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FILE NO: 47842-1308

September 17, 2024

Committee of Adjustment
City of Ottawa
4th Floor, 101 Centrepointe Drive
Ottawa, ON K2G 5K7
Attn: Michel Bellemare, Secretary-Treasurer

Committee of Adjustment
Received | Reçu le

Revised | Modifié le : 2024-09-17

City of Ottawa | Ville d'Ottawa
Comité de dérogation

REVISED

Dear Mr. Bellemare:

**Re: Application for Consent to create a new lot and easements
99 Fifth Avenue and 819 Bank Street, Ottawa
File No. D08-01-24/B-00127 and *New* Secondary Application**

We are solicitors for MINTO (FIFTH + BANK) GP INC. in its capacity as General Partner for FIFTH + BANK LP, the registered owner of 819 Bank Street and 99 Fifth Avenue, Ottawa (the “**Applicant**”) for the purposes of submitting an application~~s~~ for consent for the lands municipally known as 99 Fifth Avenue and 819 Bank Street (formerly PIN 04138-0386, now PINs 04138-0390 and 04138-0391, the “**Subject Property**”).

The application~~s~~ seeks the Committee’s consent to establish one new lot under Section 53(1) of the *Planning Act* to be exempt from Subsection 50(3), as well as permanent easements. ~~A certificate is sought for the retained lands.~~

A Part Lot Control Exemption application has previously been approved for the Subject Property, and a By-law registered. A parcelization Transfer has been registered (OC2685864), but the lands remain under a single ownership. Additional information regarding the part lot control exemption and the business decision to now seek the Committee’s consent follows.

~~The Application was originally scheduled to be heard by the Committee on August 21, 2024, but was adjourned *sine die* to allow for the preparation of an amended Reference Plan to include balconies on~~

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Floors 4-6 that extend out from the residential building over the rooftop area of the commercial building. The encroaching balconies were identified by Planning staff. A secondary application is required to establish easements over portions of the retained lands to allow the balcony encroachments, shown as Parts 9 and 10 on the Draft Reference Plan.

Background

Zoning and Site Plan Control

The Subject Property was the subject of a site-specific Zoning By-law Amendment (D02-02-17-0113) and Site Plan Control approval was granted (D07-12-18-0149) to develop a seven-storey residential apartment (“**99 Fifth**”) with frontages on Fifth Avenue and Fourth Avenue at the rear of the existing two-storey heritage commercial block (“**819 Bank**”). Parking for the two buildings is located beneath 99 Fifth. The Site Plan Control Agreement (OC2178597) and a Maintenance and Liability Agreement (OC2178598) were registered on December 12, 2019.

In accordance with the site-specific Zoning By-law Amendment and Site Plan Control approval, the property was redeveloped as one, integrated site.

Part Lot Control Exemption

Notwithstanding that the property was redeveloped as one, integrated site, the different uses and the presence of below-grade environmental contamination which impacted the commercial (819 Bank) and residential (99 Fifth) lands differently, caused the Applicant to seek the authority to convey the lands separately.

Because the Subject Property is within two Plans of Subdivision, the Owner submitted an application to lift Part Lot Control to create separately conveyable parcels of land, being 819 Bank (Parts 2, 6, 7, 8 on Plan 4R-34877), and 99 Fifth (Parts 1, 3, 4, 5 on Plan 4R-34887) as well as strata rights-of-way/easements for 819 Bank over 99 Fifth (Parts 1, 3, 4 on Plan 4R-34887) to provide access to a shared underground parking ramp from Fifth Avenue, commercial parking located beneath 99 Fifth, and to establish access to an internal commercial garbage room, in July 2022 (D07-08-22-0020).

The application was approved with conditions on August 25, 2022.

In satisfaction of the PLC conditions, a Permission to Proceed with slight alterations from the site plan approval that resulted from construction (D07-12-18-0149) was granted on December 14, 2022, and an amending Site Plan Control Agreement (OC2605190) and Encroachment Agreement (OC2605192) were registered on June 15, 2023.

PLC By-law 2023-281 (the “**By-law**”) was passed by City Council on June 14, 2023, and registered on title on June 16, 2023. By-law 2023-281 expires and will be of no further force and effect on June 14, 2026.

Following the approval of the PLC Exemption, the residential lands were not able to be transferred until a Record of Site Condition was obtained. A Certificate of Requirement was registered against the residential lands (described as Parts 1 and 2 on Plan 4R-33984) as OC2672238 on February 28, 2024. The lands residential lands are now able to be conveyed.

In the time between the PLC approval in August 2022, and the registration of the Certificate of Requirement in February 2024, market conditions have changed. The imminent transfer of either parcel is unlikely, but the Owner would like to retain the option to do so because of the different uses of the buildings and the difference in environmental status.

The creation of the separate parcels has been approved by City Council, and a parcelization Transfer (OC2685864) was registered on April 20, 2024. When this transfer was certified, PIN 04138-0386 was split between PIN 04138-0391 (819 Bank) and PIN 04138-0390 (99 Fifth).

Financing was registered on PIN 04138-0390 as OC2693165 on May 30, 2024, but a transfer to a third party is not currently anticipated.

In order to maintain the ability to convey the separate parcels beyond the expiration of the PLC exemption by-law, the Committee's consent is required.

Additional strata easements to allow the balconies on Floors 4-6 to extend out from the residential building over the rooftop area of the commercial building are now sought through a secondary application (Easement over Parts 9 and 10 in favour of Parts 1, 3, 4, 5 on Plan 4R-XXX).

Policy Documents

Official Plan

The Subject Property is designated "Neighbourhood", subject to the "Evolving Neighbourhood Overlay" on Schedule B2, "Inner Urban Transect", of the City of Ottawa Official Plan 2022, and is in proximity to the Rideau Canal (No. 3) and Lansdowne (No. 5) Special Districts ("**2022 OP**"). Bank Street is designated as a Mainstreet Corridor on Schedule B2. (See Figure 1 below)

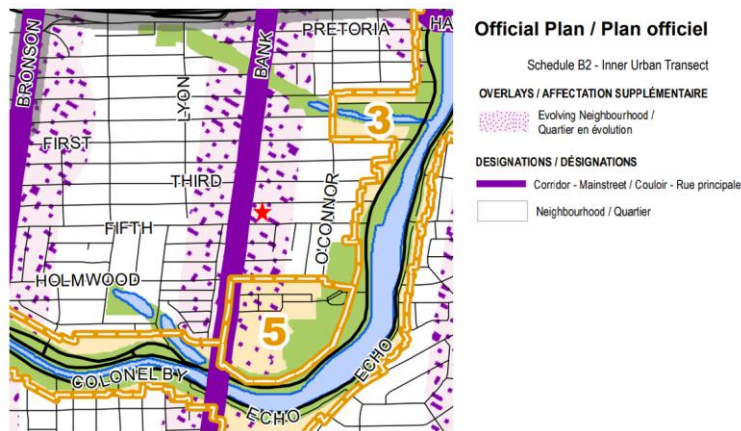


Figure 1: Official Plan Schedule B2

The 2022 OP directs growth and change to Mainstreet Corridors. The Evolving Overlay policies of the 2022 OP are intended to provide opportunities that allow the City to reach the goals of its Growth Management Framework for intensification through the Zoning By-law, by providing:

- a) Guidance for a gradual change in character based on proximity to Hubs and Corridors,
- b) Allowance for new building forms and typologies, such as missing middle housing;
- c) Direction to built form and site design that support an evolution towards more urban built form patterns and applicable transportation mode share goals; and
- d) Direction to govern the evaluation of development.

The 2022 OP provides direction to the Committee in Section 11.5 of the Implementation section. Specifically, policy 5 of Section 11.5 states:

The Committee of Adjustment shall consider strata severance applications, for both vertical and horizontal division, as it is authorized to do according to the *Planning Act*. Strata severance applications shall be assessed according to planning principles applicable to severances.

The 2022 OP confirms the established legal principle that the Committee has the authority to grant strata severances.

City of Ottawa Comprehensive Zoning By-law No. 2008-250

The Subject Property was subject of a zoning by-law amendment in 2020 that resulted in the site-specific zoning that currently applies (By-laws 2018-248, 2019-267). This site-specific zoning designation was crafted to permit the proposed development.

The Subject Property is zoned Traditional Mainstreet with a site-specific exception and height and setback schedule (“TM[2506] S387”) in the City of Ottawa Zoning By-law 2008-250 (the “**By-law**”). It is also subject to the Mature Neighbourhood Overlay. Exception 2506 does not permit or prohibit any additional uses, but sets site-specific exception provisions as shown on Figure 3 below.

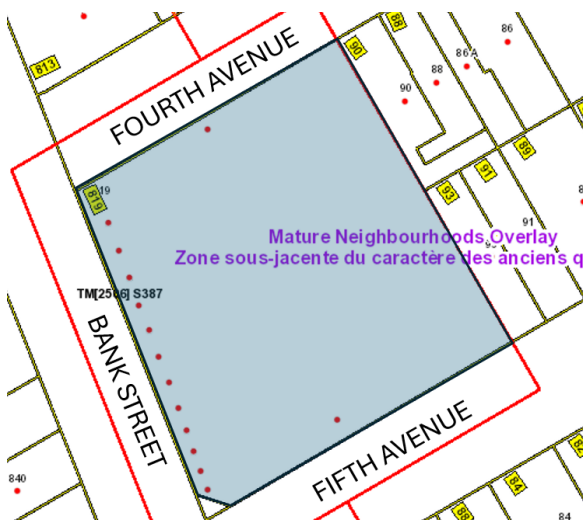


Figure 2: Zoning By-law 2008-250

I Exception number	II Applicable zones	III Exception Provisions - Additional land uses permitted	IV Exception Provisions - Land uses prohibited	V Exception Provisions - Provisions
2506 (By-law 2019-267) (By-law 2018-248)	TM[2506] S387			<ul style="list-style-type: none"> • Despite Section 64, mechanical and service equipment penthouses, and elevator or stairway penthouses that project above a height of 22.3 m may not exceed a total cumulative area of 275 m² and may not project beyond a maximum height of 25 m. • Mechanical and service equipment penthouses, and elevator or stairway penthouses, must be located in Area G as shown on Schedule 387. • Despite Section 65, canopies, awnings, open stairways, stoops, landings, steps, and ramps serving the first storey may project into the entire required corner side yard setback. • Despite Section 197, maximum permitted building heights, maximum number of storeys, and minimum setbacks are as per Schedule 387. • Permitted projections listed in Section 65 are not subject to the height limits on Schedule 387. • The provisions of Section 197(1)(b) do not apply to dwelling units that have their principal entrance located on Fourth Avenue or Fifth Avenue. • Section 197(3)(g)(ii) does not apply.

Figure 3: Site-Specific Exception 2506

Schedule 387 (See Figure 4 below) is a Zoning Schedule that sets maximum building heights and minimum setbacks to allow the development.

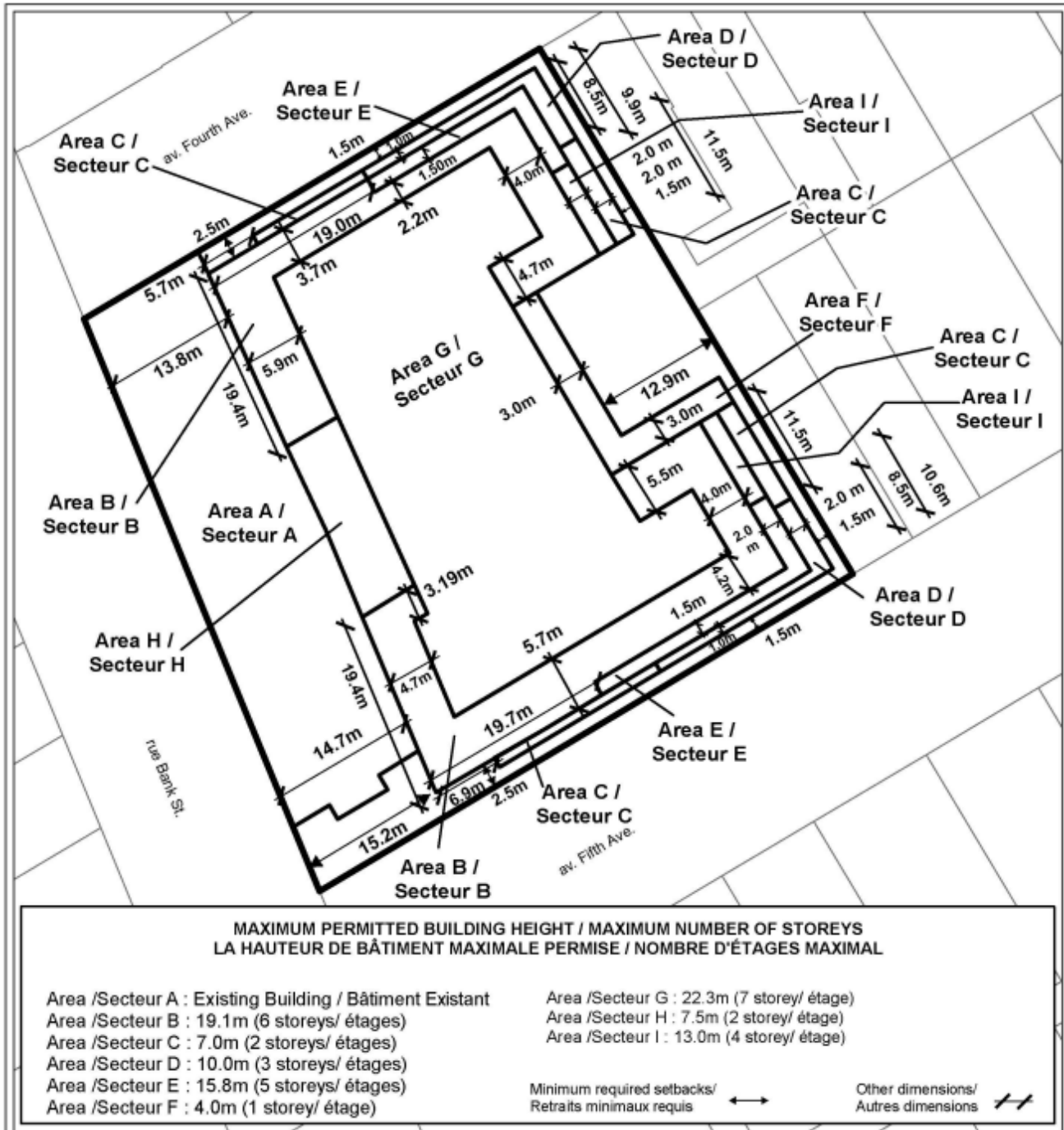


Figure 4: Schedule 387 to Zoning By-law 2008-250

The approval of the requested consents would not result in any non-compliance with the applicable zoning and no minor variances are required.

Consent Applications

The purpose of the present **primary and secondary** applications is to create the parcels and rights-of-way now described by PINs 04138-0391 (819 Bank) and PIN 04138-0390 (99 Fifth) on a permanent basis, **as well as easements to allow the residential balcony encroachments over the commercial lands at the fourth, fifth and sixth levels**. If approved, the separate conveyance of the commercial lands from the residential lands will continue to be permitted on a permanent basis, and the buildings will be able to continue to function together with one shared ramp from Fifth Avenue to the underground parking garage and internal access to the commercial garbage room **and to permit the balcony encroachments**. **The lands are shown on the Draft Reference Plan included with this application.**

The parcels are detailed below on Table 1 and shown on Figure 5 at ground level, **and at Figure 6 on the fourth level:**

Severed Lands 99 Fifth (Parts 1, 3, 4, 5)	ROW/Easement over Parts 1 in favour of Parts 2, 6 ,7, 8, 9, 10 for access to parking in the underground P1 level (P1 level)
	ROW/Easement over Part 3 in favour of Parts 2, 6, 7, 8, 9, 10 for parking (P1 level)
	ROW/Easement over Part 4 in favour of Parts 2, 6, 7, 8, 9, 10 for internal access to a commercial garbage room (ground level)
Retained Lands - Certificate Sought 819 Bank (Parts 2, 6, 7, 8, 9, 10)	Easement over Parts 9 and 10 in favour of Parts 1, 3, 4, 5 on Plan 4R-XXX for balcony encroachments on Floors 4-6 of the residential building)

Table 1: Proposed Parcels and ROW/Easements

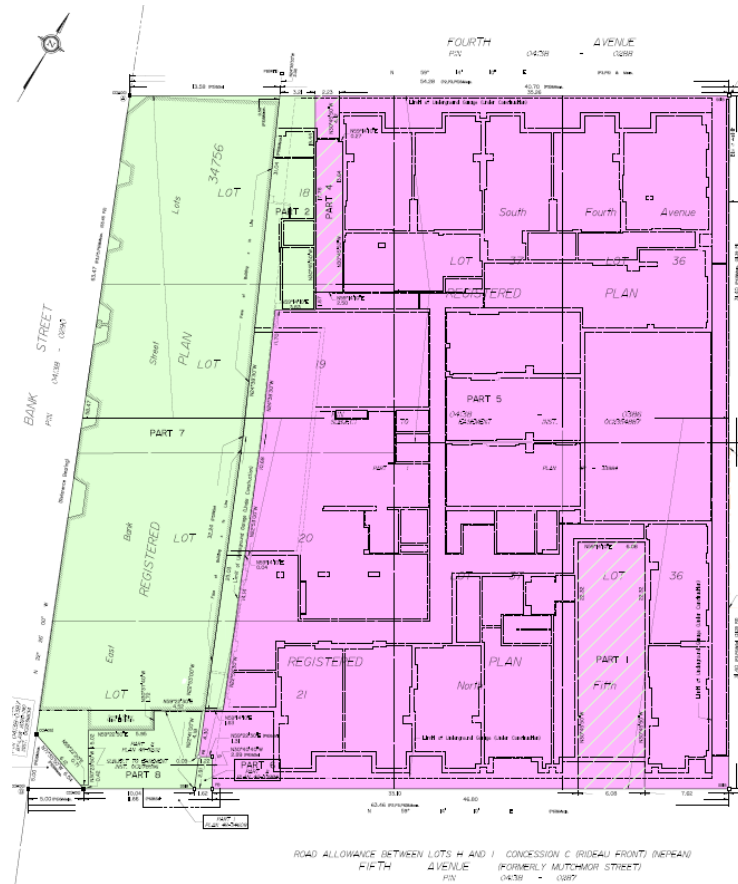


Figure 5: Proposed Parcels and ROW/Easements (Ground Level)

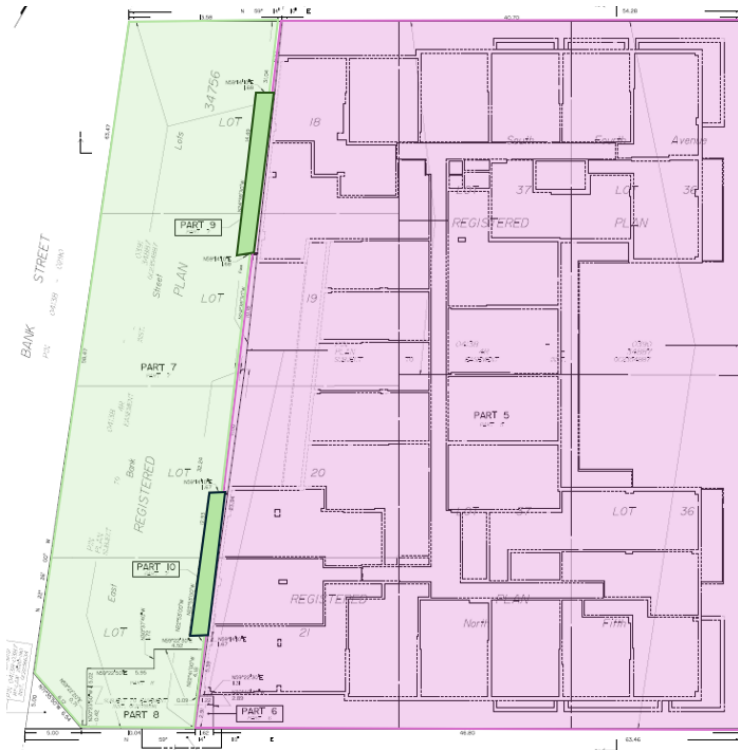


Figure 6: Proposed Balcony Easements at 80.3m elevation (4th-6th Floors)

The two existing easements will be maintained. The easement created in favour of the City of Ottawa over the Privately-Owned Public Space (“POPS”, being Part 2 on Plan 4R-32112) will be carried forward over Part 8 on the Draft Reference Plan while the blanket easement created in favour of Rogers Communications Inc. through the registration of OC2354887 will be carried forward as a blanket easement over both proposed new parcels.

Reference Plan

The Subject Property is shown on Draft Plan 4R-~~XXX34887~~ enclosed. The Reference Plan is comprised of 4 five (5) sheets, being grade level, the second level, the P1 level, the fourth level, and the required Sections showing the extent of Parts 1, 3 and 4, 9 and 10.

Rationale

The Committee has the authority to grant the consent for the requested easements pursuant to sections 50(3)(f) and 53 of the Planning Act as follows:

Subdivision control

50. (3) No person shall convey land by way of a deed or transfer, or grant, assign or exercise a power of appointment with respect to land, or mortgage or charge land, or enter into an agreement of sale and purchase of land or enter into any agreement that has the effect of granting the use of or right in land directly or by entitlement to renewal for a period of twenty-one years or more unless,

(f) a consent is given to convey, mortgage or charge the land, or grant, assign or exercise a power of appointment in respect of the land or enter into an agreement in respect of the land.

Consents

53. (1) An owner of land or the owner’s agent duly authorized in writing may apply for a consent as defined in subsection 50 (1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. 1994, c. 23, s. 32.

Section 50(3) states that a transfer may occur if consent is given and a consent may be given if a plan of subdivision is not necessary. We submit that both conditions are satisfied in the attached applications.

As noted above, the 2022 OP confirms the established legal principle that the Committee has the authority to grant strata severances, which includes strata easements.

When considering a consent application, the criteria stated in section 51(24) of the Planning Act must be considered. In this case, **all the criteria are satisfied**:

Planning Act section 51(24)	Rationale
Criteria (24) In considering a draft plan of subdivision, regard shall be had, among other matters, to	-No present or future inhabitant will be negatively impacted by the consent applications proposed, and health and safety issues are not created.

Planning Act section 51(24)	Rationale
the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,	-The proposed consent will permit the owner to define rights and obligations for the adjacent uses. This promotes the efficient use of the properties and the existing buildings.
(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;	- None of the provincial interests enumerated in section 2 of the Planning Act are negatively impacted by the proposed parcels or rights-of-way/easements.
(b) whether the proposed subdivision is premature or in the public interest;	- The creation of the parcels and rights-of-way/easements are not premature and are in the public interest. The site-specific zoning is in place, the development has received Site Plan Control Approval, has been constructed and is fully occupied. A Certificate of Requirement has been registered against the residential lands.
(c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;	-The parcels and rights-of-way/easements conform to the Official Plan in that they facilitate the efficient use of lands for development along a Corridor-Mainstreet. -Adjacent plans of subdivision are not impacted.
(d) the suitability of the land for the purposes for which it is to be subdivided;	-The site-specific zoning is in place, and the land is suitable for the purpose for which it is used.
(d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;	-No affordable housing units are proposed.
(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;	-No new road construction is required for the creation of the parcels and rights-of-way/easements. Bank Street is a Transit Priority Corridor and there is a bike lane along Fifth Avenue.
(f) the dimensions and shapes of the proposed lots;	-The dimensions and shapes of the proposed lots are derived from the approved Site Plan Control application and completed construction. The proposed ownership delineation will be unobservable from the public street.
(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or	-No restrictions are required or are an issue at this time.

Planning Act section 51(24)	Rationale
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;	- Not of concern.
(i) the adequacy of utilities and municipal services;	- The subject property is located within an established inner urban neighbourhood and is well served by municipal infrastructure and services as well as public utilities.
(j) the adequacy of school sites;	- This has not been identified as an issue. Public and separate elementary and high schools are located within walking distance of the Subject Property.
(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;	- A publicly accessible privately-owned public space (POPS) has been constructed, with an easement granted to the City. The POPS is identified as Part 8 on Plan 4R-34887 (being Part 2 on Plan 4R-32112).
(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and	-The plan's design makes efficient use of the available energy.
(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 <i>City of Toronto Act, 2006</i> . 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4).	-The existing buildings were approved through the Site Plan Control process, and in accordance with that approval, have been developed in an integrated fashion, providing public access to a POPS, and one vehicular access off of Fifth Avenue.

Accordingly, we request that the consent and easements requested be granted.

~~Certificate for the Retained Lands~~

~~A Certificate for the retained lands is requested. We confirm that there is no land abutting the Subject Property that is owned by the Owners of the Subject Property other than land that could be conveyed without contravening section 50 of the Planning Act.~~

~~In accordance with Section 53(42.1) of the *Planning Act*, the Owners are entitled to a certificate for the retained land resulting from the consent. The registrable legal description of the retained, lands, as shown on the Parcel Register for PIN 04138-0391, is as follows:~~

~~PART OF LOTS 18, 19, 20 AND 21 (EAST BANK STREET), PLAN 34756, PARTS 2, 6, 7 AND 8, 4R34887; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 6 AND 8 ON PLAN 4R-34887 AS IN OC2178596; SUBJECT TO AN EASEMENT AS IN OC2354887; TOGETHER WITH AN EASEMENT OVER PART 1, 4R34887 AS IN OC2685864; TOGETHER WITH AN EASEMENT OVER PART 3, 4R34887 AS IN OC2685864; TOGETHER WITH AN EASEMENT OVER PART 4, 4R34887 AS IN OC2685864; CITY OF OTTAWA~~

Enclosures

In Support of the Application, please find enclosed the following:

1. Completed and Executed Application for consent
2. Authorization for Soloway Wright LLP to submit the application
3. Parcel Abstracts for PIN 04138-0386, PIN 04138-0390, and PIN 04138-0391
4. Plan 34756
5. Plan 35085
6. Plan 4R-34887 (4 pages)
7. ~~Plan 4R-XXXX (5 pages)~~
8. Plan 4R-32112 (POPS)
9. Plan 4R-33984
10. Easement as in OC2178596
11. Blanket Easement as in OC2354887
12. Certificate of Requirement as in OC2672238
13. Parcelization Transfer as in OC2685864
14. Partnership Charge OC2693165
15. Our cheque in the amount of \$2,315 (\$675 for recirculation of primary application; \$1,640 for secondary application) ~~\$3,889 (\$3,639 for the Committee of Adjustment application, \$250 for the additional Certificate)~~

We look forward to the assignment of a **renewed** Hearing date on the Committee's next available Agenda. Please let us know if you require anything further.

Yours very truly,



Krista Libman
KML/
Encl.

cc. Jason Larton, Minto
Kevin Harper, Minto