



## Town of Niagara-on-the-Lake

1593 Four Mile Creek Road  
P.O. Box 100, Virgil, ON L0S 1T0  
905-468-3266 www.notl.com

**REPORT #:** CDS-24-115 **COMMITTEE DATE:** 2024-07-18  
**REPORT TO:** Committee of Adjustment **DUE IN COUNCIL:** N/A  
**SUBJECT:** Consent Application B-02/24 – 489 Regent Street

### 1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Consent Application B-02/24 for 489 Regent Street be approved, subject to the following conditions:
  - 1.1.1 That the owner/applicant provides a legal description of Part 1, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Director of Community and Development Services, for use in the issuance of the Certificate of Consent;
  - 1.1.2 That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Director of Community and Development Services, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 1, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
  - 1.1.3 That the owner/applicant, at their own expense, obtains and submits an appraisal for the purposes of payment of cash-in-lieu of parkland dedication, by a qualified appraiser, which is to be based on the fair market value of Part 1 using the direct comparison approach, to the satisfaction of the Manager of Finance; and that the owner/applicant pays to the Town a cash-in-lieu of parkland dedication, which shall be 5% of the appraised value of Part 1;
  - 1.1.4 That the owner/applicant enter into a Development Agreement with the Town, and that such Development Agreement will be registered on the title of Part 1, to the satisfaction of the Director of Community and Development Services, in which the owner/applicant shall agree:
    - 1.1.4.1 That Urban Design Committee review is required prior to issuance of a Building Permit for any new dwelling built on Part 1, and that any construction will be consistent with the Town's Official Plan and urban design guidelines and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development

Services;

- 1.1.4.2 That the owner submits an application to facilitate the removal of trees, in accordance with the Town's Tree By-laws and to the satisfaction of the Town's Urban Forestry Officer;
  - 1.1.4.3 That the owner implements the recommendations of the Tree Inventory and Preservation Plan, prepared by Jackson Arboriculture Inc., dated January 24, 2024, to the satisfaction of the Director of Community and Development Services and in consultation with the Town's Urban Forestry Officer; and
  - 1.1.4.4 Any agreements of Purchase and Sale or Lease of Part 1, which may be negotiated, shall contain a clause notifying the purchaser of the Development Agreement and the requirement to comply with the Development Agreement.
- 1.1.5 That the owner/applicant provide a lot grading plan for Part 1, completed by an Ontario Land Surveyor or Civil Engineer, and include existing grades on adjacent properties, to the satisfaction of the Chief Building Official;
  - 1.1.6 That the owner/applicant obtains any required building permit for the removal/demolition of the structure that was previously located on the existing concrete pad on Part 1, and that final inspection and closure of the permit is completed to the satisfaction of the Chief Building Official;
  - 1.1.7 That the Town Operations Department be provided with a copy of the deposited reference plan;
  - 1.1.8 That the existing water and sanitary sewer services currently serving Part 2 of the proposed severance be disconnected a minimum of 2 metres north of the proposed property line between Parts 1 and 2 and be reconfigured to serve Part 1 if a minimum separation of 2 metres from the property line can be achieved. If the minimum separation from the property line required above cannot be achieved, that the owner/applicant installs new water and sanitary sewer services wholly fronting Part 1 via application to the Town's Environmental Services Department;
  - 1.1.9 That the owner/applicant install new water and sanitary services wholly fronting Part 2 of the proposed severance via application to the Town's Environmental Services Department;
  - 1.1.10 That the owner/applicant obtains approval in the form of municipal entrance permits from the Town's Operations Department for a future driveway on Part 1 of the proposed severance, and for alterations, if any, made to the existing driveway on Part 2, to the satisfaction of the Town's Operations Department; and
  - 1.1.11 That the owner/applicant obtain final approval of Zoning By-law Amendment

Application ZBA-06-2024, to the satisfaction of the Director of Community and Development Services.

## **2. EXECUTIVE SUMMARY**

Staff have received a Consent Application submitted pursuant to Section 53(12) of the *Planning Act* proposing to sever one new residential lot to create a total of two residential lots. The new lot would be for a future single-detached dwelling, and the retained lot would continue to support an existing single-detached dwelling. Town Staff have reviewed the application and consider it to meet applicable planning legislation and policies, subject to the recommended conditions.

## **3. PURPOSE**

The applicant is proposing to create a total of two residential lots for residential use. Part 1 (severed lot) is proposed to have a lot frontage of 15.5 metres, and Part 2 (retained lot) is proposed to have a lot frontage of 19.3 metres. The existing single-detached dwelling on Part 2 is proposed to remain as existing, and is currently serviced by municipal water and sanitary connections. A future dwelling on the severed lot would be able to connect to municipal servicing.

The application drawing is attached as **Appendix I** to this report.

## **4. BACKGROUND**

### **4.1 Site Description and Surrounding Land Uses**

The subject lands are known municipally as 489 Regent Street, located on the west side of Regent Street, between Mary Street and John Street West, within the urban area of Old Town. The location of the subject lands is shown on **Appendix II** to this report.

Part 1 is proposed to have a lot area of 737 square metres and a frontage of 15.5 metres, while Part 2 is proposed to have a lot area of 927 square metres and a frontage of 19.3 metres. The existing dwelling on Part 2 is proposed to be retained. Municipal water and sanitary connections are existing and available to the subject lands.

The surrounding lands are characterized by residential and hospitality/commercial uses.

### **4.2 Zoning By-law Amendment Application**

Zoning By-law Amendment Application ZBA-06-2024 and By-law 4316FO-24 were approved by Town Council on June 25, 2024. It is anticipated that the Zoning By-law Amendment will receive final approval on July 17, 2024, subject to any appeals received. The site-specific by-law facilitates the proposed Consent application and includes provisions for lot frontages, garages, existing side yard setback and permission for existing operating apparatus to be located within the interior side yard. The Zoning By-law Amendment is attached as **Appendix III** to this report.

## 5. DISCUSSION / ANALYSIS

Section 3(5) of the *Planning Act, R.S.O. 1990, c. P.13* states that a decision of Council, in respect to any planning matter, shall be consistent with the Provincial Policy Statement and conform with the Provincial Plans.

Section 53(12) of the *Planning Act* states that Council, in determining whether a provisional consent is to be given, shall have regard to the matters under Section 51(24), and that conditions of consent may be imposed as set out in Sections 51(25), 51(26) and 51.1.

The subject lands are designated “Delineated Built-up Area” in the Niagara Official Plan (2022) and “Established Residential” and “Built-up Area” in the Town’s Official Plan (2017 Consolidation, as amended). The Regional and Town Official Plans generally encourage intensification within the Built-up Area. Single-detached dwellings are permitted.

The Growth Management Policies under Section 6A of the Town Official Plan provides that growth and development should be directed within the Town’s existing urban areas to provide for efficient use of land, services and infrastructure.

Section 6.33 of the Town Official Plan directs that existing trees must not be unnecessarily removed and that wherever possible, existing trees should be preserved and protected. The policies further state that within urban areas, where it is unavoidable that trees be removed, the proponent must plant trees of a similar or comparable species on the site or elsewhere in the Town, to the Town’s satisfaction. It is also recognized that this can be implemented through a condition of development.

A Tree Inventory and Preservation Plan Report, prepared by Jackson Arboriculture Inc., dated January 24, 2024, was submitted to evaluate the trees on or in proximity to the subject lands. The report considered all trees on and adjacent to the subject lands and concluded that out of the 15 trees on-site, four (4) are identified for removal on the severed lot to accommodate a future dwelling. The remaining trees on the retained and severed lots will be preserved and protected. The Tree Preservation Plan has identified tree protection zones in the form of fencing to ensure the retained trees are not impacted by development. Some of the trees proposed for removal could be defined as boundary trees, possibly shared with 481 Regent Street. The removal of boundary trees may require the submission of a “Declaration of Adjacent Property Owner” form where the adjacent owner is to consent to the tree to be removed under the provisions of By-law 5139-19, which regulates the destruction or injuring of trees on private property within the urban areas. The Town will require a separate application to facilitate any tree removals and will implement replanting conditions and fees at that time. Conditions have been recommended for the removal and protection of the trees.

The Residential Goals and Objectives outlined under Section 9.2 of the Town Official Plan includes ensuring that new development is appropriately located and compatible with surrounding land uses and encourages residential infill where it will contribute to the more efficient use of municipal services.

The proposed severance would facilitate an opportunity for appropriate residential infill development within an urban area. The new residential lot results in a more efficient use of the lands and existing infrastructure and services. The applicant's Streetscape Analysis, contained within the Planning Justification Report (dated March 2024), provided discussion and analysis on the block face between Mary Street and John Street West on both sides of Regent Street. A total of eight (8) properties were evaluated, including the subject lands. The frontages within these block faces vary between 16 metres and 30 metres. Staff are of the opinion that the retained and severed parcels would have appropriate frontages, being 19.3 metres for the retained lot and 15.5 metres for the severed lot, to accommodate the residential uses of the lands. The proposed lot configurations are comparable in size to surrounding residential lots in the immediate area.

The subject lands are zoned "Established Residential (ER) Site-Specific" through Zoning By-law 4316FO-24, an amendment to Zoning By-law 4316-09 (as amended). Part 1 (severed lot) contains site-specific provisions for lot frontage, garage setbacks and garage door widths, while Part 2 (retained lot) contains provisions for lot frontage, an existing interior side yard setback and to recognize the existing operating apparatus (air conditioning unit) within the northeastern interior side yard. The by-law received approval by Council on June 25, 2024, and is subject to a 20-day appeal period that would expire on July 17, 2024, should no appeals be received. The remaining provisions of the standard ER Zone and By-law 4316-09 will be maintained on both lots.

### **5.1 Town, Agency and Public Comments**

This application was circulated to all appropriate Town Departments and external agencies, and public notice of the application was provided as required by the *Planning Act*. The following responses were received:

#### Town Departments

Building – No objections. Conditions requested regarding a lot grading plan for Part 1 and a demolition permit for the structure that was previously on the concrete pad on Part 1.

Finance – No objections.

Fire and Emergency Services – No objections.

Heritage – No objections.

Operations – No objections. Conditions requested relating to servicing, entrance permits and trees.

#### Agencies

Enbridge – No objections.

Hydro One – No objections.

#### Public

No public comments were received at the time this report was prepared.

## 6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

### Pillar

1. Vibrant & Complete Community

### Priority

1.1 Planning for Progress

### Action

1.1 b) Planning for Progress Initiatives

## 7. OPTIONS

The Committee may approve, refuse or modify the requested Consent and/or conditions.

## 8. FINANCIAL IMPLICATIONS

Not applicable.

## 9. ENVIRONMENTAL IMPLICATIONS

The removal of up to four (4) trees on the subject lands may be required to facilitate a future single-detached dwelling on the severed lot (Part 1). A minimum of 11 existing trees are proposed to be retained on the subject lands. Town Staff recommends the implementation of a Development Agreement to ensure the preservation and protection of the trees.

## 10. COMMUNICATIONS

Once the Committee of Adjustment makes a decision on the application, notice of the decision will be given as required in the *Planning Act*. The decision of the Committee is subject to a 20-day appeal period following notice of the Committee's decision. If no appeals are received during the appeal period, the decision of the Committee is final.

Changes to provincial legislation have been made by way of Bill 23, and third-party appeals from private property owners are no longer permitted.

## 11. CONCLUSION

Community & Development Services Staff recommend approval of Consent Application B-02/24 for 489 Regent Street, subject to the recommended conditions, as the application meets the *Planning Act* requirements for lot creation, is consistent with the Provincial Policy Statement and complies with the Growth Plan, Niagara Official Plan, and Town Official Plan.

## 12. PREVIOUS REPORTS

- **CDS-24-073** – Public Meeting – 489 Regent Street (ZBA-06-2024) (May 7, 2024)
- **CDS-24-084** – Recommendation Report – 489 Regent Street (ZBA-06-2024) (June 11, 2024)

## 13. APPENDICES

- Appendix I – Application Drawing
- Appendix II – Location Map
- Appendix III – Zoning By-law Amendment 4316FO-24

Respectfully submitted:

**Prepared by:**



**Victoria Nikoltcheva  
Planner II**

**Reviewed by:**



**Aimee Alderman, MCIP, RPP  
Manager of Planning**