

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 11
COMMITTEE DATE: July 10, 2012	
SUBJECT/REPORT NO: Committee of Adjustment Consent and Minor Variance Applications SC/B-12:07 and SC/A-12:31 for the Property Located at 1311 Highway No. 8 (Stoney Creek), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12125) (Ward 11)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Danielle Stevens (905) 546-2424 Ext.1285
SIGNATURE:	

RECOMMENDATION

That Report PED12125, respecting Committee of Adjustment Consent and Minor Variance Applications SC/B-12:07 and SC/A-12:31, for the property located at 1311 Highway No. 8 (Stoney Creek), as shown on Appendix "A" to Report PED12125, supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information, and no further action by the City be taken.

EXECUTIVE SUMMARY

The applicant submitted Consent Application SC/B-12:07 to permit the creation of two building lots for single detached dwellings (see Appendix "B"). The proposed severed parcel has a frontage of 13.9 metres and an area of 785.9 square metres. The proposed retained parcel contains the existing single detached dwelling, and has a frontage of 13.9 metres and an area of 820.3 square metres. The consent application was initially considered before the Committee of Adjustment on March 22, 2012, and was tabled until the subsequent meeting of April 5, 2012. Comments to the Committee

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of Adjustment from staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, in conformity to the Hamilton-Wentworth Official Plan, satisfied the lot creation policies of the City of Stoney Creek Official Plan, and met the tests of Section 51 (24) of the Planning Act.

In conjunction with the consent application, the applicant submitted Minor Variance Application SC/A-12:31 to facilitate the creation of the two building lots for the existing and proposed dwellings, notwithstanding that a minimum lot frontage of 13.9 metres shall be provided for both the lands to be retained and the lands to be conveyed instead of the minimum required lot frontage of 18.0 metres.

The minor variance application was initially considered before the Committee of Adjustment on March 22, 2012, and was tabled until the subsequent meeting of April 5, 2012. Comments to the Committee of Adjustment from staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, in conformity to the Hamilton-Wentworth Official Plan, satisfied the four tests set out in Section 45(1) of the Planning Act in that the variance was determined to be minor in nature, desirable for the appropriate development or use of the land, and maintained the general intent and purpose of the Stoney Creek Official Plan and Stoney Creek Zoning By-law No. 3692-92.

The Committee of Adjustment denied the applications for the reasons provided in Appendices "C" and "D". The decision has been appealed to the Ontario Municipal Board (OMB) by the applicant. To date, an OMB hearing has not been scheduled.

Alternatives for Consideration - See Page 8.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: Planning and Economic Development Department staff supported the subject applications. However, if Council wishes to support the Committee of Adjustment's decision to deny the applications, the City must retain an outside planning consultant, and any other experts who can professionally support the denial. The Hearing would take approximately one to three days. If an outside planning consultant is retained, the costs would be approximately \$3,000.00 to \$5,000.00 for each day of a Hearing. In keeping with the funding source for other appeals where Council authorizes the retainer of outside consultants, the amount required to retain such experts to support the City's position before the OMB would be funded first, through the 2012 Budget; second, through year-end Corporate Surpluses; and lastly, through the Tax Stabilization Reserve.

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Staffing: One representative from Legal Services would be required for preparation and attendance at the OMB Hearing. One member of planning staff would attend as an expert witness at the Hearing should Council support Option 2.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND (Chronology of events)

Roles and Responsibilities of the Committee of Adjustment (PD02116(a))

In December, 2002, City Council endorsed a staff report related to the Roles and Responsibilities of the Committee of Adjustment. The recommendations included the following:

“That the Planning and Development Department be authorized and directed to prepare an Information Report, to the Committee of the Whole, when an appeal is made to the Ontario Municipal Board of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a Report, Council may determine its position on the Committee of Adjustment decision, and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

Proposal

The subject property is located at 1311 Highway No. 8 (Stoney Creek) (see Appendix “A”). The severance application proposes to convey a parcel of land, having a frontage of 13.9 metres, a depth of 56 metres, and an area of 785.9 square metres for a residential building lot, and to retain a parcel of land, having a frontage of 13.9 metres, a depth of 58 metres, and an area of 820.3 square metres containing the existing dwelling for residential purposes, as shown on Appendix “B”.

To facilitate the requested severance and proposed development, the applicant requested a minor variance seeking relief from the required 18 metre frontage to a 13.9 metre frontage for the severed and retained parcels (see Appendix “D”).

The applications were reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the former City of Stoney Creek Official Plan, and former City of Stoney Creek Zoning By-law No. 3692-92. Planning staff recommended approval of the applications on the basis of conformity with the above noted policy documents. Additionally, the consent application meets the tests set out in Section 51(24) of the Planning Act.

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As the Provincial Policy Statement and the Hamilton-Wentworth Official Plan both defer to the Local Official Plans to identify intensification areas and to determine the appropriate policies to govern those areas, staff recommended approval of the consent application, as it maintains the intent and purpose of the severance policies in Sections C.1 and C.2 of the City of Stoney Creek Official Plan and, as such, is consistent with the policies of the Provincial Policy Statement.

Staff recommended approval of the minor variance application, to facilitate the consent application, as the variance was determined to be minor in nature, desirable for the appropriate development or use of the land, and maintained the general intent and purpose of the Stoney Creek Official Plan and Stoney Creek Zoning By-law No. 3692-92.

The Committee of Adjustment, at its meeting of April 5, 2012, denied the severance application (see Appendix “C”) and the minor variance application (see Appendix “D”).

POLICY IMPLICATIONS

Places to Grow

Staff notes that the subject lands are located in a built-up area, as defined by the Places to Grow Plan. Policy 2.2.3.1 states that by the year 2015, and for each year thereafter, a minimum of 40% of all residential development occurring annually within each upper- and single-tier municipality will be within the built-up area.

Policy 2.2.2.1(a) states that population and employment growth will be accommodated by directing a significant portion of new growth to the built-up areas of the community through intensification. In addition, Policy 2.2.2.1(b) states that population and employment growth will be accommodated by focusing intensification in intensification areas. Furthermore, Policy 2.2.3.6 sets out that:

“All municipalities will develop and implement, through their Official Plans and other supporting documents, a strategy and policies to phase-in and achieve intensification and the intensification target. This strategy and policies will:

- (c) Identify intensification areas to support achievement of the intensification target.
- (e) Recognize urban growth centres, intensification corridors, and major transit station areas as a key focus for development to accommodate intensification.
- (f) Facilitate and promote intensification.

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- (g) Identify the appropriate type and scale of development in intensification areas.
- (i) Plan for a range and mix of housing, taking into account affordable housing needs.”

Accordingly, staff is satisfied that the proposed severance and minor variance is consistent with the policies focusing growth in the built-up area.

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that focus growth in Settlement Areas, Policy 1.1.3.1.

Hamilton-Wentworth Official Plan

The subject property is designated as “Urban Area” in the Hamilton-Wentworth Official Plan. Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.

The Hamilton-Wentworth Official Plan defers to the former Local Official Plans to define the ranges of urban uses and development that are appropriate for the lands that they apply to.

Based on the foregoing, staff is satisfied that the proposed severance and variance conform to the Hamilton-Wentworth Official Plan.

City of Stoney Creek Official Plan

The lands are designated “Winona Urban Community” on Schedule “A”- General Land Use Plan and “Low Density Residential” on Schedule “A2”- Winona Urban Community Secondary Plan in the City of Stoney Creek Official Plan.

Section A.1.1 of the Stoney Creek Official Plan sets out the objectives for the Residential areas. The intent of the plan for residential areas is to provide a range of housing types and densities of varied styles (Policy A.1.1.2), and to ensure that new residential redevelopment is compatible with surrounding existing and proposed development (Policy A.1.1.3). In addition, Section C.1 sets out the general provisions governing land division with specific tests set out in Policy C.1.1:

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“Severances within the City will be given consideration only if the applicant demonstrates that his application for consent is warranted and in conformity with the following provisions:

- (a) Consents shall only be permitted where the application complies with the policies of this Plan, the Regional Official Plan, the Niagara Escarpment Plan, where the lands are located within the Escarpment Natural, Escarpment Protection, or Escarpment Rural Area, as shown on Schedule "B", and the requirements of the Planning Act. Prior to the issuance of the Land Division Committee's certificate, the consent must conform with the appropriate Zoning By-law, where applicable.
- (b) Access to Provincial Highways and Regional Roads must conform with access requirements of the Provincial Ministry of Transportation and Communications and the Regional Access By-law.
- (c) Any lot created shall have direct frontage on a public road of an acceptable standard of construction.
- (d) Consent for severance shall not create a traffic hazard.
- (e) The applicant must prove to the appropriate authority that a sufficient potable ground water supply is available for the intended use of the land prior to the endorsement of the deed by the Secretary of the Land Division Committee.
- (f) Consent for severances shall be discouraged in woodlots.
- (g) Extensions to linear or ribbon development along roadways are to be discouraged.”

Section C.2 further sets out five tests specific to severances in the Urban Policy Areas. The tests require a property to be severed to have full municipal services, not to expand the Urban Policy Area beyond that which is designated in the Official Plan, must not interfere with land assembly, must comply with the staging policies of the Official Plan, and must be in accordance with the Niagara Escarpment Plan. The proposed severance application satisfies all five of these tests.

The proposed severance supports the intent of the Residential policies of the Stoney Creek Official Plan, and meets the tests set out in Sections C.1 and C.2. Accordingly, staff recommended approval of the consent application.

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The requested variance is required to facilitate the consent application. The variance requested maintains the objectives for the “Residential” areas, as set out in Section A.1.1. Accordingly, the application maintains the general intent and purpose of the Official Plan, and staff recommended approval.

City of Stoney Creek Zoning By-law No. 3692-92

The lands are zoned Single Residential “R1” Zone in Stoney Creek Zoning By-law No. 3692-92. Both the lands to be retained, and the lands to be conveyed, meet the minimum lot area requirement of 600 square metres. However, neither the severed parcel, nor the retained parcel meets the frontage required in the “R1” Zone (13.9 metres, whereas the By-law requires 18.0 metres).

The relief requested for the proposed development is considered to be minor in nature, desirable for the appropriate development of the properties, and maintains the general intent and purpose of the Official Plan and Zoning By-law.

RELEVANT CONSULTATION

- Legal Services Division in respect to staffing and costs if Council supports the Committee of Adjustment’s position.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The application proposes to sever a parcel for infill development, which is consistent with the policies of the Provincial Policy Statement and Places to Grow, and conforms with the Hamilton-Wentworth Official Plan and the City of Stoney Creek Official Plan. The severance also meets the tests set out in Section 51(24) of the Planning Act.

The requested variance is considered to be minor in nature, desirable for the appropriate development of the land, and maintains the general intent and purpose of the Stoney Creek Official Plan and Stoney Creek Zoning By-law No. 3692-92, which satisfies the four tests of a minor variance set out in Section 45(1) of the Planning Act.

Based on the foregoing, staff recommended approval of the applications by the Committee of Adjustment.

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ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Option 1

Council may instruct Legal Services to attend the OMB Hearing, in support of the Committee of Adjustment decisions, and to retain outside professional(s). If Council authorizes the retainer of outside consultants, the amount required to retain such experts to support the City's position before the OMB would be funded first, through the 2012 Budget; second, through year-end Corporate Surpluses; and lastly, through the Tax Stabilization Reserve.

Option 2

Council may decide to support the appeal against the Committee of Adjustment's decisions to deny the applications, and direct Legal Services to attend the OMB Hearing in support of the appeal and to use City Planning staff as its professional witness.

Option 3

Council may decide to not send Legal Services to the OMB, either in support of the Committee's decisions, or against the applicant's appeal.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Healthy Community

- ◆ Plan and manage the built environment.
- ◆ Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services).

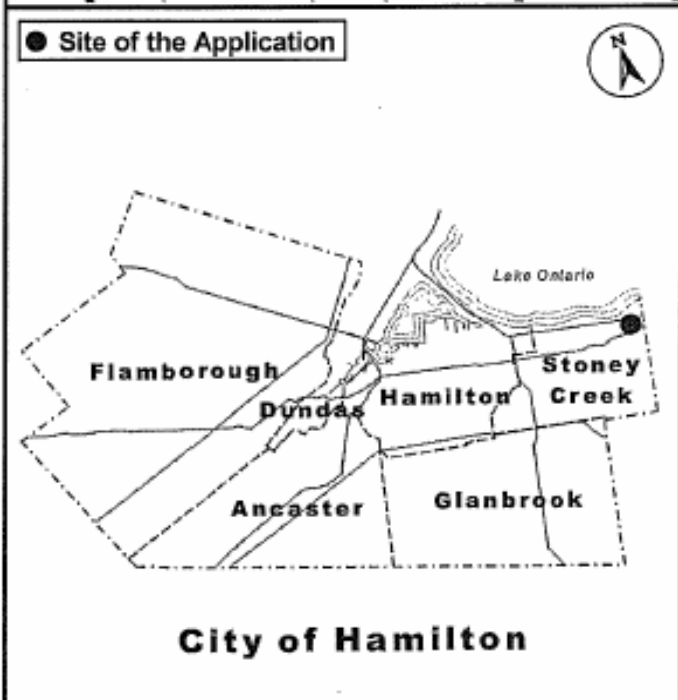
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APPENDICES / SCHEDULES

- Appendix "A": Location Map
- Appendix "B": Application Sketch
- Appendix "C": SC/B-12:07 Committee of Adjustment Decision
- Appendix "D": SC/A-12:31 Committee of Adjustment Decision

:DS

Attachs. (4)



Committee of Adjustment

Subject Property

1311 Highway #8

- Lands to be Retained
- Lands to be Severed

File Name/Number:
SC/B-12-07

Date:
March 8, 2012

Technician:
KA

Map Not to Scale

Appendix "A"





Committee of Adjustment
Hamilton City Hall
71 Main Street West, 5th floor
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENTLAND SEVERANCE

APPLICATION NO. SC/B-12:07

SUBMISSION NO. B-07/12

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

AND IN THE MATTER OF the Premises known as 1311 Highway #8, formerly in the City of Stoney Creek, Now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the owner Fatmir Murati, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the severance of a vacant parcel of land (shown as Part 2) measuring approximately 13.9m in width, 56m in depth with an area of approximately 785.9m² for residential purposes and to retain a parcel of land (shown as Part 1) measuring approximately 13.9m in width, 58m in depth with an area of approximately 820.3m² containing the existing dwelling for residential purposes.

Note that this application will be heard with the related variance application SC/A-12:31.

THE DECISION OF THE COMMITTEE IS:


That the said application is **DENIED** for the following reasons:

1. After conducting a site inspection of the property and surrounding area, the Committee is of the opinion that the subject lot being undersized in terms of lot frontage is not in the interest of property planning and development and is not in keeping with the character of this neighbourhood.
2. The proposal does not appear to be in the interest of proper planning and development for the area.
3. The proposal does not comply with the requirements of the Zoning By-law.

DATED AT HAMILTON this 5th day of April, 2012.



I. Dunlop (Acting Chairman)



D. Smith




W. Pearce



L. Gaddy



D. Drury



V. Abraham



K. Audzys

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS **April 12th, 2012.**

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS **May 2nd, 2012.**

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.



Committee of Adjustment
Hamilton City Hall
71 Main Street West, 5th floor
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. SC/A-12:31
SUBMISSION NO. A-31/12

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 3692-92, of the City of Hamilton (formerly Stoney Creek), Section 6.2.

AND IN THE MATTER OF the Premises known as 1311 Highway #8, Formerly in the City of Stoney Creek, now in the City of Hamilton and in a "R1" (**Single Residential**) district;

AND IN THE MATTER OF AN APPLICATION by the owner Fatmir Murati, for relief from the provisions of the Zoning By-Law No. 3692-92, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the conveyance of a vacant parcel of land (shown as Part 2) and to permit a lot containing an existing single family dwelling to be retained (shown as Part 1) notwithstanding that a minimum lot frontage of 13.9m shall be provided for both the lands to be retained (Part 1) and for the lands to be conveyed (Part 2) instead of the minimum required lot frontage of 18.0m.

NOTE:

- i) The variance is necessary to facilitate Consent Application SC/B-12:07.
- ii) A portion of the existing dwelling, which is presently located on the lands to be conveyed (Part 2), is intended to be demolished. The remaining portion of the single family dwelling with proposed additions, located on the lands to be retained (Part 1), is intended to maintain the minimum required side yard setback of 1.25m from the new easterly side lot line. It is assumed that the single family dwelling on Part 1 shall contain an attached garage. The dwelling and additions located on the lands to be retained (Part 1) and the intended single family dwelling on the lands to be conveyed (Part 2) shall conform to the "R1" zone regulations or further variances shall be necessary.
- iii) No building or elevations plans have been provided for the single family dwelling together with proposed additions to be located on Part 1.

THE DECISION OF THE COMMITTEE IS:

That the said application is **DENIED** for the following reasons:


1. The Committee having regard to the evidence is of the opinion that the relief requested is beyond that of a minor nature.
2. The relief requested is undesirable for the appropriate development of the land and building and is inconsistent with the general intent and purpose of the By-law and of the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee having regard to the intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.
4. The Committee having regard to the evidence is of the opinion that the proposed application would create a situation that is out of character with the neighbourhood.

DATED AT HAMILTON this 5th day of April, 2012.



I. Dunlop (Acting Chairman)

SC/A-12:31
Page 2




W. Pearce



D. Drury



D. Smith



V. Abraham



L. Gaddy



W. Audziss

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD
MAY BE FILED IS April 25th, 2012.

NOTE: This decision is not final and binding unless otherwise noted.