



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	November 15, 2016
SUBJECT / REPORT NO:	Request for Direction to Proceed with Appeal of Committee of Adjustment Consent Application AN/B-16:64 for the Property Located at 88 Valleyview Drive (Ancaster), Recommended for Tabling by the Planning and Economic Development Department but Granted by the Committee of Adjustment (PED16225) (Ward 12)
WARD(S) AFFECTED:	Ward 12
PREPARED BY:	Alicia West Planning Technician (905) 546-2424 Ext. 4672 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Council gives approval to the following actions, as detailed in Report PED16225, respecting Committee of Adjustment Consent Application AN/B-16:64, Vincent and Maria Commisso (Owner), for the Property Located at 88 Valleyview Drive (Ancaster), as shown on Appendix "A" to Report PED16225, approved by the Committee of Adjustment but recommended for Tabling by the Planning and Economic Development Department:

- (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 AN/B-16:64;
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Ontario Municipal Board (OMB) Hearing in opposition to the decision of the Committee of Adjustment to approve Application AN/B-16:64.

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EXECUTIVE SUMMARY

The applicant submitted Consent Application AN/B-16:64 to permit the creation of a new residential building lot with a frontage of 17.6 m and an area of 1039.0 sq m and to retain lands with a frontage of 17.6 m and an area of 1039.0 sq m. The Consent Application was heard by the Committee of Adjustment on September 22, 2016. Comments to the Committee of Adjustment from Planning staff recommended tabling the application, as the proposal does not meet all provisions within the Official Plan, specifically Section F.1.14.3.1 c) and e) which states that the proposed lots must comply with provisions set out in the Zoning By-law and have full municipal services.

Staff note that pursuant to Information Report PW14105, Council has passed a motion to defer lot severances in rural cross section neighbourhoods until the Assessment of Development Intensification in Rural Drainage Neighbourhoods Study is completed. Valleyview Drive does not have storm services available and does not meet the Official Plan. Planning and Development Engineering staff advised that the application be tabled for the reasons set out in Appendix "B" to Report PED16225. The Committee of Adjustment approved the application for the reasons set out in the decision of the Committee of Adjustment (see Appendix "C" to Report PED16225).

Under the *Planning Act*, appeals must be filed within 20 days of the decision. As such, Planning and Economic Development 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 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff has submitted the required fee of \$300 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 Planning and Legal Services would be required for preparation and attendance at an OMB Hearing. One member of Planning staff, would attend as an expert witness at the Hearing, should Council support the Recommendation of this Report.

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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:

“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 support an application(s) that was not 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 lands are located at 88 Valleyview Drive (Ancaster) (see Location Map attached as Appendix “A” to Report PED16225). The applicants are proposing to create a new building lot for a single detached dwelling. To accommodate this proposal the applicants submitted Consent application AN/B-16:64 to permit the conveyance of land with a frontage of 17.6 m and an area of approximately 1039 sq m, and to retain a parcel of land with a frontage of 17.6 m and an area of approximately 1039 sq m containing an existing single detached dwelling which is proposed to be demolished.

September 22, 2016 Committee of Adjustment Meeting

At the September 22, 2016 Committee of Adjustment meeting, the property owner (Mr. Vincent Comisso) attended the meeting. As noted in the minutes of the meeting (see Appendix “D” to Report PED16225), the discussion at the meeting focused on the anticipated completion date of the Assessment of Development Intensification in Rural Drainage Study. The Committee debated on tabling the application as it is anticipated that the study will be brought forth prior to the end of this calendar year (2016). The Committee discussed the previous decision made on the previous application on Valleyview Drive and conditionally approved the application.

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On September 29, 2016, Planning Division staff filed an appeal on behalf of the Planning and Economic Development Department with the Committee of Adjustment. The appeal has been forwarded to the Ontario Municipal Board.

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 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.

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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).”

Staff are of the opinion pursuant to Section 53(1) of the *Planning Act*, 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

The application has been reviewed with respect to the Provincial Policy Statement (PPS), namely the Settlement Areas Policy 1.1.3, and Housing Policy 1.4. 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. Staff are of the opinion that the proposal is consistent with the Provincial Policy Statement’s guidelines for residential intensification.

Urban Hamilton Official Plan

The subject lands are identified as “Neighbourhoods” on Schedule “E” – Urban Structure and designated “Neighbourhoods” on Schedule “E-1” – Urban Land Use Designations in the Urban Hamilton Official Plan (UHOP). The lands are not within a Secondary Plan or a Neighbourhood Plan.

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;

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- 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 note 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 severed and retained are 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. However, the subjects lands are not fully serviced by storm water and cannot satisfy item f) listed in the criteria above.

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 shall be permitted provided the following conditions are met:

- a) The lot 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;

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- d) The lots reflect the general scale and character of the established development pattern in the surrounding area by taking into consideration lot frontage and areas, building height, coverage, mass, setbacks, privacy and 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, except for c) and e). Staff note that the lot frontages of the lands to be conveyed and retained do not meet the minimum requirements of the Existing Residential “ER” Zone. However, the proposed lot configurations are in keeping with the general scale and character of the neighbourhood. Furthermore, staff note that due to the depth of lots fronting on Valleyview Drive in this area, overall lot areas are well above the required 695.0 sq m area of the “ER” Zone. Therefore and further discussed in the Zoning Analysis, staff are of the opinion that the proposal could satisfy condition c) for lot creation, contingent upon a successful Minor Variance application.

Staff note that the proposed lots are serviced by municipal water and wastewater systems, and have frontage on a public road. However, staff are of the opinion that the proposed severance does not comply with policy F.1.14.3.1 e). Specifically, staff note that pursuant to Information Report PW14105, Council has passed a motion to defer lot severances in rural cross section neighbourhoods until the Assessment of Development Intensification in Rural Drainage Neighbourhoods Study is completed. This study is intended to assess how those areas without storm sewers can proceed without having flooding and / or drainage impacts on lands within the Ancaster urban area on a rural cross section (i.e. ditches). Valleyview Drive does not currently have storm services available, and as such, both the lands to be conveyed and retained would be within a rural cross section. A report addressing this matter is anticipated to be brought to the Public Works Committee by the end of 2016. Based on the foregoing, staff cannot support the application at this time and recommended tabling the application until the Assessment of Development Intensification in Rural Drainage Neighbourhoods Study is completed.

Ancaster Zoning By-law No. 87-57

The lands are zoned Existing Residential “ER” Zone, in the Ancaster Zoning By-law No. 87-57. Single detached dwellings are permitted under this By-law. Staff note that a

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successful Minor Variance application for the lot frontage of the lands to be conveyed and retained would be required.

Section 10.2.(b) of Ancaster Zoning By-law No.87-57 requires a minimum lot frontage of 18.0 m. The applicant is proposing to provide a minimum lot frontage of 17.6 m for the lands to be retained, and for the lands to be conveyed. As shown on Appendix "B" to Report PED16225, the lot area for both the severed and retained parcels are in conformity however, staff cannot confirm if all other provisions have been met as a building envelope was not depicted on the plan. Further variances could be required.

RELEVANT CONSULTATION

- Legal Services Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The Consent to Sever Application is consistent with the policies in the Urban Hamilton Official Plan, which seek to promote residential intensification and infill development. The proposal is not in keeping with sections F.1.14.3.1 c) and e) as not all provisions of the Ancaster Zoning By-law No. 87-57 are met, specifically lot frontages. Staff further note that the application does not meet the provision which requires all newly created lots to be on full municipal services. There are currently no municipal storm water services and an Assessment of Development Intensification in Rural Drainage Neighbourhoods Study is to be completed. Council has passed a motion to defer lot severances in rural cross section neighbourhoods until the Assessment of Development Intensification in Rural Drainage Neighbourhoods Study is completed. The subject lands are located within a rural drainage area and therefore, until the study is complete, the impacts from the creation of a new building lot on adjacent lands are unknown.

Similar concern with respect to stormwater services was raised by the Growth Management Division advising that the proposed severance within Rural Drainage Neighbourhoods in Ancaster be tabled until such time as the Drainage Assessment is completed. The Growth Management Division advised the Committee of Adjustment that the cumulative impacts of re-development in this area is not known at this time and may have a negative impact on downstream properties. On this basis they recommended that the application be tabled until the Ancaster Rural Drainage Assessment is completed.

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Staff cannot support the proposed severance and have requested that this application be **Tabled** until the Assessment of Development Intensification in Rural Drainage Neighbourhoods Study is completed and has been presented to Council for adoption.

ALTERNATIVES FOR CONSIDERATION

Option 1:

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the OMB Hearing in opposition to the approved variance application, as recommended in this Report.

Option 2:

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the Ontario Municipal Board. Provided that no further appeals are filed; this option would allow the Committee of Adjustment's consent approval to stand.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Application Sketch
- Appendix "C": AN/B-15:106 Committee of Adjustment Decision
- Appendix "D": September 22, 2016, Meeting Minutes
- Appendix "E": Consolidated Staff Comments

:AW/yr