



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	October 6, 2015
SUBJECT / REPORT NO:	Committee of Adjustment Minor Variance Application SC/A-15:187 for the Property Located at 29 Lakeview Drive (Stoney Creek), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED15149) (Ward 10)
WARD(S) AFFECTED:	Ward 10
PREPARED BY:	Michael Fiorino Planning Technician (905) 546-2424 Ext. 4424 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY: SIGNATURE:	Jason Thorne General Manager Planning and Economic Development Department

RECOMMENDATION

That Report PED15149, respecting Committee of Adjustment Minor Variance Application SC/A-15:187, for the property located at 29 Lakeview Drive (Stoney Creek), as shown on Appendix "A", supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information.

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application SC/A-15:187 to permit an existing 3.04 m x 3.65 m accessory building (shed) be a minimum of 2.1 m from the front lot line instead of being located a minimum of 8.0 m from the front lot line as per Stoney Creek Zoning By-law 3692-92 (see Appendix "B"). The Minor Variance Application was considered by the Committee of Adjustment on July 9, 2015. Comments to the Committee of Adjustment from Planning staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, complied with the Urban Hamilton Official Plan and satisfied the four tests set out in Section 45(1) of the *Planning Act* in that the variances were considered to be minor in nature, desirable for the appropriate development or use of the land and maintained the general intent and

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purpose of the Urban Hamilton Official Plan and Stoney Creek Zoning By-law No. 3692-92.

The Committee of Adjustment denied the application for the reasons provided in Appendix "C". The decision was appealed to the Ontario Municipal Board (OMB) on July 29, 2015 by the applicant. At the time of the preparation of this Report, the OMB has not scheduled a hearing date on this matter.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee of Adjustment's decision to deny the application, the City must retain an outside planning consultant and any other experts who can professionally support the denial. The hearing would take approximately one day. If an outside planning consultant is retained, the costs would be approximately \$3,000 to \$5,000 for a one-day hearing. In keeping with the funding source for other appeals where Council authorizes the retainer of outside consultants the amount required to retain such experts to support the City's position before the OMB would be funded from the Tax Stabilization Reserve - 110046.

Staffing: If Council wishes to support the Committee of Adjustment decision, then one representative from Legal Services would be required for preparation and attendance at the OMB Hearing.

If Council wishes to support Option 2 in the Alternatives for Consideration section (support appeal of denial), then in addition to Legal Services attendance, one member of Planning staff would attend as an expert witness at the OMB Hearing.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND

Roles and Responsibilities of the Committee of Adjustment (PD02116(a))

In December 2002, City Council endorsed a staff report related to the Roles and Responsibilities of the Committee of Adjustment. The recommendations included the following:

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“That the Planning and Development Department be authorized and directed to prepare an Information Report, to the Committee of the Whole, when an appeal is made to the Ontario Municipal Board of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a Report, Council may determine its position on the Committee of Adjustment decision, and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

Proposal

The subject property is located at 29 Lakeview Drive (Stoney Creek) (see Location Map attached as Appendix “A”). The Minor Variance Application proposes to permit an existing 3.04 m x 3.65 m accessory building (shed) notwithstanding the accessory building (shed) shall be a minimum of 2.1 m from the front lot line instead of being located a minimum of 8.0 m from the front lot line.

The application was reviewed against all applicable planning policy documents, which included the Urban Hamilton Official Plan and the Stoney Creek Zoning By-law No. 3692-92. Staff recommended approval of the Minor Variance Application as the variances were determined to be minor in nature, desirable for the appropriate development or use of the land, and maintained the general intent and purpose of the Urban Hamilton Official Plan and Stoney Creek Zoning By-law No. 3692-92. Further policy analysis is provided below.

July 9, 2015 Committee of Adjustment Meeting

The minutes of the July 9, 2015 Committee of Adjustment meeting are attached as Appendix “D” to this Report. The discussion of the meeting was centralized around the location of the accessory building (shed) and the request to reduce the required setback from the front lot line (see Appendix “B”). The applicant was asked if the accessory building (shed) could be moved and Mr. Derbyshire explained that the shed is on a concert pad and was not moveable. Following discussion on the application merits of the application, the Committee of Adjustment passed a motion to deny the application.

RELEVANT CONSULTATION

Legal Services Division, in respect to staffing and costs if Council supports the Committee of Adjustment’s position and directs Legal Services to attend the OMB Hearing to defend the Committee of Adjustment decision (Option 1).

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ANALYSIS AND RATIONALE FOR RECOMMENDATION

Planning staff's report is attached as Appendix "D" to this Report. The minor variance application is consistent with the policies in the Urban Hamilton Official Plan which seeks to ensure preservation of the character, streetscape and ensure that the development is compatible with the neighbourhood.

The accessory building (shed) complies with the applicable UHOP policies as the shed was constructed behind trees which buffer the accessory building from the street not and hereby altering the streetscape and ensuring that the shed is not dominant to the street. The accessory building is compatible as neighbouring properties along the north side of Lakeview Drive also have accessory buildings located in the front-yard due to the location of Lake Ontario and potential additional setback requirements from the Hamilton Conservation Authority.

It should also be noted that the shore line is not straight as it meanders making properties which back onto Lake Ontario have varying lot depths. Property owners along Lakeview Drive who have larger lots have more flexibility with regards to the location of a single detached dwelling on the lot. Many of the single detached dwellings are located closer to Lake Ontario making the front yard function as a rear yard in which accessory buildings are permitted.

As noted in the letters of support provided in the appeal package, Mr. Muir, owner of the property to the west of the subject lands (27 Lakeview Drive), has stated that there was previously an accessory building located at 29 Lakeview Drive in the same location. At the Committee hearing held on July 9, 2015, the applicant explained that there was previously an accessory building (shed) in the same location. As well, the applicant stated that there are many cedar trees and due to the acidity of the soil located around the cedar trees it has prevented the applicant from growing grass in this location making this a good location for the shed. The reduction in setback distance is supportable by Planning Staff as there is mature vegetation which buffers the accessory building from the street line.

No concerns were raised from any Departments who reviewed the application for the Committee of Adjustment hearing with respect to the location of the accessory building and there has not been any additional development proposed for the subject lands. The proposed variance required to facilitate the reduction in front yard setback will not adversely impact the surrounding properties or adversely impact the quality of life for residents as there has been no significant change to the character and streetscape.

The requested variances are considered to be minor in nature, desirable for the appropriate development of the land, and maintain the general intent and purpose of the

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Urban Hamilton Official Plan and the Stoney Creek Zoning By-law No. 3692-92, which satisfies the four tests of a minor variance set out in Section 45(1) of the *Planning Act*. Based on the foregoing, staff are supportive of the requested variance.

ALTERNATIVES FOR CONSIDERATION

Option 1

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

Option 2

Council may decide to support the appeal against the Committee of Adjustment's decision to deny, and direct Legal Services to attend the Ontario Municipal Board Hearing in support of the appeal to the application, and to use City Planning staff as its professional witness.

Option 3

Council may decide to not send Legal Services to the OMB, either in support of the Committee's decision, or against the applicant's appeal.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

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

Strategic Objective

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

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

Strategic Priority #3

Leadership & Governance

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

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Application Sketch
- Appendix "C": HM/A-14:255 Committee of Adjustment Decision
- Appendix "D": July 9, 2015, Meeting Minutes
- Appendix "E": Consolidated Staff Comments
- Appendix "F": Accessory Building Definition,
Section 4.5: General Provisions for Accessory Buildings,
Section 6.1.4: Accessory Buildings in Residential Zones,
Section 6.3: Single Residential "R2" Zone
(from Stoney Creek Zoning By-law No. 3692-92)

:MF/th