

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: March 23, 2026

CASE NO(S): OLT-25-000902

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 40 Church Inc.
Subject: Minor Variance
Description: To sever the existing residential lot into six (6) residential lots, to facilitate the development of six (6) street townhouse dwellings contained within two (2) townhouse blocks.
Reference Number: A-25:133
Property Address: 40 Church Street
Municipality/UT: Ancaster/Hamilton
OLT Case No.: OLT-25-000901
OLT Lead Case No.: OLT-25-000902
OLT Case Name: 40 Church Inc. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 40 Church Inc.
Subject: Consent
Description: To sever the existing residential lot into six (6) residential lots, to facilitate the development of six (6) street townhouse dwellings contained within two (2) townhouse blocks.
Reference Number: B-25:042
Property Address: 40 Church Street
Municipality/UT: Ancaster/Hamilton
OLT Case No.: OLT-25-000902
OLT Lead Case No.: OLT-25-000902

Heard: January 29, 2026 by Video Hearing

APPEARANCES:

Parties

Joseph Veloce

Counsel

P. Harrington

MEMORANDUM OF ORAL DECISION DELIVERED BY P. TOMILIN ON JANUARY 29, 2026 AND ORDER OF THE TRIBUNAL

[1] The matters before the Tribunal are the appeals (“Appeals”) filed by Joseph Veloce (“Appellant”) against the decision of the City of Hamilton (“City”) Committee of Adjustment (“COA”) to deny a Consent and a Minor Variance (“MV”) (“Applications”), pursuant to ss. 53(19) and 45(12) of the *Planning Act* (“Act”), for the property located at 40 Church Street (“subject property / site”).

[2] The Appellant is seeking to sever the existing residential lot into six residential lots, to facilitate the development of six street townhouse dwellings contained within two townhouse blocks.

[3] City Planning Staff recommended approval with conditions.

SITE AND THE SURROUNDING CONTENT

[4] The Subject property is located southwest of the Church Street and Lodor Street intersection. The site is located on a rectangular-shaped lot 24.79 metres (“m”) in width, with a lot depth of approximately 53.14 m and is approximately 0.12 hectare in area. It is currently occupied by a single-detached dwelling comprised of two units that are proposed to be demolished.

[5] To the north and east of the subject property there are one- and two-storey single detached dwellings; to the south is the Ancaster Municipal Lawn Bowling Club, the

Ancaster Tennis Club, Village Green Park and naturalized area. West of the site there are one- and two-storey single detached dwellings, three-storey townhouse dwellings and Wilson Street East – the historic main street of the Ancaster village core.

[6] The area is served by Bus Route 16 of the Hamilton Street Railway, with connections to Hamilton’s urban area.

PRELIMINARY MATTER

[7] In advance of the Hearing, the Tribunal received a notification via the assigned Case Coordinator confirming that the City does not intend to participate in the Hearing.

PARTICIPANT STATUS REQUESTS

[8] Prior to the Hearing, the Tribunal received a number of Participant Status request forms. Their Participant statements raised concerns related to tree removal, increased traffic, street parking, infrastructure capacity and the scale and density of the proposal.

[9] One of the Participant Status requests was from the Ancaster Village Heritage Community (“AVHC”). Given that the Tribunal also received a separate request from the Secretary of the AVHC, Rowen Baker, the request of the AVHC was denied. Instead, the Tribunal will grant Participant Status to Rowen Baker.

[10] In addition to Rowen Baker, the Tribunal granted Participant Status to the following individuals:

- Alice Wang
- Andrea MacArthur
- Brad Davis
- Cynthia Watson
- Darren Earl
- Ian Gately

- Jane Burlanyette
- Jennifer Davis
- Robert Maton
- Ryan Canu
- Sarah Flis

LEGISLATIVE FRAMEWORK

[11] The issue before the Tribunal is whether the Consent Application satisfies the relevant criteria set out in ss. 51(24) and 51(25) of the Act, including with respect the Urban Hamilton Official Plan (“UHOP / OP”) and Zoning By-law No. 05-200 (“ZBL”).

[12] The Tribunal shall also have regard to matters of Provincial interest and the Provincial Planning Statement (2024) (“PPS”).

[13] An Appeal pursuant to s. 45(12) of the Act is a Hearing *de novo*, and the Applicant bears the onus to demonstrate to the Tribunal that the criteria established in ss. 45(1) of the Act has been satisfied:

- 1) The intent and purpose of the OP is being maintained.
- 2) The intent and purpose of the ZBL is being maintained.
- 3) It is desirable for the appropriate development or use of the land, building or structure.
- 4) It is minor in nature.

HEARING

[14] Matt Johnston, a Registered Professional Planner and a full member of the Canadian Institute of Planners and the Ontario Professional Planners Institute, provided a witness statement, and was qualified by the Tribunal to provide land use planning opinion evidence in relation to the matters under appeal.

[15] Mr. Johnston explained that in 2024 the City brought forward an initiative to revise its OP policies and its ZBL to allow for greater types of built form within neighbourhoods that would traditionally be reserved for single detached dwellings. It was done because the City opted for an approach of no growth through urban expansion.

[16] He provided that, as the City still has to facilitate growth, it opted for an intensification initiative that was implemented through revisions to the City OP, ZBL and the introduction of the R2 zone, applicable to the subject property and much of the surrounding community. The R2 zone will promote gentle intensification.

[17] Mr. Johnston said that, based on the R2 zone, the proposed development is allowed as of right.

[18] The subject property is located within a settlement area – the intended location for growth and development – and it is consistent with the applicable policies of the PPS.

[19] The only MV that the Appellant is seeking is the reduction of the minimum lot area for lot five (“Lot 5”) from 180 square metres (“m²”) to 170 m². Other requirements related to parking, setbacks, density, height, built form and typology are in compliance.

[20] Mr. Johnston stated that the proposed development has regard to s. 2 of the Act, as it has a direct access to the municipal water and wastewater, is located within a 1.0-kilometre radius of five public parks, will facilitate the gentle intensification of an underutilized site in the built-up area and will result in the net creation of four additional dwelling units.

[21] Mr. Johnston reviewed the applicable criteria set out in s. 51(24) and opined that the proposed development has regard for matters of Provincial interest, conforms with the UHOP as it fronts on a public road, is compatible with the character, scale and established development pattern of the area and is fully serviced by municipal infrastructure.

[22] The Tribunal agrees with Mr. Johnston's assessment and finds that the proposed severance will not have any negative impact on the features and functions of the City's Natural Heritage System and, overall, represents good planning that is in the public interest.

[23] Mr. Johnston noted that the site is located within the Urban Boundary and is designated *Neighbourhoods* ("Neighbourhoods") on Schedule E – Urban Structure, and Schedule E-1 – Urban Land Use Designations in the UHOP.

[24] Mr. Johnston pointed out that the development proposal supports the City's minimum intensification targets of 30% within the Neighbourhoods designation (OPA 167), as outlined in section B.2.4.1.3 of the UHOP. Therefore, it is in keeping with the general intent and purpose of the OP.

[25] He stated that the proposed MV seeks to reduce the minimum lot area for Lot 5 from 180 m² to 170 m². The rest of the lots will exceed the 180 m² ZBL minimum. The intent of the minimum lot area regulation is to maintain a lot fabric which is compatible with the surrounding area, and to ensure that space is available for site grading and stormwater management.

[26] In Mr. Johnston's view, the requested MV represents a minimal decrease in lot size that will not have a material impact on compatibility with the surrounding lot fabric or the ability to process stormwater on site.

[27] In his opinion, the requested MV maintains the intent and purpose of the ZBL.

[28] Mr. Johnston believes that the requested MV is desirable, as the proposed development will result in a built form that is in keeping with the character of the surrounding area and represents a land use that is permitted in the UHOP and ZBL.

[29] Mr. Johnston opined that the requested MV is minor in nature, as it does not

present an adverse impact to the surrounding community and maintains all regulations, other than the requested MV.

[30] The Tribunal finds that the proposed development respects the character, scale and appearance of the surrounding area by optimizing an under-utilized parcel with gentle intensification to establish a more compact housing form while respecting required zoning regulations.

[31] It is Mr. Johnston's professional planning opinion that the proposed development satisfies the criteria of all of the applicable planning instruments, including, but not limited to s. 2, ss. 51(24), 51(25) and 45(1) of the Act, and is consistent with the PPS.

Addressing issues raised by the Participants

[32] Mr. Johnston noted that each of the proposed lots will have a 3.75 m by 3.75 m area dedicated to tree planting and will meet the Conditions of the approval related to the requirement for a tree protection plan. In addition, instead of all six of the units facing Church Street, three of the proposed townhomes will face Lodor Street, and that will contribute to tree preservation. Remaining tree-related issues will be addressed through the Conditions of Consent approval.

[33] Mr. Johnston testified that the City transportation planning division raised no concerns with parking related to the proposal. According to the R2 zone, each of the proposed townhomes is required to have one parking space. The development proposal will have two dedicated parking spaces for each of the units.

[34] With regards to infrastructure concerns, Mr. Johnston provided that the Applications were reviewed by City Engineering and no capacity issues were raised.

[35] Mr. Johnston addressed comments regarding compatibility scale. In his view, the development proposal will support the objectives of the City's minimum intensification

targets of 30% within the Neighbourhoods and will lead to gentle intensification.

Changes to the Notes of Conditions

[36] Mr. Johnston explained to the Tribunal the rationale behind the proposed changes to the notes of the conditions. He explained that, instead of applying an Archeological assessment as a condition of approval, a note will be applied reminding of the obligations to report any findings, should there be any. Should anything be found on site that warrants archeological investigation, the balance of the note indicates who should be notified. He explained that a similar approach had been used in past applications and was supported by the Planning Staff of the Municipality.

[37] The note of the condition related to the tree removal and preservation was taken from the City's Forestry and Horticulture Design and Preservation Manual for Assets on Public Property. It stands as a reminder that the compensation approach embedded in the tree removal permit (condition four) is applicable.

[38] In addition, one Ontario Building Code condition that was part of the staff recommendation is not required and has been removed. That correspondence had already been filed with the Tribunal.

CONCLUSION

[39] This Hearing was a Hearing *de novo* of the Consent and MV Applications. In making its Decision, the Tribunal relied on the City Planning Report, and considered the professional expert evidence of Mr. Johnston, as well as the written submissions of Alice Wang, Andrea MacArthur, Brad Davis, Cynthia Watson, Darren Earl, Ian Gately, Jane Burlanyette, Jennifer Davis, Robert Maton, Rowen Baker, Ryan Canu and Sarah Flis.

[40] The Tribunal finds that the Applications satisfy the statutory tests set out in s. 2, ss. 45(12), 51(24) and 51(25) of the Act and represent good land use planning.

ORDER

[41] **THE TRIBUNAL ORDERS** that the Appeals are allowed, in part, the variance to Zoning By-law No. 05-200 is authorized, and provisional consent is to be given subject to the conditions set out in **Attachment 1**.

“P. Tomilin”

P. TOMILIN
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Attachment 1**Conditions of Consent for Proposed Severance at 40 Church Street, Hamilton****Proposed Conditions:**

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. The reference plan must be submitted in pdf and also submitted in CAD format, drawn at true scale and location and tied to the city corporate coordinate system. (Committee of Adjustment Section).
2. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer. (Committee of Adjustment Section).
3. The owner submits to the Committee of Adjustment office an administration fee, payable to the City of Hamilton, to cover the costs of setting up a new tax account for each newly created lot. (Committee of Adjustment Section).
4. A Permit to injure or remove municipal trees is a requirement of this application. A Tree Management Plan must be submitted to the Forestry and Horticulture Section c/o the Urban Forestry Health Technician, to address potential conflicts with publicly owned trees.
5. A Landscape Plan is required by to the Forestry and Horticulture Section, depicting the street tree planting scheme for the proposed development. In some cases, the requirement for a Landscape Plan may be waived. Request for waiver must be made to the Urban Forestry Health Technician.
6. That the Owner must enter into with the City of Hamilton and register, a Combined External Works and Consent Agreement, along with the current administrative fee (includes grading plan review) to address issues including but not limited to: reconstruction of the existing pavement on Church Street and Lodor Street, extension and upgrades of municipal storm sewer, lot grading and drainage to a suitable outlet on the conveyed and retained parcels (detailed grading plan required), erosion and sediment control measures (to be included on the grading plan); cash payment requirements for items such as any outstanding servicing cost for the existing municipal services adjacent to the property, street trees (City policy requires one (1) street tree/lot, inspection of grading, stormwater management infrastructure and securities for items that may include: lot grading (\$10,000.00 grading security), water and sewer services inspections, driveway approaches, relocation of any existing infrastructure/ utilities and any damage during construction (at the Owner's Cost), to the satisfaction of the Director of Development Engineering.
7. That the owner submits a Stormwater Management Brief c/w grading and servicing plans, prepared by a qualified professional, to demonstrate: • adequate stormwater management on-site to manage the increased runoff volumes and flow rates to the predevelopment levels up to the 100-year storm event, • No grading impacts to adjacent properties, • Soil characteristics are conducive to infiltration and sizing of Low Impact Development techniques (i.e., infiltration galleries), • A suitable emergency overland flow route; and, • Legal right to discharge the flow to adjacent lands. all to the satisfaction of the City's Director of Development Engineering.

8. The owner/applicant shall receive final and binding approval of minor variance application A25:133 (Planning Division – Zoning Review Section).
9. The owner/applicant shall submit survey evidence that the lands to be severed and the lands to be retained, including the location of any existing structure(s), parking and landscaping, conform to the requirements of the Zoning By-Law or alternatively apply for and receive final approval of the appropriate Planning Act application in order to seek relief from the requirements of the Zoning By-law (Planning Division – Zoning Review Section).
10. That the owner submits and receives approval of a Tree Protection Plan including the review fee as part of the Schedule of Rates and Fees, to the satisfaction of the Manager of Heritage and Urban Design. The Tree Protection Plan is to be prepared by a qualified tree management professional (i.e., certified arborist, registered professional forester, or landscape architect) in accordance with the City's Council adopted Tree Protection Guidelines (revised October 2010).
11. That the owner submits and receives approval of a Landscape Plan that shows the location of compensation trees to the satisfaction of the Manager of Heritage and Urban Design.

Notes:

The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances. If archeological resources are encountered, the proponent may be required to conduct an archaeological assessment prior to further impact in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Site specific Assessment and Stage 4 Mitigation of Development Impacts may be required as determined by the Ontario Ministry of Citizenship and Multiculturalism (MCM). All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the MCM.

Should deeply buried archaeological materials be found on the property during any of the above development activities the MCM should be notified immediately (416-212-8886). In the event that human remains are encountered during construction, the proponent should immediately contact both MCM and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-212-7499).

Loss of canopy fees are applied to public trees that have been approved for removal. Loss of canopy fees are determined in accordance with industry standard methodology; the Reproduction Method of the Trunk Formula Method (TFM), as per the Guide for Plant Appraisal, 10th Edition, Revised by the Council of Tree and Landscape Appraisers. The Reproduction Method of the TFM Appraisal provides a valuation based on reproducing an exact replica of the subject tree.

In order to clear conditions, the applicant will be required to make application for Ontario Building Code compliance and pay the relevant fees.

Due to the number of the road cuts for the proposed development the owner will be required to reconstruct the existing pavement structure on Church Street and Lodor Street, full width, adjacent to the subject lands.

We ask that the Owner agrees to physically affix the municipal numbers or full addresses to either the buildings or on signs in accordance with the City's Municipal Addressing By-law and Sign By-law, in a manner that is clearly visible from the road.