

2023-11-10



**CONSENT & MINOR VARIANCE APPLICATION
COMMENTS TO THE COMMITTEE OF ADJUSTMENT
PANEL 1**

PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT

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| Site Address: | 49 Fairmont Avenue |
| Legal Description: | Lot 12 and Part of lot 11 (in Block 1) (East Fairmont Avenue) Registered Plan 111 |
| File No.: | D08-01-23/B-00263-00265 & D08-02-23/A-00255-00257 |
| Report Date: | November 9, 2023 |
| Hearing Date: | November 15, 2023 |
| Planner: | Margot Linker |
| Official Plan Designation: | Inner Urban Transect, Neighbourhood, Evolving Neighbourhood Overlay |
| Zoning: | R4UB (Residential Fourth Density, Subzone UB) |

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **has no concerns with** the applications.

DISCUSSION AND RATIONALE

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.

The subject site is located within the Inner Urban Transect policy area on Schedule A and is designated Neighbourhood within the Evolving Neighbourhood Overlay on Schedule B2 in the Official Plan. The Inner Urban Transect is generally planned for mid- to high-density development to help meet the Growth Management Framework, which is 60 to 80 dwellings per net hectare in this transect (5.2.1). Form-based regulation within Neighbourhoods should have regard for local context and character of existing development as well as appropriate interfaces with the public realm and between residential buildings to support livability. In the Inner Urban Transect covered by the Evolving Overlay, substantial increases of density are planned and building form and massing is anticipated to become more urban (6.3.2). This includes allowing shallow front yards while prioritizing the emphasis on built-form relationship with the public realm, a range of lot sizes and higher lot coverage and floor area ratios where appropriate, and limited parking that is concealed from the street (Table 6).

The subject site is within the Residential Fourth Density, Subzone UB (R4UB) zone, which allows a wide mix of residential building forms ranging from detached to low-rise apartment buildings.

Staff have no concerns regarding the requested orientation of the principal entrance. The intent of regulating this in the Mature Neighbourhoods Overlay is to ensure that it is clear where the entrance is and to allow for greater interaction with the public realm compared to an entrance that is offset and not facing the street. While the principal entrance is facing the interior side lot lines, each building will have an additional dwelling unit entrance facing the street along with balconies and high window coverage. Staff believe that the general intent of this provision is maintained.

Staff have no concerns regarding the requested canopy projection to allow for the single canopy to cross the front façade of all three buildings. It is staff's understanding that while the three lots are intended to function as one large site, there will be easements and a Joint Use and Maintenance Agreement to mitigate concerns regarding water runoff and maintenance.

Staff have no concerns regarding the requested bay window projection for Unit C. The elevations demonstrate that the proposed bay window will not impact the walkway function. The proposed easements will allow for the owner of this building to maintain the exterior of the bay window on all sides, and will also address runoff.

Staff have no concerns regarding the requested reduced setback of the accessory building in the rear yard. The accessory building will abut a public lane, so there will be no issues regarding maintenance of the exterior walls or impact to the public realm.

Staff have no concerns with the requested interior side yard setback reduction for rear unit of the middle building if there are no windows proposed in this reduced area. The proposed easements between the buildings will allow for adequate access from the front of the property to the rear (1.2 metre walkway) and allow for sufficient room for exterior maintenance of the walls.

Staff generally have no concerns regarding the reduced rear yard setback. While the immediate abutting buildings to the north and south have quite large rear yard setbacks, it appears that the other buildings on this side of Fairmont have a similar setback to what is being proposed. Therefore, the setback does not appear to deviate from an established contiguous rear yard setback line. In addition, the existing building on the subject site has a smaller setback than what is being proposed. Staff do not anticipate privacy issues caused by this reduction as there does not appear to be windows on the side facing elevations close to the rear of the property. However, as further explained in Forestry comments below, staff believe that a compliant rear yard setback could result in better conditions for the survivability of the existing tree.

Staff have no concerns with the reduced lot width and lot area. When reviewing the broader street and neighbourhood, it appears that there is a large mix of lot sizes and a range of low-rise building typologies. The reduced lot sizes do not appear to compromise

the functionality of the site, and there appears to be adequate space to provide the required soft landscaping, tree planting, as well as bicycle and waste storage.

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. With respect to the criteria listed in Section 51 (24), staff have no concerns with the proposed consent.

Staff have made the applicant aware that the long semi-detached dwellings cannot be further severed in the future.

Staff encourage the applicant to ensure that there is sufficient room for an adequate vehicle turning radius in the rear urban lane. If it is determined that there is not sufficient room, staff encourage the applicant to propose the rear yard to be softly landscaped as this revision would not impact the requested minor variances and can be made at the building permit stage.

ADDITIONAL COMMENTS

Infrastructure Engineering

1. **Planning, Real Estate and Economic Development Department** will do a complete review of grading and servicing during the building permit process.
2. Any proposed works to be located within the road allowance requires prior written approval from the Infrastructure Services Department.
3. The surface storm water runoff including the roof water must be self contained and directed to the City Right-of-Way, not onto abutting private properties as approved by **Planning, Real Estate and Economic Development Department**.
4. Existing grading and drainage patterns must not be altered.
5. Existing services are to be blanked at the owner's expense.
6. Asphalt overlay would be required if three or more road-cuts proposed on City Right of way. This includes the road cut for blanking of existing services, and any other required utility cuts (ie, gas, hydro, etc.).
7. This property does not have frontage on a storm sewer.
8. Service lateral spacing shall be as specified in City of Ottawa Standard S11.3.
9. In accordance with the Sewer Connection By-Law a minimum spacing of 1.0m is required between service laterals and the foundation face.
10. A geotechnical memo addressing the spacing for adequate access for repair and maintenance of the services will be requested.

Planning Forestry

The Tree Information Report (TIR) identified four protected trees influenced by the proposed development. Trees 1 and 4 are adjacently owned and will be protected by following the City of Ottawa Tree Protection Specification shown in the TIR. The TIR must be updated to identify how the protective fencing will be adjusted when the parking spots are being resurfaced. A condition to update the TIR has been proposed.

Tree 3 conflicts with the most southern proposed development (Lot C). Compensation will be required for this tree in the form of tree planting. Two trees must be planted post construction as a condition of the permit to remove tree 3. An infill tree removal permit must be obtained for tree 3 prior to removal.

Planning Forestry has been working with the applicant and their agent on the retention of tree 2 in rear yard of Part 9 (Lot C). Planning Forestry requested design changes that would increase the distance from this tree to excavation and increase the likelihood of retention. The applicant's agent communicated that design modifications to reduce the building footprint, by 0.6 metres (the rear yard setback reduction being sought) for Lot C would severely impact the internal layout of the development and compromise the overall livability of these units. The extent of excavation is anticipated to remove around 30% of the trees critical root zone. Any greater excavation would exceed International Society of Arboriculture best management practices on what portion of a trees critical root zone can be impacted without seeing adverse effects on the tree's health. The TIR describes that the nearest extent of excavation to this tree as being around 60 cm. Many discussions between the applicant, their agent and the Planning Forester agree that there is possibility of retaining this tree if all professional arboriculture recommendations are abided by. The TIR must be updated to show that a hydrovac will be used to expose the tree's roots that will need to be severed prior to excavation. The Consulting Arborist and Planning Forester will assess the structural roots exposed by the hydrovac and determine whether the extent of excavation planned would risk instability of the tree. If it is determined retention appears feasible, the roots will be cleanly severed by an ISA certified arborist. The property owner will be responsible for monitoring the trees health and updating City of Ottawa Forestry if conditions change. If the hydrovac excavation determines the extent of excavation for the building/sunken terrace will threaten stability of the tree and force removal, compensation in the form of tree planting will be required. A condition of the tree removal permit would be planting two additional trees on the property. Planning Forestry requests updates to the TIR to align with this agreed upon plan with the applicant and their agent. These updates include direction to have a hydrovac expose the tree's roots prior to excavation, confirmation the Consulting Arborist and Planning Forester from the City must be present upon the use of the hydrovac, what extent of pruning is necessary to accommodate the building, confirmation an ISA certified arborist would sever the roots after exposure from the hydrovac, how the adjacent parking spaces are being resurfaced and any tree root implications, the distance of the trees edge to the excavation be included within the description section of the plan for tree 2 (page 7), and how the tree protection zone will be adapted for tree 1 when the parking area is re-surfaced.

These comments already note there are tree planting requirements associated with permits to remove protected trees (up to four). Separate to the Tree Protection By-law tree planting compensation requirements, Planning Forestry proposes a tree be planted

in the front and rear yard, when feasible for consent applications to protect and enhance urban tree cover. The applicant's agent has provided a planting plan showing four trees will be planted in the front yard of the property. Planning Forestry would encourage the applicant to plant up to two trees in the rear yard, for a total of six depending on whether tree 2 can be retained. If its determined tree 2 is not retainable if this project is approved, at least one of the trees, would be expected to be a large canopy tree.

Planning Forestry also recommends that if the owner applies for a building permit before obtaining their severance, they begin with the development on the most northern Lot, A, that is furthest away from tree 2 to provide a better chance of survival of the tree.

Right of Way Management

The Right-of-Way Management Department has **no concerns** with the proposed Minor Variance Application. The Owner shall be made aware that a private approach permit is required to establish the new private approaches and close the portion of the existing redundant private approach. No person shall construct, relocate, alter or close a private approach without first obtaining a private approach permit from the General Manager in accordance with the provisions of this By-law (No. 2003-447) and a road cut permit in accordance with the provisions of By-law No. 2003-445 being the City's Road Activity By-law or a successor by-law thereto.

CONDITIONS

If approved, the Planning, Real Estate and Economic Development Department requests that the Committee of Adjustment impose the following conditions on the applications:

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 provide a revised tree information report to the satisfaction of the General Manager of the Planning, Real Estate and Economic Development Department, or his/her designate. This report shall be prepared by an Arborist, identifying all trees protected under the City's Tree Protection by-law, existing trees, and meeting the standards of the City's Tree Information Report Guidelines, including specific mitigation measures where work is proposed within the Critical Root Zone of a protected tree.
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(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 Owners agree that the location of the proposed structures, including the driveways, retaining walls, projections, etc. shown on the Grading & Servicing Plan, will be determined based on the least impact to protected trees and tree cover. The Owner(s) further acknowledges and agrees that this review may result in relocation of these structures and agrees to revise their plans accordingly 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.
5. That the Owner(s) agree to provide proof that the tree protection fencing around the Critical Root Zone of the protected trees is installed as shown in the Tree Information Report, prior to demolition, to the satisfaction of the Development Review Manager of the Central Branch within the Planning, Real Estate and Economic Development Department, or his/her designate.
6. That the Owner(s) provide proof 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 existing dwelling/building has been removed.
7. That the Owner(s) provide evidence to the satisfaction of both the **Chief Building Official and Development Review Manager of the Central Branch within 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 with 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.
8. That the Owner(s) provide evidence 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 existing structure straddling the proposed severance line has been demolished in accordance with the demolition permit or relocated in conformity with the Zoning By-law.
9. That the Owner(s) enter into a Joint Use, Maintenance and Common Elements 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 Central Branch within Planning, Real Estate 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 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.

10. 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 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. 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 Central Branch within Planning, Real Estate and Economic Development Department, or his/her designate**.
11. 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 **Fairmont Avenue**, 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 **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.

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