



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 6, 2018
SUBJECT/REPORT NO:	Review of Committee of Adjustment Refund Program for Residential Properties Within the Airport Employment Growth District Area and Feasibility of Including Provisions within the Zoning By-laws to Provide for Relief (City Wide)(PED18005) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Scott Baldry (905) 546-2424 Ext. 4144
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- a) That the refund program for Committee of Adjustment applications regarding legally established non-conforming single family dwellings located within the Airport Employment Growth District (AEGD) Lands and in the Beach Road, McNeilly Road and Margaret Avenue neighbourhoods be discontinued upon Ontario Municipal Board approval of By-law 17-240;
- b) The item respecting minor variance applications in the Airport Employment Growth District (AEGD) be identified as complete and removed from the Planning Committee Outstanding Business List.

EXECUTIVE SUMMARY

On November 1, 2016, Planning Committee passed a motion that stated as follows:

“That staff be directed to refund, upon written request of the owner, the City of Hamilton's required Minor Variance application fee for the expansion or alteration to a legal non-conforming residential property to permit an accessory use in the Airport Employment Growth District (AEGD) where the application is supported by City of Hamilton Planning Staff and approved by the Committee of

SUBJECT: Review of Committee of Adjustment Refund Program for Residential Properties Within the Airport Employment Growth District Area and Feasibility of Including Provisions within the Zoning By-laws to Provide for Relief (City Wide)(PED18005) - Page 2 of 5

Adjustment, effective June 1st, 2016 for a 24 month period, to be funded from the Tax Stabilization Reserve Account #110046.”

A subsequent motion was passed on April 18, 2017 by Planning Committee that stated as follows:

- “(a) That staff be directed to report back on the feasibility of including an 'as of right' amendment to the bylaw, or the cost associated with a refund, upon written request of the owner, of the City of Hamilton's required Minor Variance application fee for the expansion or alteration to a legal non-conforming residential property to permit an accessory use in the Beach Road, McNeilly Road and Margaret Avenue neighbourhoods where the application is supported by the City of Hamilton Planning Staff effective April 1st, 2017 for a 24 month period, and to report back on possible funding sources including but not limited to the Tax Stabilization Reserve;
- (b) That staff report back to the Planning Committee in December, 2019, on the number of applications and assessment as to whether or not the refund program should be continued within industrial areas.

The motions were intended to alleviate the financial burden of residents living in these areas that were required to apply for Minor Variances due to their status as a legally established non-conforming single detached dwelling for the addition of accessory buildings and structures.

Amendments to the Zoning By-laws for the former municipalities as well as the current Zoning By-law 05-200 were approved by Council on November 8, 2017 (By-law 17-240) regarding the inclusion of a clause that would alleviate the requirement for Committee of Adjustment approval for accessory buildings and structures to legally established non-conforming residential properties. By-law 17-240 has been appealed to the Ontario Municipal Board (OMB).

The inclusion of the amendments to the Zoning By-laws of the former municipalities, and the current interpretation by the Building Division, as well as the current Zoning By-law 05-200, will allow for expansions to existing dwellings and the construction of accessory buildings and structures (e.g. pools) and therefore will negate the requirement for Committee of Adjustment approval, therefore the program of refunding Minor Variance Applications will no longer be required. As such staff are recommending the elimination of the program.

Alternatives for Consideration – See Page 4

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SUBJECT: Review of Committee of Adjustment Refund Program for Residential Properties Within the Airport Employment Growth District Area and Feasibility of Including Provisions within the Zoning By-laws to Provide for Relief (City Wide)(PED18005) - Page 3 of 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Currently the program provides for refunds from the Tax Stabilization Reserve Account #110046. The amount of refunds to date has been in the amount of \$3480.00.

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

Lands are usually referred to as being legally established non-conforming or grandfathered when the municipality changes the zoning of large areas of land and now creates a situation where the use is no longer permitted in the new zone. Through updates in municipal by-laws, lands that once contained legal permitted uses can become legally established non-conforming as the municipality updates its vision of growth and land uses.

The land rights of individuals have been protected under provisions in the *Planning Act*. Legislation based on the *Planning Act* usually contain provisions that help individuals with land that fall within this category by protecting and entrenching their rights. Where expansions of these types of uses are proposed, the usual course of action is that of the Minor Variance process to permit the expansion. The Minor Variance process does permit the City to review applications to ensure that the long term goals set out in the Official Plan are met.

The City of Hamilton updated its Official Plan and is in the progress of updating its Zoning By-law. During this process, area designations will be changed as well as the zoning which may result in creating numerous legally established non-conforming uses. The Airport Employment Growth District (AEGD) lands are an example of this type of occurrence.

There were area residents located within the Airport Employment Growth District (AEGD) lands that voiced concerns regarding the extra costs associated with expanding their single detached dwellings and accessory buildings and structures as a result of being in this designated area. As identified previously in this report, Planning Committee passed two motions to provide relief from the fees if the application was supported by Municipal Staff and approved by the Committee of Adjustment. This was expanded to include the Beach Road, McNeilly Road and Margaret Avenue neighbourhoods.

SUBJECT: Review of Committee of Adjustment Refund Program for Residential Properties Within the Airport Employment Growth District Area and Feasibility of Including Provisions within the Zoning By-laws to Provide for Relief (City Wide)(PED18005) - Page 4 of 5

The refund of fees would come from the Tax Stabilization Reserve Account #110046.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The City has processed three applications for refund with a total cost impact of \$3480.00 on the Tax Stabilization Reserve Account.

On November 8, 2017 Council adopted updates to the Zoning By-laws of the former municipalities as well as the current Zoning By-law 05-200, to include provisions that would permit legally established single detached dwellings to add accessory structures as well as decks and porches. By-law 17-240 has been appealed and will not come into force and effect until the Ontario Municipal Board makes a decision on the appeal.

Currently there is an interpretation of the Zoning By-laws for the former municipalities as well as the current Zoning By-law 05-200 that will see relief occur in the event of an appeal in the provisions of the Council approved By-law amendments that deal with legal non-conforming single detached dwelling uses. This interpretation will uphold the proposed provisions until such time as the Ontario Municipal Board makes a determination on any appeals. Therefore staff recommends discontinuing the refund.

ALTERNATIVES FOR CONSIDERATION

Council could direct staff to maintain the existing refund program and report back to Planning Committee in April 2019 with a recommendation on its continuance, however this is not recommended as the refund program is no longer required for alterations to existing buildings. New accessory structures will continue to require Committee of Adjustment approval until such time as By-law No. 17-240 is approved by the OMB.

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.

Economic Prosperity and Growth

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

SUBJECT: Review of Committee of Adjustment Refund Program for Residential Properties Within the Airport Employment Growth District Area and Feasibility of Including Provisions within the Zoning By-laws to Provide for Relief (City Wide)(PED18005) - Page 5 of 5

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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