



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 13, 2015
SUBJECT/REPORT NO:	Application for an Amendment to Township of Glanbrook Zoning By-law No. 464 for Lands Known as 228 Seneca Avenue, Glanbrook (PED14146(a)) (Ward 11)
WARD(S) AFFECTED:	Ward 11
PREPARED BY:	Delia McPhail (905) 546-2424 Ext. 6663
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That approval be given to **Amended Zoning Application ZAR-13-015, by Doreen Bardoel**, for a change in zoning from the Existing Residential “ER” Zone to the Existing Residential – Holding “H-ER-282” Zone, Modified, to permit a temporary second dwelling unit on the lands known as 228 Seneca Avenue (Glanbrook). A Holding Provision will be applied to the lands prohibiting development until conditions are met, on lands located at 228 Seneca Avenue (Glanbrook), as shown on Appendix “A” to Report PED14146(a) on the following basis:

- (a) That the draft By-law, attached as Appendix “B” to Report PED14146(a), which has been prepared in a form satisfactory to the City Solicitor, be adopted by City Council;
- (b) That the amending By-law be added to Schedule “E” of Township of Glanbrook Zoning By-law No. 464;
- (c) That the proposed change in zoning is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe (Places to Grow), the Urban Hamilton Official Plan, the Region of Hamilton-Wentworth Official Plan and the Township of Glanbrook Official Plan;
- (d) That the amending By-law apply the following Holding Provision, in accordance with Section 36 (1) of the Planning Act, R.S.O., 1990, by introducing the Holding Symbol “H” as a suffix to the proposed Zone. The Holding Provision “H” shall not be removed until such time as the following conditions have been completed:

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- (i) That the Owner has entered into and registered on title a Development Agreement with the City of Hamilton, to the satisfaction of the Manager of Development Planning, Heritage and Design;
- (ii) That a servicing plan for the temporary second dwelling unit be submitted and approved, to the satisfaction of the Manager of Engineering Approvals; and,
- (iii) That the Owner has applied for and received final Site Plan Approval, to the satisfaction of the Manager of Development Planning, Heritage and Design.

EXECUTIVE SUMMARY

The owners of the subject property have applied to legally recognize the conversion of the detached garage as a secondary dwelling unit for their own personal use, as their son and his family reside in the principal dwelling. Staff have amended the application to require the required parking to be located within the private property limits. The draft By-law has been prepared to allow the use on a temporary basis for a period of three years, renewable for a period of three years, subject to a subsequent rezoning approval. The draft By-law includes a modification to recognize the size and existing location of the detached garage as an accessory structure, and permits the accessory structure to be used temporarily as a second dwelling unit. Additional modifications include the prohibition of any new accessory buildings or structures, as well as the size, location, and surface treatment of the parking spaces, associated with the temporary second dwelling unit. An “H” Holding Provision has been applied on the lands to require a Development Agreement to be entered into and registered on title, as well as the completion of a servicing plan and a Site Plan Application, to the satisfaction of staff.

The proposal has merit and can be supported as the application is consistent with the Provincial Policy Statement (PPS), and it conforms to the Growth Plan for the Greater Golden Horseshoe (Places to Grow) and the Urban Hamilton Official Plan (UHOP).

Alternatives for Consideration – See Page 19

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: As required by the Planning Act, Council shall hold at least one Public Meeting to consider an application for approval of a change in Zoning.

HISTORICAL BACKGROUND

Proposal:

Since 2011, the owner of the subject lands has received two Orders to Comply from Municipal Law Enforcement staff, due to the illegal conversion of the existing detached garage to a dwelling unit, along Spalding Drive (Appendix "C"). The Request for Formal Consultation Application cited the purpose of the secondary dwelling unit was to allow family members to care for an elderly mother.

In April 2013, the subject rezoning application was received to legally recognize the existing accessory building containing a dwelling unit, to be utilized by the owners of the subject property, and to retain the existing driveway adjacent to Spalding Drive. The owners' son, daughter-in-law, and family would continue to reside in the principal dwelling, while the owners (i.e. parents) would occupy the secondary dwelling unit on a seasonal basis. The proposal would allow the owners to remain close to their family and friends, having resided on the property for a number of years (Appendix "D"). The original submission sought to reduce the parking requirement for the secondary dwelling unit to one space and to establish it within the private property limits, whereas the existing two parking spaces are within the road allowance.

Following the initial review of the application, staff advised the applicant that the proposal of a second dwelling unit would not conform to the applicable and in force Official Plan policies, unless the second dwelling unit was considered on a temporary basis. Based on the information provided by the agent regarding the rationale for the second dwelling unit, it was suggested by staff that the proposal may be considered a Garden Suite and the application was amended by the applicant, accordingly.

In July 2014, staff brought forward Planning Committee Report PED14146, which supported the proposal on a temporary basis as a Garden Suite, but a decision regarding the application was not made, as the matter was tabled for future consideration. Legal Counsel confirmed that because the building has a basement, it could not be considered a Garden Suite, as defined in the Planning Act, which is intended to be portable. Therefore, staff have amended the application to recommend the approval of a second dwelling unit on a temporary basis, subject to the removal of an "H" Holding Provision.

The site contains a principal dwelling, a detached garage and an accessory structure (secondary dwelling unit).

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Chronology:

- April 19, 2013: Application to amend the Zoning By-law was received.
- May 17, 2013: Application deemed complete.
- May 31, 2013: Public Notice Sign posted on the property.
- June 5, 2013: Notice of Complete Application and Preliminary Circulation was sent to 55 landowners within 120 m of the subject lands.
- August 16, 2013: Urban Hamilton Official Plan is in force and effect.
- January 29, 2014: Application is amended to permit a Garden Suite through a Temporary Use By-law.
- June 11, 2014: Public Notice Sign was updated to reflect Planning Committee Date.
- June 20, 2014: Notice of Public Meeting given in accordance with the Planning Act.
- July 8, 2014: Planning Committee deferred the subject application to the August 12, 2014 meeting of Planning Committee, in order to allow the applicant and staff to discuss concerns with respect to the Staff Report, and due to concerns for proper Notice of Public Meeting being given.
- August 12, 2014: Prior to the commencement of Planning Committee Meeting, Legal Counsel advised that the proposal is appropriately defined as a Second Dwelling Unit.
- August 29, 2014: Application reverted back to the initial proposal of a Second Dwelling Unit on a permanent basis.
- November 10, 2014: Letter received from the agent requesting the application be assessed against the Urban Hamilton Official Plan.
- December 19, 2014: Notice of Public Meeting given in accordance with the Planning Act.

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Location: 228 Seneca Avenue (Glanbrook)

Owner/Applicant: Doreen Bardoel
Agent: IBI Group (John Ariens)

Property Description: Lot Area: 0.14 ha
Lot Frontage: 22.86 m
Lot Depth: 60.96 m

EXISTING LAND USE AND ZONING:

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands:</u>	Single Detached Dwelling with Detached Garage Accessory Building Containing a Dwelling Unit	Existing Residential “ER” Zone

Surrounding Land Uses:

North	Single Detached Dwellings	Existing Residential “ER” Zone
South	Single Detached Dwellings	Existing Residential “ER” Zone
East	Single Detached Dwellings	Existing Residential “ER” Zone
West	Single Detached Dwellings	Existing Residential “ER” Zone

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Policy Statement (2014)

The application has been reviewed with respect to the Provincial Policy Statement (PPS). The application is consistent with those policies that promote efficient development and land use patterns, including Policy 1.1.1, which states that:

- "1.1.1 Healthy, liveable, and safe communities are sustained by:
- (a) Promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term;
 - (b) Accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons), and other uses to meet long-term needs;
 - (c) Avoiding development and land use patterns, which may cause environmental or public health and safety concerns; and,
 - (f) Improving accessibility for persons with disabilities and the elderly by removing and/or preventing land use barriers which restrict their full participation in society."

Within the Settlement Area policies of Section 1.1.3, planning authorities shall identify appropriate locations and promote opportunities for intensification and redevelopment within the existing built-up stock or area, taking into account appropriate development standards and compact form, while maintaining public health and safety. Furthermore, the housing policies within Section 1.4 promote the provision of a range and mix of housing types and densities, to meet the needs of current and future residents, such as intensification through second units, as in Policy 1.4.3 (b) 2, where adequate infrastructure is in place.

Policy 1.2.6.1 requires that major facilities (such as transportation corridors) and sensitive land uses are appropriately designed, buffered, and separated from each other to prevent adverse impacts, such as noise. Further Policy 1.6.9.2 (a) prohibits new residential development in areas near airports above the 30 Noise Exposure Forecast (NEF) contour. The subject lands are located between the 28-29 NEF of the John C. Munro Hamilton International Airport and, therefore, new residential development is permitted by the policies of the PPS.

Based on the foregoing, the proposal is consistent with the policies of the PPS.

Growth Plan for the Greater Golden Horseshoe (Places to Grow)

The application has been reviewed with respect to the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow). The subject lands are located in the built-up area, as defined. Staff consider the application to be consistent with the policies that manage growth and direct general intensification to the built-up areas, as per the Policies contained in Sections 2.2.2 and 2.2.3.

As a result, the proposal conforms to Growth Plan for the Greater Golden Horseshoe (Places to Grow).

Urban Hamilton Official Plan

Staff note that the original application was received on April 19, 2013, which is prior to the approval of the UHOP by the Ontario Municipal Board on August 16, 2013. Therefore, the review of the application would be subject to the policies of the Hamilton-Wentworth Official Plan and Township of Glanbrook Official Plan. However, the agent provided written confirmation on November 10, 2014, that his client has no objection to the review of the application solely against the policies of the UHOP, which are in force and effect. As such, a review of the application against the policies of the UHOP is provided below.

The subject lands are identified as “Neighbourhoods” on Schedule “E” – Urban Structure and are designated “Neighbourhoods” on Schedule “E-1” – Urban Land Use Designations of the UHOP. The following policies, amongst others, are applicable to the subject application for an Amendment to the Zoning By-law.

Lands designated “Neighbourhoods” are intended to function as complete communities, providing a range of residential dwelling types and densities, as well as local commercial and local institutional uses. Therefore, the existing single detached dwelling and accessory structures are permitted.

When considering opportunities for intensification within the Neighbourhoods designation, Sections B.2.4.1.4 and B.2.4.2.2 require that proposals are evaluated against the following considerations, among others:

- “B.2.4.1.4 a) a balanced evaluation of the criteria in b) through g) as follows;
- b) the relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built form;
 - c) the development’s contribution to maintaining and achieving a range of dwelling types and tenures;

- d) the compatible integration of the development with the surrounding area in terms of use, scale, form and character;
- e) the development's contribution to achieving the planned urban structure as described in Section E.2.0 – Urban Structure;
- f) infrastructure and transportation capacity; and,
- g) the ability of the development to comply with all applicable policies.

B.2.4.2.2 a) the matters listed in Policy B.2.4.1.4;

- b) compatibility with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic, and other nuisance effects;
- j) infrastructure and transportation capacity and impacts.”

In light of the foregoing policies, the proposal of a second dwelling unit within the existing accessory structure (i.e. garage) provides a form of intensification that utilizes the existing built form. The size of this flankage lot is large enough to accommodate the proposed second dwelling unit, which is within the existing single storey accessory building with basement, and is of an appropriate size and height to maintain the character of the neighbourhood. The addition of the proposed second dwelling unit also contributes to providing a range of dwelling types and tenures. The location of the accessory building is adjacent to Spalding Drive, which allows direct access to the unit, and the relocation of the parking spaces within the private property limits will further integrate the development within the established pattern of the surrounding area. In terms of servicing and transportation infrastructure, sufficient capacity exists within the system to service the second dwelling unit. Based on the foregoing, the proposal meets the above intensification policies of the UHOP.

The Housing Policies found in Section B.3.2 recognize the changing needs of households and encourage the provision of a range of housing types to meet the requirements of all current and future residents.

“B.3.2.4.4 Second dwelling units shall be permitted within single and semi-detached dwellings in all Institutional, Neighbourhoods, Commercial and Mixed Use designations, as shown on Schedule E-1 – Urban Land Use Designations, and shall be subject to zoning regulations.

C.3.2.2 The following uses shall be permitted in the Neighbourhoods, Commercial, Mixed Use, and Institutional designations:

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- d) A second dwelling unit shall be permitted within single and semi-detached dwellings provided it complies with all applicable policies and the Zoning By-law.

E.3.2.3 The following uses shall be permitted on lands designated Neighbourhoods on Schedule E-1 – Urban Land Use Designations:

- a) residential dwellings, including second dwelling units and housing with supports.”

As per the UHOP policies, second dwelling units are permitted within single and semi-detached dwellings, subject to zoning regulations. However, the subject proposal concerns the establishment of a second dwelling unit within a detached accessory structure, and not within the single detached dwelling located on the subject property.

Policy No. B.3.2.4.5 states that:

“B.3.2.4.5 Subject to the City undertaking a study, in certain conditions it may be appropriate to permit new detached second dwelling units on lots of existing single detached dwellings.”

Staff note that such a study has not yet been undertaken, as it will form part of the background research for the new residential zones. In the absence of this study, the above policy indicates that there may be certain conditions under which a new detached second dwelling unit may be permitted on lots of existing single detached dwellings.

This application calls for the recognition of the existing second dwelling unit in the existing accessory structure. Although the proposal concerns a second dwelling unit not located within the principal dwelling (i.e. detached garage adjacent to Spalding Avenue), staff are satisfied that, through the Site Plan review process, the proposed development will become more compatible and integrated with the surrounding neighbourhood. Staff find it appropriate to require approval of a Site Plan Control Application to recognize the existing second dwelling unit. Although the detached garage has formed part of the streetscape along Spalding Drive for the past 35 years, the proposed change in use warrants modifications to how the second dwelling unit is accessed and serviced by water and wastewater. This will be discussed further in the Analysis and Rationale for Recommendation Section of the Report.

In light of the foregoing policy review, staff find that the proposal conforms to the intensification and second dwelling unit policies of the UHOP.

The policies in the UHOP pertaining to the requirements of development in the vicinity of John C. Munro International Airport are still under appeal and, therefore, the operable policies are those of the Region of Hamilton-Wentworth Official Plan and the Township

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of Glanbrook Official Plan. The subject lands are located within the 28-29 NEF contours of the John C. Munro Hamilton International Airport, and, according to Policy C.4.8.8 and Table C.4.8.1, all new residential development within the 28-35 NEF contours shall be prohibited. However, these policies have been appealed and are not in effect. Therefore, Policy C-4.3.5.3 of the Hamilton-Wentworth Official Plan applies, which states that in order to minimize future conflict between the operation of the airport and surrounding land uses:

- “C-4.3.5.3 a) No sensitive land uses are permitted to be developed within areas exposed to noise disturbance levels greater than 28 NEF, except where the lands are currently designated Urban; and,
- b) Any sensitive land uses permitted to be developed between 25 and 28 NEF contours will be required to implement noise mitigative measures in accordance with Provincial and Federal guidelines/standards.”

Based on the foregoing, the proposal does meet the applicable noise policies of the Hamilton-Wentworth Official Plan, since the property is designated “Urban”.

Policy F.1.11.3 of the UHOP provides a list of requirements that must be met in order to permit a temporary use, Policy F.1.11.4 prescribes the maximum duration of the temporary use, and Policy F.1.11.5 requires the temporary use to cease and shall not be considered legal non-conforming.

“F.1.11.3 The proposed temporary use shall:

- a) be compatible with uses on adjacent and nearby properties;
- b) have no adverse impact on the traffic, transportation or parking facilities in the area;
- c) comply with the Minimum Distance Separation requirements established by the Province; and,
- d) have sufficient services such as roads, storm water drainage, water supply and sanitary sewage systems to accommodate the proposed temporary use.

F.1.11.4 A temporary use by-law may be permitted for a period of time which shall not exceed three years, except for garden suites which shall not exceed ten years. However, Council may, by By-law, extend such period of time for further periods of time not exceeding three years each, during which the temporary use is authorized.

F.1.11.5 Upon expiration of the temporary use by-law, uses which may have been permitted by that temporary use by-law shall cease to exist, shall not be considered as legal non-conforming uses, and therefore shall be removed.”

The proposal, which entails a second dwelling unit within the existing accessory structure, as discussed, is compatible with the other residential uses on adjacent and nearby properties in terms of scale, form and character. With respect to the other criteria for assessing Temporary Use By-laws under Section F.1.11.3, with the establishment of a parking area within the limits of the private property, there will not be any adverse impact on traffic or parking facilities in the area and sufficient capacity exists within the water, wastewater, and road systems to accommodate the proposal. Due to the fact that the proposal of a second dwelling unit is within an existing accessory structure that has a basement, it does not meet the Planning Act definition of a Garden Suite which is designed to be portable, and therefore cannot be permitted for a 10-year period, as per Policy F.1.11.4. Based on the foregoing, the draft Temporary Use By-law for a secondary dwelling unit, which has been prepared to be in effect for a three-year period, is in keeping with the general intent of the UHOP.

Township of Glanbrook Zoning By-law No. 464

The subject property is currently zoned Existing Residential “ER” Zone, which permits only one single detached dwelling per lot, as well as uses, buildings and structures accessory thereto. Therefore, the establishment of a second dwelling unit on the subject lands on a temporary basis requires an amendment to the Zoning By-law.

RELEVANT CONSULTATION

The following Departments and Agencies had no comments or objections to the proposal:

- Budgets, Taxation and Policy Services, Corporate Services Department;
- Recreation Division, Community Services Department;
- Forestry and Horticulture Section, Public Works Department;
- Traffic Engineering Section, Public Works Department;
- Strategic Planning, Public Works Department;
- Bell Canada; and,
- Hydro One.

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The following Departments and Agencies have provided comments with respect to the proposed application:

Hamilton Municipal Parking System (HMPS)

Staff have no concerns with the proposal, so long as the parking requirements of the Zoning By-law are being met. The existing parking area in front of the proposed second dwelling unit must either be removed or reconfigured, as the current parking spaces are within the municipal right-of-way, and boulevard parking is not permitted within the former Township of Glanbrook.

Through subsequent correspondence, HMPS staff advise that, in the event that parking for the proposed second dwelling unit is provided within the existing driveway adjacent to Seneca Avenue, HMPS staff would not be opposed to a reduction in parking requirements. However, the home owner must be aware that on-street parking is not a viable alternative for long term parking, since the maximum time that a vehicle can be parked on an unrestricted street, such as Seneca Avenue, is 12 hours for passenger vehicles and four hours for commercial vehicles. Under this scenario, the driveway access adjacent to Spalding Avenue must be removed, and the boulevard must be restored to green space.

Staff have amended the application to require the parking to be located within the limits of the private property, thereby addressing the above concerns.

Waste Management Division, Public Works Department

The City's Encroachments on City Property Policy discourages encroachments onto City property. The applicant has been advised that any existing encroachments into the public right-of-way that are not permitted under an Encroachment Agreement must be removed. Staff note that the parking of vehicles on the existing gravel driveway, which is located within the Spalding Drive road allowance, is prohibited. Therefore, staff have amended the application to require all required parking to be located within the limits of the private property.

The property is eligible for the weekly collection of garbage, recycling, organics, as well as leaf and yard waste, subject to compliance with the City's Solid Waste Management By-law No. 09-067.

Public Consultation

In accordance with the provisions of the Planning Act and the Council-approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation was sent to 55 property owners within 120 m of the subject lands on June 5, 2013. In addition, a Public Notice sign was placed on the property on May 31, 2013, and had

been updated to reflect both the July 8, 2014 and subsequent August 12, 2014 Public Meeting dates. On September 23, 2014, staff was advised by a neighbouring resident that the sign had been removed and, on October 6, 2014, the agent informed staff that the sign was reinstalled. In response to the preliminary notice of circulation, two letters in opposition to the proposal were received from the same neighbouring resident, and staff have had follow-up correspondence with the resident since that time (see Appendix "E").

The correspondence made mention of the writer's assumption that a building permit had been obtained and that all necessary approvals had been in place before the conversion occurred, approximately four years ago. The writer cited the change in neighbourhood character and the potential for similar applications to undermine City By-laws, if the precedent was set through the approval of the application. As discussed in the Analysis and Rationale for Recommendation Section of the Report, staff are satisfied that, subject to the recommended conditions of approval, the proposed temporary use and its associated streetscape impacts along Spalding Drive will be mitigated.

Notice of the Public Meeting was given in accordance with the requirements of the Planning Act.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. The proposal, as amended by staff, has merit and can be supported for the following reasons:
 - (i) The proposal is consistent with the Provincial Policy Statement and conforms with the Growth Plan for the Greater Golden Horseshoe (Places to Grow).
 - (ii) The proposal conforms to the Urban Hamilton Official Plan, the Region of Hamilton-Wentworth Official Plan and the Township of Glanbrook Official Plan.
 - (iii) The proposal is temporary in nature and will only be permitted for a period of three years.
2. The subject lands are Lot 78, Registered Plan 969 "Aldercrest Extension Survey", which was registered in 1954. Characteristic of that time period, the lot fabric of the neighbourhood includes large, wide lots, which have remained intact with no severance applications. Therefore, the only redevelopment that has taken place within the neighbourhood has been in the form of the renovation of existing dwellings and the demolition of the existing dwellings, resulting in the construction of new homes.

3. According to the Canada Mortgage and Housing Corporation, a Garden Suite, or “Granny-Flat” is a temporary, self-contained dwelling without a basement, which is usually intended for individuals or couples over the age of 65, who can live independently, or for people with disabilities. Similarly, Section 39.1 (2) of the Planning Act defines a “Garden Suite” as a portable, one-unit detached residential structure, with kitchen and bathroom facilities, which is ancillary to an existing residential structure. Further, Section 39.1 (1) of the Planning Act, allows Council the discretion to require the owner to enter into an agreement with the municipality that will be registered on title. In accordance with Section 39.1 (3) and Policy F.1.11.4 of the Urban Hamilton Official Plan, a temporary use by-law for a Garden Suite may be effective for ten years, renewable every three years, for the lifetime of the occupant/occupants. However, since the subject proposal is for the recognition of a permanently constructed detached garage with a basement, it cannot be considered a “Garden Suite”, and therefore Section 39.1(3) of the Planning Act does not apply, but rather would be subject to the provisions of Subsection 39 (2) of the Planning Act.

It is recognized that the Urban Hamilton Official Plan contains a policy indicating that there may be certain conditions within which it may be appropriate to permit new detached second dwelling units on lots of existing single detached dwellings. However, the policy (B.3.2.4.5) indicates that the City shall undertake a study to determine the appropriate conditions under which this may take place. As such, it is the opinion of staff that the application should not be approved on a permanent basis, because such a decision could be seen as precedent-setting and the conditions of the subject application (i.e. location and servicing conditions) may prejudice the results of the future study.

However, in recognition that the proposal for a second dwelling is similar to a “Garden Suite” (i.e. second dwelling unit is to be utilized by dependent person(s) over 65 years of age), staff recommend that the proposed use be permitted on a temporary basis and that the owner enter into an agreement with the municipality to be registered on title, as a condition of the temporary use of a second dwelling unit. In the case of the subject proposal, staff will require the inclusion of the following principles in the agreement:

- a) Specify the occupants;
- b) Specify the period of occupancy by the named occupants;
- c) Specify the amount of time within which the second dwelling unit must be demolished or converted back to an accessory building and parking spaces removed once either (i) the period of occupancy has expired, or (ii) the property is sold;

- d) Require the owner to apply for a Change of Use Building Permit and satisfy any other requirements identified by Building Services staff, in order to convert the structure from a dwelling unit back to an accessory structure;
- e) Specify (annual, or such other frequency) reporting requirements by the occupants to evidence their continued occupancy of the suite and ongoing compliance with the terms of the agreement; and,
- f) Require that securities be posted and held by the municipality, which will either be refunded once the structure is demolished or converted, or drawn on by the City to demolish or convert the structure if the owners do not fulfil their obligation to do so.

Therefore, the requirement for the owner to enter into this agreement has been made one of the conditions for the removal of the “H” Holding Provision included in the implementing By-law, attached as Appendix “B”.

4. The draft By-law, attached as Appendix “B”, has been prepared to address the zoning deficiencies noted in the subsections below, and to define the use of the term “second dwelling unit” to reflect the circumstances of the subject proposal. The draft By-law also references that it shall be in effect for a three-year period, in accordance with the UHOP policies concerning Temporary Use By-laws. In order to extend the use of the second dwelling unit beyond the initial three-year period, subsequent rezoning applications would need to be submitted and Temporary Use By-laws (effective for three year increments) would need to be passed by Council, prior to the lapsing of the initial By-law, attached as Appendix “B”.

Upon expiration of the Temporary Use By-law, the second dwelling unit is not deemed to be legal non-conforming and, as such, the use must cease. In the event that the owner does not terminate the use, under the terms of the Development Agreement, the City will have the right to enter the property and turn the structure back into an accessory garage, utilizing the securities posted by the owner as part of the Development Agreement.

Staff note that the accessory garage adjacent to Spalding Drive has been converted to a dwelling unit without the issuance of a building permit. Moreover, the use of an accessory building for human habitation is specifically prohibited through the definition of an accessory building in Section 4 of the Township of Glanbrook Zoning By-law No. 464. Therefore, a Change of Use Building Permit will be required to recognize and legally establish the second dwelling unit, which has been included as a requirement in the proposed Development Agreement.

Location and Zoning Deficiencies for Conversion of Building back to an Accessory Structure

In 1978, the Township of Glanbrook issued Building Permit Nos. 17-78 and 97-78 for the construction of the accessory structure for the purposes of a garage and storage; this structure has a basement. The accessory structure was not constructed in the location described on the Building Permits, but within 2.3 m (7.9 ft) of the flankage lot line, whereas the By-law in effect at the time (Zoning By-law No. 1078) required it be located a minimum of 25 ft (7.62 m) from the flankage lot line. The current Zoning By-law No. 464 also requires a minimum setback of 25 ft (7.62 m) from the flankage lot line (Section 7.13(b)(ii)(A)). Therefore, the location of the existing accessory building does not comply with the Zoning By-law.

Staff have calculated the total lot coverage for all buildings on the property to be 16.4%, which complies with the By-law requirement of a maximum lot coverage of 25%. However, the existing accessory building, which is approximately 140 sq m, alone exceeds the maximum gross floor area of 40 sq m for all accessory buildings on the lot, as does the detached garage located elsewhere on the property, which is approximately 45 sq m, notwithstanding the fact that the previous By-law did not contain a restriction. Furthermore, the accessory building is also located within the required side yard, which was not prohibited under the previous By-law; however, it is prohibited under Section 7.13(b)(iii) of the current By-law.

Notwithstanding the above noted deficiencies, staff have considered the fact that this accessory building has remained in the existing size and location for over 35 years. The building has formed part of the streetscape of Seneca Avenue and there remains sufficient amenity area in the rear yard. Based on the preceding analysis, staff have also deemed it appropriate to prohibit the erection of any additional accessory structures associated with the temporary second dwelling unit.

The above noted deficiencies have been addressed through the draft By-law, attached as Appendix “B”, by deeming the accessory building with basement to be in compliance with Section 7.13, Accessory Structures of Zoning By-law No. 464. Furthermore, the owner would need to apply for a Change of Use Building Permit and satisfy any other requirements identified by Building Services staff (e.g. eliminate water and sewer service to the structure), in order to convert the structure from a dwelling unit back to an accessory structure. This will be included in the terms of the required Development Agreement.

Number of Dwelling Units and Definition of Second Dwelling Unit

The subject property is zoned Existing Residential “ER” Zone in the Township of Glanbrook Zoning By-law No. 464. The subject application is seeking to recognize

two single detached dwelling units on the property. However, Sections 11.2(a) and 12.1 of the Glanbrook Zoning By-law No. 464 state that not more than one single detached dwelling shall be permitted on any lot within the Existing Residential “ER” Zone. The amending By-law includes a provision that a second dwelling unit shall be permitted as a temporary use for three years. Also included is the definition of a second dwelling unit, which is tailored to the contextual details of the subject application.

Parking Space Size, Number and Location

In order to provide flexibility in the relocation of the existing parking onto private property with minimal impact to the existing landscaping, staff recommend the reduction to the minimum parking stall size to reflect the standards of Hamilton Zoning By-law No. 05-200, namely 2.6 m by 5.5 m. However, the draft By-law does not amend the owner’s requirement to provide two parking spaces for the second dwelling unit within the boundaries of their private property, which will alleviate concerns raised by a neighbouring resident regarding on-street parking in the vicinity of the unit. In order to provide parking within the vicinity of the second dwelling unit, the draft By-law includes a provision to allow parking within the exterior side yard of this corner lot. Furthermore, because staff are recommending the approval of the second dwelling unit on a temporary basis, it is appropriate to allow the surface treatment of the associated parking spaces to be gravel instead of the asphalt required by Glanbrook Zoning By-law No. 464. Therefore, the draft By-law has included a corresponding provision.

5. The applicant indicated that when the property was purchased in 1987, there was an existing water service from the primary dwelling to the detached garage located elsewhere on the property. At the time the accessory building was converted to contain a dwelling unit, the water line was extended from the detached garage to the accessory building containing a dwelling unit, and a lateral connection was made from the sanitary service connection of the primary dwelling unit, which extends from Spalding Avenue, to the accessory building containing a dwelling unit.

There is no record of a private drain permit for the subject property and the said servicing connections to the accessory buildings are contrary to the City’s Sewer Use By-law. If the application is approved, Growth Management staff would be supportive of the proposal, provided that the applicant submits a servicing plan that shows how the property is being serviced, to the satisfaction of the Manager of Engineering Approvals. This has been included as a condition of the “H” Holding Provision in the amending By-law.

Since there are no storm sewers in the vicinity of the subject lands, a detailed grading plan, prepared and stamped by an Engineer, Architect or Landscape

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Architect, must be submitted for review and approval. The plan must clearly demonstrate that existing drainage patterns will not be blocked or cause drainage to be directed towards adjacent properties and/or the municipal roadway.

6. As indicated earlier, the accessory building has been situated on the subject property and has formed part of the streetscape along Spalding Avenue since the late 1970s. It would have been in recent years, at the time of the conversion of the building from a detached garage to a dwelling unit, that the streetscape experienced a change, such as the parking of personal vehicles within and along the road allowance. Parking staff have advised that the parking of personal vehicles in front of the structure is prohibited because the spaces encroach into the municipal right-of-way. Staff recommend that the parking configuration be changed in order to provide the required two parking spaces within the boundaries of the private property, which appears may be accommodated in the vicinity of the second dwelling unit with minimal impacts to the existing vegetation. Furthermore, staff are satisfied that the parking of personal vehicles associated with the second dwelling unit can be reviewed in detail at the Site Plan stage and, as such, all impacts will be addressed.

Should the Applicant wish to convert the structure to a garage and restore driveway access from Spalding Drive as it currently exists, the submission of a Change of Use Building Permit and the issuance of an access permit would be required. The Applicant is further advised that, at such time, the temporary parking area associated with the second dwelling unit would need to be removed and that all parking would need to be provided within the garage structure. The parking of vehicles in front of the structure is prohibited, as those spaces would be within the municipal right-of-way of Spalding Drive.

7. In order to ensure that the second dwelling unit is utilized by a particular dependent person, or persons, that the building is adequately serviced, and that the property functions efficiently, an "H" Holding Provision has been applied on the lands to require a Development Agreement to be registered on title, as well as the completion of a servicing plan and a Site Plan application, to the satisfaction of staff. Staff recommend this course of action because it is the most appropriate mechanism to require the applicant to comply with the City's requirements and it would be completed without additional public costs of By-law Enforcement.

Other matters that will be considered at the Site Plan stage include:

- The assignment of an official address to the converted garage;
- The location of parking spaces;
- The issue of the 0.30 m reserve and driveway access along Spalding Drive;

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- The transfer of lands for a 4.57 m daylight triangle at the intersection of Seneca Avenue and Spalding Drive; and,
- The inclusion of a Noise Warning in the required Undertaking, indicating that sound levels may exceed the City's and/or the Ministry of Environment's noise criteria, due to the proximity of the subject property to John C. Munro Hamilton International Airport, and Upper James Street.

ALTERNATIVES FOR CONSIDERATION

If the application is denied, the applicant will be required to either remove the dwelling unit or obtain the necessary zoning approval to recognize the existing location of the structure and meet the Ontario Building Code requirements to convert the structure back to a garage. Should the existing driveway access to the garage remain, the 0.3 m reserve, located along the entire flankage of the property on Spalding Drive (Parcel "E", Registered Plan 969 "Aldercrest Extension Survey") would need to be lifted or the Owner would need to enter into an Encroachment Agreement with the City and an Access Permit would be required.

If the application as submitted by the applicant is approved, the second dwelling unit would be permitted on a permanent basis, which would undermine the intent of the Urban Hamilton Official Plan and Glanbrook Zoning By-law No. 464.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Draft By-law
- Appendix "C": Concept Plan
- Appendix "D": Cover Letter for Rezoning Application
- Appendix "E": Public Comments

:DM/th