



CITY OF HAMILTON
CITY MANAGER'S OFFICE
Legal Services
and
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 6, 2016
SUBJECT/REPORT NO:	Proposal to Proceed with an OMB Appeal for Minor Variance Application, 975 Beach Boulevard, Hamilton (LS16021/ PED16148) (Ward 5)
WARD(S) AFFECTED:	Ward 5
PREPARED BY:	Patrick MacDonald, Solicitor 905-546-2424 Ext. 4708
SUBMITTED BY:	Janice Atwood-Petkovski City Solicitor City Manager's Office Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Council agree to the following action, as detailed in this Report LS16021/PED16148, respecting the appeal of City of Hamilton Committee of Adjustment Minor Variance Application HM/A-16:36 (Owner/ Applicant: Terri Laan), 975 Beach Boulevard (Hamilton), as shown on Appendix "A" to this Report, approved by the Committee of Adjustment and recommended for denial by the Growth Management Division, Development Engineering Section;

- (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 HM/A-16:36; and,
- (b) That Council directs appropriate Legal Services, Growth Management, and Planning staff to attend the future OMB Hearing in opposition to the decision of the Committee of Adjustment to approve Application HM/A-16:36.

EXECUTIVE SUMMARY

Application HM/A-16:36, to permit one variance which would permit the construction of a single detached dwelling with a minimum side yard width of 0.8 metres notwithstanding that a minimum setback of 1.7 metres shall be provided, was considered by the City of Hamilton Committee of Adjustment on March 24, 2016. Comments to the Committee of Adjustment from the Planning Division (see Appendix “B”) recommended that the application be tabled until the conditional approval of a related Site Plan application (DAB-16-044) was granted, or that the Committee of Adjustment deny the application should the applicant not wish to table it. Development Engineering opposed the application as it did not conform to the Master Drainage Plan, Hamilton Beach. The Committee of Adjustment approved the Minor Variance Application for the reasons set out in their decision (see Appendix “D”).

Development Engineering 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.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial:

Development Engineering 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 Development Engineering, Planning, and Legal Services, would be required for preparation and attendance at an OMB Hearing. One member each of Development Engineering and Planning staff would attend as expert witnesses at the hearing, should Council support the recommendation set out in this Report.

Legal:

No legal implications are expected.

HISTORICAL BACKGROUND

The subject property is located at 975 Beach Boulevard (Hamilton) (see Appendix "A").

The proposal is to allow for a variance to City of Hamilton Zoning By-law No. 6593 that would permit the construction of a single detached dwelling with a smaller than required side yard setback.

Committee of Adjustment application HM/A-16:36 sought relief for one variance, permitting a minimum side yard setback of 0.8m as opposed to the Zoning By-law minimum of 1.7m.

The site was previously approved for a severance, HM/B-13:06, with a grading plan showing a 1.7m side yard, as required in the Master Drainage Plan, Hamilton Beach.

The application was reviewed against all applicable planning policy documents which included the *Planning Act*, the Growth Plan for the Greater Golden Horseshoe (Places to Grow), the PPS, the UHOP, the City of Hamilton Zoning By-law No. 6593. Planning Division staff did not support the proposed variance as it pre-empted the Site Plan approval process. Development Engineering Staff opposed the variance as the proposed setback of 0.8m was smaller than the 1.7m minimum required in the Master Drainage Plan, Hamilton Beach. Development Engineering staff requested that the application not proceed until they review and approve a Grading and Drainage Control Plan from the applicant. Development Engineering staff recommended that the application be tabled, or denied should the applicant not wish to table the application. Planning also provided comments to the Committee of Adjustment stating that the application for a minor variance was premature until such time as conditional Site Plan approval was granted. The applicant and Committee elected not to table the application, and to proceed with the hearing of the application.

In the opinion of Development Engineering staff, the application does not conform to the Master Drainage Plan, Hamilton Beach, as the side yard variance does not allow for a proper drainage swale. Development Engineering staff also note that the Master Drainage Plan, Hamilton Beach requires that the rear 15% of the lot be left undisturbed, and that no structures are permitted in this area. However, the applicant's proposed sketch shows a deck encroaching into the undisturbed area, which is not permitted. In addition, in the opinion of Planning staff, the application for a minor variance is premature until such time as conditional Site Plan approval has been granted.

The Committee of Adjustment, at its meeting of March 24, 2016, approved the Minor Variance Application (see Appendix “D”). The last day for appeals was April 13, 2016.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Planning Act

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

Powers of Committee

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).

The approved variance (see Appendix “D”), to permit a reduced side yard setback should not have been applied for until conditional site plan approval was granted, and in any event does not conform to the Master Drainage Plan, Hamilton Beach .

Site Plan

New construction of single detached residential buildings on Beach Boulevard are subject to Site Plan Control. This is required for two reasons; the Beach Strip is a Cultural Heritage Landscape and therefore a greater emphasis on design and compatibility is required. The proposal went before Heritage Committee and received an approval conditional on the subject variance being approved.

The second reason development on Beach Boulevard is reviewed through Site Plan is to ensure there are no issues with flooding and drainage as reviewed by Development Engineering. The Site Plan process allows for a thorough review as to whether side yards are of adequate setback, and whether or not common swales are required between neighbouring properties. In situations where common swales are needed, permissions are required from neighbouring properties and are recorded on the final approved Site Plan.

Site Plan application DAB-16-044 for the subject property was submitted in February 2016. At the time that comments were provided to the Committee of Adjustment

regarding the Minor Variance application, the Site Plan application was not yet conditionally approved. The Site Plan process was still in the stage of collecting comments from various internal and external agencies.. The proposal is properly and comprehensively reviewed through the Site Plan process with all potential impacts understood. All potential variances are also identified through Site Plan process and their impacts understood. Therefore, the requested side yard variance is premature until the associated Site Plan application receives conditional approval. Through the Site Plan process the design of the dwelling may have to be altered. This may include a more restrictive side yard setback than the one requested in the Minor Variance application.

Provincial Policy Statement 2014 (PPS)

The application was reviewed against the policies of the PPS, specifically:

1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns.

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; and,
- e) promoting cost-effective development patterns and standards to minimize land consumption and servicing costs.

Staff is of the opinion that the application is consistent with these PPS policies.

Urban Hamilton Official Plan

The subject property is designated "Neighbourhoods" in the UHOP. The following policies apply:

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

- a) residential dwellings, including second dwelling units and housing with supports;

E.3.1.4 Promote and support design which enhances and respects the character of existing neighbourhoods while at the same time allowing their ongoing evolution.

- E. 3.2.7 The City shall require quality urban and architectural design. Development of lands within the Neighbourhoods designation shall be designed to be safe, efficient, pedestrian oriented, and attractive, and shall comply with the following criteria:
- e) Development shall comply with Section B.3.3 – Urban Design Policies and all other applicable policies.
- B.3.3.1.5 Ensure that new development is compatible with and enhances the character of the existing environmental and locale.
- B.3.3.2.3 Urban design should foster a sense of community pride and identity by:
- c) respecting existing character, development patterns, built form, and landscape;
 - d) promoting quality design consistent with the locale and surrounding environment;

Planning staff concluded that strictly from a design perspective, the proposed setback of 0.8 metres does not appear to be out of character for the area as other dwellings in the immediate area appear to have similar, and in some cases, less side yard setback.

Built Heritage:

The subject property, 971 Beach Boulevard (formerly 975 Beach Boulevard), is located within the Hamilton Beach Heritage Conservation District, designated under Part V of the *Ontario Heritage Act*, and a “protected heritage property” under the Provincial Policy Statement. The heritage attributes of a Heritage Conservation District generally comprise the exterior of all buildings and structures, streetscapes and landscapes.

The proponent proposes to construct a two-storey single-detached dwelling with parking spaces on a vacant lot. At its meeting on January 21, 2016, the Hamilton Municipal Heritage Committee recommended conditional approval of the Heritage Permit Application HP2015-041 for the erection of a new single-detached dwelling on the subject property. On February 10, 2016, Council approved HP2015-041, as per the recommendations in staff Report PED16025, as follows:

- “(a) That the deficient side yard setbacks identified in the Preliminary Site Plan, attached as Appendix “D” to Report PED16025 shall be addressed in accordance with the Site Plan approval process;*
- (b) That the final design specifications, including windows, railings, columns, doors and downspouts, shall be submitted, to the satisfaction and approval of the*

Director of Planning and Chief Planner, prior to submission as part of any application for a Building Permit;

- (c) That the dimensions and surfacing materials for the new driveway and any walkways, patios or other hard surface areas, shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, in accordance with the Site Plan approval process and prior to installation;*
- (d) That the dimensions, design and materials for any new fencing and gates shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, in accordance with the Site Plan approval process and prior to installation;*
- (e) That a plan depicting the removed, retained and any new trees, of a minimum caliper of 55mm and of a species consistent with the City of Hamilton's Tree Species and Recommended Index, shall be submitted to the satisfaction and approval of the Director of Planning and Chief Planner, prior to planting;*
- (f) That any minor changes to the plans and elevations following approval shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to submission as part of any application for a Building Permit; and,*
- (g) That construction and site alterations, in accordance with this approval, shall be completed no later than February 28, 2018. If the construction and site alterations are not completed by February 28, 2018, then this approval expires as of that date, and no alterations shall be undertaken without a new approval issued by the City of Hamilton."*

The applicant is advised that the proposed construction must comply with Heritage Permit HP2015-041, as approved by Council, or be in contravention of the *Ontario Heritage Act*.

Condition (a) of HP2015-041 addresses the proposed side yard setbacks of 0.97 m to the south and 0.85 m to the north. Staff note that the proposed setbacks are deficient and do not meet the minimum zoning requirement of 1.7 m. On November 24, 2015, the Heritage Permit Review Subcommittee recommended approval of the proposed new construction in principle, subject to modifications of the design to mitigate any negative impact of the massing of the structure (i.e., the deficient side yard setbacks).

Any changes necessary to conform with the zoning requirements, such as reduction of the width of the proposed building to meet the minimum side yard setback requirements shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to submission as part of any application for a Building Permit, as per Condition (f) of HP2015-041. (AG/JT 2016 03 16)

City of Hamilton Zoning By-law No. 6593

The subject property is zoned “C/S-1435” and “C/S-1435a” (Urban Protected Residential, etc.) District in the City of Hamilton Zoning By-law, to which the use complies.

Development Engineering – East:

The subject property is in the Hamilton Beach area and is to follow the Master Drainage Plan, Hamilton Beach. There are strict requirements in this area for grading and drainage. The requested side yard variance does not allow for a proper drainage swale.

This site was previously approved for severance, HM/B-13:06, with a grading plan showing 1.7m side yard, as required in the Master Drainage Plan, Hamilton Beach.

The Master Drainage Plan, Hamilton Beach also requires that the rear 15% of the lot be left undisturbed. Any structures such as decks, as well as, low impact development solutions (i.e. Soakaway pits) or drainage swales are not permitted in this area. The proposed sketch shows a deck encroaching into undisturbed area, which is not permitted.

RELEVANT CONSULTATION

The following were consulted for the writing of this Report:

- Development Engineering
- Planning

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The applicant has applied for one variance in order to permit the construction of a single detached dwelling with a smaller than required side yard setback. The proposed development is the subject of an associated Site Plan application. Until such time that the Site Plan application is conditionally approved, the application for the requested variance is premature.

Development Engineering maintains that a Grading and Drainage Control Plan should be reviewed and approved prior to the application proceeding. The subject property is in the Hamilton Beach area, and therefore it must follow the Master Drainage Plan, Hamilton Beach . There are strict requirements in this area for grading and drainage, and the side yard variance requested does not allow for a proper drainage swale. The

site was previously approved for a severance, HM/B-13:06, with a grading plan showing a 1.7m side yard, as required in the Master Drainage Plan, Hamilton Beach.

Based on this, Development Engineering staff appealed the decision of the Committee of Adjustment to approve Minor Variance Application HM/A-16:36, and recommended that the appeal proceed in order to ensure the property is reviewed properly and comprehensively through the Site Plan approval process and that the reduced side yard setback not be approved given drainage concerns.

ALTERNATIVES FOR CONSIDERATION

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.

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

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

Strategic Objective

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

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": Zoning and Location Map
- Appendix "B": Development Planning Comments
- Appendix "C": HM/A-16:36 March 24, 2016 Committee of Adjustment Minutes
- Appendix "D": HM/A-16:36 Committee of Adjustment Decision

:PM