

2023-06-16



**CONSENT APPLICATION  
COMMENTS TO THE COMMITTEE OF ADJUSTMENT  
PANEL 1**

**PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT**

Site Address: 21 Merganser Street  
Legal Description: Lot 151, Registered Plan 4M-1120  
File No.: D08-01-22/B-0370 & D08-01-22/B-00371  
Report Date: June 14, 2023  
Hearing Date: June 21, 2023  
Planner: Basma Alkhatib  
Official Plan Designation: Outer Urban Transect, Neighbourhood  
Zoning: R3W (Residential third density Zone, subzone W) &  
R1TT [527] (Residential first density Zone, subzone TT,  
exception 527)

**DEPARTMENT COMMENTS**

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

**DISCUSSION AND RATIONALE**

Section 53 (12) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, includes 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.

On March 1, 2023, this application was adjourned as requested by the Planning staff because there was a missing minor variance and referenced agreements on title for 21 Merganser, which might impact their severance. Staff also requested time to investigate past Development Applications and agreements.

**History**

The subject address was part of a Subdivision Agreement between Claridge Homes (Rockcliffe Mews) Inc, and the City of Ottawa dated February 23<sup>rd</sup>, 2001. The registered plan 4M-1120 (this plan identifies areas and lot numbers), the subject address is shown as lot 56 (number 151). Staff have done a title search for the subdivision and the relevant agreements to the subject matter are LT1371649 and LT1371650.

Agreement LT1371649 stated that *“the Owner covenants and agree to comply with the mitigation and monitoring measures stipulated in the **Environmental Mitigation and Monitoring Report, Carson Grove Development, Canada Lands Company (October 1998) prepared by Mulligan and Associates to the satisfaction of the corporation of the City of Ottawa’s commissioner of urban planning and public works, the Rideau Valley Conservation Authority and the planning and development approvals commissioner.”***

Agreement LT1371650 referred to the Environment Protection Measures and Retention of Private Trees are identified in a **Tree Preservation Plan** dated September 16, 1998. This plan is part of the **Environmental Mitigation and Monitoring Report, Carson Grove Development..** Staff located part of this report in the subdivision folder (hard copy), but the Tree Preservation Plan could not be located.

Part 19 of the agreement LT1371650 included Environment Protection Measures and Retention of Private Trees conditions including the following::

1. The subdivider agrees to acknowledge and comply with the mitigation and monitoring measures stipulated in the **Environmental Mitigation and Monitoring Report, Carson Grove Development report,**
2. The subdivider shall retain individual trees and clumps of vegetation as identified on the **Tree Preservation Plan report,** at the rear lots of 15-22 inclusive and lots 62-85 inclusive for blocks 1,40,41,44,100 and lots 6-39,
3. Should the woodlot or groupings of trees located within lots 37 to 39 inclusive and lots 151 and 152 be identified as significant through satisfaction of subsection 19.11, the subdivider agrees to manage the remnant woodlot identified for protection within these lots as recommended, as follows: clean up, cut, prune and remove all trees which is a safety concern, and to do so in such a manner that removes as little vegetation as possible (page 14)

Clause 19.6 and condition 19.9 stated *“that the subdivider covenants and agree that prospective purchasers of units occupying lots 15 to 22 inclusive and lots 63 to 86 inclusive are to acknowledge in writing in the agreement of purchase and sale, of being notified of items related to Tree preservation and retention of vegetation areas”*

The related conditions to the **Tree Preservation Plan** included retaining and maintaining trees by the subdivider for lot 56 but did not require further investigation. . This indicates that in certain circumstances in the Subdivision, there was an intent for trees to remain in natural state in perpetuity, but this subject lot 56 was not one of them.

The subject site is located within the Outer Urban Transect Policy Area on Schedule A and is designated Neighbourhood on Schedule B3 in the Official Plan. Section 5.3.4 states that Neighbourhoods located in the Outer Urban area shall accommodate residential growth to meet the Growth Management Strategy as outlined in Section 3. The Zoning By-law shall implement development standards that transition away from a suburban model and move towards urban built forms, Allowing and supporting a wide variety of housing types with a

focus on lower density missing-middle housing which generally reflects the existing built form context of the neighbourhood, which may include new housing types that are currently not contemplated in this Plan. Table 6 in the Official Plan states the transition from Suburban areas that has generous spacing between buildings, larger lots, and lower lot coverage and floor area ratios to Urban areas that has buildings attached or with minimal functional side yard and setbacks, range of lot sizes that will include smaller lots, and higher lot coverage and floor area ratios.

The subdivision process is meant to deal with development of a subdivision and to guide the development process through the land division process. There are options for mechanisms to enforce tree retention including alternative zoning, land dedication to the City, and notices on title. While within this Subdivision, notices exist regarding noise clauses, there are none related to tree retention, which would also have been an option if tree retention in perpetuity was the desired goal.

The original municipal Tree by-law came into effect in 2006 and the Urban Tree Conservation By-law (the first private land tree by-law) came into effect in late June 2009. For the private land By-law, the distinctive tree component only came into effect in September or October 2009. The Tree By-law in effect now balances the desire for intensification with tree preservation and planting.

Reviewing the existing planting situation there is no existing woodlot, so preservation is not a rationale to prevent the severance of the lot.

Staff recognize that the adjacent properties follow a similar pattern of lot division. The retained and the proposed lots meet the minimum lot area and the minimum lot width stated in Part 6 of the Zoning By-law. Furthermore, the subject lot severance will meet the Official Plan intention in transitioning from Suburban to Urban form.

The Department has **no concerns** with the applicant's request for Consent. Staff recognized the efforts of the applicant in keeping the severance in conformity with the Zoning By-law by changing the design to complying and the last update was made June 14, 2023. There is recognition that the current zoning permits a height of eight metres (roughly two storeys), where the applicant is proposing a height of three metres (one storey) to accommodate their neighbours' concerns regarding privacy.

## **ADDITIONAL COMMENTS**

### **Planning Forestry**

There are five protected trees on the subject property, three of which are shown as to be removed (numbers two, three and four). City owned trees number two and three are said to require removal because of conflicts with the proposed driveway. In the Tree Information Report, the width of the driveway is shown as being six metres when only a three metres

wide driveway is permitted. The site plan and TIR must be revised to show a 3m driveway that allows for retention of tree number two.

Removal of protected trees requires compensation in the form of tree planting as well as monetary payment for the removal of City trees. For a compensation tree that cannot be planted, a payment in lieu of planting will be required. Tree protection fencing must be installed and maintained around City trees number one and number two through construction. Removing or moving this fencing would be a by-law infraction.

A planting plan has been provided showing two large canopy trees will be planted in the rear yard.

## CONDITIONS

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

1. That the Owner(s) demonstrate that the location of the proposed elements, including the driveways, retaining walls, services, 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 Central Branch within the Planning, Real Estate and Economic Development Department, or his/her designate.
2. That the Owner(s) provide a **revised site plan and tree information report, showing retention of tree #2**, 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. This report shall be prepared by an Arborist, identifying all trees protected under the City's Tree Protection by-law, 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. That the Owner(s) demonstrate to the satisfaction of both the Chief Building Official and Development Review Manager, Planning, Real Estate and Economic Development Department, or designates, that **both severed and retained parcels will 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 to 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.
4. 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 (Promenade Aviation Parkway) and may therefore be subject to noise and other activities associated with that use”***

The Agreement shall be to the satisfaction of Central 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.

5. That the Owner(s) provide plans, drawings or reports as may be required to demonstrate, to the satisfaction of the Manager, Right-of-Way, Heritage, and Urban Design Department or his/her designate that a **private approach that conforms** with the Private Approach By-law (2003-447) **can reasonably be established on the severed land** (4 Solace Court), to be confirmed in writing from the Department to the Committee.



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**Basma Alkhatib**

Planner I, Development Review, Central Planning, Real Estate and Economic Development Department



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**Erin O'Connell, RPP, MCIP**

Planner III, Development Review, Central Planning, Real Estate and Economic Development Department