



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	November 15, 2016
SUBJECT/REPORT NO:	Appeal of Committee of Adjustment Minor Variance Application - DN/A-16:266, 231 York Road (Dundas) – Conditionally Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED16218) (Ward 13)
WARD(S) AFFECTED:	Ward 13
PREPARED BY:	Steve Boich Planning Technician (905) 546-2424 Ext.1293 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Report PED16218, respecting the appeal of Committee of Adjustment Minor Variance Application – DN/A-16:266 by the applicant to the Ontario Municipal Board (see Appendix “D” to Report PED16218), for the property known as 231 York Road, Dundas, as shown on Appendix “A” to Report PED16218, conditionally supported by the Planning and Economic Development Department, but Denied by the Committee of Adjustment, be received for information and that Council take no action with respect to the appeal to the Ontario Municipal Board, either in support of the Committee’s decision or against the decision (Option 3).

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application DN/A-16:266 to permit the development of six single detached dwellings fronting on a private condominium road. The application required variances to amend the definition of “Public Thoroughfare” in

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the Town of Dundas Zoning By-law 3581-86 so as to include a private condominium road, and to permit a parking space to be located in a driveway.

Application DN/A-16:266 was considered before the Committee of Adjustment on September 1, 2016. Comments from Planning staff to the Committee of Adjustment conditionally supported the application (see Appendix “B” to Report PED16218), as the requested variances were considered to be consistent with the Provincial Policy Statement, in conformity with the Urban Hamilton Official Plan, and maintained the intent and purpose of Town of Dundas Zoning By-law No. 3581-86. Staff support was conditional upon the applicant receiving approval of the required Site Plan Control and Plan of Condominium applications.

The Committee members discussed the merits of the application (see Appendix “E” to Report PED16218) and denied the application for the reasons provided in attached Appendix “C” to Report PED16218. The decision was appealed to the Ontario Municipal Board (OMB) by the applicant on September 19, 2016. A hearing date has not yet been set.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff supported the subject application with conditions. However, if Council wishes to support the Committee of Adjustment’s decision to deny the application (Option 1), the City must retain an outside planning consultant, and any other experts who can professionally support the denial. If an outside planning consultant is retained, the costs would be approximately \$3,000 to \$5,000 for each day of a 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 be funded from the Tax Stabilization Reserve -110046.

Staffing: One representative from Legal Services would be required for preparation and attendance at the OMB Hearing should Council support Option 2 (support the appeal).

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 231 York Road, Dundas (see Appendix “A” to Report PED16218). The Minor Variance application (DN/A-16:266) was to permit the development of six single detached dwellings fronting on a private condominium road (see Appendix “F” to Report PED16218).

In order to facilitate the development, the applicant required the following variances:

- Notwithstanding the definition of “Public Thoroughfare” in Section 3 “Definitions” of Zoning By-Law 3681-86, a private road / condominium road (which may include visitors parking, landscaping, etc.) shall be considered a street for the purpose of the regulations contained in the By-Law; and,
- To permit a parking space to be located in the driveway notwithstanding that the By-Law states that no such parking shall be located in a required front yard.

The application was reviewed against all applicable Provincial and Local planning policy documents.

Planning staff recommended conditional approval of the Minor Variance application, as the proposal was considered to be minor in nature, desirable for the use of the lands, in conformity with the Urban Hamilton Official Plan, and maintained the intent and purpose of Dundas Zoning By-law No. 3581-86. However, staff support was conditional upon the

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applicant receiving approval of the required Site Plan Control and Plan of Condominium applications (see Appendix “B” to Report PED16218).

The subject lands were twice previously before the OMB. The first occurrence, case PL120995, involved a proposal to develop the subject lands with eighteen townhouse units, which was later revised to fourteen townhouse units and one single detached unit. In its decision, the Board dismissed the appeal as it deemed the development to be too dense for the area and not in keeping with the single detached character of the surrounding existing residential development.

A second appeal (case PL140448) was heard by the Board. In this instance, the proposal was for 12 semi-detached dwelling units within six buildings. The Board dismissed this appeal as it continued to determine the proposal to be too dense, an over building of the site and out of character with the existing surrounding single detached uses.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee of Adjustment decision, and to retain outside professional(s) to attend as an expert witness. Funding to retain outside professionals would come from the Tax Stabilization Reserve – 110046.

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 Ontario Municipal Board, either in support of the Committee’s decision, or against the decision.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

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Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

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APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Staff Comments for DN/A-16:266
- Appendix "C": DN/A-16:266 Committee of Adjustment Decision
- Appendix "D": DN/A-16:266 Committee of Adjustment Application
- Appendix "E": Minutes of Public Meeting
- Appendix "F": DN/A-16:266 Site Plan for Six Single Detached Dwellings

:SB/mo

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