

**DECISION
CONSENT/SEVERANCE**

Date of Decision	January 26, 2024
Panel:	2 - Suburban
File No(s):	D08-01-23/B-00290 & D08-01-23/B-00291
Application:	Consent under Section 53 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	Tim Sims and Chantal Alarie
Property Address:	100 James Cummings Avenue
Ward:	7 – Bay Ward
Legal Description:	Part of Lot 11, Concession 1, Geographic Township of Nepean
Zoning:	R1E
Zoning By-law:	2008-250
Hearing Date:	January 16, 2024, in person and by videoconference

APPLICANTS' PROPOSAL AND PURPOSE OF THE APPLICATIONS

- [1] The Owners want to subdivide their property into two separate parcels of land to create one new lot for residential development. The existing dwelling will remain.

CONSENT IS REQUIRED FOR THE FOLLOWING

- [2] The Owners require the Committee's consent to sever land.

File No.	Frontage	Depth	Area	Part No.	Municipal Address
B-00290	19.47 metres	irregular	607.4 square metres	1	102 James Cummings Avenue
B-00291	38.66 metres (Carling Avenue)	irregular	1255.4 square metres	2	100 James Cummings Avenue (existing dwelling)

- [3] Approval of these applications will have the effect of creating separate parcels of land that will not be in conformity with the requirements of the Zoning By-law and therefore, minor variance applications (D08-02-23/A-00271 & D08-02-23/A-00272) have been filed and will be heard concurrently with these applications.

PUBLIC HEARING

Oral Submissions Summary

- [4] Tim Eisner, Agent for the Applicant, asked that the City's requested condition of provisional consent regarding a noise attenuation study not be imposed as this would be captured in condition 11 when a notice is registered on title regarding noise.
- [5] Joshua Foster, an Environmental Engineer for the Applicant, believed that the stone wall at the front of the property would act as a sound barrier and negate the need for a noise study.
- [6] City Planner Shahira Jalal explained that the requested condition is the last opportunity for the City to obtain a noise attenuation study before the building permit stage and advised that condition 10 should remain. Ms. Jalal also confirmed that a noise study is required under the Official Plan.
- [7] The Committee also heard oral submissions from the following individuals:
- M. Pourjam, resident, inquired about the servicing of the property.
- [8] Mr. Eisner confirmed that servicing connections would be at the rear of the property.
- [9] Following the public hearing, the Committee reserved its decision.

DECISION AND REASONS OF THE COMMITTEE: APPLICATIONS GRANTED

Application(s) Must Satisfy Statutory Tests

- [10] 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

[11] 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:

- Applications and supporting documents, including cover letter, parcel registry, plans, site sketch with tree setbacks, tree information report, a photo of the posted sign, and a sign posting declaration.
- Revised City Planning Report received January 12, 2024, with no concerns; received December 7, 2023, with no concerns.
- Rideau Valley Conservation Authority email received January 10, 2024, with no objections; received December 7, 2023, with no objections.
- Hydro Ottawa email received December 21, 2023, with no concerns; received December 5, 2023, with no concerns.
- Building Code Services email received December 15, 2023, with no concerns.
- Ministry of Transportation email received December 19, 2023, with no concerns.
- F. Doherty, resident, email received December 5, 2023, with no objections.
- B. and W. Ellacott, residents, email received December 5, 2023, with no objections.
- M. Pourjam, resident, email received December 6, 2023, with concerns.
- S. Mastrangelo, resident, email received December 8, 2023, with concerns.

Effect of Submissions on Decision

[12] The Committee considered all written and oral submissions relating to the applications in making its decision and granted the applications.

[13] The Committee notes that the City's Planning Report raises "no concerns" regarding the applications, highlighting that, "other R1E zoned lots in the immediate area on James Cummings Avenue and Cyrus Court share similar lot sizes and lot widths which are comparable in size to those proposed under this consent application."

[14] The Committee does not agree to remove the condition regarding the Noise Attenuation Study as this study is required for development under the City's Official Plan.

[15] 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.

[16] 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 Owners provide evidence that the accompanying Minor Variance applications (D08-02-23/A-00271 & D08-02-23/A-00272) have been approved, with all levels of appeal exhausted.
2. 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.
3. That the Owner(s) provides 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 the existing building on Part 2 on the Draft 4R plan shall comply with the Ontario Building Code, O. Reg. 332/12 as amended, in regards to the limiting distance along the [North] property line. If necessary, a building permit shall be obtained from Building Code Services for any required alterations.
4. That the Owner(s) provide evidence to the satisfaction of the **Chief Building Official, or designate**, that the accessory structures – Portion of the frame deck attached to the dwelling on Part 2 and small cedar shingle sided garage Located in the North west corner of Part 1 have been demolished or relocated within the ROW under the authority of a building permit.
5. The Owner/Applicant(s) enter into a Development Agreement or Letter of Undertaking with the City of Ottawa, at the expense of the Owner/Applicant(s), and to the satisfaction of the **General Manager of the Planning, Real Estate, and Economic Development Department, or his/her designate**. A development agreement is to be registered on Title of the property. (where applicable), which will include the mitigation measures outlined in the approved Tree Information Report, prepared by Ottawa Tree Reports, dated October 3, 2023, and associated security for tree protection. The securities, which will be based on the value of the trees to be protected Trees 2 and 4 shall be retained for 2 years following completion of construction, and returned to the owner only

upon the City having received a report from an arborist or appropriate professional confirming that the trees identified are in good health and condition and remain structurally stable.

6. That the Owner(s) 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 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.

7. That the Owner convey a 5m x 5m corner sight triangle located at the intersection of Carling Ave. and James Cummings Ave. 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.
8. 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.
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 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 James Cummings Avenue and Carling 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 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.

10. 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 **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 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 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 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.

12. 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.

13. 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
FABIAN POULIN
VICE-CHAIR

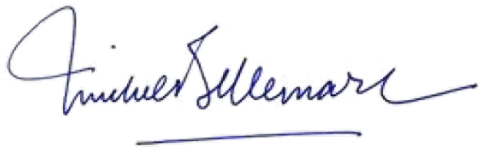
“Jay Baltz”
JAY BALTZ
MEMBER

“George Barrett”
GEORGE BARRETT
ACTING PANEL CHAIR

“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 **January 26, 2024**.



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 **February 15, 2024**, 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