



Hamilton

INFORMATION REPORT

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	March 3, 2015
SUBJECT / REPORT NO:	Committee of Adjustment Minor Variance Application HM/A-14:255 for the Property Located at 25 Barnesdale Avenue South (Hamilton), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED15025) (Ward 3)
WARD(S) AFFECTED:	Ward 3
PREPARED BY:	Danielle Beck Planning Technician (905) 546-2424 Ext. 1285 Steve Robichaud Director of Planning and Chief Planner Planning Division
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Report PED15025, respecting Committee of Adjustment Minor Variance Application HM/A-14:255, for the property located at 25 Barnesdale Avenue South (Hamilton), as shown on Appendix "A", supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information.

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application HM/A-14:255 to permit the conversion of the existing single family dwelling to a two family dwelling (see Appendix "B"). The Minor Variance Application was initially considered before the Committee of Adjustment on October 2, 2014, and was tabled by the Committee of Adjustment until the subsequent meeting of October 23, 2014. Comments to the Committee of Adjustment from Planning staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, in conformity with the Urban Hamilton Official Plan, and satisfied the four tests set out in Section 45(1) of the *Planning Act*, in

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that the variances were 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 Urban Hamilton Official Plan and Hamilton Zoning By-law No. 6593.

The Committee of Adjustment denied the application for the reasons provided in Appendix "C". The decision was appealed to the Ontario Municipal Board (OMB) on November 11, 2014. A one day hearing has been scheduled for March 31, 2015.

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee of Adjustment's decision to deny the application, and if the Council wishes to send Legal staff, the City must retain an outside planning consultant, and any other experts who can professionally support the denial. The hearing would take approximately one day. If an outside planning consultant is retained, the costs would be approximately \$3,000 to \$5,000 for a one day hearing. Approval of Option 1 in the Alternatives for Consideration section (support denial) will provide authority to fund the required retainers from the identified reserves. Legal staff have advised that 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 2015 Budget; second, through year-end Corporate Surpluses; and lastly, through the Tax Stabilization Reserve.

Staffing: If Council wishes to support the Committee of Adjustment's decision, then one representative from Legal Services would be required for preparation and attendance at the OMB Hearing. If Council wishes to support Option 2 in the Alternatives for Consideration section (support appeal of denial), then in addition to Legal Services attendance, one member of Planning staff would attend as an expert witness at the OMB Hearing.

Legal: No legal implications are expected.

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HISTORICAL BACKGROUND

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 25 Barnesdale Avenue South (Hamilton) (see Appendix “A”). The Minor Variance Application proposes to permit the conversion of the existing single family dwelling to a two family dwelling notwithstanding;

1. A minimum floor area of 49 sq m shall be provided for the dwelling unit located on the ground floor whereas the By-law requires a minimum average floor area of 65 sq m;
2. A minimum clear height of 1.5 m shall be provided for a portion of the third floor living space, for the dwelling unit comprised of living space on the second and third floors whereas the By-law requires a minimum clear height of 2.1 m;
3. A minimum lot area of 255 sq m shall be provided whereas the By-law requires a minimum lot area of 270 sq m;
4. A minimum parking space size of 2.6 m in width by 5.5 m in length shall be provided whereas the By-law requires a minimum parking space size of 2.7 m in width by 6.0 m in length; and,
5. No on-site manoeuvring space shall be provided whereas the By-law requires a minimum 6.0 m on-site manoeuvring.

The location of the existing dwelling is considered to be legally non-conforming and no variances were required regarding setbacks or location of the dwelling.

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The application was reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Urban Hamilton Official Plan and the City of Hamilton Zoning By-law No. 6593. Staff recommended approval of the Minor Variance Application as the variances were 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 Urban Hamilton Official Plan and Hamilton Zoning By-law No. 6593. Further policy analysis is provided below.

October 2, 2014 Committee of Adjustment Meeting

At the October 2, 2014, Committee of Adjustment Meeting, the applicant attended along with one member of the public who was opposed to the application. In addition, there were letters sent in from other members of the public with concerns. The discussion of the meeting was centralized around the conversion of the single family dwelling to a two family dwelling (see Appendix "D"). Due to the concerns raised from the member of the public in attendance, the Committee of Adjustment passed a motion to table the application for a site visit and to bring the application back at the next meeting on October 23, 2014.

October 23, 2014 Committee of Adjustment Meeting

At the October 23, 2014, Committee of Adjustment Meeting, only the applicant attended and no members of the public were in attendance. However, there were additional letters sent in from members of the public with concerns. Following discussion on the application, the Committee of Adjustment passed a motion to deny the application.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Planning Act

The application has been reviewed with respect to the provisions of the *Planning Act*.

Powers of Committee

"44(1) If a municipality has passed a by-law under section 34 or a predecessor of such section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, as the council considers advisable. R.S.O. 1990, c. P.13, s. 44 (1).

45(1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38,

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or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

45(3) A council that has constituted a committee of adjustment may by by-law empower the committee of adjustment to grant minor variances from the provisions of any by-law of the municipality that implements an official plan, or from such by-laws of the municipality as are specified and that implement an official plan, and when a committee of adjustment is so empowered subsection (1) applies with necessary modifications. R.S.O. 1990, c. P.13, s. 45 (3)."

As noted in the Planning staff comments on the application (see Appendix "E"), staff are of the opinion that the proposed Minor Variance Application meets the four tests under Section 45(1) of the *Planning Act*.

Provincial Policy Statement, 2014

The application has been reviewed with respect to the Provincial Policy Statement 2014 (PPS). The following policy of the PPS applies:

- "1.1.1 Healthy, liveable and safe communities are sustained by:
- b) accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs."

The proposed conversion to permit a second unit in the existing single family dwelling is consistent with the above policy.

Staff recognize that the application is consistent with the policies that focus growth in Settlement Areas, Policy 1.1.3.1 which states:

"Settlement areas shall be the focus of growth and development, and their vitality and regeneration shall be promoted."

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Further, Policy 1.2.6.1 outlines that major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and / or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities. As the subject lands are proposed to contain an additional residential dwelling unit and are located within approximately 80 m from King Street East, a designated arterial road, a noise warning clause is required.

Urban Hamilton Official Plan

The subject lands are identified as “Neighbourhoods” on Schedule “E” – Urban Structure and designated “Neighbourhoods” on Schedule “E-1” – Urban Land Use Designations in the Urban Hamilton Official Plan.

Policy Goals in Section E.3.1 state:

- “3.1.3 Plan and designate lands for a range of housing types and densities, taking into account affordable housing needs.
- 3.1.4 Promote and support design which enhances and respects the character of existing neighbourhoods while at the same time allowing their ongoing evolution.
- 3.1.5 Promote and support residential intensification of appropriate scale and in appropriate locations throughout the neighbourhoods.”

The proposed conversion to permit an additional dwelling unit provides a range of housing type and density taking into account housing needs; respects the character of the existing neighbourhood by proposing no external changes to the existing dwelling, respecting the existing built form; and, promotes appropriate residential intensification by using the existing housing stock to provide an additional dwelling unit.

Policy E.3.2.3 a) outlines the permitted uses in the “Neighbourhoods” designation:

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

The proposed conversion of a single family dwelling to a two family dwelling is permitted in the Urban Hamilton Official Plan’s “Neighbourhoods” designation, as the designation permits second dwelling units.

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Further, the proposed conversion to a two family dwelling is consistent with Policy B.2.4 regarding residential intensification being compatible with the scale and character of the existing residential neighbourhood. Policy B.2.4.1.4 states that developments shall be evaluated based on the following criteria:

- “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. In this regard, the City encourages the use of innovative and creative urban design techniques;
- 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.”

The proposed conversion to a two family dwelling builds upon the established residential pattern of the neighbourhood and aids in providing a range of dwelling types and tenures. The proposed additional unit is located within the existing dwelling and will not alter the scale, form and character of the area, and is therefore a compatible form of development. There are no concerns with infrastructure or transportation capacity.

Based on the foregoing, staff are satisfied that the proposed Minor Variance Application complies with the Urban Hamilton Official Plan.

Hamilton Zoning By-law No. 6593

The lands are zoned “C” (Urban Protected Residential, etc.) District in Hamilton Zoning By-law No. 6593. The “C” District permits the following residential uses: a single family dwelling, together with the accommodation of lodgers to the number not more than three; a foster home; a residential care facility for the accommodation of not more than six residents; and a retirement home for the accommodation of not more than six residents.

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However, Section Nineteen of the By-law outlines Residential Conversion Requirements which permits any single family dwelling in a “C” District to convert to contain no more than two dwelling units, provided the requirements outlined within are complied with (see Appendix “E”). The variances requested in HM/A-14:255 as outlined on page 3 of this Report, are specific to Section Nineteen of the By-law.

RELEVANT CONSULTATION

Legal Services Division, in respect to staffing and costs if Council supports the Committee of Adjustment’s position and directs Legal Services to attend the OMB Hearing to defend the Committee of Adjustment decision.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The Urban Hamilton Official Plan and Zoning By-law permit secondary units. There are no proposed external renovations to the dwelling as a result of the conversion from a one family dwelling to a two family dwelling. The proposed conversion provides a different form of housing tenure and assists in promoting intensification in appropriate locations.

The proposed variances required to facilitate the proposed conversion will not adversely impact the surrounding properties. The decrease in the ground floor unit size is minimal and will not adversely impact the quality of life for residents of that unit. The proposed reduced height of the living space on the third floor is a result of the design of the roof, and is only for a small portion of that unit which is located on both the second and third floors. Adequate living space is provided that meets the minimum height requirements. The proposed reduced lot area is recognizing an existing situation where additional lands cannot be obtained to meet the requirements. Sufficient land is provided to maintain the existing building footprint, provide amenity space and parking on-site. The proposed reduced parking space size aligns with the City’s new Hamilton Zoning By-law No. 05-200 which permits a smaller parking space size than Hamilton’s former Zoning By-law No. 6593. With the reduction, the parking space size will still permit vehicle parking on-site and the applicants are providing the minimum number of parking spaces. Lastly, not providing on-site manoeuvring is typical of the neighbourhood where residents manoeuvre their vehicles into the City right-of-way to access their parking spaces. There are not sufficient setbacks or property area to accommodate the minimum number of parking spaces and the minimum manoeuvring.

The requested variances are considered to be minor in nature, desirable for the appropriate development of the land, and maintain the general intent and purpose of the Urban Hamilton Official Plan and the Hamilton Zoning By-law No. 6593, which satisfies the four tests of a minor variance set out in Section 45(1) of the *Planning Act*.

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Based on the foregoing, staff are supportive of the requested variances.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may instruct Legal Services to attend the OMB Hearing, in support of the Committee of Adjustment decision, and to retain outside professional(s) to attend as an expert witness.

Option 2

Council may decide to support the appeal against the Committee of Adjustment's decision to deny, and direct Legal Services to attend the Ontario Municipal Board Hearing in support of the appeal to the application, 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 decision, or against the applicant's appeal.

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

1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

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

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

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Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Application Sketch
- Appendix "C": HM/A-14:255 Committee of Adjustment Decision
- Appendix "D": October 2, 2014, and October 23, 2014, Meeting Minutes
- Appendix "E": Consolidated Staff Comments
- Appendix "F": Section Nineteen Residential Conversion Requirements from Hamilton Zoning By-law No. 6593

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