

**DECISION  
CONSENT/SEVERANCE**

<b>Date of Decision</b>	September 29, 2023
<b>Panel:</b>	2 - Suburban
<b>File No(s):</b>	D08-01-23/B-00126, D08-01-23/B-00127, D08-01-23/B-00128, and D08-01-23/B-00129
<b>Application:</b>	Consent under Section 53 of the <i>Planning Act</i>
<b>Owner(s)/Applicant(s):</b>	Ehsan Forouzandeh
<b>Property Address:</b>	884 Byron Avenue
<b>Ward:</b>	7 – Bay
<b>Legal Description:</b>	Part of Lots 33 and 34, Registered Plan 317
<b>Zoning:</b>	R4UB [2493]
<b>Zoning By-law:</b>	2008-250
<b>Hearing Date:</b>	September 19, 2023, in person and by videoconference

**APPLICANT’S PROPOSAL AND PURPOSE OF THE APPLICATIONS**

- [1] The Owner wants to subdivide the property into four separate parcels of land for the construction of two long semi-detached dwellings, with one dwelling unit each containing a secondary dwelling unit, on each new parcel.

**CONSENT IS REQUIRED FOR THE FOLLOWING**

- [2] The Owner requires the Committee’s consent to sever the property and to grant easements. The property is shown as Parts 1 to 10 on a Draft 4R-Plan filed with the applications and the separate parcels will be as follows:

File No.	Frontage	Depth	Area	Part Nos.	Municipal Address
B-00126	9.59 metres	Irregular	208.5 sq. metres	1, 2 and 10	884 & 884B Byron
B-00127	4.60-1.81 metres	Irregular	219.8 sq. metres	3 & 4	886 & 886B Byron

B-00128	9.27 metres	irregular	249.2 sq. metres	6, 7 and 9	880 & 880B Byron
B-00129	<del>1.60</del> <b>1.81</b> metres	irregular	239.9 sq. metres	5 & 8	882 & 882B Byron

[3] It is proposed to establish Easements/Rights-of-way as follows:

- Over Parts 4 & 5 in favour of Parts 6, 7 and 9 to provide vehicular access and parking.
- Over Part 4 in favour of Parts 5 & 8 to provide vehicular access and parking.
- Over Parts 4 & 5 in favour of Parts 1, 2 and 10 to provide vehicular access and parking.
- Over Part 5 in favour of Parts 3 & 4 to provide vehicular access and parking.

[4] The applications indicate that the Property is not the subject of any other current application under the *Planning Act*.

## PUBLIC HEARING

[5] Prior to the hearing on September 19, 2023, the Committee received an adjournment request from the City to allow the Applicant time to respond to Forestry’s concerns regarding tree number 5 in the Tree Information Report submitted by the Applicant. Nancy Young of the City’s Forestry Services highlighted that several neighbours would be impacted by the removal of the tree due to its large canopy. She requested revised plans showing modifications to any elements within its critical root zone or proof that the Applicant had examined available options.

[6] The Committee also heard from Michael Segreto, Agent for the Applicant, who objected to the adjournment request. The Committee agreed to hear the applications without delay.

### Oral Submissions Summary

[7] Ehsan Forouzandeh, the Applicant, provided an overview of the applications and highlighted that a building permit had previously been issued with City Forestry Services’ concurrence but had since been rescinded.

[8] Mr. Segreto stated that the Applicant would agree to discuss with Forestry Services the possibility of retaining tree number five if the severance were granted.

[9] City Planner Solé Soyak advised that the frontage for applications D08-01-23/B-00127 and D08-01-23/B-00129 should be amended from 1.6 metres to **1.81** metres to reflect the revised site plan provided by the Applicant. Also, Ms. Soyak

commented that the dwelling would fit the character of the neighbourhood and asked that the Committee impose all requested conditions, including those addressing Forestry Services' concerns.

[10] Ms. Young confirmed that since the department had requested revised plans at the building permit stage in May, 2023, there was no evidence that any alterations had been made to the proposed development.

[11] Following the public hearing, the Committee reserved its decision.

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

### **Applications Must Satisfy Statutory Tests**

[12] 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**

[13] 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, property deed, revised site and registered plans, tree replacement plan, tree information report, parcel registry, photo of the posted sign, and a sign posting declaration.
- City Planning Report received September 15, 2023, requesting an adjournment; revised City Planning Report received September 19, 2023, requesting an adjournment.
- Hydro Ottawa email dated September 19, 2023, with no concerns.
- Rideau Valley Conservation Authority email dated September 14, 2023, with no objections.

### Effect of Submissions on Decision

- [14] The Committee considered all written and oral submissions relating to the application in making its decision and granted the applications.
- [15] The Committee notes that the City's Planning Report highlights that "the loss of tree number five is avoidable." The Committee finds that the requested conditions, including those relating to tree retention and protection are reasonable and necessary.
- [16] 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.
- [17] 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, as amended. Information regarding the appraisal process can be obtained by contacting the **Planner**.
  2. The Owners agree to explore opportunities for the protection of tree number five as identified in the Tree Information Report. The Owner(s) further acknowledges and agrees to provide plans or drawings that demonstrate the options considered and that this review may result in changes to the design and locations of proposed elements (services, retaining walls, terraces, parking, etc.) The Owner(s) agrees to revise their plans accordingly to the satisfaction of **Allison Hamlin of the West Branch within Planning, Infrastructure and Economic Development Department, or his/her designate**. The Tree Information Report must be revised to reflect changes to the site plan and to show the accurate tree protection areas and mitigation measures.
  3. The Owner/Applicant(s) shall prepare and submit a tree planting plan, prepared to the satisfaction of **Allison Hamlin of the West Branch within Planning,**

**Infrastructure and Economic Development Department, or his/her designate**, showing the location(s) of the specified number of compensation trees (50mm caliper) required under the Tree Protection By-law, assuming that all proposed tree removals are permitted.

4. That the Owner(s) provide evidence (servicing plan), to the satisfaction of **Allison Hamlin of the West Branch within Planning, Infrastructure 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 the **Allison Hamlin of the West Branch within Planning, Infrastructure 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 **Allison Hamlin of the West Branch within Planning, Infrastructure and Economic Development Department, or his/her designate**.
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, common structural elements such as roof, footings, soffits, foundations, common areas, common driveways, and common landscaping.)

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 **Allison Hamlin of the West Branch within Planning, Infrastructure and Economic Development Department, or his/her designate, and City Legal Services**. The Committee requires written confirmation that the Agreement is satisfactory of **Allison Hamlin of the West Branch within Planning, Infrastructure 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 a Development Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Allison Hamlin of the West Branch within Planning, Infrastructure and Economic Development Department, or his/her designate**. to require that an asphalt overlay will be installed, at the Owner(s) expense, on Byron Avenue, fronting the subject lands, over the entire public driving surface area within the limits of the overlay, as shown on the approved Site Grading and Servicing Plan. The overlay must be carried out to the satisfaction of **Allison Hamlin of the West Branch within Planning, Infrastructure 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.

8. 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 deal with the following covenant/notice that shall run with the land and bind future owners on subsequent transfers:

“The property is located next to lands that have an active railway line now, or may have one in the future, and may therefore be subjected to noise, vibration, and other activities associated with this use.”

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 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), and may therefore be subject to noise and other activities associated with that use.”

The Agreement shall be to the satisfaction of **Allison Hamlin of the West Branch within Planning, Infrastructure 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.

10. The Owner(s) shall prepare a noise and vibration attenuation study in compliance with the City of Ottawa Environmental Noise Control Guidelines to the satisfaction of **Allison Hamlin of the West Branch within Planning, Infrastructure and Economic Development Department, or his/her designate**, The Owner(s) shall enter into an agreement with the City that requires the Owner to implement any noise control and vibration attenuation measures recommended in the approved study. The Committee requires a

copy of the Agreement and written confirmation from **City Legal Services** that it has been registered on title.

11. 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.
12. 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.

*“Fabian Poulin”*  
FABIAN POULIN  
VICE-CHAIR

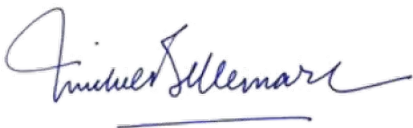
*“Jay Baltz”*  
JAY BALTZ  
MEMBER

*“George Barrett”*  
GEORGE BARRETT  
MEMBER

*“Heather MacLean”*  
HEATHER MACLEAN  
MEMBER

*“Julianne Wright”*  
JULIANNE WRIGHT  
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **September 29, 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 **October 19, 2023**, 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 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](mailto: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](http://Ottawa.ca/CommitteeofAdjustment)  
[cofa@ottawa.ca](mailto:cofa@ottawa.ca)  
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