



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 15, 2015
SUBJECT/REPORT NO:	Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application AN/A-15:205, Glendale Services (Owner), for Lands Located at 407 Wilson Street East (Ancaster) (PED15143) (Ward 12)
WARD(S) AFFECTED:	Ward 12
PREPARED BY:	Danielle Beck Planning Technician (905) 546-2424 Ext. 1285 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Council agrees to the following actions, as detailed in Report PED15143, respecting the appeal of City of Hamilton Committee of Adjustment Minor Variance Application AN/A-15:205, Glendale Services (Owner), 407 Wilson Street East (Ancaster), as shown on Appendix "A" to Report PED15143, approved by the Committee of Adjustment but was recommended for Denial by the Planning Division, Planning and Economic Development Department;

- (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 Application AN/A-15:205;
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Ontario Municipal Board (OMB) Hearing in opposition to the decision of the Committee of Adjustment to approve Application AN/A-15:205.

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EXECUTIVE SUMMARY

Application AN/A-15:205, to permit minor variance approval for the establishment of a motor vehicle sales establishment in conjunction with the existing motor vehicle service station at 407 Wilson Street East, was considered by the City of Hamilton Committee of Adjustment on July 23, 2015. The Planning Division advised the Committee of Adjustment that the variance to permit the motor vehicle sales establishment should be denied, as the proposal did not meet the tests of a minor variance contained in Section 45(1) of the *Planning Act* (see Appendix “B”). The Committee of Adjustment approved the minor variance application for the reasons set out in the decision of the Committee of Adjustment (see Appendix “C”).

Under the *Planning Act*, appeals must be filed within 20 days of the decision. As such, 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’s approval / ratification.

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 where the *Planning Act* appeal periods cannot be met, the Planning and Development Department be authorized and directed to file an appeal with the Secretary Treasurer of the Committee of Adjustment, in the name of and on behalf of the City, whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law **and is deemed not to be in keeping with the intent and purpose of the By-law**. Such an appeal shall be made subject to Council approval/ratification or withdrawal. The Planning and Development Department shall prepare a report to the Committee of the Whole. In response to such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

Alternatives for Consideration – See Page 10

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.

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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 9 of this Report.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND

The subject property is located at 407 Wilson Street East, Ancaster, on the west side of Wilson Street East, south of Rousseau Street and north of Sulphur Springs Road (see Location Map attached as Appendix "A").

In 1999, a Zoning By-law Amendment Application was brought forward on the subject lands to permit a motor vehicle service station and an accessory dwelling unit in addition to the permitted uses of the "Village Area" zone in Ancaster Zoning By-law No. 87-57. By-law No. 99-53 was adopted and the Village Area "VA-436" site-specific zoning was approved.

The effect of the proposal is to add a motor vehicle sales establishment use. The sale of motor vehicles will be in conjunction with the existing motor vehicle service station and the application to allow up to three vehicles to be sold onsite (see Appendix "C").

Planning Division staff recommended denial of the application as the proposed motor vehicle sales establishment use is not permitted in the applicable provisions of the Urban Hamilton Official Plan UHOP, the Ancaster Wilson Secondary Plan or the Ancaster Zoning By-law as they relate to the subject lands. Based on this, the application is considered to not be in conformity with the criteria in Section 45 of the *Planning Act* (see Appendix "B"). The variance does not meet the intent and purpose of the UHOP, does not meet the intent and purpose of the Ancaster Zoning By-law No. 87-57, is not desirable and appropriate for the use of the lands, and is not considered to be minor in nature.

The Committee of Adjustment, at its meeting on July 23, 2015, approved the minor variance with a limitation that three vehicles could be sold as part of the motor vehicle sales establishment (see Appendix "C").

On August 4, 2015, Planning Division staff filed an Appeal with the Secretary-Treasurer of the Committee of Adjustment and said appeal has been forwarded to the OMB. At the time of the preparation of this Report the OMB has not scheduled a hearing date on this matter.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Planning Act

The application has been reviewed with respect to the criteria 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, 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 variance to permit a motor vehicle sales establishment does not meet the general intent of the UHOP and Ancaster Zoning By-law No.87-57; is not desirable and appropriate for the use of the land; and, is not considered minor in nature. Therefore, the minor variance application would not meet the four test of a minor variance under the *Planning Act*, and the variance should be denied.

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:

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- 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.

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.”

The proposed motor vehicle sales establishment directs growth into the existing built-up area. Therefore, the proposed redevelopment conforms with the policies of the Provincial Growth Plan for the Greater Golden Horseshoe.

Urban Hamilton Official Plan

The subject lands are identified as “Community Node” on Schedule “E” – Urban Structure and designated “Mixed Use – Medium Density” on Schedule “E-1” – Urban Land Use Designations in the Urban Hamilton Official Plan (UHOP).

Volume 1, Chapter E, policy 2.3.3.2 states:

“Within each Community Node a range of uses shall be provided that allow for access to housing, employment, services, and recreation in close proximity to each other and transit. The Community Nodes shall provide services to residents within the former area municipalities and surrounding neighbourhoods in a mixed use environment.”

The proposed used would be permitted in the “Community Node” as it provides employment and services on a transit route in a mixed-use environment.

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Further, Policy 2.3.3.17 states:

“The Community Node shall contain a broad mix of uses. Where possible, this mix of land uses should include developments either as mixed use buildings or a mix of uses on the same property. Redevelopment of larger sites provides significant opportunities to transform the character of a Node. Therefore, on sites greater than 2.5 hectares, a mix of uses shall be required in major redevelopments.”

The proposed motor vehicle sales establishment is providing for a mix of uses on the same property as it will function in conjunction with the existing service station.

In addition, Policy 4.6.5 states:

“The following uses shall be permitted on lands designated Mixed Use - Medium Density on Schedule E-1 – Urban Land Use Designations:

- a) commercial uses such as retail stores, auto and home centres, home improvement supply stores, offices oriented to serving residents, personal services, financial establishments, live-work units, artist studios, restaurants, gas bars, and drive-through facilities.”

The existing gas bar is permitted in the Mixed Use – Medium Density designation; however, the proposed motor vehicle sales establishment is not permitted as a primary, joint or accessory use.

Prohibited Uses in Policy 4.6.6 states:

“The following uses shall be prohibited on lands designated Mixed Use - Medium Density on Schedule E-1 – Urban Land Use Designations:

- a) gas bars and car washes on pedestrian predominant streets;
- b) vehicle dealerships; and,
- c) garden centres as a primary use.”

The UHOP specifically prohibits vehicle dealerships on the subject lands. As such, the proposed motor vehicle sales establishment is not a permitted use in the UHOP and the request to include said use does not meet the intent of the UHOP.

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Ancaster Wilson Secondary Plan

The subject lands are designated “Mixed Use - Medium Density” and “Pedestrian Predominant Street” in the Ancaster Wilson Secondary Plan. The lands are also identified as being part of the “Community Node” area and the “Village Core” area.

Volume 2, Policy 2.8.8.4 states:

“Village Core Area

- g) The Village Core area, shown on Appendix A - Character Areas and Heritage Features, shall primarily consist of service and retail uses, as well as residential uses. The Village Core area shall serve the daily retail, commercial, and personal service needs for the Ancaster Community.
- h) Commercial facilities to be encouraged with the Village Core area may include retail stores, service commercial uses, banks, restaurants with sit-down service, and offices. The lands to be used for commercial purposes shall be those lands that front onto Wilson Street.
- i) The design of buildings and lands located in the Village Core area, shown on Appendix A - Character Areas and Heritage Features, are detailed in Policy 2.8.12.1 j) ii), and are further described in the supporting Ancaster Wilson Street Secondary Plan Urban Design Guidelines.”

The secondary plan does not outline specific permitted uses, and therefore the parent policies of the UHOP apply which specifically prohibit a motor vehicle sales establishment.

Furthermore, staff have concerns that the proposed motor vehicle sales establishment is also not consistent with the intent of the policies relating to Pedestrian Predominant Streets in the UHOP.

Policy 2.8.8.5 respecting Pedestrian Predominant Streets states:

“Private and public parking areas are permitted on lands designated Mixed Use – Medium Density, and identified as Pedestrian Predominant Streets, subject to the following:

- i) Parking areas shall be buffered from the street through the use of building placement or enhanced landscaping;

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- ii) The location of parking areas shall not negatively affect the pedestrian environment or access to building; and,
- iii) Private and public parking areas are encouraged to provide for shared parking for several uses within the Village Core.”

In addition, the Ancaster Wilson Street Urban Design Guidelines also apply to the subject lands.

Justification was not provided by the applicant as to how the above noted policies in the secondary plan or Urban Design Guidelines were met.

Ancaster Zoning By-law No. 87-57

The lands are zoned Village Area “VA-436” Zone, Modified, in the Ancaster Zoning By-law No. 87-57.

The variance does not meet the general intent and purpose of the Zoning By-law since a motor vehicle sales establishment is not a permitted use within the Village Area “VA-436” Zone. Specifically the “VA” parent zoning permits:

- (a) “Commercial buildings existing at the date of passing of this By-law and the enlargement or extension thereof, and buildings and structures accessory thereto, and the Village Area “VA” Zone uses permitted in Subsection 22.1 are also permitted in such commercial buildings.
- (b) Residential uses existing at the date of passing of this By-law and enlargement thereof but not so as to increase the number of dwelling units, and uses, buildings and structures accessory thereto.
- (c) One detached dwelling on one lot and uses, buildings and structures accessory thereto.”

The Village Area “VA-436” site-specific zone permits:

- “1.0 Notwithstanding Subsection 22.1, the following additional uses shall be permitted:
 - a) Motor Vehicle Service Station;
 - b) Accessory dwelling unit.”

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A motor vehicle sales establishment is a defined term in the Ancaster Zoning By-law:

“Motor Vehicles Sales Establishment means a place where motor vehicles are kept for display and sale, lease or rent.”

A motor vehicle sales establishment is only permitted in the Urban Commercial “C4” Zone in the Ancaster Zoning By-law, save and except where site specific zoning has been approved. The site-specific permissions in By-law No. 99-53 limit the use of the site to a motor vehicle service station and accessory dwelling unit only. As such, the request for a minor variance to permit the use does not meet the intent of the Zoning By-law.

RELEVANT CONSULTATION

- Legal Services Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

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 where the *Planning Act* appeal periods cannot be met, the Planning and Development Department be authorized and directed to file an appeal with the Secretary Treasurer of the Committee of Adjustment, in the name of and on behalf of the City, whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law **and is deemed not to be in keeping with the intent and purpose of the By-law**. Such an appeal shall be made subject to Council approval/ratification or withdrawal. The Planning and Development Department shall prepare a report to the Committee of the Whole. In response to such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

The proposed variance to permit a motor vehicle sales establishment does not meet the four tests of a minor variance as stipulated by the *Planning Act*. The proposed variance fails the four tests on the basis that the use is not prohibited in the UHOP and the Ancaster Wilson Secondary Plan and is not a permitted use in the Ancaster Zoning By-law. Adequate justification and supporting data have not been provided to adequately demonstrate that the proposed motor vehicle sales establishment will not negatively impact the surrounding neighbourhood.

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Staff note that in 1999 a Zoning By-law Amendment was adopted to permit a motor vehicle service station on the subject lands. Therefore, a use that was not permitted in the parent "Village Area" zoning was adopted by way of a Zoning By-law Amendment, whereas the current application is proposing a use that is not permitted by way of a Minor Variance.

As the use is not permitted in the UHOP or Ancaster Zoning By-law, an amendment to both policy documents would be required to facilitate the proposal.

It is the opinion of staff that the four tests of a minor variance have not been satisfied with respect to the proposed variance to permit a motor vehicle sales establishment on the subject lands. Therefore, it is appropriate for the City to appeal the minor variance to the OMB.

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, 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. Provided that no further appeals are filed; this option would allow the Committee of Adjustment's decision to permit vehicle sales from the subject property.

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.

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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.

Strategic Objective

2.2 Improve the City's approach to engaging and informing citizens and stakeholders.

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.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Comment Consolidation
- Appendix "C": Excerpt from the Urban Hamilton Official Plan
- Appendix "D": AN/A-15:205 Committee of Adjustment Decision
- Appendix "E": Concept Plan Submitted with Application