



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	July 7, 2015
SUBJECT/REPORT NO:	Proposed Urban Hamilton Official Plan (UHOP) Amendment and Zoning By-law Amendment for Property located at 102 Ainslie Avenue, Hamilton (PED15083) (Ward 1)
WARD(S) AFFECTED:	Ward 1
PREPARED BY:	Cam Thomas Senior Planner (905) 546-2424 Ext. 4229 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That **Urban Official Plan Amendment Application UHOPA-15-13, by Aiden Tuite, Owner**, in order to legalize an existing illegal triplex located at 102 Ainslie Avenue, Hamilton, as shown on Appendix "A" to Report PED15083, be **DENIED** on the following basis:
- (i) The application does not conform to the planning policies of the Ainslie Wood Westdale Secondary Plan and is not a suitable form of residential intensification. The development would introduce a more intensive form of housing within the interior of the Ainslie Wood East Neighbourhood; and,
 - (ii) The application would further contribute to neighbourhood instability within a sensitive community by encouraging other similar types of applications.

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- (b) That **Zoning Application ZAR-12-023, by Aiden Tuite, Owner**, for a change in zoning from the “C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential, etc.) District, Modified to an amended “C/S-1335a” (Urban Protected Residential) District, Modified in order to legalize an existing illegal triplex, for lands located at 102 Ainslie Avenue (Hamilton), as shown on Appendix “A” to Report PED15083, be **DENIED** on the following basis:
- (i) The application does not conform to the planning objectives of the Ainslie Wood Westdale Secondary Plan. The proposal introduces a more intensive form of housing within the interior of the Ainslie Wood East Neighbourhood;
 - (ii) The application would further contribute to neighbourhood instability by encouraging other similar types of applications; and,
 - (iii) The application does not meet the intent of Hamilton Zoning By-law No. 6593.

EXECUTIVE SUMMARY

The proposal is to amend the Urban Hamilton Official Plan (UHOP) and the Hamilton Zoning By-law No. 6593 in order to legalize an existing illegal triplex for the property located at 102 Ainslie Avenue. Staff do not support the proposed amendments as they do not conform with the planning objectives of the Ainslie Wood Westdale Secondary Plan and are not a suitable form of residential intensification because the property is located within the interior of a neighbourhood and is not compatible with the adjacent land uses. The proposal would introduce a more intensive form of housing within the interior of the Ainslie Wood East Neighbourhood. If approved, it may contribute to further instability within the neighbourhood and may serve as a catalyst for other more intensive forms of housing within the area.

Alternatives for Consideration – See Page 25

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: None.

Staffing: None.

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider an application for an Official Plan Amendment and a Zoning By-law Amendment.

HISTORICAL BACKGROUND

The subject property is located at 102 Ainslie Avenue, in the Ainslie Wood East Neighbourhood, and is approximately 1 km south of McMaster University. The property is a “flag-shaped” lot that was created through the approval of a 1989 consent application. The site currently contains a dwelling that was converted to a duplex shortly after it was constructed in 1997. The dwelling was subsequently converted to a triplex without required permits, through the use of the cellar as a separate residential unit.

The development history of the property and existing dwelling is documented as follows:

- Minor Variance Application (A-93:120) was submitted to permit a reduced frontage of 4.57 m. This was initially denied by the Committee of Adjustment in 1993, because of concerns with overdevelopment, but was subsequently approved by the OMB in 1994.
- A Building Permit was issued and later revoked in July 1996 because the building was determined to be three storeys due to an extra floor. This was found to be in contravention of By-law 95-33 (“Monster Home” By-law), which limits the height to two storeys and 9 m.
- Minor Variance Application A-96:181 was submitted to permit the dwelling to have a building height of three storeys instead of two storeys and to permit minor reductions to the previously reduced westerly side yard and rear yard. This application was denied by the Committee of Adjustment.
- A Building Permit was issued in January 1997 to permit a single detached dwelling to be constructed, which was deemed to be two storeys. The additional floor between the cellar and the first floor was removed, which resulted in the creation of a higher cellar, which has a floor to ceiling height of 4.6 m.
- In October 1997, the Fire Department confirmed that the building was converted without permits to a duplex. It was also noted that it was evident that framing and room layouts were being initiated in the cellar.
- In September 1998, the owner received approval from the Building Division to convert the single detached dwelling to contain no more than two dwelling units under Section 19 of Hamilton Zoning By-law No. 6593.
- A third dwelling unit within the cellar was identified in January 2011 as a result of proactive enforcement. It was determined that the cellar contained three

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bedrooms and one loft unit. This resulted in the issuance of a fine which has been addressed by the owner.

- In December 2011, the owner applied for a Formal Consultation Application (FC-11-142) to consider the requirements for the use of the property as either a three family or quadruplex (four-unit) dwelling.

The legal units are located on the first and second floors, and each contain four bedrooms. The third unit is within the cellar and also contains four bedrooms, including a loft unit, which has been developed due to the high ceiling. The unusually high basement (i.e. 4.6 m) has allowed for the creation of elevated bedrooms which are “lofts”, allowing for the potential to have a second floor of living space.

As an illegal triplex, the building has been occupied by 12 renters in total, within the three units. The property is one of three similarly-sized “flag-shaped” lots that have been created to the rear of existing single detached residential properties at 96, 104 and 106 Ainslie Avenue. It is recognized that under Zoning By-law No. 6593, a maximum of three lodgers is permitted per dwelling unit.

The property has 4.57 m of frontage which includes a 3 m wide driveway which has been developed adjacent to the easterly side of 104 Ainslie Avenue and connects to the main part of the site. The driveway is 43.2 m in length and connects to a paved area, which is approximately 10 m across in front of the existing dwelling. This area provides parking for three vehicles within the side yard, south of the dwelling. The existing dwelling is located approximately 21 m north of the rear lot lines of 104 and 106 Ainslie Avenue (see Appendix “B”).

Proposed Official Plan Amendment Application (OPA-12-008)

An Official Plan Amendment (OPA-12-008) was applied for at the time of the rezoning application to address changes that were required to the Ainslie Wood Westdale Secondary Plan policies under the former City of Hamilton Official Plan.

The subject property is within the Ainslie Wood Westdale Secondary Plan and is designated “Low Density Residential”, which permits single detached dwellings, semi-detached dwellings, duplexes, and street townhouses, as well as, existing legal three, four and five-plexes. The permitted densities are generally in the range of 10-29 units per gross hectare. The proposed density for three dwelling units would be approximately 28.5 units per hectare which is within the required density range. The proposed Official Plan Amendment (OPA) is required to amend Policy 6.4.1.2(i) (Low Density Residential), in order to permit the dwelling to be recognized as a legal triplex, as only existing, legally established triplexes are permitted.

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The City of Hamilton Official Plan has been superseded by the UHOP which came into effect on August 17, 2013. The proposed Official Plan Amendment will not proceed as the applicant has formally requested that the Clergy Principle not apply to this application.

Urban Official Plan Amendment Application (UHOPA-15-13)

As the Ainslie Wood Westdale Secondary Plan has been incorporated into the UHOP, the same detailed policy framework would apply to the proposed amendment. Since the property is designated Low Density Residential 2 on Map B.6.2.1 – Ainslie Wood Westdale Secondary Plan, which permits single detached dwellings, semi-detached dwellings, duplexes, and street townhouses, the required UHOP Amendment is to Policy 6.2.5.4(a) (i) in Volume 2 of the UHOP to also permit a triplex, whereas only existing triplexes are permitted.

Proposed Zoning By-law Amendment Application (ZAC-12-023)

The subject property is zoned “C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential, etc.) District, Modified in Zoning By-law No. 6593. The purpose of this application is to amend the Zoning By-law in order to legalize the existing illegal triplex. The applicant is proposing three parking spaces for the triplex, which are identified on the attached conceptual site plan (see Appendix “B”). In addition, several special regulations are required to recognize existing conditions and include the following:

- Minimum lot width (to permit 4.57 m instead of 12 m);
- Minimum side yard (to permit 0.32 m along the west side lot line instead of 1.2 m);
- Minimum rear yard (to permit 6.7 m instead of 7.5 m);
- Minimum aisle width (to permit 5 m instead of 6 m for a maneuvering space); and,
- A maximum of three lodgers are permitted within a dwelling unit.

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Chronology:

<u>December 8, 2011:</u>	Formal Consultation Application (FC-11-142) to consider the legalization of the existing illegal triplex.
<u>August 17, 2012:</u>	Submission of Zoning Application ZAR-12-023 and OPA-12-008 by IBI Planning Consultants Inc.
<u>September 2, 2012:</u>	Application ZAR-12-023 and OPA-12-008 are deemed complete.
<u>September 12, 2012:</u>	Circulation of Notice of Complete Application and Preliminary Circulation for Applications ZAR-12-023 and OPA-12-008 to all property owners within 120 m of the subject lands.
<u>September 13, and October 25, 2012:</u>	Site Visits.
<u>September 17, 2012:</u>	Public Notice Sign posted.
<u>April 15, 2013:</u>	Request from IBI Group to Planning and Economic Development for application to be held in abeyance for six months.
<u>April 22, 2013:</u>	Planning agreeable to applicant's request to hold application in abeyance.
<u>August 17, 2013:</u>	UHOP approved by Ontario Municipal Board. Majority of UHOP in force and effect.
<u>May 16, 2014:</u>	Site Visit to inspect proposed units within dwelling.
<u>October 9, 2014:</u>	Request to IBI Group to apply for UHOP Amendment to address non-conforming land use.
<u>March 31, 2015:</u>	Formal Submission of UHOP Amendment and Request for Clergy Principle to not apply to the subject application.
<u>April 24, 2015:</u>	Public Notice Sign updated.
<u>June 19, 2015:</u>	Circulation of Notice of Public Meeting and Notice of Complete Application for UHOPA-15-13 to all property owners within 120 m of the subject lands.

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Details of Submitted Application

Owner: Aiden Tuite

Location: 102 Ainslie Avenue (Hamilton)
(see Appendix “A”)

Property Size: Frontage: 4.57 m
Depth: 73.76 m
Area: 0.1 ha

EXISTING LAND USE AND ZONING

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands:</u>	Duplex	“C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential, etc.) District, Modified
<u>Surrounding Lands:</u>		
North	Single Detached Dwellings	“C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential, etc.) District, Modified
South	Single Detached Dwellings	“C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential, etc.) District, Modified
East	Single Detached Dwellings	“C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential, etc.) District, Modified

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West	Single Detached Dwellings	“C/S-1335” and “C/S-1335a” (Urban Protected Residential, etc.) District, Modified
	Utility Corridor and Neighbourhood Park	“P1” Neighbourhood Park

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Policy Statement (2014)

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Policy 1.1.3.1 states that settlement areas shall be the focus of growth, and their vitality and regeneration shall be promoted.

Policy 1.1.3.2 states that land use patterns within settlement areas shall be based on:

“a) Densities and a mix of land uses which:

1. Efficiently use land and resources; and,
2. Are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;”

Policy 1.1.3.3 directs that:

“Planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.”

In addition, the following policies of the 2014 PPS are also noteworthy:

“1.4.3 b) permitting and facilitating:

1. all forms of housing required to meet the social, health and well-being requirements of current and future residents, including special needs requirements.

- 4.7 The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans.

Official plans shall identify provincial interests and set out appropriate land use designations and policies. To determine the significance of some natural heritage features and other resources, evaluation may be required.”

The proposal is consistent with the general intent of the PPS, which encourages all forms of housing and efficient development, but it is noted that as per Policy 4.7 detailed above, that the City’s Official Plan is the primary mechanism for the implementation of the PPS, including but not limited to how and where intensification is to occur. On this basis, and as guided through the City’s Official Plan, it is the opinion of staff that the requirement for an “appropriate range of housing types” and intensification projects such as that proposed would be more appropriately met with development along arterial roads such as Main Street West or within areas designated for Medium Density development.

It is further noted that the City of Hamilton Official Plan and Zoning By-law currently promote intensification within stable residential areas through existing conversion policies contained through Zoning By-law 6593 under Section 19. Specific criteria (as detailed within later Sections of this Report) govern the location and level of intensification intended for these areas and of which would be exceeded and compromised by the proposed development.

As such, staff consider that within the interior of the neighbourhood, areas are being detrimentally affected because of the intensive use of existing dwellings and the conversion of many single family dwellings to higher density uses beyond that contemplated through the existing intensification strategy.

Finally, the PPS directs that implementation is required through the Official Plan. In this case, as Clergy rights have been waived, the UHOP Policies for Neighbourhoods and the Ainslie Wood Westdale Secondary Plan are applicable.

Growth Plan for the Greater Golden Horseshoe

The Plan identifies, in Section 2.2.2 the following policies to manage future growth:

- “a) directing a significant portion of new growth to the built-up areas of the community through intensification; and,

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- b) encouraging cities and towns to develop as complete communities with a diverse mix of land uses, a range of employment and housing types, high quality open space and easy access to local stores and services;”

With respect to General Intensification policies, the Plan directs the following in Section 2.2.3:

- “1. By the year 2015 and for each year thereafter, a minimum of 40 per cent of all residential development occurring within each upper and single tier municipality will be within the built-up area.”

The proposal conforms to the general intent of the Provincial Growth Plan. However, it is recognized that the UHOP (including the Ainslie Wood Westdale Secondary Plan), is regarded as the vision document in which to best determine where this growth should be directed. The subject property is within a neighbourhood consisting primarily of single detached dwellings, which has intensified considerably due to its proximity to McMaster University and the demand for student rental accommodation. To maintain reasonable densities and to ensure liveability and sustainable communities, the City’s response has been to limit the size and height of dwellings and to discourage higher density housing forms.

It is the view of staff that the property has already intensified to an appropriate level, in accordance with the City’s intensification strategy, because it has evolved from a single detached dwelling and is recognized as an approved converted two unit dwelling. The creation of a third unit within the cellar would not be consistent with the direction of the UHOP and the Ainslie Wood Westdale Secondary Plan, and would circumvent the planning controls which have been developed (i.e. By-law 95-033 to regulate overbuilding (“Monster Homes”)).

Intensification in this area would be appropriate in conjunction with mixed use development along arterial roads and properties which are designated “Medium Density”, however, it would not be appropriate for properties such as this, which are in the interior of a sensitive neighbourhood and which do not have frontage on an arterial or collector road. Further information concerning this matter is also provided in the discussion on the UHOP and Ainslie Wood Westdale Secondary Plan.

Hamilton-Wentworth Official Plan

As noted, the subject applications were received prior to the UHOP coming into force and effect on August 16, 2013. Normally, under the “Clergy” principle, the applications would be assessed under the policy framework in effect at the time the original applications were submitted. However, on March 31, 2015, the applicant waived the “Clergy” principle. Accordingly, this proposal is to be reviewed against the policies of

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the UHOP, and a review against the former Hamilton-Wentworth Official Plan is not required.

City of Hamilton Official Plan

As noted, the subject applications were received prior to the UHOP coming into force and effect on August 16, 2013. Normally, under the “Clergy” principle, the applications would be assessed under the policy framework in effect at the time the original applications were submitted. However, on March 31, 2015, the applicant waived the “Clergy” principle. Accordingly, this proposal is to be reviewed against the policies of the UHOP, and a review against the former City of Hamilton Official Plan is not required.

Urban Hamilton Official Plan (UHOP)

Neighbourhoods Designation

In terms of general land use, the subject property is located within the “Neighbourhoods” designation and is within an area that is characterized by low density residential development. The following policies, amongst others, which apply to Low Density Residential uses in the Neighbourhoods designation, are for general information and would be superseded by the more specific policies of the Ainslie Wood Westdale Secondary Plan, which would continue to apply to this area.

- “E.3.3.1 Lower density residential uses and building forms shall generally be located in the interior of neighbourhood areas with higher density dwelling forms and supporting uses located on the periphery of neighbourhoods on or in close proximity to major or minor arterial roads;
- E.3.4.1 The preferred location for low density residential uses is within the interior of neighbourhoods;
- E.3.4.2 Low density residential areas are characterized by lower profile, grade-oriented built forms that generally have direct access to each unit at grade;
- E.3.4.3 Uses permitted in low density residential areas include single-detached, semi-detached, duplex, triplex, and street townhouse dwellings;
- E.3.4.4 For low density residential areas the maximum net residential density shall be 60 units per hectare;
- E.3.4.5 For low density residential areas, the maximum height shall be 3 storeys; and,

E.3.4.6 Development in areas dominated by low density residential uses shall be designed in accordance with the following criteria:

- c) A mix of lot widths and lot sizes compatible with streetscape character; and a mix of dwelling unit types and sizes compatible in exterior design, including character, scale, appearance and design features shall be subject to the Zoning by-law regulations for appropriate minimum lot widths and areas, yards, heights, and other zoning regulations to ensure compatibility.”

Generally the UHOP encourages higher density developments, as well as a range of dwelling unit types and sizes within neighbourhoods, and the preferred location for lower density uses is within the interior of neighbourhoods. Although triplexes are generally considered as a low density form of housing in the UHOP, the Ainslie Wood Westdale Secondary Plan (as amended), provides more detailed guidance, and would remain in effect for the neighbourhoods around McMaster University to control density, and as such, a triplex would not be included as a permitted use based on the Secondary Plan. This matter is discussed in greater detail later in this Report.

The following policies from the UHOP pertain to residential intensification:

“B.2.4.1.4 Residential intensification 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.

B.2.4.2.2 When considering an application for a residential intensification development within the Neighbourhoods designation, the following matters shall be evaluated:

- 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;
- c) the relationship of the proposed building(s) with the height, massing, and scale of nearby residential buildings;
- d) the consideration of transitions in height and density to adjacent residential buildings;
- e) the provision of amenity space and the relationship to existing patterns of private and public amenity space; and,
- f) the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations.”

Effects on Neighbourhood Character

With respect to the above, the main concern of staff is with the changes in neighbourhood character that would result from the further intensification of the subject property. The neighbourhood is characterized as a neighbourhood consisting of single detached dwellings of various forms and sizes, many of which are occupied as rented dwellings. The majority of dwellings in this area are, however, are smaller than the dwelling located on the subject property.

In particular, the locational characteristics of the subject property, as a lot without proper frontage (i.e. a “flag lot”) and which is within the interior of a neighbourhood, surrounded by single detached dwellings, would not qualify the property for further intensification beyond its current status as a converted single detached dwelling. A review of the planning history of the property has identified that the original severance and minor variance to create this property and the two abutting properties to the east with undersized frontages was not supported by staff, because it was not in keeping with the

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character of the area. The approvals for the development of this property and the abutting properties to the east were provided through the OMB.

In addition, the character of the Ainslie Wood Neighbourhood East would be affected by an indiscriminate form of intensification within the interior of a neighbourhood as a result of the scale and form of the development and the large size of the proposed units. Whereas the addition of one residential unit to create a triplex is generally intended to accommodate one or perhaps two persons, the proposed units are intended to accommodate up to four students per unit, which is a higher level of intensification, and above the allowance of the “C” District which permits a maximum of three lodgers within a single family dwelling. The dwelling on the subject property was constructed to the maximum requirements under By-law No. 95-33, which was developed to limit the size and height of dwellings relative to their lot size in the neighbourhoods near McMaster University.

As previously noted, the City of Hamilton currently provides opportunities within the existing By-law to facilitate appropriate intensification within “C” Zoned districts within the Neighbourhoods Designation of the UHOP. Conversion of a single detached dwelling through Section 19 of Hamilton Zoning By-law 6593 is a process intended to facilitate mild intensification of an existing single detached dwelling through the addition of one residential unit, subject to specific criteria. The conversion, and subsequent request to add an additional dwelling unit, would not meet the intent of either the conversion policies of Section 19 or the intent of By-law No. 95-33 which seeks to prevent the overbuilding and over-intensification of the residential neighbourhood, which is characterized by the predominance of single detached dwellings.

Incompatibility

With respect to Policy B.2.4.2.2 noted above, staff note that the legalization of the proposed triplex on the subject property would create an incompatible situation with the existing neighbours to the south at 104 and 106 Ainslie Avenue because of the large nature of the units and occupancy levels (i.e. four renters per unit). As noted, the property does not have sufficient street frontage for the use of the lands as a triplex. The property was permitted to be developed with the aforementioned reduced frontage through an earlier OMB decision, although it is noted that this frontage issue was assessed with respect to the development of a single detached dwelling and not for the currently proposed triplex.

As previously discussed, the unique lot fabric of the proposal is such that the single detached dwelling was developed to the rear of existing dwellings on Ainslie Avenue. Given the increase in the intensity of the use, there is the potential for nuisance effects related to higher levels of traffic, lighting from vehicles, noise and litter in an area in which residential intensification was never contemplated. The majority of amenity

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space for the subject property is also located to the rear of an existing dwelling which is unfenced, which may contribute to privacy and nuisance issues. This potential for nuisance creates an incompatible situation with the adjacent land uses.

While staff note that the lands, if developed as a triplex, would be subject to site plan review (and that this would provide the potential opportunity to address a number of these issues), the ability to accommodate mitigation methods through this process is not in and by itself sufficient justification to reconcile the above raised concerns over the principle of the land use.

As the dwelling does not have direct frontage and does not form part of the streetscape on Ainslie Avenue, the proposal does not present a streetscape issue, but rather an urban form issue. In this regard, the intensification of a concealed property does not represent proper urban form and in staff's view would predispose the adjacent properties to unwanted nuisances that are noted above.

Therefore, staff do not consider the proposed triplex to be a suitable form of intensification and the proposal does not comply with the UHOP policies.

Finally, with respect to Policy F.1.2.2, staff note that in accordance with this Policy, the Secondary Plan policies are to be read in conjunction with the designations and policies of the UHOP discussed above, and that where there is a discrepancy, the policies of the Secondary Plan shall prevail, as it states:

"F.1.2.2 The individual secondary plan policies and designations are contained in Volume 2. Secondary plan designations shall be identified on the maps appended to the specific secondary plan areas. It is intended that secondary plan policies are to be read in conjunction with the policies and designations contained in Volume 1. However, should there be a discrepancy between the policies and/or designations, the policies and designations of the secondary plan shall prevail."

It is on this basis that the following Secondary Plan Policies have been critically assessed.

Ainslie Wood Westdale Secondary Plan

The subject property is within the Ainslie Wood Westdale Secondary Plan, a component of the UHOP, which has been developed to address land use issues in the neighbourhoods which are adjacent to McMaster University.

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The following objectives and policies of the Secondary Plan are considered to be relevant to the proposal:

“B.6.2.4 The objectives of the Ainslie Wood Westdale Secondary Plan are to:

- a) Provide a diversity of suitable housing choice for families, students, seniors and others;
- b) Maintain low density, single detached residential areas in terms of both appearance and use; and,
- c) Ensure new infill housing and renovations are compatible with existing development.”

The proposed triplex would not be consistent with the above-noted objectives because it would not allow for the maintenance of a low density area in that a triplex is not a permitted use within the Low Density Residential 2 designation. The proposed triplex would contribute to changes in density, and introduces a use which would not be consistent with this area.

Concerning c), the renovations undertaken by the owner to create the triplex, have not been approved by the City and are not consistent with other rental dwellings in this area. This type of change could contribute further to changes in neighbourhood character, such as the provision of rear yard area parking.

On this basis, the proposal does not comply with the approved Secondary Plan.

The General Residential Policies include the following:

“B.6.2.5.3 (a) A range of residential designations is provided, to help encourage a variety of housing types, forms and sizes. Rental housing is a very important element in providing a range of housing types.

B.6.2.5.3 (c) Changes to the existing housing stock, such as new infill construction and renovations, are to be comparable to existing housing styles on the same block and street. New construction is encouraged to reflect similar housing styles, massing, height, setbacks and other elements of style as the adjacent homes, on the same block and street. The City will attempt to discourage the building out of roof lines to convert dormers into a full storey. The City will limit overbuilding on properties, to maintain compatibility within the neighbourhood.”

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The property is designated Low Density Residential 2 and the following policies would apply:

“B.6.2.5.4 (a) The following policies apply to lands designated Low Density Residential 2 on Map B.6.2.1 – Ainslie Wood Westdale Secondary Plan:

- (i) Low Density Residential 2 areas permit single detached dwellings, semi-detached dwellings, duplexes, and street townhouses. These uses will include dwellings with accessory apartments/second dwelling units. Single detached housing will be the primary form of housing in most of these areas, especially in the interior of neighbourhoods. Existing legal 3, 4 and 5-plexes will be recognized as permitted uses.
- (ii) Notwithstanding Policy E.3.4.4 of Volume 1, the Low Density Residential 2 densities shall generally be from 10-29 units per gross hectare. The residential densities associated with the Low Density Residential uses will generally be from 10-29 units per gross hectare.
- (iii) Where single detached housing presently exists in the interior of the neighbourhood, the maintenance of such low density housing will be preferable to new higher density housing forms.”

Desired Housing Mix

Staff are of the opinion that the proposed triplex will not properly contribute to the desired mix of housing because of the location of the dwelling within the interior of the neighbourhood. In addition, the neighbourhood has intensified through the provision of widespread rental accommodation, such that controls have been necessary to limit the size and height of dwellings and the location of medium density uses such as triplexes. On this basis, the proposal does not conform to the Secondary Plan.

In addition, staff note that the renovations undertaken by the owner to create the triplex have not been approved by the City and are not consistent with other legal rental dwellings in this area. This type of change could contribute further to changes in neighbourhood character such as the provision of rear yard area parking on other sites having similarly-sized dwellings. On this basis, the proposal does not comply with the approved Ainslie Wood Westdale Secondary Plan.

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Compatible Low Density Housing Forms

With respect to Policy B.6.2.5.4 (a), it is recognized that the property is located within the interior of a neighbourhood and that only existing legal triplexes are permitted. New triplexes, such as the one currently proposed, would be considered to be an intrusive or incompatible use within the Ainslie Wood East Neighbourhood and in particular, within the interior part of the neighbourhood. Since the proposal does not comply with Policy 6.4.1.2(i) an UHOP Amendment is required.

New triplexes are discouraged in the areas designated “Low Density Residential 2” because they are more intensive housing forms, which could contribute to changes in neighbourhood character due to parking requirements and the removal of landscaped areas and potential nuisance issues. While the proposed triplex would be similar to the density requirement of the Secondary Plan for the Low Density Residential 2 designation (i.e. 30 units per hectare), it would introduce a use that is not characteristic of this interior neighbourhood area and which is permitted only in certain locations which have similar forms and densities (i.e. areas designated “Low Density Residential 3” and “Mixed Use”).

Concerning Policy 6.2.5.4 (a)(iii), the proposed triplex would be located within the interior of the neighbourhood with limited street frontage, and to the rear of existing single detached dwellings. To ensure long term compatibility, more intensively developed residential uses should be visibly located along appropriate streets and beside uses with similar densities.

Based on the foregoing, the proposed triplex does not comply with the UHOP and the Ainslie Wood Westdale Secondary Plan. Staff do not support the proposed Amendment to the UHOP.

Monster Home By-law (By-law 95-33)

As noted, the subject property is under the Monster Home By-law (By-law No. 95-02 of Zoning By-law No. 6593) which created the “C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential etc.) Districts, Modified, to regulate the size of dwellings in the interior parts of the Ainslie Wood Westdale Neighbourhoods to discourage oversized dwellings and illegal lodging houses.

In particular, the special zoning provisions regulate the gross floor area of dwellings which is limited to a factor that shall not exceed 0.45 for all floors in relation to the size of the lot (with certain exceptions for garages and floor areas occupied by heating, A/C and laundry equipment). Secondly, a maximum height for a basement or cellar is provided which is 4.6 m. In cases where the height of the basement or cellar exceed 4.6 m in height, a factor of 1.9 is applied which essentially doubles the gross floor area

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because the higher ceilings could provide additional floor space for loft units. The subject property contains a dwelling which is very close to the maximum GFA as well as the maximum height requirement. If the ceiling were 4.7 m in height, the GFA would exceed the requirement under the By-law.

By-law No. 95-33 provides provisions for single detached dwellings only. As the proposed triplex is a multiple dwelling, it would be in contravention of the By-law.

RELEVANT CONSULTATION

The following internal departments and external agencies had no concerns or objections to the proposed applications:

- Forestry and Horticulture Section, Public Works Department; and,
- Corridor Management Section, Public Works Department.

Hamilton Municipal Parking System (HMPS)

As part of the formal application HMPS requires detailed plans to show the parking areas for the development. It is important that the applicant provide sufficient parking on site as onsite parking regulations in the neighbourhood are already restrictive.

Note - The applicant's conceptual site plan (Appendix "B") identifies the proposed parking area to be three parking spaces, however under Hamilton Zoning By-law No.6593, four spaces would be required.

Public Consultation

In accordance with Council's Public Participation Policy, the applications were pre-circulated to all property owners within 120 m on September 12, 2012, and a sign was posted on the site. A total of 99 notices were circulated. A total of five public submissions were received from the public for the proposed applications and are attached as Appendix "F".

The issues identified in the submissions are discussed in the Analysis and Rationale for Recommendations section of the Report. Notice of the Public Meeting was given in accordance with the requirements of the *Planning Act* through the circulation to property owners within 120 m of the subject lands and through the posting of a sign on the property, and this notification will include the Amendment to the UHOP.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. It is recommended that the applications be denied for the following reasons:
 - (a) The application does not conform to the planning objectives and policies of the Ainslie Wood Westdale Secondary Plan. The proposal introduces a more intensive form of housing within the interior of the Ainslie Wood East Neighbourhood which is not compatible with the adjacent land uses;
 - (b) The application would further contribute to neighbourhood instability by encouraging other similar types of applications; and,
 - (c) The application does not meet the intent of the Hamilton Zoning By-law No. 6593.
2. The proposed UHOP Amendment would require modifications to Volume 2, (Ainslie Wood Westdale Secondary Plan) Policy 6.2.5.4(a)(i), to permit a converted single detached dwelling to be changed to a triplex, whereas only existing triplexes are permitted. An amendment to the UHOP has been submitted.

Staff do not support the proposed Amendment to the UHOP because it is contrary to the fundamental planning principles and objectives that have been developed for the Ainslie Wood Westdale community. Staff are of the opinion that the approval may set an unsuitable precedent for higher density forms of development within interior areas of the Ainslie Wood East Neighbourhood, which is an area comprised mostly of single detached dwellings.

The Ainslie Wood Westdale Secondary Plan was developed to address land use issues within the neighbourhoods of West Hamilton, which surround the McMaster University campus. One of the main issues and challenges has been the need to accommodate higher than average residential demand while maintaining the integrity and character of the residential neighbourhoods.

In the land use plan that was developed, it was determined that Low Density Residential development is the predominant land use form. The low density areas which are within the interior parts of the Ainslie Wood East Neighbourhood are particularly vulnerable and require protection from changes in density and from intensified forms of housing. Since the density within the Ainslie Wood East Neighbourhood is affected by the size of dwellings and the creation of second dwelling units, and since it is difficult to regulate the number of occupants within a dwelling, the Secondary Plan in Policy 6.2.5.4 (i) limits areas designated “Low Density Residential 2” to consist only of single detached dwellings, semi-

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detached dwellings, duplexes and street townhouses, and existing three, four and five-plexes.

In addition, Policy B.6.2.5.4 (iii) identifies that the maintenance of low density housing in the interior of neighbourhoods will be preferable to new higher density housing forms.

Staff consider these policies to be of critical importance for the protection of the low density areas from incompatible development, and for the maintenance of appropriate densities within this sensitive residential area. In addition, staff note the following as further reasons for not supporting the proposed Official Plan Amendment:

- The proposed triplex is a form of housing that would be best located in clusters adjacent to similar uses such as the Medium Density designated properties along the Hamilton Brantford Rail Trail or along Main Street West, which is designated for Mixed Use development;
- Further changes to allow for the development of triplexes within the Low Density designation have not been included in the UHOP for the Ainslie Wood Westdale Secondary Plan. This indicates that the current Secondary Plan policies which apply, would still be appropriate;
- The Medium Density designation has been removed from the Ainslie Wood East Neighbourhood. This illustrates that further measures have been undertaken to restrict, as opposed to encourage, the development of new triplexes, in which case only existing triplexes would be permitted; and,
- The location of the property on land that is not adjacent to a public street may also contribute to impacts within the neighbourhood which relate to privacy and safety. Planning staff did not support the Minor Variance for the creation of the reduced driveway (i.e. 4.5 m in width) for 102 Ainslie Avenue in 1993 because it would create new housing that was concealed from existing development and not part of the streetscape.

The proposed UHOP Amendment should therefore not be supported because triplexes are a more intensive land use that should be limited to those which exist legally within the Ainslie Wood East Neighbourhood. In addition, the proposal, if approved, may contribute to further changes through the development of similar proposals that may be detrimental to the surrounding neighbourhood.

3. The subject property is regulated under Zoning By-law No. 6593, but more specifically is within an area that is under special zoning provisions known as the Monster Home By-law (By-law No. 95-33) which applies to the Ainslie Wood Westdale Neighbourhoods. By-law No. 95-33 regulates building size according to gross floor area and is based on the gross floor area not being greater than 45% of the lot area. The purpose of the By-law was to control the size of dwellings within the neighbourhoods adjacent to McMaster University.

Municipal By-law identified that the additional height within the cellar enabled the owner to provide additional occupancy within the cellar through the use of loft bedroom units attached to the upper part of the cellar walls.

Furthermore, as By-law No. 95-33 does not permit the creation of multiple units, the creation of the proposed triplex would be contrary to the purpose of this By-law, which is to protect existing low density residential neighbourhoods.

Monster Home By-law (By-law 95-33)

As noted, the subject property is under the Monster Home By-law (By-law No. 95-33 of Zoning By-law No. 6593 which created the “C/S-1335”, “C/S-1335a”, and “C/S-720” (Urban Protected Residential etc.) Districts, Modified, to regulate the size of dwellings in the interior parts of the Ainslie Wood Westdale Neighbourhoods to discourage over-sized dwellings.

4. In response to the Notice of Complete Application to legalize the proposed triplex, four letters from residents of the surrounding neighbourhood were received (see Appendix “F”). The following issues were identified in the letters and are discussed below:

Regulatory concerns

- (i) The building footprint exceeds “Monster Home By-law” and ignored the applicable zoning; and,
- (ii) Setting an unsuitable precedent for other higher density uses.

Concerning Item (i), staff have noted the creation of a triplex would contravene the Monster Home By-law (By-law No. 95-33). See also in the discussion on Zoning in the preceding section.

Concerning Item (ii), staff are of the opinion that the approval of the dwelling as a triplex may set a precedent for this area by encouraging the illegal conversion of

existing dwellings to higher density forms of housing within the interior part of the Ainslie Wood East Neighbourhood.

The Ainslie Wood Westdale Secondary Plan discourages the development of higher density uses within the interior of neighbourhoods and recognizes only existing triplex, 4-plex and 5-plex dwellings. The conversion of existing dwellings to triplexes poses a concern because the building could be used accommodate significantly more occupants as a triplex (i.e. more bedroom units and separate facilities such as kitchens / bathrooms) than as a detached dwelling or duplex. The indiscriminate increase in density would potentially generate impacts on both the compatibility and functionality of existing residential lots. Provision of potentially additional parking areas, traffic, and number of occupants could undermine the low density stable residential character of an area.

The subsequent zoning provisions that would be applied to triplex development would also provide for potentially lower parking requirements than for a single detached dwelling with the same number of bedrooms, as well as having reduced landscaping requirements (i.e. 25% of a property). Circumventing the intent of the Zoning By-law in this manner, in the opinion of staff, would have an undesirable and destabilizing effect on the character of the neighbourhood.

Neighbourhood Impacts

- (i) Problem with too many absentee landlords; and,
- (ii) Renters are not respectful of the neighbours.

Concerning Item (i) the issue of absentee landlords is pervasive throughout the Ainslie Wood East Neighbourhood, and remains a continually raised concern by residents and Neighbourhood Associations.

Housing that is built specifically for student rental purposes in particular is a concern because based on the pattern of construction activity, these buildings typically lack aesthetic qualities and are intended to maximize the number of bedrooms when compared to a typical single detached dwelling, or alternatively, the purpose built multiple dwellings that are designed and marketed for students. Staff note that the subject dwelling was built specifically as a student rental dwelling. As such, there have been violations through the creation of an illegal triplex unit.

Concerning Item (ii), there were no complaints issued for the existing dwelling for property standards and two infractions since 2011 for parking. The property, however, is also largely hidden from view of the street, is bounded on two sides by open space, and is within an area of primarily rental dwellings. It is not clear

whether there may be more issues that have not been reported because of other rental dwellings which surround the site. There is concern that the hidden nature of the property could be problematic in terms of noise and rowdiness because of the higher intensity nature of the units.

Parking

- (i) Cars will park on adjacent streets or on driveway.

The owner has established a parking area for three vehicles as well as a turnaround that could also accommodate an additional parking space if required. The requirement of one parking space per unit, as proposed, would be consistent with the By-law 05-200 requirements for multiple dwellings. HMPS has advised that there have been two parking offences since 2011 associated with the subject property. If approved, the subject property would be subject to further review for parking at the Site Plan Approval stage.

Emergency

- (i) Fire truck access may be encumbered.

Staff are of the opinion that fire truck access would not be an issue for this property because a fire hydrant is located in front of 104 Ainslie Avenue. In the event of a fire, fire trucks would have the option of directly accessing the property or parking on Ainslie Avenue.

Density

- (i) Too many people living in the house; and,
- (ii) Not possible to regulate how many people live in a house.

With respect to Item (i), the Ainslie Wood Westdale Secondary Plan policies do not support the conversion of existing dwellings to triplexes because it would contribute to the destabilization of the neighbourhood. The interior areas of the Ainslie Wood East Neighbourhood is particularly sensitive to intensification pressures particularly since the amount of rental housing has increased from 30% in 2002 to 59% in 2012, according to the neighbourhood association Ainslie Wood Westdale Community Association (AWWCA). Staff note that it would be difficult to regulate the number of persons residing within the subject dwelling if it were to be developed as a triplex. Staff support the current policies, which are intended to protect the interior of low density neighbourhoods from incompatible development and, which, would not permit new triplexes.

With respect to Item (ii), staff note that the number of renters or persons residing within a dwelling is not a planning issue regulated through a zoning by-law. Instead, regulations to control height, massing gross floor area are in place for rental housing in the area under the C/S-1335 and C/S-1335a District. There are also provisions in Zoning By-law No. 6593 that apply to dwellings which require additional parking spaces to be provided on the basis of 0.5 spaces for each additional habitable room above eight habitable rooms. It is through careful regulation of these provisions that the issue of character and compatibility are assessed and evaluated.

For residential uses including triplexes, occupancy is reasonably determined through building permits which establish the number of bedrooms and other rooms under the Building Code that are required for occupancy. However, since interior work is often done without permits, changes may occur within dwellings and individual units to allow for greater occupancy than would be permitted. Licensing and proactive enforcement are being undertaken by the City to curtail this problem.

5. If the proposed UHOP Amendment and Zoning By-law Amendment are supported, it is recommended that the property be subject to a Holding "H" Provision until Site Plan Approval is finalized. This is to enable the examination of required parking, maneuvering, building entrances, walkways and landscaped areas on the site. Due to noise associated with highway traffic, the applicant's Letter of Undertaking on the final approved site plan would also require the owner to agree to include warning clause within all future lease agreements which would include the following wording:

"Tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria."

In addition, following Site Plan Approval, a Building Permit would be required to address the required fire separations, individual entrances and other requirements for the units comprising the triplex under the Building Code.

ALTERNATIVES FOR CONSIDERATION

1. Should the proposed UHOP Amendment and Zoning By-law Amendment applications be denied, the property could continue to be used as a converted single detached dwelling under the existing "C/S-1335", "C/S-1335a" and "C/S-720" (Urban Protected Residential, etc.) Districts, Modified, which would permit up to three lodgers per unit, rather than four lodgers under the existing situation.

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However, the cellar of the dwelling would not be permitted to be used for residential occupancy. The owner would be required to consider other options for this portion of the dwelling which do not involve habitable rooms.

2. Should Council approve the proposed UHOP Amendment and Zoning By-law Amendment, staff shall be directed to prepare the required UHOPA and implementing Zoning By-law.

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 #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”: Plan with Aerial Overlay Showing Proposed Triplex
- Appendix “C”: Photos of Existing Development
- Appendix “D”: East Elevation Showing Building Height and Cellar (1997)
- Appendix “E”: Photos of Existing Medium Density Development in Ainslie Wood East Neighbourhood
- Appendix “F”: Neighbourhood Correspondence

:CT/th