

# CITY OF HAMILTON PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT Planning Division

то:	Chair and Members Planning Committee	
COMMITTEE DATE:	February 14, 2017	
SUBJECT/REPORT NO:	Application for an Amendment to the City of Hamilton Zoning By-law No. 6593, for Lands Located at 942 Upper Gage Avenue (Hamilton) (PED17015) (Ward 6)	
WARD(S) AFFECTED:	Ward 6	
PREPARED BY:	Robert Clackett (905) 546-2424 Ext. 7856	
SUBMITTED BY: SIGNATURE:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department	

## RECOMMENDATION

- (a) That approval be given to <u>Amended Zoning By-law Amendment Application</u> <u>ZAR-16-038, by John Richard Maggio and Janice Mae Maggio (owners)</u>, for a change in zoning from the "C" (Urban Protected Residential, etc.) District to the "DE/S-1743" – 'H' (Low Density Multiple Dwellings - Holding) District, Modified, to permit the legalization of the conversion of a single detached dwelling to a triplex, for the lands located at 942 Upper Gage Avenue, Hamilton, as shown on Appendix "A" to Report PED17015, on the following basis:
  - (i) That the draft By-law, attached as Appendix "B" to Report PED17015, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
  - (ii) That the amending By-law, attached as Appendix "B" to Report PED17015 be added to Schedule "E-49" of the City of Hamilton Zoning By-law No. 6593; and,
  - (iii) That the proposed change in zoning is consistent with the Provincial Policy Statement (2014), conforms to the Growth Plan for the Greater Golden Horseshoe (Places to Grow), and complies with the Urban Hamilton Official Plan (UHOP).

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(b) That upon finalization of the implementing Zoning By-law, the Lawfield Neighbourhood Plan shall be amended by redesignating the subject lands from "Single and Double Residential" to "Low Density Apartments".

## EXECUTIVE SUMMARY

The purpose of the application is to rezone lands known municipally as 942 Upper Gage Avenue from the "C" (Urban Protected Residential, etc.) District to the "DE/S-1743" – 'H' (Low Density Multiple Dwellings - Holding) District, Modified, to legalize the existing triplex located on the subject lands. Modifications to the "DE" District provisions of the Zoning By-law also required to recognize the existing situation with respect to: side yard width; rear yard depths; accessory building height and location; parking; and, manoeuvring space.

A "H" Holding provision will be required to ensure that the necessary Building Permits have been obtained to formally legalize the triplex.

The proposal has merit and can be supported since the application is consistent with the Provincial Policy Statement (PPS), conforms to the Growth Plan for the Greater Golden Horseshoe and complies with the Urban Hamilton Official Plan (UHOP). The proposed development is considered to be compatible with and complementary to the existing and planned development in the immediate area.

#### Alternatives for Consideration – See Page 15

# FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider an application for an Amendment to the Zoning By-law.

# HISTORICAL BACKGROUND

#### Proposal:

The subject lands are located on the west side of Upper Gage Avenue, between Mohawk Road East and Limeridge Road East, in Hamilton. The subject lands are rectangular in shape, have an area of 0.1 ha (1,011.3 sq m), and are municipally known

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as 942 Upper Gage Avenue, Hamilton (see Appendix "A" to Report PED17015). The site is currently zoned for a single detached dwelling. The dwelling has been converted to contain three dwelling units in contravention of the Zoning By-law. No building permits were obtained for the conversion.

The applicant is requesting a Zoning By-law Amendment to modify the existing "C" District zoning to allow for the subject lands to be used for a duplex or a triplex. The rezoning is required as the single detached dwelling has been illegally converted to a triplex. The following modifications to the Zoning By-law are also being requested:

- a minimum northerly side yard setback of 0.6 m, where 1.2 m is required;
- a minimum rear yard depth of 7.0 m, where 7.5 m is required;
- an accessory building (garage) shall be permitted subject to the following minimum yard setbacks, where the By-law does not permit such a structure in a required side yard:
  - A southerly side yard setback of 0.0 m;
  - A northerly side yard setback of 12.0 m;
  - A rear yard setback of 2.0 m; and,
  - A front yard setback of 40.0 m.
- a minimum required maneuvering space of 5.1 m, where 6.0 m is required; and,
- a required parking space size of 2.6 m wide by 5.5 m long for a standard parking space, where the By-law requires a space size of 2.7 m wide by 6.0 m long.

Staff have amended the application as it would be more appropriate to rezone the subject lands to a modified "DE" (Low Density Multiple Dwellings) District, with a 'H' Holding provision, instead of a modified "C" District as the "DE" District permits single detached, duplex, and triplex dwellings as of right, whereas the "C" District does not. The modifications requested by the applicant with respect to yards and building setbacks will also be included in the amending By-law.

The "H" Holding provision is required to ensure that the necessary Building Permits are obtained from the City.

#### Chronology:

<u>July 19, 2016</u>:

Application ZAR-16-038 deemed complete.

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- <u>August 8, 2016</u>: Notice of Complete Application and Preliminary Circulation were mailed to 126 property owners within 120 m of the subject lands.
- <u>August 3, 2016</u>: Initial Public Notice Sign was posted on the subject lands.
- <u>January 18, 2017</u>: Public Notice Sign updated to include date of Public Meeting.
- <u>January 27, 2017</u>: Circulation of Notice of Public Meeting to 126 property owners within 120 m of the subject lands and all residents who provided written comments.

#### **Details of Submitted Application:**

- Location: 942 Upper Gage Avenue (see Location Map attached as Appendix "A" to Report PED17015)
- Owner: John Richard Maggio and Janice Mae Maggio
- Agent: UrbanSolutions Planning & Land Development Consultants Inc. (c/o Matt Johnson)
- Property Description: Lot Frontage: 19.2 m
  - Lot Depth: 52.7 m
  - <u>Area</u>: 0.10 ha
  - Services: Municipal Piped Water System Municipal Sanitary Sewer System Sewer Drainage

#### EXISTING LAND USE AND ZONING:

	Existing Land Use	Existing Zoning
Subject Lands:	Single Detached Dwelling	"C" (Urban Protected Residential, etc.) District

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Surrounding Lands:

North	Single Detached Dwelling	"C" (Urban Protected Residential, etc.) District
South	Single Detached Dwelling	"C" (Urban Protected Residential, etc.) District
East	Single Detached Dwelling	"C" (Urban Protected Residential, etc.) District
West	Single Detached Dwelling	"C" (Urban Protected Residential, etc.) District

# POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

## Provincial Planning Policy Framework

The Provincial planning policy framework is established through the *Planning Act* (Section 3), the *Provincial Policy Statement* (PPS 2014), the *Growth Plan for the Greater Golden Horseshoe* (the Growth Plan) and the *Greenbelt Plan.* The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the PPS. The Places to Grow Act and the Greenbelt Act require that all municipal land use decisions made under the *Planning Act* conform to the Growth Plan and the Greenbelt Plan.

The mechanism for the implementation of the Provincial plans and policies is through the Official Plan. Through the preparation, adoption and subsequent Ontario Municipal Board approval of the City of Hamilton Official Plans, the City of Hamilton has established the local policy framework for the implementation of the Provincial planning policy framework. As such, matters of provincial interest (e.g. efficiency of land use, balanced growth and environmental protection) are reviewed and discussed in the Official Plan analysis below.

As the application for a modification in zoning complies with the Official Plan, it is staff's opinion that the application is:

- consistent with Section 3 of the *Planning Act*;
- consistent with the Provincial Policy Statement (2014); and,
- conforms to the Growth Plan for the Greater Golden Horseshoe.

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# Urban Hamilton Official Plan (UHOP)

The subject property is identified as "Neighbourhoods" on Schedule "E" – Urban Structure and designated as "Neighbourhoods" on Schedule "E-1" – Urban Land Use Designations in the UHOP. The following policies, amongst others, are applicable to the application for the proposal.

## Low Density Residential

- "E.3.4.1 The preferred location for low density residential uses is within the interior of the neighbourhoods.
- E.3.4.2 Low density residential areas are characterized by lower profile, gradeoriented built forms that generally have direct access to each unit at grade.
- E.3.4.3 Uses permitted in low density residential areas include single-detached, semi-detached, triplex and street townhouse dwellings.
- E.3.4.4 For low density residential areas the maximum net residential density shall be 60 units per hectare.
- E.3.4.5 For low density residential areas, the maximum height shall be three storeys."

The subject lands are an existing lot of record within the Lawfield Neighbourhood located on the periphery of the neighbourhood. The neighbourhood is composed of low density residential uses so the addition of two units will have a minimal impact on the overall density of the neighbourhood. Also, no alterations to the site or exterior of the building are proposed, as the existing dwelling has already been illegally converted into a triplex. Finally, semi-detached and triplex dwellings are permitted within the Low Density Designation. The designation also permits dwellings to a maximum of three storeys in height. The dwelling on the subject lands is two storeys in height, thereby complying with the above noted requirements of the UHOP.

- "E.3.4.6 *Development* in areas dominated by low density residential uses shall be designed in accordance with the following criteria:
  - a) Direct access from lots adjacent to major or minor arterial roads shall be discouraged.

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- c) A mix of lot widths and sizes *compatible* with streetscape character; and a mix of dwelling unit types and sizes *compatible* in exterior design, including character, scale, appearance and design features; shall be encouraged. *Development* shall be subject to the Zoning By-law regulations for appropriate minimum lot widths and areas, yards, heights, and other zoning regulations to ensure *compatibility*.
- d) Development, including the creation of infill lots involving the creation of new public streets or extensions, shall generally proceed by way of plan of subdivision. Such plans shall achieve the logical and sequential extension of streets and municipal services and an efficient lotting pattern."

Upper Gage Avenue is identified in the UHOP as a minor arterial road. While direct access to the road is discouraged, the direct access to Upper Gage Avenue is a preexisting situation for this property, along with all of the other neighbouring properties. Corridor Management staff have not identified any concerns with respect to an additional two units on the subject lands. As such, Planning staff are of the opinion that the proposal meets the intent of this policy direction.

As the proposed units will be accommodated within the existing detached dwelling, the existing streetscape will be maintained. Also, all of the required parking can be accommodated on site. Furthermore, the addition of a triplex will provide variety of unit types and tenures within the neighbourhood. With respect to lot width, area, yard setbacks, height, and other zoning regulations, the existing site conditions will remain unchanged, thereby ensuring compatibility with the surrounding area. The modifications to the Zoning By-law that are related to the existing site conditions will be addressed in the amending By-law (Appendix "B" to Report PED17015) and will be discussed later in this report.

No new public streets or extensions are being proposed through this application. As such, the existing lotting pattern will remain.

# Intensification

Policy E.3.2.4 of the UHOP states that:

"E.3.2.4 The existing character of established Neighbourhoods designated areas shall be maintained. *Residential Intensification* within these areas shall enhance and be compatible with the scale and character of the existing

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residential neighbourhood in accordance with Section B.2.4 – Residential Intensification and other applicable policies of this Plan."

In the case of this application, no exterior modifications are being proposed to the detached dwelling. The only changes on site have been interior to the dwelling, as such the scale and character of the neighbourhood will not change.

The proposal has also been evaluated based on the UHOP's residential intensification criteria, namely, policies B.2.4.1.4 and B.2.4.2.2:

- "B.2.4.1.4 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.
- B.2.4.2.2 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;

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- 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;
- 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."

# Character of the Neighbourhood

The subject lands are situated within the Lawfield Neighbourhood which is an established neighbourhood, composed predominately of low density residential building types. There are single detached dwellings surrounding the subject lands to the north, west, south, and across Upper Gage Avenue, to the east, as well. This neighbourhood is also serviced by one large park, Lawfield Park, an elementary school, and several commercial uses.

As previously mentioned in this Report, no development is proposed to the site. The required parking spaces are provided in front of the dwelling and meet the requirements of the Zoning By-law with respect to their location. As such, the existing character of the neighbourhood will be maintained. The addition of a triplex will contribute to the variety of unit types within the neighbourhood.

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## Compatibility

The neighbourhood is composed of single detached dwellings to the north, east, south and west. As no exterior modifications to the detached dwelling or the site are proposed, the development will maintain compatibility with the existing neighbourhood character.

To the north, east and south, the setbacks for the subject lands, while are legal nonconforming, are such that they are similar to the existing setbacks of comparable forms of development in the area (which includes side yards ranging between 4.0 m and 0.4 m, front yards of between 14.0 m and 24.0 m, and heights of two storeys). The existing front yard setback for the dwelling is 31.5 m, where 6.0 m are required, and exceeds the front yard setbacks of other properties in the neighbourhood (which range from 4.0 m to 14.0 m). The minimum side yard requirement is 1.2 m, where 0.6 m is provided to the northerly side lot line, and 8.3 m is provided to the southerly side lot line. Finally, the provided rear yard is 7.0 m, where 7.5 m is required.

The required parking spaces are provided in front of the dwelling. As the required front yard depth is 6.0 m and the existing front yard setback is 31.5 m, there are no issues related to compatibility as 64% of the front yard is landscaped area and the required 6.0 m front yard is being provided. This will maintain a desirable front yard, while still providing the required parking for the intended use.

The current situation is consistent with the existing scale and character of the area and thereby creates a continuous, uniform street edge and spacing between buildings.

As the proposed triplex is situated within a mature neighbourhood, and surrounded by similar residential uses, staff does not anticipate any nuisance effects from the proposed development.

As such, Planning staff feel that the proposed use is compatible with the surrounding area.

#### Overlook

Staff have no concerns with respect to overlook as the current built form will remain unchanged and the only development occurring on site will be internal to the dwelling.

## Height / Massing

The existing single detached dwellings to the north and the south of the subject site are two storeys in height. As the existing dwelling on the subject lands is also two storeys in height there are no concerns.

As discussed above, minor modifications are required to the setback requirements found within the Zoning By-law to recognize the existing legal non-conforming situation. These modifications will ensure that the existing massing of the dwelling remains.

## Transportation and Infrastructure Capacity

Corridor Management staff have advised that there are no concerns with respect to transportation capacity as a result of the proposal. Furthermore, Growth Management staff has not identified any issues related to servicing capacity.

Therefore, the proposal complies with the UHOP.

## Lawfield Neighbourhood Plan

The Lawfield Neighbourhood Plan identifies the subject lands as "Single and Double Residential". As a triplex dwelling is proposed, an amendment to the Neighbourhood Plan will be required.

Policy F.1.2.8 of the UHOP notes:

"F.1.2.8 Any amendment to the Neighbourhood Plan must be evaluated using the provisions of Policies F.1.1.3 and F.1.1.4 and shall require a formal Council decision to enact the amendment."

Also, Policy F.1.1.3 indicates:

"F.1.1.3 Amendments to this Plan, including secondary plans, shall be required to create, modify or expand land use designations and policies which do not comply with this Plan."

Policies F.1.2.7 and F.1.2.8 state:

"F.1.2.7 *Neighbourhood Plans* are policies adopted by council resolution and do not form part of the Official Plan. Any proposal for *development or redevelopment* must conform to the designations, and policies in the Neighbourhood Plan.

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F.1.2.8 Any amendment to the *Neighbourhood Plan* must be evaluated using the provisions of Policies F.1.1.3 and F.1.1.4 and shall require a formal Council decision to enact the amendment."

As the proposed development is to legalize an existing triplex, an amendment to the Neighbourhood Plan is required to redesignate the subject lands from "Single and Double Residential" to "Low Density Apartments". This redesignation will be consistent with the rezoning of the subject lands from "C" District to "DE" District which will permit a single family dwelling, duplex dwelling, or a triplex dwelling.

In light of the above, staff are supportive of the redesignation and have included a recommendation in the staff report.

# City of Hamilton Zoning By-law No. 6593

The subject lands are currently zoned "C" (Urban Protected Residential, etc.) District in the Hamilton Zoning By-law No. 6593, as shown on Appendix "A" to Report PED17015. The following uses are permitted in the "C" District: a single family home; a foster home; a residential care facility for the accommodation of not more than six residents, a day nursery; a school of learning except a commercial school or sanatorium school, and not including a dormitory; a seminary, a library, art gallery, museum, observatory, community centre or other such cultural, recreational or community building or structure, except one carried on as a business, or of a kind that is customarily carried on as a business, a bowling green, tennis court, playground, playfield, play lot or other such recreational uses.

The "DE" (Low Density Multiple Dwellings) District allows for a single family dwelling, a two family dwelling or a three family dwelling, together with the accommodation of lodgers to the number of not more than three in each Class A dwelling unit; a multiple dwelling, together with the accommodation of lodgers to the number or not more than three in each Class A dwelling unit; a short term care facility for the accommodation of not more than six residents; and a day nursery.

The purpose of this Zoning By-law Amendment will be to rezone the subject lands to a modified "DE" District to restrict the uses on site to a single detached dwelling, a duplex dwelling, or a triplex dwelling, and to recognize the existing zoning deficiencies, including requirements related to the side yard setbacks; rear yard depth; location of the accessory building (garage); required maneuvering spaces; and, size of parking spaces. Furthermore, the triplex within the building existing at the time of passing of the by-law attached to this Report as Appendix "B" will deem to be legally established so long as the owner obtains the necessary Building Permits from the City. The requirement of

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these permits will be part of a "H" Holding Provision which will need to be lifted prior to the building being used as a legal triplex.

These modifications are further discussed in the Analysis and Rationale for Recommendation section of this Report.

## **RELEVANT CONSULTATION**

The following Departments / Agencies have no comments or objections:

• Geomatics & Corridor Management Division, Public Works Department.

#### PUBLIC CONSULTATION

In accordance with the provisions of the *Planning Act* and the Council Approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation was sent to 126 property owners within 120 m of the subject property on August 8, 2016, for the proposed Zoning By-law Amendment application.

To date, no public submissions have been received.

A Public Notice Sign was posted on the property on August 3, 2016, and updated on January 18, 2017, with the Public Meeting date. Finally, Notice of the Public Meeting was given in accordance with the requirements of the *Planning Act* on January 27, 2017.

#### ANALYSIS AND RATIONALE FOR RECOMMENDATION

- (1) The proposal has merit and can be supported for the following reasons:
  - (i) It is consistent with the PPS and conforms to the Growth Plan for the Greater Golden Horseshoe (Places to Grow).
  - (ii) It complies with the UHOP; and,
  - (iii) The proposed development is compatible with existing residential land uses in the immediate area and represents good planning by, among other things, providing for the development of a complete community, while making efficient use of a dwelling on an existing lot of record and existing infrastructure within the urban boundary.

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(2) The applicant has requested amendments to Hamilton Zoning By-law No. 6593 to implement the proposal.

The "C" (Urban Protected Residential, etc.) District does not permit a duplex dwelling or a triplex as of right. As such, an amendment is required to facilitate the proposed uses. Furthermore, the existing site conditions are legal non-conforming so further modifications to the By-law are required to legalize the existing site conditions.

The modifications to the Zoning By-law are as follows:

#### <u>Uses</u>

While the "C" District allows for a single detached dwelling, it does not allow for a duplex dwelling or a triplex dwelling.

Staff are of the opinion that it is more appropriate to rezone the subject lands to the "DE" (Low Density Multiple Dwellings) District as this zone permits, as of right, single detached dwellings, duplex dwellings, triplex dwellings, and multiple dwellings. The proposed site specific zoning will restrict the uses on the subject lands to single detached dwellings, duplex dwellings, triplex dwellings only, by not applying Section 10A (1) (iv) of the By-law to the amendment.

All three uses implement the policy direction of the Low Density land use designation and comply with the UHOP. The proposed development will not result in any impacts regarding nuisance effects and is compatible with the surrounding neighbourhood. Furthermore, the proposed development maintains the character of the surrounding area. For the reasons outlined in this Report, staff are supportive of the rezoning.

# Side Yards, Rear Yard, Location of Accessory Building, Maneuvering, Parking Spaces

In order to permit the existing triplex, by-law modifications to recognize the side yards, rear yard, the location of the accessory building, maneuvering spaces, and the layout and size of parking spaces of the triplex and accessory building (garage) are to be included into the amending By-law. As the modifications are only to recognize the existing side yards, rear yard, the location of the accessory building, maneuvering spaces, and the layout and size of parking spaces, the proposed modifications will maintain the existing built form and character of the area, and therefore can be supported.

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- 4. As the triplex has been built illegally without the necessary permits, staff are placing an "H" Holding provision on the subject lands to ensure that these permits are obtained, thereby legally establishing the triplex and recognizing the change of use.
- 5. The Lawfield Neighbourhood Plan identifies the subject lands as "Single and Double Residential". As a triplex dwelling is proposed, an amendment to the Neighbourhood Plan will be required.

As the proposed development is to legalize an existing triplex dwelling, an amendment to the Neighbourhood Plan is required to redesignate the subject lands from "Single and Double Residential" to "Low Density Apartments". This redesignation will be consistent with the rezoning of the subject lands from "C" District to "DE" District which will permit a single detached dwelling, duplex dwelling, or a triplex dwelling. As such, staff are supportive of the redesignation.

6. Engineering

For information purposes, there is a 300 mm public watermain, 250 mm sanitary sewer and a 375 mm storm sewer fronting the subject lands on Upper Gage Avenue.

Furthermore, as Upper Gage Avenue is designated a minor arterial road in the UHOP, and would be subject to an ultimate road allowance width of 36.576 m, a condition of any future development application involving redevelopment will be to provide the City with a road widening. The Owner will be required to dedicate to the City of Hamilton sufficient land to establish the as-widened property line approximately 18.288 m from the original centerline of construction of Upper Gage Avenue.

7. The Owner has advised staff that they object to the placing of an "H" Holding provision on the subject lands to ensure that the necessary permits are obtained. They have advised staff that they will obtain the permits themselves in order to legally establish the Triplex. Staff would like to be sure that these permits are obtained, and as such, feel the 'H' Holding provision will ensure that this is done.

# ALTERNATIVES FOR CONSIDERATION

Should the application be denied, the lands could be used in accordance with the existing "C" (Urban Protected Residential, etc.) District provisions.

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# ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

#### **Healthy and Safe Communities**

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

#### **Built Environment and Infrastructure**

*Hamilton is* supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

## APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Zoning By-law Amendment
- Appendix "C": Concept Plan