

DECISION CONSENT/SEVERANCE

Date of Decision	April 28, 2023
File No(s):	D08-01-23/B-00085 & D08-01-23/B-00086
Application:	Consent under Section 53 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	Falsetto Homes Inc.
Property Address:	366 Winona Avenue
Ward:	15 - Kitchissippi
Legal Description:	Lot 25, Registered Plan No. 37
Zoning:	R4UB
Zoning By-law:	2008-250
Hearing Date:	April 19, 2023

APPLICANT(S)' PROPOSAL AND PURPOSE OF THE APPLICATION(S)

- [1] The Owners want to subdivide their property into two separate parcels of land for the construction of two new low-rise apartment buildings, with one on each of the newly created lots.

CONSENT IS REQUIRED FOR THE FOLLOWING

- [2] The Owners require the Consent of the Committee for Conveyances.
- [3] The property is shown as Parts 1 and 2 on a Draft 4R-Plan filed with the applications and the separate parcels will be as follows:

File No.	Frontage	Depth	Area	Part No.	Municipal Address
B-00085	10.05 m	30.19 m	299.7 m ²	1	364 Winona Avenue
B-00086	10.05 m	30.18 m	299.7 m ²	2	366 Winona Avenue

- [4] The applications indicate that the Property is subject of a Zoning By-law Amendment Application (D02-02-22-0056) under the *Planning Act*.

PUBLIC HEARING

- [5] The Panel Chair administered an oath to Jeffrey Kelly, Agent for the Applicant, who confirmed that the statutory notice posting requirements were satisfied.

Oral Submissions Summary

- [6] The Committee noted that the property is the subject of a Council-approved Zoning By-law Amendment application, currently within the appeal period, and that the description should be amended to delete the strikethroughs and add the bolded text:

The applications indicate that the Property is ~~not the~~ subject of ~~any other a~~ **Zoning By-law Amendment Application (D02-02-22-0056)** under the *Planning Act*.

- [7] Murray Chown, also acting Agent for the Applicant, stated that the requested Stormwater Management Report/Brief condition should not be imposed because the policy basis for it, namely the City's Infrastructure Master Plan, has not yet been considered by City Council. Alternatively, Mr. Chown believed the condition should be reworded. He referred to an email exchange with City staff and advised that a mutual agreement was concluded for a different standard condition for the stormwater management on the subject property. In place of the requirement for *"demonstrating runoff from the subject site, up to and including the 100-year storm event to a 5-year pre-development level"*, the condition would read as follows: *"roof control to a 5-year release rate."* Alternatively, Mr. Chown requested that details for entering into a Development Agreement to implement any proposed stormwater system, including posting securities, be deleted from the requested condition.
- [8] City Planner Margot Linker, responding to the Committee's questions, advised that if runoff is controlled on the roof a two-year release rate is required. If runoff is controlled on the entire site, then a five-year control rate is required. She explained that the reasoning for requesting the condition was to ensure runoff is controlled on the subject site and because of area stormwater management concerns. Ms. Linker also stated that, before Bill 23, *More Homes Built Faster Act*, the proposal would have required Site Plan Control approval subject to the same stormwater condition.
- [9] As for the development agreement and securities, Ms. Linker emphasized that the development agreement is necessary to ensure a stormwater management system is developed further to a stormwater management report/brief. Once implemented, the securities would be released.
- [10] In addressing the conditions, the Committee also questioned the need for the private approach permit and tree planning plan condition. Ms. Linker advised that the private approach permit condition is imposed because of the size of the subject site and no permitted parking on the site. The condition would ensure that the curb

is reinstated. City Planner Erin O'Connell advised that the requested conditions are not reviewed during the building permit process. Also present was the City Infill Forester Hayley Murray, who advised that according to the Official Plan policy section 4.8.2, the City's objective is to pursue an urban forest canopy cover target of 40%. She also noted that the department is requesting one tree be planted per lot.

- [11] In response to questions from the Committee as to whether an adjournment would be appropriate to allow further discussion between all parties regarding the stormwater management condition, Ms. O'Connell stated she was willing to further discuss the condition with the Applicant. The Committee agreed an adjournment would not be necessary.
- [12] City Planner Jean-Charles Renaud was also present.
- [13] Following the public hearing, the Committee reserved its decision and advised that a written one with reasons would be issued within ten days.

DECISION AND REASONS OF THE COMMITTEE: APPLICATIONS GRANTED

Applications Must Satisfy Statutory Tests

- [14] 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).

Evidence

[15] Evidence considered by the Committee included all oral submissions made at the hearing, as highlighted above, and the following written submissions held on file with the Secretary-Treasurer and available from the Committee Coordinator upon request:

- Application and supporting documents, including cover letter, plans, and tree information.
- City Planning Report received April 17, 2023, with no concerns
- Rideau Valley Conservation Authority email dated April 17, 2023, with no objections

- Hydro Ottawa email dated April 11, 2023, with no comments

Effect of Submissions on Decision

- [16] The Committee considered all written and oral submissions relating to the applications in making its decision and granted the applications.
- [17] The Committee notes that the City's Planning Report raises "no concerns" regarding the applications.
- [18] The Committee also notes that section 4.7.1 of the Official Plan provides direction on addressing stormwater management regarding proposed development.
- [19] 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.
- [20] THE COMMITTEE OF ADJUSTMENT 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. The Owner, or any subsequent owners, at its expense acknowledges and agrees to obtain a private approach permit to remove the now redundant approach from the property. In addition, the removal shall be completed in accordance with and shall comply with the City's Private Approach By-Law, being By-law No. 2003-447, as amended, and shall be subject to approval of the **Right-of-Way, Heritage, and Urban Design Department**.
 3. That the Owner(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 the compensation trees as required under the Tree Protection By-law and one new tree (50 mm

caliper) to be planted in the ROW following construction, to enhance the urban tree canopy.

4. That the Owner(s) provide evidence (servicing plan), to the satisfaction of the **Central Manager of the Central Branch 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) 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 **Select Manager of the Select Branch 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 **Select Manager of the Select Branch within Planning, Real Estate and Economic Development Department, or his/her designate**.
6. That the Owner(s) submit a Stormwater Management Report/Brief prepared by a Professional Civil Engineer licensed in the Province of Ontario, for approval by **the Development Review Manager of the Central Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, to be confirmed in writing from the Department to the Committee, demonstrating a SWM design for the control of post-development runoff from the subject site, up to and including the **100-year storm event, to a 5-year pre-development level**.

The Owner(s) also agrees to enter into a Development Agreement with the City to implement any proposed stormwater system including posting required securities. The Committee requires a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title.

If applicable, the Owner(s) must obtain an Environmental Compliance Approval from the Ontario Ministry of Environment, Conservation and Parks.

The Owner(s) acknowledges and agrees that should the stormwater management system cross property lines or access to the system be over multiple properties, that the owner shall obtain approval of the Committee to

grant easement(s) for access and maintenance of the stormwater system or register a Joint Use and Maintenance Agreement on title of the properties, all at the owner(s) costs.

7. The Owner(s) shall prepare a noise attenuation study in compliance with the City of Ottawa Environmental Noise Control Guidelines to the satisfaction of the **Central Manager of the Central Branch within Planning, Real Estate and Economic Development Department, or his/her designate**. The Owner(s) shall also enter into an agreement with the City that requires the Owner to implement any noise control attenuation measures recommended in the approved study. The Agreement will also deal with any covenants/notices recommended in the approved study, that shall be registered on the land title and bind future owners on subsequent transfers, warning purchasers and/or tenants of expected noise levels due to the existing source of environmental noise. The Agreement shall be to the satisfaction of the **Central Manager of the Central Branch 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.;

or

Design the dwelling units with the provision for adding central air conditioning at the occupant's discretion and 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, warning purchasers and/or tenants of expected noise levels due to the existing source of environmental noise. The following two conditions will be included in the above-noted Agreement:

Notices-on-Title respecting noise:

- i. "The Purchaser/Lessee for himself, his heirs, executors, administrators, successors and assigns acknowledges being advised that this dwelling unit has been fitted with a forced air heating system and the ducting, etc. was sized to accommodate central air conditioning. Installation of central air conditioning by the Purchaser/Lessee will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the City of Ottawa's and the Ministry of the Environment and Climate Change's noise criteria;" and
- ii. "The Purchaser/Lessee for himself, his heirs, executors, administrators, successors and assigns acknowledges being advised that noise levels due to increasing roadway traffic may be of concern, occasionally interfering with some activities of the

dwelling occupants as the outdoor sound level exceeds the City of Ottawa's and the Ministry of the Environment and Climate Change's noise criteria."

8. 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.
9. 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.

Absent
JOHN BLATHERWICK
VICE-CHAIR

"Stan Wilder"
STAN WILDER
MEMBER

"Heather MacLean"
HEATHER MACLEAN
MEMBER

"Michael Wildman"
MICHAEL WILDMAN
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **April 28, 2023**.



Michel Bellemare
Secretary-Treasurer

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 **May 18, 2023**, delivered by email at cofa@ottawa.ca and/or by mail or courier to the following address:

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

The Appeal Form is available on the OLT website at <https://olt.gov.on.ca/>. The Ontario Land Tribunal 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.

Only the applicant, the Minister or a specified person or public body that has an interest in the matter may appeal the decision to the Ontario Land Tribunal. A “specified person” does not include an individual or a community association.

There are no provisions for the Committee of Adjustment or the Ontario Land Tribunal 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.

If a major change to condition(s) is requested, you will be entitled to receive Notice of the changes only if you have made a written request to be notified.

NOTICE TO APPLICANT(S)

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.

Ce document est également offert en français.

Committee of Adjustment
City of Ottawa
Ottawa.ca/CommitteeofAdjustment
cofa@ottawa.ca
613-580-2436



Comité de dérogation
Ville d'Ottawa
Ottawa.ca/Comitedederogation
cded@ottawa.ca
613-580-2436