



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
*Planning Division*

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	August 11, 2015
<b>SUBJECT/REPORT NO:</b>	Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-15:83, Trinity Investment Inc. (Owner), for lands located at 554 Main Street East (Hamilton) (PED15092)(Ward 3)
<b>WARD(S) AFFECTED:</b>	Ward 3
<b>PREPARED BY:</b>	Daniel Barnett Planner 2 (905) 546-2424 Ext. 4445  Steve Robichaud Director of Planning and Chief Planner Planning Division
<b>SUBMITTED BY:</b>	Jason Thorne General Manager Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That Council agrees to the following actions, as detailed in Report PED15092, respecting the appeal of City of Hamilton Committee of Adjustment Minor Variance Application HM/A-15:83 (Trinity Investment Inc.) (Owner), 554 Main Street East (Hamilton), as shown on Appendix “A” to Report PED15092, approved by the Committee of Adjustment but not including a condition ensuring that off-site parking at 7 Myrtle Avenue remains available for the exclusive use of the medical office at 554 Main Street East:

- (a) That Council of the City of Hamilton proceed with the appeal to the Ontario Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Minor Variance Application HM/A-15:83 without an appropriate condition; and,
- (b) That Council directs appropriate Legal Services and Planning staff, to attend the future OMB Hearing in opposition to the decision of the Committee of Adjustment

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to approve Minor Variance Application HM/A-15:83 without an appropriate condition.

**EXECUTIVE SUMMARY**

Minor Variance Application HM/A-15:83, to permit the establishment of a medical office within the ground floor and second floor of an existing building, was considered by the City of Hamilton Committee of Adjustment on June 11, 2015.

Comments to the Committee of Adjustment from Planning staff supported the application on the basis that ten additional parking spaces for the medical office would be available off-site at 7 Myrtle Avenue (see Appendix “B”). In the absence of the additional off-site parking, the variance to reduce the required on-site parking from 32 parking spaces down to eight would not have been supported by staff. The Committee of Adjustment approved the Minor Variance Application for the reasons set out in Appendix “C”, without any mechanism to ensure that off-site parking remain available for the exclusive use of the medical office at 554 Main Street East. Due to the appeal period, Planning and Economic Development staff submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council approval / ratification.

***Alternatives for Consideration – See Page 8***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** Planning and Economic Development Department staff have submitted the required fee of \$125.00 to the Minister of Finance to begin the appeal process. Other than this one-time fee, the costs for the Hearing are covered by the respective Departmental Work Programs / Budgets. The Hearing would likely take one day.

**Staffing:** One representative each from Planning and Legal Services would be required for preparation and attendance at an OMB Hearing. One member of Planning staff would attend as an expert witness at the Hearing, should Council support Option 1 as outlined on page 8 of this Report.

**Legal:** No legal implications are expected.

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## **HISTORICAL BACKGROUND**

### **Proposal:**

The subject property is located at 554 Main Street East (Hamilton) (see Appendix “A”).

The proposal is to permit the establishment of a medical office within the ground floor and second floor of an existing commercial building. A total of eight parking spaces would be maintained on-site and ten additional parking spaces would be located off-site at 7 Myrtle Avenue (see Appendix “D”). The applicant was also seeking approval to not require on-site manoeuvring space instead of the required 6 m, to permit a parking space size of 2.6 m by 5.5 m instead of 2.7 m by 6 m, and to not require an on-site loading space whereas one loading space is required.

Planning Division staff recommended approval of the application based on the parking needs of the proposed medical office being supplemented by ten off-site parking spaces. Based on this, the application is considered to be in conformity with the criteria in Section 45 of the *Planning Act* (see Appendix “B”). The variances meet the intent and purpose of the Urban Hamilton Official Plan (UHOP), meet the intent and purpose of the City of Hamilton Zoning, are desirable and appropriate for the use of the lands, and are considered to be minor in nature.

The Committee of Adjustment first reviewed the minor variance application at its meeting on May 28, 2015. The application was tabled in order for further discussion with the local ward councillor to occur.

The Committee of Adjustment, at its meeting on June 11, 2015, approved the minor variance without any mechanism to ensure that the ten off-site parking spaces continued to remain for the use of the medical office at 554 Main Street East (see Appendix “C”).

On June 24, 2015, Planning Division staff filed an Appeal with the Secretary-Treasurer of the Committee of Adjustment.

On June 30, 2015, a member of the public filed an Appeal with the Secretary-Treasurer of the Committee of Adjustment.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

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

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**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, 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 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).”

Staff are of the opinion that the variances meet the intent of the UHOP and Zoning By-law No. 6593, is desirable for the appropriate development or use of the land, and can be considered minor in nature, subject to an appropriate condition respecting off-site parking.

**Provincial Policy Statement (2014)**

The application has been reviewed with respect to the Provincial Policy Statement (PPS).

- “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.”

Policy 1.1.1 speaks to healthy, liveable and safe communities. The application is generally consistent with the policies of the PPS.

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**Provincial Growth Plan for the Greater Golden Horseshoe:**

The application has been reviewed with respect to the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow).

“2.2.2 Managing Growth

1. Population and employment growth will be accommodated by-
  - a. directing a significant portion of new growth to the built-up areas of the community through intensification
  - d. reducing dependence on the automobile through the development of mixed-use, *transit-supportive*, pedestrian-friendly urban environments.”

The proposed medical office directs growth into the built-up area and is located on a transit line and therefore is a transit-supportive, pedestrian-friendly development. Therefore, the proposed redevelopment conforms with the policies of the Provincial Growth Plan for the Greater Golden Horseshoe.

**Urban Hamilton Official Plan**

The subject property is identified as “Primary Corridor” on Schedule “E” and designated “Neighbourhoods” on Schedule “E-1”. The following policies, amongst others, are applicable to the review of the minor variance application.

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

- d) local commercial uses.

E.3.8.1 Local Commercial uses that primarily cater to the weekly and daily needs of residents within the surrounding neighbourhood may be permitted within the Neighbourhood Designation.

E.3.8.2 The following uses shall be permitted:

- b) medical offices or clinic, provided it has direct access to an arterial road and is adjacent to other local commercial uses.”

As the proposal is to permit a medical office within an existing commercial building along an arterial road, the proposed use complies with the policies of the UHOP.

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- “E.3.8.9 Development and redevelopment of local commercial uses shall:
- a) Front and have access to a major arterial, minor arterial or collector road;
  - b) Provide safe and convenient access for pedestrian and cyclists; and,
  - c) Be compatible with the surrounding area in terms of design, massing, height, setbacks, on-site parking, noise impact, landscaping, and lighting.”

The policies of the UHOP require that the redevelopment of local commercial uses be compatible with the surrounding area with respect to parking, among other issues. The subject property has eight on-site parking spaces whereas 32 parking spaces are required. An additional ten parking spaces are provided at 7 Myrtle Avenue creating a total of 18 parking spaces. The combined on-site and off-site parking is required for the proposed medical office to meet its parking needs and to avoid negative traffic impacts on the neighbourhood.

**City of Hamilton Zoning By-law No. 6593**

The subject property is zoned “H” (Community Shopping and Commercial) District in the City of Hamilton Zoning By-law, to which the proposed use of a medical office conforms.

The land upon which the supplementary off-site parking are located (7 Myrtle Avenue) are zoned “G-3” (Public Parking Lots) District, to which the use of the lands as a parking lot conforms.

**RELEVANT CONSULTATION**

- Legal Services Division.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The approved variances permit the existing commercial building to be converted to a medical office (see Appendix “D”).

The minor variance approval included a total of four variances, which included variances to not require an on-site loading space instead of providing one on-site loading space; not requiring on-site manoeuvring space instead of requiring 6 m of on-site manoeuvring space; reduction in the minimum size of a parking space from 2.7 m

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by 6 m to 2.6 m by 5.5 m; and, to reduce the minimum number of on-site parking spaces from 32 spaces to eight spaces.

Staff were supportive of the four variances (see Appendix “B”). In review of the minor variance for reduction in the minimum number of on-site parking spaces, staff noted that the proposed eight on-site parking spaces are accessed from an alleyway south of the property and that an additional ten parking spaces were located on the south side of the alleyway (7 Myrtle Avenue) (see Appendix “D”). The ten parking spaces located on 7 Myrtle Avenue are located on a property that is owned by the property owner of 554 Main Street East and is zoned “G-3” (Public Parking Lots) District. The parking spaces on both sides of the alleyway, and the alleyway itself, have the appearance of being one parking lot. Staff also noted that the subject property was located along a major transit route which provided alternative transportation options for both the staff and the patients of the proposed medical office.

After reviewing the proposal, staff were of the opinion that the proposed variance for a reduction in on-site parking met the four tests of a minor variance. This opinion was based on the availability of public transit and the availability of the ten additional off-site parking spaces. The four tests of a minor variance would not be met if the ten additional off-site parking spaces were not available for the use of the medical office. The off-site parking spaces need to remain for the use of the medical office and the parking cannot be used for other commercial uses nor can these parking spaces be removed to accommodate future development of this site.

To ensure that the parking remains for the use of the medical office at 554 Main Street East, and that the parking is not removed to accommodate future development of 7 Myrtle Avenue, an agreement, to be registered on title, is required which ensures that the off-site parking is maintained for the use of the medical office.

No agreement was required as part of the minor variance approval by the Committee of Adjustment which has necessitated this appeal to the Ontario Municipal Board (OMB).

#### Additional Appeal

A second appeal was filed by a member of the public, appealing the decision of the Committee of Adjustment to approve Minor Variance Application HM/A-15:083, specifically with respect to the variances for reduced on-site parking and no on-site loading space. The reasons for the appeal was that the appellant was of the opinion that the variances for reduced on-site parking and no on-site loading did not meet the four tests of a minor variance, and that the absence of adequate parking and loading spaces has and will continue to negatively impact the neighbourhood.

## **ALTERNATIVES FOR CONSIDERATION**

### **Option 1:**

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the OMB Hearing in opposition to the approved variance application without the appropriate off-site parking agreement condition, as recommended in this Report.

### **Option 2:**

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment, to the OMB. This option would not affect the appeal filed by the interested third party, and the variance application would remain under appeal and therefore would not be brought into force and effect by the withdrawal of the appeal filed by staff. The minor variance application would not be brought into force and effect until the additional appeal has been resolved.

## **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).

### **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.*

### **Strategic Objective**

3.4 Enhance opportunities for administrative and operational efficiencies.



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**APPENDICES AND SCHEDULES ATTACHED**

- Appendix “A”: Location Map
- Appendix “B”: Development Planning Comments
- Appendix “C”: HM/A-15:083 Committee of Adjustment Decision
- Appendix “D”: Surveyor’s Sketch

:DB/th