

2023-10-13



**CONSENT & MINOR VARIANCE APPLICATION
COMMENTS TO THE COMMITTEE OF ADJUSTMENT
PANEL 2**

PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT

Site Address: 429 Ancaster Avenue
Legal Description: Part of Lot 5, Registered Plan 46
File No.: **D08-01-23/B-00238, D08-01-23/B-00241,
D08-01-23/B-00242, and D08-01-23/B-00243
D08-02-23/A-00227, D08-02-23/A-00228,
D08-02-23/A-00229, and D08-02-23/A-00230**
Report Date: October 13, 2023
Hearing Date: October 17, 2023
Planner: Samantha Gatchene
Official Plan Designation: Inner Urban Transect, Neighbourhood
Evolving Neighbourhood Overlay
Zoning: R2F

DEPARTMENT COMMENTS

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

BACKGROUND

Permitted Uses

Staff would like to clarify the dwelling type terminology being used for the application. The application states that the dwelling types being proposed are long semi-detached dwellings “long-semi”. Upon review, Staff have determined that the proposed dwelling types would not be classified as either semi-detached dwelling or a long semi-detached dwelling as one or both units do not have roadway frontage.

“Semi-detached Dwelling means a residential use building containing two attached principal dwelling units that are divided vertically, with each unit having lot frontage except where located within a planned unit development, and in the case of a long semi-detached dwelling where the dwelling units are attached and arranged one behind the other, and that may be developed in a flag lot configuration; and “long semi” has the same meaning as long semi-detached dwelling.”

“Frontage means that part of a lot that abuts an improved public street.”

For the present development, staff believe that Units 1 and 2 could be considered a long-semi because Unit 1 clearly has street frontage and while Unit 2 does not. However, for the other three buildings do not front the street at all, but rather are located side-by-side facing the driveway and function as regular semi-detached buildings. For this reason, Staff would not consider the proposed building types a permitted use in this zone and would best classified as a Planned Unit Development.

Application History

Staff began pre-consulting with the Applicant in Fall 2022. On October 25, 2022, City staff held a formal pre-application consultation meeting with the Applicant to discuss the proposed development. The concept presented in October mirrors what was submitted to the Committee: four semi-detached dwellings with vehicle access provided by a shared driveway.

As per the follow-up notes sent on November 10, 2022, Planning Staff advised that per the Zoning By-law, the proposed development would be considered a Planned Unit Development (PUD). PUDs are defined by the Zoning By-law as “two or more residential use buildings on the same lot”. Since PUDs are not a permitted use in the R2F zone, Staff advised that a Major Zoning By-law Amendment application would be required to allow for the PUD. Staff also advised that if individual lot ownership of the dwellings was desired, then additional applications would be required such as a Lifting of Part Lot Control or a Plan of Subdivision. To address the shared services/access, an application such as a Common Elements Plan of Condominium would be required.

At this time, a several servicing concerns were also identified by the City’s engineer. Most of the concerns pertained to the proposed site layout. The narrow access would provide inadequate space for individual services to run to each unit; the long pipes running to the rear units would make it difficult to achieve the minimum 1% slope requirement for storm and sanitary services; a separate storm sewer for the development would be required so as to control flow into the Ancaster Avenue storm sewer; and private on-site fire hydrants would not be supported for a long severance configuration.

In Spring 2023, the Applicant requested to meet with City staff to discuss potential Consent and Minor Variance applications. The development concept was relatively unchanged compared to what was submitted in October 2022. On April 5, 2023, City staff met with the Applicant and City staff expressed concerns regarding the proposed lot fabric and small lot frontages, variances for which would not be considered minor in their opinion. Staff advised that a Zoning By-law Amendment would be a more appropriate mechanism to add PUD as a permitted use and enable the proposed development.

DISCUSSION AND RATIONALE

Discussion

The Official Plan designates the property as Neighbourhood within the Inner Urban Transect. The Evolving Neighbourhood Overlay also applies. The Official Plan provides policy direction that Neighbourhoods located in the Inner Urban Transect shall accommodate residential growth to meet the City's Growth Management Framework and that new development should include urban built form and site design attributes, including shallow front yard setbacks, range of lot sizes including smaller lots and higher lot coverage, small formal landscaped areas, and limited automobile parking. The property is also within 400 metres of the future BRT station at Carling Avenue / Woodroffe Avenue and within 600 metres of the future New Orchard LRT station.

The property is zoned Residential Second Density Subzone F (R2E), which permits detached, semi-detached and duplex dwellings. The purpose of this zone is to limit development to detached and two principal unit buildings and regulate the massing, height, and design of new developments in a manner that is compatible with the existing land use pattern and built form.

Section 53 (12) of the Planning Act, R.S.O. 1990, c .P.13, as amended, permits the criteria for the subdivision of land listed in Section 51 (24) to be considered when determining whether provisional consent may be granted by a committee of adjustment. Regard must be had to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality, matters of provincial interest, whether the proposal is premature or in the public interest, conformity with the official plan, suitability of the lands to be subdivided, number, location and adequacy of highways, size of proposed lots, existing or proposed restrictions on the lands or proposed structures to be erected on said lands and restrictions on adjoining land, conservation of natural resources and flood control, adequacy of utilities and municipal services, adequacy of school sites, any land to be conveyed for public purposes, optimization, use, supply and conservation of energy and the relationship between the proposed plan of subdivision and matters of site plan control and any development on the land.

Staff have reviewed the subject consent application against the above criteria and are not satisfied that a consent to sever is the correct mechanism for the proper development of the subject lands. Furthermore, studies and plans are required to ensure the serviceability of the lots which is outside of the scope and purview of a consent application and instead should be reviewed under a Zoning By-law Amendment, Plan of Subdivision and Plan of Condominium.

Staff have reviewed the subject minor variance application against the "four tests" as outlined in Section 45 (1) of the *Planning Act*, R.S.O. 1990 c. P.13, as amended. Staff are not satisfied that the requested minor variance(s) meet(s) the "four tests".

The Official Plan supports intensification in Neighbourhoods located adjacent to Hubs and Corridors and in proximity to rapid transit. Staff have reviewed the applications and do not consider that they are minor, meet the general intent of the Zoning By-law or desirable for the logical development of the property. While the Official Plan is supportive of intensification on the subject property, Staff are of the opinion that the Minor Variance applications are not the appropriate mechanisms for the proposed development. A Major Zoning By-law Amendment to add PUD as a permitted use would be more appropriate. The PUD provisions within the Zoning By-law were created for development scenarios exactly like the one before the Committee where multiple residential buildings are proposed on the same lot with a shared driveway accesses and internal parking setup. To address the Applicant's desire to establish individual ownership over the lots, a Common Elements Plan of Condominium is a more appropriate mechanism. The condo would allow for individual unit sale with a built-in system for managing the shared access and services under the Condominium Act.

Rationale

Staff recommend refusal because of the cumulative impacts of the variances and the resulting lot fabric that would be created by the Consent. It is evident that the variances and accompanying Consents do not result in the creation of lots that are functional on their own.

As noted already, the narrow lot frontages result in several engineering issues, particularly inadequate space for individual services to run under the driveway access. Each building requires 2.0 metres of frontage for its services (8.0 metres across four buildings), whereas 3.96 metres total is proposed for the four buildings. The variances for reduced lot frontage would create a servicing situation which is not feasible. Further, Section 59 Frontage on a Public Street of the Zoning By-law states that (1) "No person shall develop or otherwise use any lot unless that land abuts an improved public street for a distance of at least 3.0 metres"; and (2) No person shall sever any land unless the land severed and the land retained each abut to a street, in accordance with subsection (1)."

The intent of the Zoning By-law provisions for minimum setbacks, parking location and size and landscaping is to ensure that development has adequate space to function and serve the needs of its users. By seeking relief from several of these provisions, staff are not satisfied that the general intent of the Zoning By-law has been met. The variances will result in development with constrained lot sizes, inadequate separation between buildings and limited amenity area. The variances are not appropriate and believe that a Zoning By-law Amendment to allow the site to develop as a PUD, which staff anticipate would eliminate the need for the majority, if not all, of the zoning deficiencies.

ADDITIONAL COMMENTS

Planning Forestry

This site, as designed requires the removal of 5 of the 17 trees on and adjacent to the property. The TIR also recommends removal of 2 trees on adjacent property, however this would need to be negotiated with the owner; if no permission is given, the plans must allow for their retention. Tree E01 is shown for removal, however no rationale is provided in the TIR; all options must be considered to retain this tree as it is healthy and outside of the building envelope. If this file must be submitted through a different planning application type, the design must continue to allow for retention of tree E12 and all adjacent trees. A planting plan must also be provided showing the required number of compensation trees or a minimum of 1 new tree per property, to improve the streetscape and canopy cover of the site following development.

Right of Way Management

The Right-of-Way Management Department has **no concerns** with the proposed Consent & Minor Variance Applications. However, the Owner shall be made aware that private approach permits are required to construct, alter or relocate each of the newly created driveways/approaches.

Transportation Engineering

CONDITIONS

If approved, the Planning, Real Estate and Economic Development Department requests that the Committee of Adjustment impose the following condition(s) on the application(s):

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) enter into a Condominium Agreement or a Joint Use, Maintenance and Common Element, 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 **the Development Review Manager 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 to the Development Review Manager 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.

3. That the Owner(s) provide evidence (servicing plan), to the satisfaction **the Development Review Manager 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.

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 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 the parcel has access to sufficient services with adequate capacity.

4. 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 Development Review Manager 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 **the Development Review Manager of the West Branch within Planning, Infrastructure and Economic Development Department, or his/her designate.**

5. 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 **the Development Review Manager 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.

6. 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 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 Ancaster 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 Development Review Manager 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.

If the **Development Review Manager of the West Branch within Planning, Infrastructure 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.

7. The owners agree to provide a revised site and/or grading plan with the driveways, services, retaining walls, and grading situated to reduce any excavation within the Critical Root Zones of protected trees and/or to provide

sufficient soil volume to plant new trees, to the satisfaction of the Development Review Manager of the West Branch within the Planning, Real Estate 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.

8. That the Owners provide a combined Grading & Drainage Plan and Site Servicing Plan including, where applicable, the tree locations and protection recommendations from the approved Tree Information Report, to the satisfaction of the Managers of the relevant branches of Planning, Real Estate, and Economic Development, or his/her designate, the plans can be shown on one sheet or multiple sheets, but must include the following information:
 - a. The Grading and Drainage Plan must be prepared by a relevant professional: Professional Engineer (P.Eng.), Certified Engineering Technologist (CET), Ontario Land Surveyor (OLS), Professional Landscape Architect (OLA), or Professional Architect (OAA) and adhere to the following;
 - i. Minimum Grading and Servicing Plan Specifications Infill Serviced Lots
 - ii. City of Ottawa Standard Drawings, By-laws, and Guidelines, as amended.
 - b. The Site Servicing Plan must be prepared by a relevant professional: Professional Engineer (P.Eng.), Certified Engineering Technologist (CET), or Ontario Land Surveyor (OLS) and adhere to the requirements as noted for the Grading & Drainage Plan.
 - c. In the case of a vacant parcel being created, the plan(s) must show a conceptual building envelope to establish that the lot can be graded to a sufficient and legal outlet, has access to services with adequate capacity, and follows the recommendations of the Tree Information Report.
 - d. The following information from the Tree Information Report must be included on both the Grading and Servicing Plans to ensure that these elements are designed to follow the recommendations within the TIR:
 - i. Surveyed locations of all protected trees on and adjacent to the subject site
 - ii. Location of tree protection fencing
 - iii. Measurements from the tree(s) trunks to nearest limit of excavation or grade changes

- iv. Any notes related to excavation or grade changes within the Critical Root Zone, as recommended in the TIR (e.g. use of hydrovac, directional boring, or capping of services outside of the Critical Root Zone).
 - v. Proposed planting locations from the associated Tree Planting Plan, if provided
9. The Owner/Applicant(s) shall prepare and submit a tree planting plan, prepared to the satisfaction of the Development Review Manager of the West Branch within the Planning, Real Estate and Economic Development Department, or his/her designate, showing the location of all required compensation trees or one new 50mm tree to be planted on each lot following construction, to enhance the urban tree canopy and/or streetscape.
10. That the Owner/Applicant(s) shall provide a signed letter of permission from the owner of identified adjacent or boundary tree(s), for the proposed removal or operations impacting the tree(s). The applicant acknowledges that a tree removal permit cannot be issued without the permission of all owners of a tree, and that the development plan must be revised to allow for the retention and protection of the adjacent or boundary trees if this letter cannot be produced.



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