentation including the approved technical studies.

Please note that if a major change to a condition or conditions is requested, you will be entitled to receive Notice of the changes only if you have made a written request to be notified.

**NOTICE OF RIGHT TO APPEAL**

To appeal this decision to the Ontario Land Tribunal (OLT), a completed appeal form along with payment must be received by the Secretary-Treasurer of the Committee of

Adjustment by **November 17, 2022**, delivered by email at [cofa@ottawa.ca](mailto:cofa@ottawa.ca) and/or by mail or courier to the following address:

Secretary-Treasurer, Committee of Adjustment,  
101 CentrepoinTE Drive, 4<sup>th</sup> floor, Ottawa, Ontario, K2G 5K7

The Appeal Form is available on the OLT website at <https://olt.gov.on.ca/>. The OLT has established a filing fee of \$400.00 per type of application with an additional filing fee of \$25.00 for each secondary application. Payment can be made by certified cheque or money order made payable to the Ontario Minister of Finance, or by credit card. Please indicate on the Appeal Form if you wish to pay by credit card. If you have any questions about the appeal process, please contact the Committee of Adjustment office by calling 613-580-2436 or by email at [cofa@ottawa.ca](mailto:cofa@ottawa.ca).

Only individuals, corporations and public bodies may appeal Decisions in respect of applications for consent to the OLT. A notice of appeal may not be filed by an unincorporated association or group. However, a Notice of Appeal may be filed in the name of an individual who is a Member of the Association or group on its behalf.

Please note that there are no provisions for the Committee of Adjustment or the OLT to extend the statutory deadline to file an appeal. If the deadline is not met, the OLT does not have the authority to hold a hearing to consider your appeal.

#### **NOTICE TO APPLICANT**

Applicants are advised to take note of comments received from City departments and other technical agencies like Hydro Ottawa and to consult where appropriate.

**DECISION SIGNATURE PAGE  
PAGE DE SIGNATURE DE LA DÉCISION**

**File No. / Dossier n°:** D08-01-22/B-00135  
**Owner / Propriétaire:** Adrian Besharat  
**Location / Emplacement:** 1842 Kingsdale Avenue

We, the undersigned, concur in the decision and the reasons set out by the Committee of Adjustment.

Nous, soussignés, souscrivons à la décision et aux motifs rendus par le Comité de dérogation.

***“Ann M. Tremblay”***

**ANN M. TREMBLAY  
CHAIR / PRÉSIDENTE**

***“Kathleen Willis”***

**KATHLEEN WILLIS  
MEMBER / MEMBRE**

***“Scott Hindle”***

**SCOTT HINDLE  
MEMBER / MEMBRE**

***“Colin White”***

**COLIN WHITE  
MEMBER / MEMBRE**

***Absent / Absente***

**JULIA MARKOVICH  
MEMBER / MEMBRE**

I certify that this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa.

Je certifie que celle-ci est une copie conforme de la décision rendue par le Comité de dérogation de la Ville d'Ottawa.

***Date of Decision / Date de la décision***  
**October 28, 2022 / 28 octobre 2022**



**Michel Bellemare**  
**Secretary-Treasurer / Secrétaire-trésorier**