



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 19, 2016
SUBJECT / REPORT NO:	Committee of Adjustment Minor Variance Application GL/A-15:317 for the Property Located at 22 Bellstone Lane (Glanbrook), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED16087) (Ward 11)
WARD(S) AFFECTED:	Ward 11
PREPARED BY:	Ryan Cummins Planning Technician (905) 546-2424 Ext. 1285 Steve Robichaud Director of Planning and Chief Planner Planning Division
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Report PED16087, respecting Committee of Adjustment Minor Variance Application GL/A-15:317, for the property located at 22 Bellstone Lane (Glanbrook), as shown on Appendix “A” to Report PED16087, supported by the Planning and Economic Development Department, but denied in part by the Committee of Adjustment, be received for information.

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application GL/A-15:317 to permit a proposed 5.18 m by 5.18 m one storey addition to the existing single detached dwelling. Specifically the applicant is proposing to construct a sunroom addition. The requested variances were to permit a minimum 3.8 m exterior side yard setback instead of the required minimum of 5.0 m exterior side yard setback, and a minimum 4.0 m rear yard setback instead of the required minimum 7.0 m rear yard setback, as per Glanbrook Zoning By-law No. 464 (see Appendix “B” to Report PED16087). The Minor Variance Application was heard by the Committee of Adjustment on November 12, 2015, and was rescheduled to November 26, 2015 to allow for further consideration. Comments to

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the Committee of Adjustment from Planning division 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* which require the variances be considered 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 Glanbrook Zoning By-law No. 464.

The Committee of Adjustment denied variance 1 (side yard setback), and approved variance 2 (rear yard setback), for the reasons provided in Appendix “C” to Report PED16087. The approval of variance 2 was appealed to the Ontario Municipal Board (OMB) on December 16, 2015 by an adjacent land owner. At the time of the preparation of this Report, the OMB had not scheduled a hearing date on this matter.

Alternatives for Consideration – See Page 8

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 in part, the City must retain an outside planning consultant and any other experts who can professionally support the denial. The Hearing is anticipated to 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, outlined in the Alternatives for Consideration section of this report (support appeal of denial), then in addition to Legal Services attendance, one member of Planning staff would attend as an expert witness at the OMB Hearing.

Legal: No legal implications are expected.

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HISTORICAL BACKGROUND

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

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

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

Proposal

The subject property is located at 22 Bellstone Lane (Glanbrook) (see Location Map attached as Appendix “A” to Report PED16087). The Minor Variance Application is to facilitate the construction of a 5.18 m by 5.18 m one storey addition to the existing single detached dwelling. Specifically, the variances are to permit the addition to be a minimum of 3.8 m from the exterior side lot line instead of being located a minimum of 5.0 m from the exterior side lot line, and a minimum of 4.0 m from the rear lot line instead of being located a minimum of 7.0 m from the rear lot line, as per Glanbrook Zoning By-law No. 464.

The application was reviewed against all applicable planning policy documents, which included the Urban Hamilton Official Plan and the Glanbrook By-law No. 464. 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 Glanbrook Zoning By-law No. 464. Further policy analysis is provided below.

November 12, 2015 Committee of Adjustment Meeting

At the November 12, 2015 Committee of Adjustment meeting, agent John Witten, representing owner Alex Alexander, attended the meeting. As noted in the minutes of the meeting (see Appendix “D” to Report PED16087), several neighbours were in attendance to voice their concerns with the proposal. There were three letters also submitted to the Committee of Adjustment by neighbours voicing concern about the potential impacts on the existing streetscape and property values. The discussion at the meeting focused around the impact of the rear and side yard setbacks, and the roofline

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of the proposed addition (see Appendix “B” to Report PED16087). The neighbours in attendance were given an opportunity to voice their concerns. The major areas of concern brought forward by neighbours are the impacts on property values, that the proposal is not in keeping with the character of the neighbourhood, and that the corner lot location impacts a considerable number of properties in the neighbourhood. Following discussion on the merits of the application and the concerns of the neighbours, the Committee of Adjustment passed a motion to table the application for further consideration.

November 26, 2015 Committee of Adjustment Meeting

At the November 26, 2015 Committee of Adjustment meeting, agent John Witten, representing owner Alex Alexander, attended the meeting. There was one letter submitted to the Committee of Adjustment by a neighbour voicing concern about the potential impacts on the existing streetscape and property values. Following a site inspection, a member of the Committee indicated that the side yard setback proposed would not be in keeping with the established streetscape. Following discussion on the merits of the application and the concerns of the neighbours, the Committee of Adjustment passed a motion to approve the reduced rear yard setback but to deny the variance for the reduced side yard.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Planning Act

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

Powers of Committee

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

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

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and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

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

As noted in the Planning staff comments on the application (see Appendix “E” to Report PED16087), planning staff are of the opinion that the proposed Minor Variance Application meets the four tests under Section 45(1) of the *Planning Act*.

Provincial Policy Statement, 2014

Planning staff are of the opinion that the Minor Variance application for a reduction in the minimum rear and side yard setback for a single detached dwelling is consistent with the Provincial Policy Statement (PPS), namely the Settlement Areas policies 1.1.3. Staff are of the opinion that the application is consistent with the policies that focus on growth and development, and the efficient use of land in settlement areas.

Urban Hamilton Official Plan

The subject lands are identified as “Neighbourhoods” on Schedule “E” – Urban Structure and designated as “Neighbourhoods” on Schedule “E-1” – Urban Land Use Designations in Volume 1 of the Urban Hamilton Official Plan (UHOP). In addition, the subject lands are designated “Low Density Residential 2” in the North West Glanbrook Secondary Plan. Single detached dwellings are permitted within these designations.

Volume 1, Policy B.2.4.2 states:

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

- 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;

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- e) the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;
- f) the provision of amenity space and the relationship to existing patterns of private and public amenity space;”

The proposal is compatible with adjacent land uses, and will maintain a height, massing and scale consistent with the established streetscape. Furthermore, the proposal also provides for adequate amenity space within the rear yard of the property.

Volume 1, Policy E.3.1.4 states:

“The following goals apply to the Neighbourhoods land use designation:

Promote and support design which enhances and respects the character of existing neighbourhoods while at the same time allowing their ongoing evolution.”

The proposed addition respects the character and ongoing evolution of the area as the applicant is seeking to permit a single storey addition that will match the existing roofline of the dwelling. Staff are of the opinion that the proposal will not significantly impact the existing character of the neighbourhood, as the reduction in setback requirements will still allow for adequate buffering and landscaping to be maintained.

Glanbrook Zoning By-law No. 464

The subject lands are zoned Residential “R3-140” Zone in Glanbrook Zoning By-law No. 464. Single detached dwellings are permitted in this Zone.

Pursuant to Section 44 of Glanbrook Zoning By-law No. 464, the following provisions apply to the subject property:

- “(d) Minimum Exterior Side Yard5 m (16.5 ft), except that an attached garage or attached carport which fronts on the flanking street shall not be located within 6 m (20 ft) of the flanking street line
- (e) Minimum Rear Yard.....7 m (23 ft)”

The applicant is seeking relief from the above noted provisions in the By-law in order to permit the construction of a 5.18 m by 5.18 m sunroom addition. The proposed variance to the required minimum exterior side yard setback meets the general intent and purpose of the Zoning By-law since an adequate side yard is being provided for access, privacy, and drainage purposes. Staff also note that the angle of the proposed addition in relation to the exterior lot line is such that the minimum proposed setback

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does not reflect that of the entire addition. Based on the drawings provided by the applicant, the southerly section of the addition will set back approximately 5.0 m from the side lot line. Furthermore, staff are of the opinion that the proposed variance to the required minimum rear yard setback meets the general intent and purpose of the Zoning By-law since an adequate rear yard setback is being provided for privacy, amenity space, and drainage. Therefore, Staff are of the opinion that the proposal will not negatively impact the streetscape and character of the area.

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).

ANALYSIS AND RATIONALE FOR RECOMMENDATION

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 proposed addition complies with the applicable UHOP policies as it is compatible with adjacent land uses, and will maintain a height, massing and scale consistent with the established streetscape. Furthermore, the proposal also provides for adequate amenity space within the rear yard of the property.

The front lot line is wider than the rear lot line and as such the side lot line tapers towards the rear of the subject lands. The angle of the proposed addition in relation to the exterior lot line is such that the minimum proposed setback does not reflect that of the entire addition. As such, although the required variance is for a minimum 3.8 m exterior side yard setback, much of the addition will be set back up to 5.0 m from the westerly exterior lot line. Furthermore, Staff note that there is a considerably large section of landscaped area that provides a buffer between the dwelling and the right-of-way. Staff are therefore of the opinion that the proposed addition will not impact the existing streetscape.

No concerns were raised from any Departments who reviewed the application for the Committee of Adjustment hearing. The variances required to facilitate the proposed addition 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 Glanbrook Zoning By-law No. 464, 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 variances.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may instruct Legal Services to attend the OMB Hearing, in support of the Committee of Adjustment decision, and to retain 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).

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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 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": GL/A-15:317 Committee of Adjustment Decision
- Appendix "D": November 12, 2015 Meeting Minutes
November 26, 2015 Meeting Minutes
- Appendix "E": Consolidated Staff Comments

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