



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 Consent Application AN/B-15:106 and Minor Variance Application AN/A-15-365 for the Properties Located at 27 & 29 Oldoakes Place (Ancaster), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED16088) (Ward 12)
WARD(S) AFFECTED:	Ward 12
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 PED16088, respecting Committee of Adjustment Consent Application AN/B-15:106 and Minor Variance Application AN/A-15-365 for the properties located at 27 & 29 Oldoakes Place (Ancaster), supported by the Planning and Economic Development Department but denied by the Committee of Adjustment, be received for information.

EXECUTIVE SUMMARY

The applicant submitted Consent Application AN/B-15:106 to permit the conveyance of an irregular shaped parcel of land with an area of approximately 965 sq m, and to retain an irregular shaped parcel of land with an area of approximately 706 sq m containing an existing single detached dwelling. The applicant also submitted Minor Variance Application AN/A-15:365 to permit a minimum lot frontage of 19.6 m for the lands to be retained, and a minimum lot frontage of 10.4 m for the lands to be conveyed, as opposed to the required 21.0 m required frontage under Ancaster Zoning By-law No. 87-57 (see Appendix "B" to Report PED16088). The Consent and Minor Variance

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Application was heard by the Committee of Adjustment on January 21, 2016. Comments to the Committee of Adjustment from Planning staff supported the applications, as they were 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 purpose of the Urban Hamilton Official Plan and Ancaster Zoning By-law No. 87-57.

The Committee of Adjustment denied Consent Application AN/A-15:106 and Minor Variance Application AN/A-15:365, for the reasons provided in Appendix “C” to Report PED16088. The decision was appealed to the Ontario Municipal Board (OMB) on February 9, 2016 by the applicant. 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 11

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff supported the subject applications. However, if Council wishes to support the Committee of Adjustment’s decision to deny the applications, 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.

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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 properties are located at 27 & 29 Oldoakes Place (Ancaster) (see Location Map attached as Appendix “A” to Report PED16088). The applicant is proposing to create a new building lot for a single detached dwelling. To do this, they submitted a consent application and minor variance Application. The Consent Application AN/B-15:106 proposes to permit the conveyance of an irregular shaped parcel of land with an area of approximately 965 sq m, and to retain an irregular shaped parcel of land with an area of approximately 706 sq m containing an existing single detached dwelling. Minor Variance Application AN/A-15:365 proposes to permit a minimum lot frontage of 19.6 m for the lands to be retained, and a minimum lot frontage of 10.4 m for the lands to be conveyed, as opposed to the required 21.0 m required frontage under the R2 Zone of Ancaster Zoning By-law No. 87-57.

The application was reviewed against all applicable planning policy documents, which included the Urban Hamilton Official Plan and the Ancaster By-law No. 87-57. Staff recommended approval of the Consent Application, as it was considered to be consistent with applicable policies pertaining to intensification and infill development. Furthermore, staff were in support of the Consent Application as it was determined that the proposed lot configuration is in keeping with the lot fabric of the surrounding neighbourhood. Planning staff recommended approval of the Minor Variance Application as the variances with respect to lot frontages 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 Ancaster Zoning By-law No. 87-57. Further policy analysis is provided below in the Policy Implications and Legislated Requirements Section of this Report.

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January 21, 2016 Committee of Adjustment Meeting

At the January 21, 2016 Committee of Adjustment meeting, the applicant's agents (Matt Johnston & Sergio Manchia of Urban Solutions Planning and Land Development Consultants Inc.) and the property owners (Mr. & Mrs. Burwell) attended the meeting. As noted in the minutes of the meeting (see Appendix "D" to Report PED16088), several neighbours were in attendance to voice their concerns with the proposal. Four letters were 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 on the intent of the original sale of the subject property by the City, and the compatibility of the proposal with the existing neighbourhood (see Appendix "B" to Report PED16088). The neighbours in attendance were all given an opportunity to comment on the applications. The major areas of concern were the impacts on property value, that the proposal was not in keeping with the character of the neighbourhood, and that the proposed dwelling footprint for the lands to be conveyed is not 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 deny the Consent and Minor Variance Applications.

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).

53(1) An owner of land or the owner's agent duly authorized in writing may apply for a consent as defined in subsection 50 (1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. 1994, c. 23, s. 32.

54(5) The council of a single-tier municipality authorized to give a consent under section 53 may by by-law delegate the authority of the council under section 53 or any part of that authority to a committee of council, to an appointed officer identified in the by-law by name or position occupied, to a municipal planning authority or to the committee of adjustment. 2002, c. 17, Sched. B, s. 21 (4).

54(6) Where, under subsection (2) or (5), a committee of adjustment has had delegated to it the authority to give a consent, section 53 applies with necessary modifications and subsections 45 (4) to (20) do not apply in the exercise of that authority. 1994, c. 23, s. 33 (9)."

As noted in the Planning staff comments on the applications (see Appendix "E" to Report PED16088), staff are of the opinion that the proposed Minor Variance Application meets the four tests under Section 45(1) of the *Planning Act*. Furthermore, pursuant to Section 53(1) of the *Planning Act*, staff are of the opinion that a Plan of Subdivision is not necessary for the proper and orderly development of the subject lands, and that a Consent Application is appropriate for the division of the subject lands.

Provincial Policy Statement, 2014

Planning staff are of the opinion that the Applications are consistent with Settlement Areas Policy 1.1.3, and Housing Policy 1.4 of the Provincial Policy Statement 2014. In particular, staff are of the opinion that the application is consistent with Policy 1.1.3.3, which promotes intensification and redevelopment where appropriate. Furthermore, Housing Policy 1.4.3 encourages planning authorities to permit and facilitate all forms of residential intensification.

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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 the Urban Hamilton Official Plan (UHOP). Single detached dwellings are permitted within the Neighbourhoods designation.

Residential Intensification Policy B.2.4 in the Urban Hamilton Official Plan states:

“Residential intensification is a key component of Hamilton’s growth strategy and is essential to meet our growth and employment targets. Intensification ensures land, urban services and the transportation network are used more efficiently and sufficient population is maintained to support existing community facilities. Successfully accommodating more residents within the existing built-up area reduces the need for development of greenfield lands and urban boundary expansions.

Intensification contributes to creating and maintaining vibrant neighbourhoods, nodes and corridors and can provide a wider range of housing types to meet the housing needs of Hamilton’s current and future population. This Plan supports the intensification of the existing built-up area of the City, with a focus on intensification of planned Urban Nodes and Urban Corridors described in Chapter E – Urban Systems and Designations.

While growth through residential intensification brings many benefits to communities and the City as a whole, it must be recognized that it also brings change in varying degrees across the City. In node and corridor areas targeted to receive intensification, greater changes in built form can be expected to occur.

Residential intensification is a key component in successfully developing and transforming targeted areas of the City. Intensification creates livable, vibrant, compact communities; facilitates and enhance the node and corridor structure of the City, and makes efficient use of the City's public transit network and other infrastructure. For intensification to make a positive contribution to the City, careful consideration must be given to design and compatibility with existing uses, neighbourhood character, and cultural and natural heritage. Intensification must represent good planning and not cause unacceptable impacts.”

Staff are of the opinion that the proposed severance does consider the design and compatibility with the existing neighbourhood character. Staff note that development of the subject lands will contribute to maintaining a vibrant neighbourhood, as well as allowing for the efficient use of a parcel previously deemed to be surplus as parkland.

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Residential Intensification Policy B.2.4.1.4 in the Urban Hamilton Official Plan states:

“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.

Staff feel that the proposed severance will allow for development that will enhance and build upon the existing character of the neighbourhood. Staff feel that the land to be conveyed is in keeping with and will maintain the character of the established neighbourhood, while allowing for development that will further enhance and build upon the existing streetscape character.

Furthermore, policy 2.4.2.2 states:

“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;

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- 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 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;
- g) the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations;
- h) the ability to complement the existing functions of the neighbourhood;
- i) the conservation of cultural heritage resources; and,
- j) infrastructure and transportation capacity and impacts.”

Staff are of the opinion that the proposal complies with the above noted policies, as the use, scale, lot pattern and configuration is consistent with the surrounding neighbourhood.

Consent policy F.1.14.3.1 in the Urban Hamilton Official Plan states:

“Consents for new lot creation, for both the severed and retained lands, for residential uses in the Neighbourhoods designation shown on Map E-1 – Urban Land Use Designation, shall be permitted provided the following conditions are met:

- a) The lots comply with the policies of this Plan, including secondary plans, where one exists;
- b) The lots comply with existing Neighbourhood Plans;
- c) The lots are in conformity with the Zoning By-law or a minor variance is approved;
- d) The lots reflect the general scale and character of the established development pattern in the surrounding area by taking into consideration lot frontages and areas, building height, coverage, mass, setbacks, privacy and

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overview;

- e) The lots are fully serviced by municipal water and wastewater systems; and,
- f) The lots have frontage on a public road.”

Planning staff are of the opinion that the proposal complies with the above policies, subject to approval of the Minor Variance Application. Staff note that the proposal complies with the policies of the Official Plan, and that the lots to be retained and conveyed reflect the general scale and character of the established development. In addition, the proposed lots are fully serviced by municipal water and wastewater systems, and have frontage on a public road. Staff are in full support of Minor Variance Application AN/A-15:365, of which approval would have fulfilled policy c) noted above.

Staff are of the opinion that the proposed severance meets the residential intensification policies listed above. The existing character of this particular neighbourhood features a diversity of lot frontages and areas. The proposed building parcel will be in keeping with the general character of the existing neighbourhood, and will adhere to all required setbacks. Staff also note that there are existing instances of reduced frontages on Oldoakes Place. Based on the foregoing, the proposed severance will create a lot fabric which is compatible with the existing neighbourhood.

Ancaster Zoning By-law No. 87-57

The lands are zoned Residential “R2” Zone in Ancaster Zoning By-law No. 3692-92. Single detached dwellings, and uses accessory thereto, are permitted in this Zone. A portion of the subject lands were rezoned from Open Space “O2” to Residential “R2” in 2008 (By-law 08-063 is attached as Appendix “F” to Report PED16088). Section 11.2.2 of Ancaster Zoning By-law No.,87-57 requires a minimum lot frontage of 21.0 m that is measured 7.5 m back from the front lot line. The applicant is proposing to provide a minimum lot frontage of 19.6 m for the lands to be retained, and 10.4 m for the lands to be conveyed. Furthermore, Section 11.2.2 requires a minimum lot area of 700 sq m, which both the lands to be retained and to be conveyed meet. As shown on Appendix “B” to Report PED16088, the building envelope will facilitate a dwelling that will adhere to all other requirements of Section 11.2.2 of the By-law.

Staff are of the opinion that the variance to the required frontage for the lands to be retained is considered minor in nature since the applicant is proposing to recognize the frontage of the original lot. Furthermore, Planning staff are of the opinion that the variance to the required frontage for the lands to be conveyed is minor in nature since the proposed reduction in lot frontage will still allow for an adequate building envelope to be established that is consistent with the existing character of the neighbourhood.

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Therefore, staff are of the opinion that the proposed reduction in required frontage for both the lands to be retained and to be conveyed will not negatively impact the streetscape or alter the 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 Consent to Sever and supporting Minor Variance Application is consistent with the policies in the Urban Hamilton Official Plan, which seeks to promote residential intensification and infill development. Furthermore, the proposal is consistent with the Provincial Policy Statement 2014, which encourages planning authorities to permit and facilitate all forms of residential intensification.

The proposal complies with the applicable UHOP policies as the lands to be retained and conveyed are both consistent with the lot fabric of the neighbourhood. Staff are of the opinion that the proposed severance will allow for development that will enhance and build upon the existing character of the neighbourhood. Furthermore, staff feel that the land to be conveyed is in keeping with and will maintain the character of the established neighbourhood, while allowing for development that will further enhance and build upon the existing streetscape character. The existing character of this particular neighbourhood features a diversity of lot frontages and areas. The proposed building parcel will be in keeping with the general character of the existing neighbourhood; the requested variance to the required frontage is the result of the irregular shape of the parcel and all other setbacks and lot area meet the requirements of the Zoning By-law. Staff also note that there are existing instances of reduced frontages on Oldoakes Place. Furthermore, staff note that the location of the subject properties on a court contributes to a reduced frontage. Based on the foregoing, the proposed severance will create a lot fabric which is compatible with the existing neighbourhood.

No concerns were raised from any Departments who reviewed the application for the Committee of Adjustment hearing with respect to the proposed configuration of the lands to be retained or conveyed. There were also no concerns raised from any Departments with respect to the proposed variances to the required lot frontages for the lands to be retained or conveyed.

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The requested Consent Application and subsequent Minor Variance Application are considered to be minor in nature, desirable for the appropriate development of the land, and maintain the general intent and purpose of the Urban Hamilton Official Plan and the Ancaster Zoning By-law No. 87-57, thereby satisfying the four tests for a minor variance set out in Section 45(1) of the *Planning Act*.

Based on the foregoing, staff are supportive of the proposed Consent Application, and corresponding Minor Variance Application.

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.

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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 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”: AN/A-15:365 Committee of Adjustment Decision
AN/B-15:106 Committee of Adjustment Decision
- Appendix “D”: January 21, 2016, Meeting Minutes
- Appendix “E”: Consolidated Staff Comments
- Appendix “F”: By-law No. 08-063

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