



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
 Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 3, 2018
SUBJECT/REPORT NO:	Application for Amendment to the City of Hamilton Zoning By-law No. 6593 for Lands Located at 412 Aberdeen Avenue, Hamilton (Ward 1) (PED18072)
WARD(S) AFFECTED:	Ward 1
PREPARED BY:	Daniel Barnett (905) 546-2424 Ext. 4445
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That **Amended Zoning By-law Amendment Application ZAR-17-040 by Mario Neves and Susana Da Silva, Owners,** for a further modification to the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, to legalize an existing illegal triplex within the existing building, for lands located at 412 Aberdeen Avenue, Hamilton, as shown on Appendix “A” to Report PED18072, be **APPROVED** on the following basis:
- (i) That the draft By-law, attached as Appendix “B” to Report PED18072, 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 PED18072, be added to District Map No. W14 of Zoning By-law No. 6593.
 - (iii) That the amending By-law apply the Holding Provision of section 36(1) of the *Planning Act*, R.S.O. 1990 to the subject lands by introducing the Holding symbol ‘H’ as a suffix to the proposed zoning.

The Holding Provision “D/S-1758-‘H’” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Holding, Modified, be removed conditional upon:

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- 1) The Owner apply for a Building Permit to legalize the two dormer additions and internal renovations to create three dwelling units, to the satisfaction of the City's Chief Building Official.
 - 2) The Owner undertake a noise study
 - 3) The Owner submits and receives approval of an updated wastewater generation assessment, to the satisfaction of the Senior Director, Growth Management.
- (iv) That the proposed change in zoning is consistent with the Provincial Policy Statement (2014), conforms to the Growth Plan for the Greater Golden Horseshoe (2017), and complies with the Urban Hamilton Official Plan.
- (b) That upon finalization of the amending By-law, that the Kirkendall North Neighbourhood Plan be amended to re-designate the subject lands from "Single and Double" to "Low Density Apartment".

EXECUTIVE SUMMARY

The purpose and effect of the proposed Zoning By-law Amendment to the City of Hamilton Zoning By-law No. 6593 is for a change in zoning from the "D/S-1381" (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Modified to the "D/S-1758-'H'" (Urban Protected Residential - One and Two Family Dwellings, etc.) District, Holding, Modified, in order to legalize an existing illegal triplex within the existing three storey residential building.

Modifications to the Zoning By-law are also required to recognize the existing situation with respect to eave and gutter encroachments, landscaping, reduced on-site manoeuvring, parking within the front yard, and to reduce the length of a parking space.

A 'H' Holding Provision has been included for the necessary Building Permits, noise warning clauses and updated wastewater generation assessment. The proposed development will be permitted once the Holding Provision is removed by Council.

The application has merit and can be supported since the proposal is consistent with the Provincial Policy Statement (2014), conforms to the Growth Plan for the Greater Golden Horseshoe (2017), and complies with the Urban Hamilton Official Plan.

Alternatives for Consideration – See Page 22

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 amendment to the Zoning By-law.

HISTORICAL BACKGROUND

The subject property is located on the north side of Aberdeen Avenue, east of Dundurn Street South, and is occupied by an existing three storey, 8.7 m high residential building. There are four on-site parking spaces, one within the front accessed from Aberdeen Avenue, and three at the rear accessed from the alleyway.

The last recognized use of the property is a single detached dwelling. On January 20, 2016, City inspectors attended the subject property due to the construction of two dormer additions without the required Building Permit, and at that time the City was informed of the presence of three illegal dwelling units within the building. An Order to Comply was issued by the City of Hamilton on January 21, 2016.

Following the Formal Consultation meeting in October, 2016, the applicant applied to change the zoning of the property from the "D/S-1381" (Urban Protected Residential - One and Two Family Dwellings, etc.) District, Modified to a site specific "DE-2" (Multiple Dwelling) District, in order to legalize the triplex within the existing building with site specific modifications.

The "DE-2" (Multiple Dwelling) District permits a three family dwelling (triplex) but also permits a multiple dwelling with a maximum height restriction of eight storeys, a six resident emergency shelter, and a long term care facility within the existing building. Based on the scale of the proposal and that the proposed triplex is being restricted to the existing residential building, it is the opinion of staff that the "DE-2" District is not the appropriate zone for the proposed use and as a result, staff have amended the application to further amend the "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) District. The amended Zoning By-law Amendment will ensure that the subject lands can only be utilized for the proposed triplex or the permitted uses of the "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) District (which includes single detached dwellings, semi-detached dwellings, and duplexes). It is further noted that the amended Zoning By-law would no longer permit the use of a new and used book store as permitted by By-law 97-132. The proposed Zoning By-law Amendment also includes modifications to the Zoning By-law to recognize the existing situation with respect to eave and gutter encroachments, landscaping, reduce on-site

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manoeuvring, parking within the front yard, and to reduce the length for one of the required parking spaces.

Chronology

- April 27, 2017: Zoning By-law Amendment Application ZAR-17-040 was received.
- May 25, 2017: Application ZAR-17-040 deemed complete.
- June 1, 2017: Notice of Complete Application and Preliminary Circulation was sent to 232 property owners within 120 m of the subject lands.
- June 8, 2017: Public Notice Sign posted on the subject lands.
- March 7, 2018: Public Notice Sign updated with Public Meeting date.
- March 16, 2018: Circulation of the Notice of Public Meeting to 232 property owners within 120 m of the subject lands.

Details of Submitted Application:

- Location:** 412 Aberdeen Avenue, Hamilton
- Owner / Applicant:** Mario Neves and Susana Da Silva
- Agent:** Same as Owner
- Property Description:**
- | | |
|----------------------|----------------------------------|
| <u>Lot Frontage:</u> | 15.24 m |
| <u>Lot Depth:</u> | 37.92 m |
| <u>Lot Area:</u> | 577 sq m |
| <u>Servicing:</u> | Existing Full Municipal Services |

Existing Land Use and Zoning:

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands:</u>	Single Detached Dwelling	"D/S-1381" (Urban Protected Residential – One and Two Family

Dwellings, etc.) District, Modified

Surrounding Land Uses:

North	Single Detached Dwellings	“D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District
South	Single Detached Dwelling and Commercial Plaza	“D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District and “H” (Community Shopping and Commercial, etc.) District
East	Single Detached Dwelling	“D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District
West	Hamilton Hydro	“H” (Community Shopping and Commercial, etc.) District

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Planning Policy Framework

The Provincial Planning Policy Framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (PPS 2014). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the PPS.

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, environmental protection and sensitive land uses) are reviewed and discussed in the Official Plan analysis that follows.

Staff note the Cultural Heritage policies have not been updated within the UHOP in accordance with the PPS (2014). The following policy of the PPS (2014) also applies:

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“2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.

2.6.2 Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.”

Although the subject property is not formally recognized under the *Ontario Heritage Act* through registration or designation, the existing building is a representative example of Period Tudor Revival style of architecture from around the 1900's and therefore is of potential cultural heritage value and staff do have an interest in ensuring any proposed changes are sympathetic to the historic character of the building and are contextually appropriate. As the proposal is to recognize internal renovations of the building and dormer additions to the existing building, staff are satisfied that the heritage attributes of the heritage property are being conserved.

Also, the subject property meets three of the ten criteria used by the City of Hamilton and Ministry of Tourism, Culture and Sport for determining archaeological potential:

- 1) In the vicinity of distinctive or unusual landforms;
- 2) In areas of pioneer EuroCanadian settlement; and,
- 3) Along historic transportation routes.

Notwithstanding the current surface conditions, there is no concern from an archaeological prospective with respect to the Zoning By-law Amendment application to legalize a triplex within an existing building.

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

- Consistent with Section 3 of the *Planning Act*; and,
- Consistent with the Provincial Policy Statement.

Growth Plan for the Greater Golden Horseshoe (2017)

As of July 1, 2017, the policies of the Growth Plan for the Greater Golden Horseshoe, 2017 apply to any Planning decision.

The Growth Plan is focused on accommodating forecasted growth in complete communities and provides policies on managing growth. The following policies, amongst others, apply:

- “2.2.1.2 Forecasted growth to the horizon of this Plan will be allocated based on the following:
- a) The vast majority of growth will be directed to *settlement areas* that:
 - i. have a *delineated built boundary*;
 - ii. have existing or planned *municipal water and wastewater systems*; and,
 - iii. can support the achievement of complete communities.
- 2.2.1.4 Applying the policies of this Plan will support the achievement of *complete communities* that:
- a) feature a diverse mix of land uses, including residential and employment uses, convenient access to local stores, services, and *public service facilities*;
 - c) provide a diverse range and mix of housing options, including second units and *affordable* housing, to accommodate people at all stages of life, and to accommodate the needs of all household sizes and incomes; and,
 - d) expand convenient access to:
 - i. a range of transportation options, including options for the safe, comfortable and convenient use of *active transportation*;
- 2.2.2.1 By the year 2031, and for each year thereafter, a minimum of 60 per cent of all residential development occurring annually within each upper- or single-tier municipality will be within the *delineated built-up area*.”

The subject application is to legalize a triplex within a settlement area. The proposed residential units will enhance the housing options and the proposal is in keeping with the existing residential character of the neighbourhood as no external renovations are proposed. The proposed development supports the achievement of complete communities by proposing a residential development, in a mixed use area, that utilizes existing infrastructure, including transit. Also, the subject application contributes to intensification within the delineated built-up area. Therefore, the proposal conforms to the Growth Plan.

Urban Hamilton Official Plan (UHOP)

The subject lands are identified as “Neighbourhoods” on Schedule “E” – Urban Structure and designated “Neighbourhoods” on Schedule “E-1” – Urban Land Use Designations. The following policies, amongst others, apply to the proposal:

Function

“E.3.2.1 Areas designated Neighbourhoods shall function as *complete communities*, including the full range of residential dwelling types and densities as well as supporting uses intended to serve the local residents.

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*.

Scale and Design

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

E.3.2.15 The City shall encourage the adaptive reuse of the existing building stock for appropriate land uses. Rezoning applications for new uses shall be evaluated to ensure compatibility with surrounding land uses.”

The proposed development is to legalize a triplex within an existing building, which will form part of the complete community and will contribute to a full range of residential dwelling types and densities (Policies E.3.2.1, E.3.2.3, and E.3.2.15). As the building is existing, the proposal does not change the existing streetscape character of the area and therefore the character of the area is maintained. The proposed triplex is similar in height to the building to the west which is one and one half storeys in height but the peak of the roof is similar to that of the building on the subject lands. Additionally, the proposed triplex has a building height of approximately 8.7 m and is therefore below the maximum building height permitted in the “D” District of 14 m. Therefore, the proposed development is compatible with the scale and character of the existing residential neighbourhood (Policy E.3.2.4).

Residential Uses – General Policies

- “E.3.3.1 Lower density residential uses and building forms shall generally be located in the interior of neighbourhood areas with high density dwelling forms and supporting uses located on the periphery of the neighbourhoods on or in close proximity to major or minor arterial roads.
- E.3.3.2 Development or redevelopment adjacent to areas of lower density shall ensure the height, massing, and arrangement of buildings and structures are compatible with existing and future uses in the surrounding area.”

The proposed triplex is considered to be a low density residential use in the UHOP (as per Policy E.3.4.3 below). Low density residential uses shall generally be located in the interior of the neighbourhood with higher density forms on the periphery of the neighbourhood on or in close proximity to major or minor arterial roads. While the subject property is located on the periphery of the neighbourhood and on a minor arterial road, Policy E.3.3.1 does not preclude lower density residential uses from being located on the periphery of neighbourhoods, and low density uses both within the existing building and along Aberdeen Avenue represent an existing situation.

The subject property is classified as a low density use and is located adjacent to an area of lower density residential uses to the north, east and south of the subject lands. As the proposal is to legalize an existing illegal triplex within an existing building, the height, massing and arrangement of the building will be maintained.

Low Density Residential

Function

- “E.3.4.1 The preferred location for low density residential uses is within the interior of neighbourhoods.
- E.3.4.2 Low Density residential areas are characterized by lower profile, grade-oriented 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, duplex, triplex, and street townhouse dwellings.”

The use of a triplex represents a permitted use for low density residential lands. As previously noted, the subject property is located on the periphery of the neighbourhood and not the interior where lower density residential uses are preferred. However, Policy E.3.4.1 does not preclude low density residential uses on the periphery of the neighbourhood, and low density residential uses currently exist within the existing

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building, as well as along Aberdeen Avenue. The existing three storey building represents a low profile form of development and all three units have access by way of a common front entrance as well as separate direct access on the easterly side of the building either at grade or from a second storey deck. Therefore, the proposed development complies with the low density residential policies with respect to function.

Scale

“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 triplex has a residential density of 51.99 units per net hectare and the existing building will maintain a height of three storeys, which complies with the low density residential designation.

Design

“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 to adjacent major or minor arterial roads shall be discouraged.
- 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.”

The existing property currently has direct access to a minor arterial however the majority of the on-site parking is accessed at the rear by way of an existing assumed alleyway. The subject property is an existing lot of record and therefore the lot size will not be changed by way of this application. Also the exterior design of the building will not be changed as a result of the proposal, and the proposed use will contribute to the mix of dwelling unit types in the area. The proposed Zoning By-law Amendment will establish zoning regulations to recognize the existing building which is compatible with the character of the area. Therefore, the proposed development complies with the low density residential policies with respect to design.

Residential Intensification

- "B.2.4.1.1 Residential intensification shall be encouraged throughout the entire built-up area in accordance with the policies of Chapter E – Urban Systems and Designations and Chapter F – Implementation.
- 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."

As the proposal is to legalize an existing illegal triplex within an existing building, the existing pattern and built form will be maintained (Policy B.2.4.1.4 b)). The proposed triplex within the existing building represents a use that is compatible with the other residential uses in the area and the existing building is of a scale and character that is similar to other existing buildings in the area (Policy B.2.4.1.4 d)). The proposal contributes to maintaining and achieving a range of dwelling types and tenures in the area (Policy B.2.4.1.4 c)), and the scale, form and character of the existing building will remain compatible with the surrounding area (Policy B.2.4.1.4 d)). Also the proposed development is in line with the planned urban structure for lands identified as Neighbourhoods (Policy B.2.4.1.4 e)) and has adequate infrastructure (subject to a holding respecting wastewater generation) and transportation capacity to meet the needs of the proposed development (Policy B.2.4.1.4 f)).

- "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;
 - 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."

The proposal does not alter the existing streetscape character in respect to height, massing and scale nor change the existing established pattern and built form as no exterior changes to the existing building are proposed (Policy B.2.4.2.2 c)). As a result, there will be no change with respect to shadowing, overlook, noise or lighting, and the two additional dwelling units will not significantly alter the traffic demand for the property (Policy B.2.4.2.2 b)). The subject property currently maintains an amenity area that is in excess of 100 sq m to the north and east of the existing building which will not be altered as a result of the proposal, thereby providing adequate amenity space (Policy B.2.4.2.2 f)). The proposal does not alter the existing lot pattern, setbacks or building separations (Policy B.2.4.2.2 e) and g)) and adaptively re-uses a building with cultural heritage interest (Policy B.2.4.2.2 i)). Finally the property has access to adequate municipal infrastructure (subject to a holding respecting wastewater generation) and

utilizes existing transportation capacity primarily from a rear assumed alleyway (Policy B.2.4.2.2 j)).

Therefore the proposal to legalize an existing illegal triplex within an existing building complies with the Residential Intensification policies of the UHOP.

Noise

"B.3.6.3.1 *Development of noise sensitive land uses*, in the vicinity of provincial highways, parkways, minor or major arterial roads, collector roads, truck routes, railway lines, railway yards, airports, or other uses considered to be noise generators shall comply with all applicable provincial and municipal guidelines and standards.

B.3.6.3.7 A noise feasibility study, or detailed noise study, or both, shall be submitted as determined by the City prior to or at the time of application submission, for development of residential or other noise sensitive land uses on lands in the following locations:

- a) 100 metres of a minor arterial road, as identified on Schedule C – Functional Road Classification."

The subject property is located on Aberdeen Avenue and within 60 m of Dundurn Street South, which are both classified as minor arterial roads in the UHOP. Given the presence of these potential noise sources, a noise brief was prepared and submitted with the Zoning By-law Amendment application. The noise study tested the existing noise levels within the existing building and noted that the levels conformed to MOECC requirements. The testing was conducted with the windows of the building closed and it is expected the noise levels with the windows open would exceed the MOECC requirements. In situations where MOECC requirements can be met only so long as windows remain closed, the preferred approach to ensure that the windows can remain closed is by providing centralized air conditioning. Given that the building pre-dates the 1900's, the building is not designed to accommodate central air conditioning and it is not practical to require the establishment of a centralized air condition for the building. It is however prudent for the applicant to include a noise warning clause on title advising all purchasers / tenants that sound levels due to road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the Municipality's and the Ministry of the Environment and Climate Change's noise criteria. Staff are proposing to include an 'H' Holding Provision as part of the Zoning By-law Amendment, which will include a condition that requires the applicant include the noise warning clause on title and in all purchase and sale / lease agreements to advise prospective purchasers and tenants about the potential noise impacts.

Infrastructure

- “C.5.3.5 All new *development* and *redevelopment* within the *urban area* shall be connected to the City’s water and wastewater system.
- C.5.3.11 The City shall ensure that any change in density can be accommodated within the municipal water and wastewater system.
- C.5.3.15 The City shall be satisfied that adequate infrastructure services can be provided prior to any *development* or intensification proceeding and, where technically and economically possible, the City shall require such services to be located underground.”

The existing building has connections to the municipal water and wastewater system. As part of the application for Zoning By-law Amendment, the applicant submitted a wastewater generation assessment. Through the review of the wastewater generation assessment, Growth Management staff identified that the total flows identified in the assessment were incorrect and that the assessment should be updated. Staff are proposing to include an ‘H’ Holding Provision as part of the Zoning By-law Amendment, with a condition that requires that the applicant update the wastewater generation assessment to the satisfaction of the Senior Director, Growth Management Division.

Neighbourhood Plans

- “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.
- 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.”

With respect to the above noted policies, an amendment to the Kirkendall North Neighbourhood Plan is required to change the designation from “Single and Double” to “Low Density Apartment”. Staff are in support of this Neighbourhood Plan Amendment which is discussed in the following section.

Based on the foregoing, the proposal complies with the policies of the UHOP.

Kirkendall North Neighbourhood Plan

The subject property is designated “Single and Double” in the Kirkendall North Neighbourhood Plan. The “Single and Double” designation does not permit a triplex. The triplex is a use that is in line with the “Low Density Apartment” designation of the Kirkendall North Neighbourhood Plan.

The policies of the Kirkendall North Neighbourhood Plan “permit a range of residential densities in Kirkendall North and South Neighbourhoods that will provide a variety of housing types while maintaining and enhancing the positive characteristics of the Neighbourhood and that the variety of accommodations encourage a full range of the population cross section, young families through to senior citizens to provide a stable viable neighbourhood”. The proposed triplex contributes to the range of residential densities and housing types and is compatible with the character of the neighbourhood. Therefore, the proposed amendment to the Kirkendall North Neighbourhood Plan is appropriate.

City of Hamilton Zoning By-law No. 6593

The subject property is currently zoned “D/S-1381” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Modified, which permits single detached dwellings, semi-detached dwellings, duplexes, and includes a site specific By-law provision that permits a book store for the sale of new and used books. The proposal is to further modify the existing site specific “D” (Urban Protected Residential – One and Two Family Dwelling, etc.) District, Modified. The “D” District does not permit a triplex (three family dwelling). The proposal is for a site specific modification to the existing “D” (Urban Protected Residential – One and Two Family Dwelling, etc.) District, Modified, to remove the use of a book store for the sale of new and use books and establish the use of a triplex (three family dwelling) within the building existing on the date of the passing of the By-law as a permitted use.

Modifications to the Zoning By-law are also required to recognize the existing situation with respect to eaves and gutter encroachments, height, landscaping, reduced on-site manoeuvring space, parking within the front yard, and to reduce the length of a parking space. An analysis of the site specific modifications is included in the Analysis and Rationale for Recommendation section below.

RELEVANT CONSULTATION

The following Departments and Agencies had no comments or objections to the applications:

- Recreation Division, Community and Emergency Services Department;
- Strategic Planning, Public Works Department;
- Alectra Utilities (formerly Horizon Utilities), and,
- Corridor Management, Public Works Department.

The following Departments and Agencies have provided comments with respect to the proposed application:

Operations Division, Public Works Department staff note that the development is eligible for municipal waste collection services subject to meeting the City's requirements.

Transportation Planning, Public Works Department staff note that Aberdeen Avenue is classified as a Minor Arterial Road with an anticipated road allowance width of 36.576 m. Transportation Planning also noted that the sidewalks within the municipal right-of-way should have a minimum width of 2 m and that sidewalks through the site should maintain a width of 1.5 m. Planning staff note there are existing sidewalks along Aberdeen Avenue and existing internal sidewalks through the site which are not being altered as part of the Zoning By-law Amendment application.

Public Consultation:

In accordance with the provisions of the *Planning Act* and Council's Public Participation Policy, Notice of Complete Application and Preliminary Circulation was circulated to 232 property owners within 120 m of the subject lands on June 1, 2017 requesting public input on the application. A Public Notice sign was also posted on the property on June 8, 2017 and updated on March 7, 2018 with the date of the Public Meeting.

Notice of the Public Meeting was also given in accordance with the requirements of the *Planning Act*, through the circulation to property owners within 120 m of the subject lands. At the time of the writing of this Report no letters of correspondence have been received.

Public Consultation Strategy

The applicant engaged in a Public Consultation Strategy that consisted of visiting the adjacent landowners to discuss the zoning proposal. The applicant advised staff that they met with ten neighbouring property owners over the course of the summer of 2017,

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and that the primary concern raised in the meetings was that the existing building would be demolished and a new multiple dwelling would be established. This issue will be further discussed in the Analysis and Rationale for Recommendation section of this Report.

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 (2017);
 - ii) It complies with the policies of the Urban Hamilton Official Plan; and,
 - iii) The existing building forms part of the existing character of the area, is of a size and scale that is compatible with other buildings in the area, and represents good planning.
2. **Zoning By-law Amendment**

The application for Zoning By-law Amendment is to change the zoning from the “D/S-1381” (Urban Protected Residential – One and Two Family Dwelling, etc.) District, Modified to the “D/S-1758-‘H’” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Holding, Modified.

The proposed change in zoning will repeal Site Specific By-law 97-132 which established the site specific “D/S-1381” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, Modified District.

It is noted that a triplex is defined in the City of Hamilton Zoning By-law No. 6593 as a three family dwelling.

The intent of the Zoning By-law Amendment is to legalize an existing illegal triplex within the building existing on the date of the passing of the By-law. By restricting the use to no more than three units and to the existing building, any future redevelopment would continue to be subject to the By-law requirements of the “D” District.

The proposed change in zoning will not permit a multiple dwelling and will maintain the existing building that forms part of the character of the area. The proposed Zoning By-law Amendment increases the number of permitted dwelling units within the existing building and therefore complies with the policies that

promote intensification on the periphery of neighbourhoods along major transportation routes.

Therefore, the proposed change in zoning is supported by staff.

Additionally, the following site specific modifications to Zoning By-law No. 6593 are required to implement the proposal:

Lot Dimensions, Building Height and Setbacks

The site specific By-law permits a three family dwelling within the building existing on the date of the passing of the By-law. As a three family dwelling is not a use permitted within the “D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, there are no minimum lot width, lot area, building height, front yard setback, side yard setback, or rear yard setback requirements that would apply to the proposed use. Therefore, the site specific Zoning By-law will recognize the existing lot dimensions of the subject property and recognize the building height and setbacks of the existing building. This includes recognition of the building height and setbacks of the dormer additions that have been established on the third floor of the existing dwelling but did not receive the necessary building permits. Given the existing condition of the building would remain unchanged, the existing streetscape character of the area will be maintained. Therefore, the proposed modification can be supported.

Eave and Gutter Encroachments

The eaves and gutters on the westerly side of the existing building do not conform to the maximum side yard encroachment of not more than half the required side yard or 1 m whichever is lesser. The existing building is located 0.3 m from the westerly side lot line and the existing eaves and gutters project into the required side yard. As the modification is to recognize the existing eaves and gutters, the proposed modification can be supported.

Minimum Front Yard Landscaping

A minimum of 50% of the front yard is required to be landscaped whereas 25% is currently being provided, and a maximum of 50% of the front yard can be occupied by parking whereas 75% is currently being provided.

The 75% of the front yard that is occupied by parking and 25% of the front yard landscaping represents an existing situation that will not change as a result of the proposed application. Also, as the site is already developed there is no opportunity to increase the amount of front yard landscaping or decrease the

amount of the front yard occupied by parking. The proposed modification is to recognize the existing situation with respect to front yard landscaping and parking therefore, the existing streetscape character of the area will be maintained. The proposed modification can be supported.

Minimum On-Site Manoeuvring Space and Parking Space Access

A minimum on-site manoeuvring space aisle width of 6 m is required whereas 0 m is proposed on-site for the parking at the rear and 3 m for the parking in the front yard. The parking space in the front yard is accessed from Aberdeen Avenue, whereas the manoeuvring space and access driveway for the parking spaces at the rear is to be provided off-site by way of an existing assumed alleyway, whereas manoeuvring space and access driveways are required to be located on-site and have access to a municipal road.

Parking spaces are required to maintain a minimum aisle width of 6 m on-site for manoeuvring in order to access the parking spaces without creating traffic conflicts. The access is required to be provided from a municipal road in order to ensure that the parking spaces are accessible. The three parking spaces located at the rear of the subject lands are accessed by a rear public alleyway and therefore the parking spaces and the respective manoeuvring space will be accessible. The manoeuvring space for the three parking space accessed from the rear will occur off-site over the alleyway. As the alleyway serves only a limited number of properties fronting onto Aberdeen Avenue and Homewood Avenue, the alleyway is not expected to have significant levels of traffic and therefore the proposed reduction in on-site manoeuvring space and allowing the access driveway and manoeuvring for the parking spaces to occur over the alleyway is not expected to create traffic conflicts.

In respect to the one parking space located at the front of the building, the parking space will be accessed from Aberdeen Avenue and will have 3 m of on-site manoeuvring space. Given the width of the existing driveway area at the front of the existing building, there is sufficient space on-site in which to manoeuvre into and out of the parking space and exit onto Aberdeen Avenue in a forward manner by way of the existing paved area located in front of the existing building. Therefore, the parking space will be accessible and will not create traffic conflicts.

Therefore, the proposed modifications can be supported.

Parking Space within the Front Yard

One of the four required on-site parking spaces is to be provided partially within the required front yard whereas no parking space is permitted to be located within the required front yard.

Parking is not permitted within the required front yard in order to maintain the streetscape character of the area. The one parking space located near the front of the property is primarily located to the side of the existing building however the back portion of the parking space is partially located within the required front yard. The parking is partially screened by an existing landscaped area that is located between the parking space and the street. The parking space that is partially within the front yard represents an existing situation and therefore, the modification will not change the existing streetscape character of the area. Therefore, the modification can be supported.

Minimum Parking Space Size

A minimum parking space size of 3.2 m by 5.5 m in the rear and 3.2 m by 6 m in the front are proposed whereas 2.7 m by 6 m is required.

A minimum parking space size of 2.7 m by 6 m is required in order to ensure that parking is of an adequate size to accommodate a wide variety of different types of vehicles. All the proposed parking spaces have widths that are greater than 2.7 m and therefore the proposed 3.2 m minimum parking space width represents an increase in the parking space size. In respect to length, the one parking space at the front of the property has a length of 6.77 m and therefore exceeds the existing 6 m requirement. In respect to the parking spaces at the rear of the subject lands, the applicant is proposing to relocate a portion of an existing chain link fence at the rear of the property in order to increase the length of two of the proposed three parking spaces that are provided at the rear of the property accessed from the alleyway. The modification for reduction in parking space length pertains to only one of the on-site parking space. The applicant is seeking to not relocate the chain link fence for the westerly most parking space due to the proximity to an existing mature tree and concern that relocating the fence for the westerly most parking space could negatively impact this tree. The proposed modification will only apply to a maximum of one on-site parking space and therefore the majority of the on-site parking spaces will conform to the minimum required length of 6 m. Furthermore, it is noted that the proposed modification with respect to the westerly most parking space is to recognize the existing situation with respect to the length of the parking space. As the majority of the on-site parking spaces will conform to the minimum length the on-site parking will be able to accommodate the parking needs of a wide variety of

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different types of vehicles. As the proposed modification is to recognize the existing situation with respect to parking space length for one of the on-site parking spaces, the proposed modification can be supported.

3. As the triplex has been built illegally without the necessary Building Permits, staff are placing an 'H' Holding Provision on the subject lands to ensure that Building Permits are applied for, thereby legally establishing the triplex, recognizing the change of use and the previously established dormer additions.

In addition, staff are placing an 'H' Holding Provision on the subject lands to ensure that a noise warning clause is placed on title and in all purchase and sale and lease agreements. This is being required in order to ensure that future purchasers and tenants are advised that noise levels may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the Municipality's and the Ministry of the Environment and Climate Change's noise criteria.

Furthermore, staff are also placing an 'H' Holding Provision on the subject lands to ensure that an updated wastewater generation assessment is completed. This is being required in order to ensure that wastewater generation in respect to total flows is properly calculated.

4. Growth Management staff reviewed the Zoning By-law Amendment application and advised that as part of any future development application, the applicant will be required to transfer any road widening to the City of Hamilton. The existing combined sewer is capacity-deficient under current City guidelines and therefore on-site private sewer back-up prevention measures are recommended. A wastewater generation assessment was submitted with the application for a Zoning By-law Amendment. Staff were generally satisfied with the wastewater generation assessment however it was identified that total flows should be 14,750 L/d + 1,382.4 L/d instead of 2,950 L/d + 1,382.4 L/d and that the wastewater generation assessment should be corrected and resubmitted. The resubmission of the wastewater generation assessment is being undertaken as a condition of lifting the 'H' Holding Provision.
5. Development of a triplex is subject to Site Plan Control. Based on the small size and scale of the existing dormer additions and based on the fact that the dormer additions are only required to improve the liveability of one of the dwelling units, the proposed additions do not substantially increase the size and usability of the property. As the 'H' Holding Provision requires that the applicant include the noise warning clause on title and in any purchase and sale or lease agreements and update the wastewater generation assessment, a Site Plan Control application is not required to ensure that these issues are adequately addressed.

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6. The applicant advised staff that as part of their Public Consultation Strategy, a number of neighbouring property owners raised concern with respect to the existing building being demolished and a new multiple dwelling being established on-site. The applicant advised the neighbouring property owners to whom they met with that the proposal was to permit three dwelling units within the existing building.

The proposed site specific Zoning By-law will permit a maximum of three units within the building existing on the date of the passing of the By-law. The proposed site specific Zoning By-law will not permit a multiple dwelling within the existing building nor permit a multiple dwelling or a triplex within a new building.

ALTERNATIVES FOR CONSIDERATION

Should the application be denied, the subject property would remain zoned “D/S-1381” (Urban Protected Residential – One and Two Family Dwellings, etc.) District, in the City of Hamilton By-law No. 6593, and would be subject to the provisions of the site specific zoning. Furthermore the applicant would be required to adhere to the Order to Comply and would be required to discontinue the use of the existing building as a triplex.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Healthy and Safe Communities

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

Clean and Green

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

Built Environment and Infrastructure

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

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APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Location Map
- Appendix "B": Draft Amendment to Zoning By-law No. 6593
- Appendix "C": Concept Plan

DB:mo