

Committee of Adjustment
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City of Ottawa | Ville d'Ottawa
Comité de dérogation



Consent
COMMENTS TO THE COMMITTEE OF ADJUSTMENT
Panel 2

Site Address:	136 & 138 Acacia Avenue
Legal Description:	Part of Lots 5, 6, 7 & 8, Registered Plan 4M-46
File No.:	D08-01-22/B-00360 & D08-01-22/B-00361
Date: May 15, 2023	Hearing Date: May 17, 2023
Planner:	Cass Scлаuzero
Official Plan Designation:	Inner Urban Transect, Neighbourhood
Zoning:	R1C [1260]

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **recommends refusal** of the application.

DISCUSSION AND RATIONALE

Section 53 (12) of the *Planning Act*, R.S.O. 1990, c.P.13 permits the criteria for the subdivision of land listed in Section 51 (24) to be considered when determining whether provisional consent may be granted.

The purpose of the application is to sever two abutting lots under common ownership. The proposed severance would permit the severed lot to be conveyed separately and would reconfigure the location of the common interior side lot line. If severed, both the retained and severed parcel would comply with the minimum required lot width and area of the R1C subzone. No minor variances are being requested concurrently with this application.

Following the removal of a sunroom addition on the north side of the detached dwelling on the retained parcel, the dwelling will comply with all applicable provisions of the Zoning By-law. Heritage Planning Branch staff have indicated that a heritage permit could be issued for the removal of the sunroom addition.

At its hearings on February 15, March 15 and April 5, the Committee adjourned the



application so that staff and the applicant could provide more information about the history of the two properties, including confirmation about historic ownership of the properties and any other relevant documentation that would determine if the lots had merged on title and/or if any provision under the current Planning Act would render 138 Acacia Avenue a legally conveyable lot. Following discussion with the applicant, Planning and Heritage staff determined that additional research was required to satisfy the Committee's request and, if necessary, to re-evaluate the application per the *Planning Act*, Official Plan, and Rockcliffe Park Heritage Conservation District (HCD) Plan.

The applicant engaged Gibsons LLP to provide a legal opinion on the status of 136 and 138 Acacia, with specific regard to whether the two lots had merged on title due to being under common ownership as of 1961. D. Kenneth Gibson, on behalf of Gibsons LLP, provided their first opinion letter to staff on March 22, and sent a revised version on March 23, to correct minor typographical and factual errors that staff determined had no significant bearing on the content of the letter. The March 23 letter noted that, in the opinion of Mr. Gibson, the titles had **not** merged and that the lots were separately conveyable.

This was explained, in summary, as being due to Parcel 2733 (later 138 Acacia Avenue) and Lot 38 on Plan M80 both coming under ownership, together as Parcel 3008, of Ethelwynne Kemp as of July 1948. E. Kemp subsequently conveyed the whole of former Parcel 2733, re-entered as Parcel 6089 and now referred to as 138 Acacia Avenue, to Gordon Crean in July 1961. Mr. Gibson opined that Section 26 (3) of the *Planning Act* c. 296 R.S.O. 1960 permitted conveyance of land if the land remaining to the guarantor was the whole part of a parcel described in a registered conveyance to them. Because E. Kemp retained the whole of Lot 38 on Plan M80, she was able to convey Parcel 6089 to G. Crean, who also owned abutting Parcel 4511, later 136 Acacia Avenue.

Following this opinion letter, Planning staff engaged Legal Services staff to request further information from Mr. Gibson that would determine whether consent from a committee of adjustment was granted for the conveyance of Parcel 6089, which would allow 138 Acacia Avenue to benefit from one of the exceptions under s. 50 (3) of the current *Planning Act*, or if any other evidence could be procured to show an exemption under s. 50 (5) or (7). Legal Services notes that the provision under s. 26 of the *Planning Act* 1960, referenced above, is no longer included in the current *Act* and is therefore not applicable to current conveyances.

On May 3, Gibsons LLP sent an additional opinion letter that reiterated the position that the titles had not merged, on the basis that the lands registered in 1947 as



Parcel 2733 (138 Acacia Avenue) were “shown on” the 1946 registered plan of subdivision M80, thereby qualifying the parcel for the exception under s. 50 (3)(a) of the current *Planning Act*.

On May 8, Planning, Heritage, and Legal Services staff met with Mr. Gibson and the agents representing the property owner to discuss Mr. Gibson’s position regarding whether 136 and 138 Acacia were currently merged on title, thereby requiring consent from the Committee to sever the parcels, or were already legally severed and subsequently required only a lot line adjustment.

As a result of the discussion, and following further review and discussion with staff, Legal Services continues to be of the view that the parcels known as 136 and 138 Acacia Avenue are currently merged on title, and consent from the Committee is required to sever the two parcels. In order to convey one or the other parcel without the need for consent from the Committee, it must be shown that conformity under s. 50 of the current *Planning Act* is achieved by demonstrating that a severance, subdivision, part-lot control exemption, or other exception to the restriction on new lot creation, applies. Legal Services disagrees that the area labelled “easement” on Plan M80, which was not included in the legal description of Plan M80 and not registered as its own parcel until a year later, is sufficient to meet the current *Planning Act* standard of being lands “described in accordance with and is within a registered plan of subdivision”. Legal Services is unaware of any authority (in the *Act* or common law) allowing the applicant to assert that they are effectively “grandfathered” and able to rely on past wording of repealed provisions of the *Planning Act* to assert that they have a continuing right to convey a parcel which would otherwise contravene s. 50 under the current *Act*.

In light of the information provided by the applicant’s lawyer and a review of the Rockcliffe Park HCD Plan policies, staff determined that the proposed consent does not satisfy s. 51 (24)(c) of the *Planning Act*, which directs consideration of a consent application to have regard for conformity with an official plan. Policy 4.5.2 of the Official Plan requires that development applications comply with applicable Heritage Conservation District Plans. An application to sever a Grade I property does not comply with the Rockcliffe Park HCD and is therefore not in conformity with the Official Plan.

ADDITIONAL COMMENTS

136 and 138 Acacia Avenue are comprised of lots 5 through 8 on Plan 4M-46, registered in December 1914. The Plan shows this portion of Rockcliffe Park as being comprised of largely rectangular lots, generally with 36 to 50 feet of frontage,

with most being 90 feet deep. Lots 5 through 8 along Acacia Avenue were between 99 and 180 feet deep. The subject properties are shown on an excerpt of the Plan below:

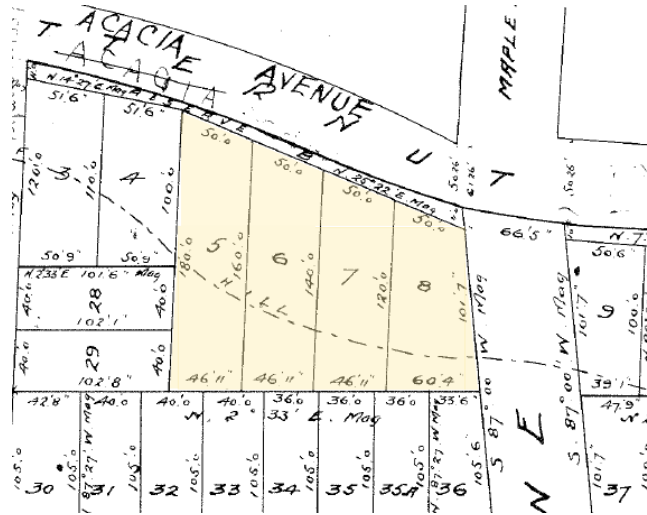


Fig. 1: Lots 5 - 8 on Plan 4M-46, registered in 1914.

An easement for the Ottawa Electric Railway (OER) over a number of lots on Plan 4M-46, including parts of lots 5 through 8, was registered in December 1937. In June and August 1944, parts of lots 5 through 8 were registered as Parcels 2317 and 2345, respectively. The eastern and northern limits of these parcels abutted the OER easement (see Figure 2).

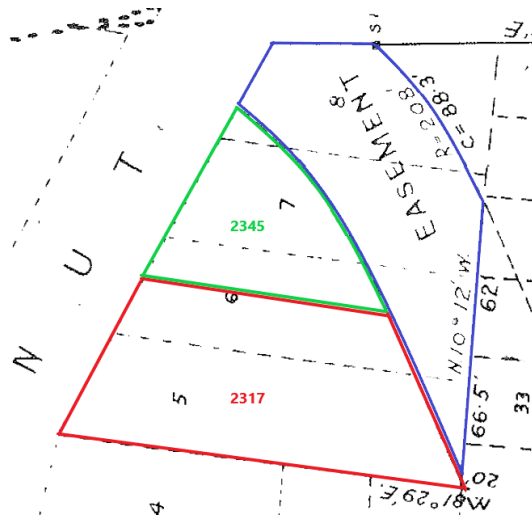


Fig. 2: Approximate configuration of Parcels 2317 and 2345 overlaid onto Plan 4M-80.

Plan 4M-80 was registered in June 1947 and proposed the creation of larger estate lots that more or less represent the current lot configuration of Rockcliffe Park along Maple Lane, Maple Place, Juliana Road, Beechwood Avenue, and portions of Wood Avenue and Roxborough Avenue. The lots along Acacia Avenue were excluded from this new Plan of Subdivision and subsequent development along this road largely reflected the previous Plan 4M-46.

Parcel 2733, later addressed as 138 Acacia Avenue, was registered in August 1947. The irregular shape of this parcel reflects its creation from the remnant parcels of lots 5 through 8 on Plan 4M-46 that were excluded from Parcels 2317, 2345 and Plan 4M-80 (see Figure 3).

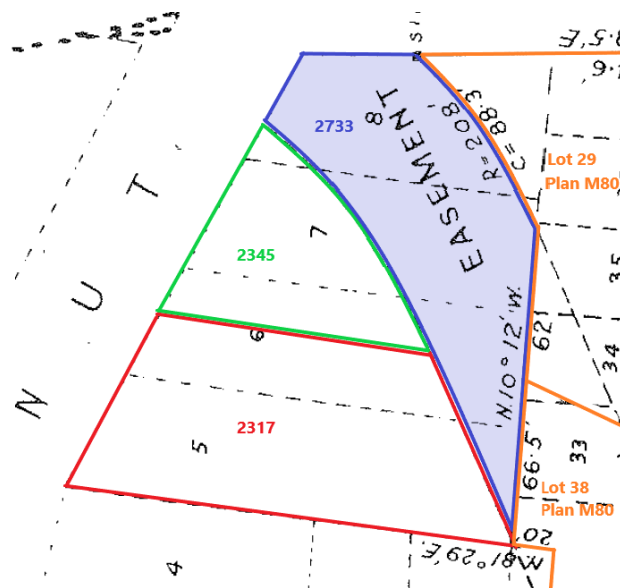


Fig. 3: Parcel 2733 (later 138 Acacia Avenue) abutting Parcels 2345, 2317, and Plan 4M-80

Parcel 2733, along with Lot 38 on Plan M80, came under common ownership of Ethelwynne Kemp in August 1947. Parcel 2733 was closed and re-entered along with Lot 38 on Plan M80 as Parcel 3008 (see Figure 4).



Fig. 4: Parcel 3008, consisting of former Parcel 2733 and Lot 30, Plan 4M-80

In March 1955, Parcels 2345 and a portion of Parcel 2317 were reconfigured into Parcel 4511, now 136 Acacia Avenue. E. Kemp conveyed away the former Parcel 2733, re-registered as Parcel 6089, to Gordon Crean in 1961. The acquisition of Parcel 6089 by G. Crean, who also owned the abutting Parcel 4511, marked the beginning of 136 and 138 Acacia existing under common ownership (see Figure 5). The parcels have since been conveyed together to several subsequent owners.



Fig. 5: Parcels 4511 and 6089, now 136 and 138 Acacia Avenue, as of 1961



Staff provide the above context to provide a summary of the property histories, specifically with regard to the irregular lot shapes of 136 and 138 Acacia Avenue and to confirm that they were indeed created as separate parcels, but reiterate that no provision or exception under the current *Planning Act* permits the two parcels to be conveyed separately.

Heritage:

After further review with Legal Services, the Heritage Planning Branch is of the opinion that 136 and 138 Acacia Avenue are considered one lot for both zoning and conveyance purposes. While the map included for illustration purposes in the Rockcliffe Park HCD Plan shows these as two properties, the Heritage Survey and Evaluation Form clearly reviewed and evaluated the property as one lot, particularly in the “Garden/Landscape/Environment” section where it is referred to multiple times as a “large corner lot.”

According to the Rockcliffe Park Heritage Conservation District Plan, “Existing larger lots with Grade I buildings shall be preserved”. The proposed severance of this lot does not comply with this policy and therefore heritage staff cannot support the request for a severance at 136-138 Acacia Avenue.

Engineering:

At its hearing on February 1, the Committee requested that the applicant provide a geotechnical report for staff review prior to the March 15 hearing. The report was received on March 6 and subsequently reviewed by Engineering staff, who concurred with the report’s conclusion that the that the severed parcel is considered developable from a geotechnical standpoint. Although Engineering staff recommend that Condition 9 remain in the staff report, they are satisfied that it can be cleared should the Committee approve the application.

Transportation Engineering:

Any private approach must be at least 6.0 metres from an intersection and 0.3 metres from the adjacent property line to comply with the Private Approach By-Law.

Forestry:

The applicant provided a plan showing the as of right building footprint on the retained and severed lots, and a Tree Information Report (TIR). Future



development on the Parcel containing Parts 1, 3, and 4 is likely to have impacts on private and/or jointly owned trees. Section 4.8.2 of the Official Plan states that Planning and development decisions, including Committee of Adjustment decisions, shall have regard for short-term, long-term, and cumulative impacts on the urban forest at the neighborhood and urban-wide scale. The design and locations of the building, driveway, servicing, and grading should be determined based on the least impact to existing trees on and adjacent to the development site, particularly Trees 11, 12, fully owned by 410 Maple Lane; Tree 23, jointly owned with 410 Maple Lane; and City-owned Trees 3 and 14.

CONDITIONS OF APPROVAL

The Department further requests that the following conditions be imposed on the consent applications if approved:

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, as amended. Information regarding the appraisal process can be obtained by contacting the Planner.
2. That the Owner(s) provide plans, drawings or reports as may be required to demonstrate, to the satisfaction of the Manager, Right-of-Way, Heritage, and Urban Design Department or his/her designate that a private approach that conforms with the Private Approach By-law (2003-447) can reasonably be established on the severed land, to be confirmed in writing from the Department to the Committee.
3. That the Owner(s) provide evidence to the satisfaction of both the Chief Building Official and Development Review Manager, Planning, Real Estate and Economic Development Department, or designates, that both severed and retained parcels have their own independent water, sanitary and storm connection as appropriate, and that these services do not cross the proposed severance line and are connected directly to City infrastructure. Further, the Owner(s) shall comply to 7.1.5.4(1) of the Ontario Building Code, O. Reg. 332/12 as amended. If necessary, a plumbing permit shall be obtained from Building Code Services for any required alterations.

In the case of a vacant parcel being created, the Owner(s) shall provide evidence (servicing plan), to the satisfaction of 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, that the parcel has access to sufficient services with adequate capacity.

4. 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 3,5 of Plan 4M-46 shall comply with the Ontario Building Code, O. Reg. 332/12 as amended, in regard to the limiting distance along the northerly side of the proposed property line. If necessary, a building permit shall be obtained from Building Code Services for any required alterations. (Note that an addition on the side is not shown on the survey plan).
5. That the Owner(s) convey a 5 metre x 5 metre corner sight triangle located at the intersection of Acacia Avenue and Maple Lane to the City, with all costs to be borne by the Owner(s), to the satisfaction of the Surveys and Mapping Branch of the City. This area will be free of all structures, plantings, etc. and will allow a proper sighting distance for motorists when performing turning movements within the intersection. The Committee must receive written confirmation from City Legal Services that the transfer of the lands to the City has been registered.
6. That the Owner(s) enter into a Joint Use, Maintenance and Common Elements Agreement, at the expense of the Owner(s), setting forth the obligations between the Owner(s) and the proposed future owners.

The Joint Use, Maintenance and Common Elements Agreement shall set forth the joint use and maintenance of all common elements including, but not limited to, the common party walls, the common storm laterals, common structural elements such as roof, footings, soffits, foundations, common areas, common driveways and common landscaping, common retaining wall.

The Owner shall ensure that the Agreement is binding upon all the unit owners and successors in title and shall be to the satisfaction of the Development Review Manager of the Central Branch within Planning, Real Estate and Economic Development Department, or his/her designate. The Committee requires written confirmation that the Agreement is satisfactory to the Development Review Manager of the Central Branch within Planning, Real Estate and Economic Development Department, or his/her designate, and is satisfactory to City Legal Services, as well as a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title.



7. That the Owner(s) enter into an Agreement with the City, at the expense of the Owner(s), which is to be registered on the Title of the property, to address the following covenant/notice that shall run with the land and bind future owners on subsequent transfers:

“The lot is located adjacent to lands with slope stability concerns. Additional engineering and slope stability measures may be required prior to issuance of Building Permits for development on the lot.”

The Committee requires a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title.

The following conditions pertain to D08-01-22/B-00361 – Severed lands, 138 Acacia Avenue only:

8. That the Owner provide a Geotechnical Report prepared by a Professional Geotechnical Engineer licensed in the Province of Ontario, that is satisfactory to both the Development Review Manager of the Central Branch within Planning, Real Estate and Economic Development Department, or his/her designate, and to the Rideau Valley Conservation Authority, to be confirmed in writing from the PREDD and the Authority to the Committee, demonstrating the following:
 - a) That all parcels to be created by this application are or can be made suitable for residential purposes (slope stability, erosion protection, and building limits adjacent to slopes)

The Geotechnical Report shall, as a minimum, determine the limit of organic soils present on the severed parcel and provide recommendations for construction methods based on the soil types encountered.

9. 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 Development Review Manager of the Central Branch 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 Acacia Avenue and Maple Lane, 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 Development Review 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.

If the Development Review Manager of the Central Branch 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.

10. That the Owner(s) provide, to the satisfaction of the General Manager of the Planning, Real Estate and Economic Development Department, or his/her designate, a site plan with tree locations overlaid, indicating the as-of-right locations of permitted structures including the dwelling, retaining walls, projections, etc.; driveway(s) and servicing trench. The Owner(s) shall further demonstrate that as-of-right development on the severed parcel will have minimal impact to protected trees and tree cover and will ensure full protection of Trees 3, 11, 12, 14 and 23.

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