

DATE: February 24th, 2021

REPORT NO: COA-005-21

SUBJECT: **Recommendation Report**
Change of Conditions – Caistorville United Church
File No. B03/2020WL

CONTACT: Brian Treble, Director of Planning and Building

OVERVIEW:

- On October 28th, 2020, the COA granted approval of a severance application which proposed to sever Part 3 (church building) away from the cemetery.
- In order to have an adequate area of land available to support the church building, the church had previously been successful in having Church Street closed and conveyed with part of the Church Street road merged with adjacent lands to create a lot that generally complies with zoning.
- The end result of the severance and road closing process is 3 lots as follows:
 1. Part 1 and 2 on severance sketch – existing cemetery.
 2. Part 3 along with 4, 5, and 6 (former street) and Part 8, to be merged into a new and separate lot.
 3. Part 7 to merge with adjacent lands owned by Jeff Howard and Michelle Wedawin described as Lots 6 and 7 south of York Road and lot 1 west of Church Street.
- The road closing and conveyance materials are now with the Legal Counsels for all parties.
- In order to make the process work and to achieve the planned end result, the lawyers have concluded that the consent conditions should be amended.
- The wording of the decision was not quite consistent with the application. Although the end result is the same, the manor of conveyance makes a difference
- If the severed lands were Parts 3,4,5, 6, and 8 on the severance sketch attached then the end result could be achieved much more effectively,
- Therefore, at the advice of Township Legal Counsel, Staff recommend that the Committee change the conditions of provisional consent approval by amending condition 1 of the consent and adding in a new condition.

RECOMMENDATION:

That, the consent application, as approved on October 28th, 2020, be and is hereby modified by changing one of the conditions of consent approval as authorized by Section 53 (23) of the Planning Act to replace condition one with a new condition and add a new condition as follows:

1. That, condition 1 be replaced with the following new condition:
That, the severed lands of this consent application apply to Part 3 and the adjacent lands of Part 4, 5, 6, and 8 on the survey sketch. Therefore, the severed lands are Part 3, 4, 5, 6, and 8 and the retained lands are Parts 1 and 2.
2. That, the following new condition be added:
That, the consent is conditional upon the church acquiring the road allowance lands (Parts 4, 5, and 6) and creating easements as follows:
 - a) easement over Part 2 in favour of Part 3*
 - b) easement over Parts 4 and 5 in favour of Parts 1 and 2.*
3. FINALLY, Planning Staff advise that the Committee may determine the change of conditions to be minor.

STAFF REVIEW:

Section 53 (23) of the Planning Act authorizes a change to the conditions of draft/provisional consent approval at any time prior to final approval.

The wording of Section 53 (23) of the Planning Act states as follows:

'Change of conditions

(23) The council or the Minister, as the case may be, may change the conditions of a provisional consent at any time before a consent is given. 1994, c. 23, s. 32.'

This section is not used frequently, but the Township has used the change of conditions authority on a few previous opportunities.

Township Legal Counsel is recommendation to Township Planning staff that we seek your support to change conditions on this application.

The intended end result of this joint road closing and consent process is clear. There are 3 new proposed lots as follows:

1. Parts 1 and 2 on the severance sketch to be one lot to accommodate the existing cemetery.

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2. Parts 3,4,5, 6, and 8 to become one lot containing the existing church building.
3. Part 7 to be added to the adjacent lands owned by Jeff Howard and Michelle Wedawin.

In addition, there are a number of easements that need to be explicitly outlined and achieved jointly by the road closing and consent processes as follows:

1. Use of Part 2, by Part 3 for building maintenance purposes.
2. Easement over Part 4 in favour of Part 7 and the lands owned by Jeff Howard and Michelle Wedawin.
3. Easement over Part 7 in favour of Parts 3 and 4 for parking/traffic aisle purposes from time to time.
4. Easement over Part 5 and 4 for cemetery access from time to time.

By changing the conditions of the consent as noted above, Legal Counsel is better able to achieve the desired end result. Staff recommend that Committee endorse these two changes of condition.

AGENCY COMMENTS:

This file has been discussed with Township legal counsel and legal counsel for the church. The proposed change of conditions brings the decision in line with the application and allows legal counsel to register the lots as proposed for future ownership purposes.

PUBLIC COMMENTS:

Only the interested parties need to be involved in this process as the change of conditions only effects the internal process to merge the lands as originally intended. Section 53 of the Planning Act stats the following:

(24) **Notice.** – If the council or the Minister changes conditions of a provisional consent under subsection (23) after notice has been given under subsection (17), the council or the Minister shall, within 15 days of the decision, give written notice of the changes in the prescribed manner and containing the information prescribed to,

- (a) the applicant;
- (b) each person or public body that made a written request to be notified of changes to the conditions;
- (c) the Minister, with respect to a change of conditions by council, if the Minister has notified the council that he or she wishes to receive a copy of the changes of conditions; and
- (d) any other person or public body prescribed. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (8); 2015, c. 26, s. 33 (7).

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(26) **No notice required.** – The council or the Minister, as the case may be, is not required to give written notice under subsection (24) if, in the council's or the Minister's opinion, the change to conditions is minor. 1994, c. 23, s. 32, *part*; 2009, c.33, Sch. 21, s. 10(14).

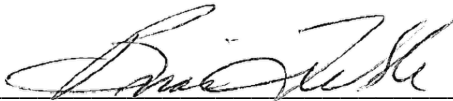
CONCLUSION:

Staff recommend that Committee agree to the change of conditions as noted in this report and that the change of conditions be considered minor.

ATTACHMENTS:

1. Severance Sketch

Prepared by:



Brian Treble, RPP, MCIP
Director of Planning and Building

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