LAWRENCES
LAWYERS

MEMORANDUM

TO: City of Brampton Committee of Adjustment DATE: September 24, 2020

FROM: Heather M. Picken

RE: Manoj Kapil - Applications B19-017 and A19-121 for 67 Main Street S., Brampton

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I am the lawyer representing Tony and Chris Helik, in objection to the above-noted applications. I have submitted written comments dated August 13 and 17, 2020 in regard to these applications which are part of the record for this matter. I will summarize those comments here and include some additional comments which arise as a result of the arborists' reports and our client's planner's observations.

Since the last meeting of the Committee of Adjustment on August 18, 2020, the applicant has retained a new arborist who has prepared a new report, which again was peer reviewed by our client's arborist. Our client has also consulted a planner very well known to the City of Brampton, being Paul Snape, the City's retired Director of Development Services. Both of these experts have significant concerns with the applications, as do I from a legal perspective.

The concerns are as follows:

1. As Mr. Snape concludes, the primary issue here is whether the lot should be created with the issuance of a severance Consent in the first place. The Staff report makes no mention of the Heritage Conservation District Study which is an ongoing, comprehensive plan to address many aspects of a Heritage District, including whether or not there will be severance opportunities. An approval for this application would in Mr. Snape's opinion, "jeopardize the study, create undue pressure for more and similar severances and in so doing, change the character of the area that is sought to be preserved." The application is therefore PREMATURE, and pursuant to section 51(24) of the Planning Act, should not be considered.

2. Mr. Snape also is of the opinion that the real physical and visual impacts of this new proposed lot have not been properly analyzed by City of Brampton staff. The conventional design of houses in this area is that they are side by side facing the street and the side yards are the typical areas where there are mutual impacts from shadowing, overview and loss of privacy. The rear yards are areas where a certain amount of privacy should be expected, where these rear yards back on to other rear yards whose dwellings face on to opposing parallel streets. Not so with this proposed application which would result in complete loss of privacy with a 2 storey building and upper floor windows. This is a real impact to the neighbourhood and adjacent properties who will experience loss of privacy and significant negative visual impacts. Mr. Snape considers that a Consent approval would create a very dangerous precedent for other severance applications in the future.

3. Our client's arborists, Mary Ann Young and Jim Dougan from Dougan & Associates, have concluded that the applicant's arborist has not followed the City of Brampton's own tree protection fencing standards, and does not properly interpret the City's Tree By-Law or the Forestry Act, and does not consider the full implications of site development on existing trees. The City's Tree Preservation By-law 317-2012 requires a permit to injure trees and states that all boundary trees cannot be injured without the written consent of the adjacent property owner. Our clients' arborists conclude that a permit cannot be granted for the project since there are no consents that will be forthcoming from the adjacent owners in regard to the resultant injuries to the boundary trees. The applicant's arborist – both the prior one and the new one, have FAILED to state this important threshold consideration.

4. The staff report does not inform the Committee of Adjustment members that the Heritage Board refused to accept staff's report and the Applicant's submitted Heritage Impact Assessment. **Further, City staff report does not tell you that the Heritage Board actually passed a motion**

that the applications should be refused by the Committee of Adjustment. The initial deferral by the Committee in 2019 was done to address the Heritage impacts of the application. Why is City staff not providing the Committee members with the Heritage Board's input as you requested them to do?

5. As I have mentioned before, but I have to state again, the City staff's report fails to properly identify and/or explain the many prohibitive sections in the Official Plan and Downtown Secondary Plan that are breached by this proposed development. The Planning Act requires under section 51(24) consideration as to whether the proposal conforms to the Official Plan, and specifically the dimensions and shapes of the proposed lots and conservation of natural resources. In some cases, the relevant provisions in the City's planning documents are not mentioned at all, and in others, there is information added about the "intent" of the provisions which is nowhere to be found in the documents. These include:

(a) Section 5.17.9 of the Official Plan says that any new lot must have its frontage as being equal to one half of its depth. Staff says that the intention of this policy is to ensure that, "the lot being created is functional and appropriate for the residential use proposed." **This intent is NOT stated anywhere within the Official Plan.** If that were the case, as long as a lot "functions for residential use" the frontage and depth ratio would be of no importance. Why would the City include this provision, just to allow it to be routinely ignored? With respect, this is not a decision that is open to staff to make. Clearly, the proposed severed lot fails to meet this requirement.

(b) Section 5.6.1.1(iii) of the Downtown Brampton Secondary Plan says that the subdivision of existing lots which front on Main Street South shall be discouraged. Staff say that the intent of this policy is to preserve the historic streetscape character of Main Street South. Again, **this intent is not stated anywhere in the Downtown Secondary Plan or the Official Plan**. The heritage designation for 67 Main Street South is not just recognizing its streetscape. It recognizes the entire large lot, the dwelling and the beautiful large lawn. It recognizes all of the mature trees. Why is the application to cut this heritage lot in half just to build another large house crammed in behind two others which front on Elizabeth Street, so particularly unique that would cause the City to ignore this important planning policy? Again, the policy is there for a reason, and should not just be swiftly ignored.

(c) Section 5.17.10 of the Official Plan says that new lots must have similar depth and shape as the adjoining lots. Section 5.17.4 says that the proposed lot must be of a size and shape that is compatible with the adjacent areas. Section 5.17.17(v) says that the creation of the building lot must not have an adverse effect on the character of the surrounding area. The staff report does not discuss these specific provisions for you, but just says "the requested consent satisfies these criteria." How is that so? The new lot that staff defines as "flag and pole" is **NOT** of similar depth and shape as the adjoining lots; and

(i) If this application were approved, we would have a severed lot with an Elizabeth Street South orientation and address, that has no actual house frontage on Elizabeth Street South like most of the other neighbouring Elizabeth Street South houses do. Only the narrow driveway provides any frontage for the severed lot on Elizabeth Street South, but this is not house frontage. Moreover, there are no other flag and pole lots which have been severed from one of the larger Main Street South estate residential lots. The proposed severed lot is therefore NOT similar to the adjoining lots on Main Street South which really should be the direct comparator since the Elizabeth Street South houses are not within the Heritage District. The application fails to meet these important provisions of the Official Plan.

(ii) It is completely unreasonable and inconsistent for staff to place great importance on the narrow flagpole laneway part of the severed lot so that it meets the requirement for frontage on a public street in compliance with Official Plan policy 5.17.13, but then when analyzing whether the large variance in the required width of the lot is minor or not, staff says that we don't really have to count that narrow width which the zoning bylaw prescribes is the appropriate portion to be counted. In other words, it's OK to point to the laneway to meet the

frontage requirement on a public street, but in the next breath, you can dismiss it when looking at the required width of the lot.

(iii) For staff to then just pronounce that the applications won't have an adverse effect on the character of the surrounding area, without any justification for such statement, is just baffling. This development proposal for a 2-storey, over 5,000 square foot residence with a small 26 foot rear yard is not in any way comparable to the other adjacent lots. The overall size of the lot and its amenity space is miniscule compared to the adjacent lots at 71 Main Street South and 65 Main Street South and others along Main Street South. The development proposal will cause adverse noise and visual impacts and loss of privacy and sunlight to the neighbourhood – both during construction and after. It will destroy and damage neighbours' trees. It will eliminate the Applicant's existing lot's large parkland garden type heritage feature. The severed lot is of a size and orientation unlike other adjacent lots within the Heritage District, and any approval will be a precedent setting decision that could see further subdivision of Main Street South heritage value properties. All of this certainly has an adverse effect on the character of the surrounding area.

3. Again, we are also concerned about the condition that the access out to Elizabeth Street for the retained parcel should be for emergencies only. Why is this condition imposed? The TRCA states that because of the fact that the frontage of 67 Main is all within a flood zone, a rear easement out to Elizabeth Street for the retained lot as is proposed by the Applicant must be part of the development proposal (and it is). The wider, flatter - and safer - Elizabeth Street South access (about 18 feet in width) has been and should remain the primary access for 67 Main Street South, whether it is severed or not. The easement over our client's property is narrow (only 11 feet in width) and has a quick slope out to busy Main Street South. It is not appropriate for any kind of larger vehicles or trucks and is more difficult to navigate in the Winter months. Further, staff's analysis of section 5.6.1.1(ii) says "the severed parcel will have access from Elizabeth Street South" when she is making the argument that there will be no functional or visible impacts on Main Street South due to the severance. Then why turn around later when setting out proposed conditions and require the Elizabeth Street South access to be used only for emergencies? The City is indeed seeking to change the existing functional impact of the PRIVATE easement over my clients' property in requiring that easement to be the primary access point and virtually eliminating the Elizabeth Street South access for day to day use. The condition that the Elizabeth Street South access for the retained lot should only be used in emergencies should therefore be eliminated.

I maintain that there are insurmountable deficiencies from a planning and legal perspective associated with these applications. For the severance Consent application, these deficiencies are threshold requirements that have not been met under section 51(24) of the Planning Act. For the variance application, these deficiencies are clearly not minor in nature and do not meet the 4 tests by which the Committee is governed. The applications are not in keeping with the purpose and intent of the Official Plan or the Zoning By-law, and they are not desirable for the appropriate development of the area.

I urge the Committee of Adjustment to look at all of these serious deficiencies, and refuse the applications.

Yours very truly,

LAWRENCE, LAWRENCE, STEVENSON LLP

per: Heather M. Picken

Heather M. Picken