

**DECISION
CONSENT/SEVERANCE**

Date of Decision:	January 26, 2024
Panel:	3 - Rural
File Nos.:	D08-01-23/B-00296 to D08-01-23/B-00298
Application:	Consent under Section 53 of the <i>Planning Act</i>
Owners/Applicants:	Wafaa and Ghassan Abou-Akrouche
Property Address:	5536 Downey Road
Ward:	20 – Osgoode
Legal Description:	Part of Lot 30, Concession 2RF, Geographic Township of Osgoode
Zoning:	RU
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 three separate parcels of land to create two new lots for future residential development.

CONSENT IS REQUIRED FOR THE FOLLOWING

- [2] The Owners require the Committee's consent to sever land.
- [3] The property is shown on a sketch filed with the applications and the separate parcels will be as follows:

File No.	Frontage	Depth	Area	Part No.	Municipal Address
B-00296	72.6 m 91.7 m	112.25 m 112.45 m	0.8 hectares- 1.01 hectares	1	5500 Downey Road Vacant parcel for future residential development
B-00297	71.6 m 110.4 m	109.95 m 93.3 m	0.8 hectares 1.11 hectares	2	5510 Downey Road Vacant parcel for future residential development

- [4] The land to be retained, shown on said sketch, will have a frontage of ~~234.8 metres~~ **176.8 metres**, an irregular depth of 612.9 metres, and a lot area of ~~24.96 hectares~~ **20.68 hectares**. This parcel contains the existing dwelling and accessory structures known municipally as 5536 Downey Road.
- [5] Approval of these applications will have the effect of creating two separate parcels of land that will not be in conformity with the requirements of the Zoning By-law and therefore, minor variance applications (File Nos. D08-02-23/A-00277 & D08-02-23/A-00278) have been filed and will be heard concurrently with these applications.

PUBLIC HEARING

- [6] On December 12, 2023, further to the City's request and with the Agent concurring, the Committee adjourned the hearing to January 16, 2024, to allow time for the Agent to address concerns raised by the City's Planning Services and to revise the proposed lot configuration and the environmental impact statement accordingly.

Oral Submissions Summary

- [7] Arjan Soor, Agent for the Applicants, responded to questions from the Committee and confirmed the need to amend the applications in accordance with the revised sketch that addresses the concerns the City had with the original proposal. Specifically, the amendments increase the frontage and area of the proposed lots as follows:

File No.	Frontage	Depth	Area	Part No.	Municipal Address
B-00296	72.6 m 91.7 m	112.25 m 112.45 m	0.8 hectares 1.01 hectares	1	5500 Downey Road Vacant parcel for future residential development
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- [8] The land to be retained, shown on said sketch, will have a frontage of ~~234.8 metres~~ **176.8 metres**, an irregular depth of 612.9 metres, and a lot area of ~~24.96 hectares~~ **20.68 hectares**. This parcel contains the existing dwelling and accessory structures known municipally as 5536 Downey Road.
- [9] The Committee agreed to amend the applications as highlighted above.

[10] Mr. Soor questioned the need for the condition outlined in the City's Planning Report, requiring proof that each parcel had independent services. Mr. Soor requested that the condition be removed given that the subject property is in the rural area and any future dwelling would have private services.

[11] City Planner Stephan Kukkonen agreed that the condition could be removed.

[12] With the concurrence of all parties, the Committee removed the condition relating to independent services.

DECISION AND REASONS OF THE COMMITTEE: APPLICATIONS GRANTED AS AMENDED

Application(s) Must Satisfy Statutory Tests

[13] 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

[14] 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, sketch, parcel register, revised cover letter, sketch and environmental impact statement, photo of the posted sign, and a sign posting declaration.
- City Planning Report received January 11, 2024, with no concerns; dated December 7, 2023, requesting adjournment.
- Rideau Valley Conservation Authority and Ottawa Septic System Office email received January 12, 2024, with no objections; received December 6, 2023, with no objections.
- Hydro Ottawa email received December 21, 2023, with no comments; received December 6, 2023, with no comments.
- Forestry Services email received December 14, 2023, with no concerns; received November 27, 2023, with no concerns.

- Hydro One email received December 5, 2023, with no concerns.
- Ministry of Transportation received dated December 18, 2023, with no comments.

Effect of Submissions on Decision

- [15] The Committee considered all written and oral submissions relating to the applications in making its decision and granted the applications.
- [16] The Committee notes that the City's Planning Report raises "no concerns" regarding the applications.
- [17] 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.
- [18] 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. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

"The City of Ottawa does not guarantee the quality or quantity of the groundwater. If, at some future date, the quality or the quantity of the groundwater becomes deficient, the City of Ottawa bears no responsibility,

financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the homeowner.”

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

3. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

“The City of Ottawa has identified that there are potential thin soils and sensitive marine clays within the area that may require site specific detailed geotechnical engineering solutions to allow for development, the City of Ottawa bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the homeowner.”

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

4. That the Owner acknowledges and agrees to convey to the City, at no cost to the City, an unencumbered road widening across the complete frontage of the lands, measuring 17 meters from the existing centerline of pavement/the abutting right-of-way along Mitch Owens Road and 13 meters from the existing centerline of pavement/the abutting right-of-way along Downey Road, pursuant to Section 50.1(25)(c) of the Planning Act and Schedule C16 of the City’s new Official Plan. The exact widening must be determined by legal survey. The Owner shall provide a reference plan for registration, indicating the widening, to the City Surveyor for review and approval prior to its deposit in the Land Registry Office. Such reference plan must be tied to the Horizontal Control Network in accordance with the municipal requirements and guidelines for referencing legal surveys. The Owner(s) must provide to the City Surveyor a copy of the Committee of Adjustment Decision and a draft Reference Plan that sets out the required widening. The Committee requires written confirmation from **City Legal Services** that the transfer of the widening to the City has been registered. All costs shall be borne by the Owner.
5. That the Owner convey a 5 m x 5 m corner sight triangle located at the intersection of Downey Rd and Mitch Owens Rd 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 Owners provide a report, to the satisfaction of the City of Ottawa, demonstrating the adequacy of the aquifer with respect to quality and quantity to support the proposed development, failing which the Owners construct a new well on the severed lot and provide a report, to the satisfaction of the City of Ottawa, to demonstrate the adequacy of the aquifer with respect to quality and quantity to support the proposed development. The report must include a septic impact assessment to evaluate the water quality impact of the on-site septic system on the receiving aquifer.

The Owners' report must demonstrate the following to the City of Ottawa:

- That the construction of any new well on the severed parcel is in accordance with the Ministry of the Environment, Conservation and Parks
- That the quality of the water meets the Ministry of the Environment, Conservation and Parks Regulations, Standards, Guidelines and Objectives;
- That the quantity of water meets all the Ministry of the Environment, Conservation and Parks requirements.
- That the septic impact assessment meets the Ministry of the Environment, Conservation and Parks requirements.

A qualified Professional Engineer or Professional Geoscientist must prepare the report. It is the Owner's responsibility to coordinate the person drilling a new well, if required, and the professional noted herein in order to properly satisfy this condition.

If the accepted report recommends specific mitigation measures or design requirements, the Owners shall enter into a Development Agreement with the City, at the expense of the Owners, which is to be registered on the title of the property, which includes those recommendations. In instances where the subject site has sensitive soils, the drilling of a well or the conveyance of a 30-centimetre reserve may be required. Both the report and any required Development Agreement shall be prepared to the satisfaction of **Development Review Manager of the Rural Branch within Planning, Real Estate and Economic Development Department, or his/her designate.**

7. That the Owner(s) enter into an Agreement with the City, to the satisfaction of the **Development Review Manager of the relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, to be placed on title that includes the development envelopes and mitigation measures identified in the "Environmental Impact Statement Land Severance Application 5536 Downey Road, Ottawa, Ontario" provided by GEMTEC and dated January 4, 2024.
8. 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.

9. 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.

“William Hunter”
WILLIAM HUNTER
VICE-CHAIR

“Terence Otto”
TERENCE OTTO
MEMBER

“Beth Henderson”
BETH HENDERSON
MEMBER

“Martin Vervoort”
MARTIN VERVOORT
MEMBER

“Jocelyn Chandler”
JOCELYN CHANDLER
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 APPLICANTS

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
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