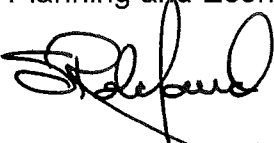




Hamilton

CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

| | |
|---------------------------|---|
| TO: | Chair and Members Planning Committee |
| COMMITTEE DATE: | April 20, 2021 |
| SUBJECT/REPORT NO: | Request for Direction to proceed with Appeal of Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) |
| WARD AFFECTED: | Ward 2 |
| PREPARED BY: | Jennifer Allen (905) 546-2424 Ext. 4672 |
| SUBMITTED BY: | Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department |
| SIGNATURE: |  |

RECOMMENDATION

That Council gives approval to the following actions, as detailed in Report PED21084, respecting Committee of Adjustment Minor Variance application HM/A-20:271 by Their & Curran Architects Inc, (c/o Bill Curran) on behalf of 121 King (Hamilton) GP Inc. (Owner), for the lands located at 121 and 125 King Street East (Hamilton), as shown on Appendix "A" to Report PED21084, granted by the Committee of Adjustment but recommended for denial by the Planning and Economic Development Department:

- (a) That Council of the City of Hamilton proceed with the appeal to the Local Planning Appeal Tribunal (LPAT) against the decision of the Committee of Adjustment to approve Application HM/A-20:271;
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Local Planning Appeal Tribunal hearing in opposition to the decision of the Committee of Adjustment to approve application HM/A-20:271.

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application HM/A-20:271 to permit the establishment of a multiple dwelling containing six dwelling units on the ground floor of the existing building.

Minor Variance Application HM/A-20:271 was considered by the Committee of Adjustment on January 21, 2021. Planning staff recommended the variance to permit a multiple dwelling on the ground floor of the existing building be denied, as the proposal did not meet the four tests of a Minor Variance under Section 45(1) of the *Planning Act* (see Appendix “B” to Report PED21084). The Committee of Adjustment granted the application (see Appendices “C” and “E” to Report PED21084).

Under the *Planning Act*, appeals must be filed within 20 days of the decision. As such, Planning staff submitted an appeal letter, and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process on February 5, 2021, subject to Council’s approval/ratification. Staff recommend proceeding with the appeal. A hearing date has been not yet been set.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning has submitted the required fee of \$400.00 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.

Staffing: One representative from Legal Services and one representative from the Planning Division would be required for preparation and attendance at the LPAT hearing.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND

In December, 2002, City Council endorsed a report related to the Roles and Responsibilities of the Committee of Adjustment. The recommendations included the following:

“That where the *Planning Act* appeal periods can be met, the Planning and Development Department be directed to report to the Committee of the Whole

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 3 of 9

whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law. In response to such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

The subject property is located at 121 and 125 King Street East in Hamilton, at the north west corner of King Street East and Catharine Street North (see Appendix “A” to PED21084).

Site Plan Control Application

In 2017, Site Plan Amendment application SPA-17-086 was submitted to permit the construction of a two and three storey addition to the existing building to establish a six storey building containing 40 residential dwelling units and three ground floor commercial units on the subject property.

Site Plan Amendment application SPA-17-086 received final approval on March 21, 2019. The building is currently under construction to implement the approved site plan.

Minor Variance Application

In December, 2020, the applicant submitted a Minor Variance application to permit the establishment of a multiple dwelling containing six dwelling units on the ground floor of the existing building. The concept plan submitted in support of Minor Variance application HM/A-20:271 identified the proposed dwelling units located along the Catharine Street North frontage and included commercial units with frontage on King Street East. No elevation drawings were submitted with HM/A-20:271 to demonstrate how the proposal would impact the approved east elevation in accordance with SPA-17-086.

Staff comments recommended the variance be denied as the proposal did not meet the four tests of a Minor Variance under Section 45(1) of the *Planning Act* (see Appendix “B” to Report PED21084). While the concept plan identified commercial units on the ground floor, approval of the variance does not require that the commercial units remain as proposed. As a result, approval of the variance has the effect of allowing residential uses on the ground floor, which strictly prohibited by the Pedestrian Focus Streets policies in the Urban Hamilton Official Plan (UHOP), the Downtown Secondary Plan and the Downtown Mixed Use – Pedestrian Focus (D2) Zone.

During the hearing on January 21, 2021, staff recommended that the Committee of Adjustment include a condition on the decision, if approved, to ensure the King Street East frontage remains as commercial (see “Appendix E” to Report PED21084). The

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 4 of 9

Committee of Adjustment granted Minor Variance application HM/A-20:271 on January 21, 2021 with no conditions.

Staff are of the opinion the Committee of Adjustment's decision should be appealed because:

- an Official Plan Amendment application and Zoning By-law Amendment application is the appropriate mechanism to review the impacts of adding a use; and,
- a condition was not added to ensure the continuation of the commercial uses along King Street East.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENT

Planning Act

The application has been reviewed with respect to the criteria 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 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).”

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SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 5 of 9

Staff are of the opinion the effect of the variance is to permit a multiple dwelling on the ground floor of the existing building which does not maintain the general intent of the Urban Hamilton Official Plan, the Downtown Hamilton Secondary Plan or Zoning By-law No. 05-200; is not desirable and appropriate for the use of the land; and is not considered minor in nature. Therefore, the Minor Variance application does not meet the four tests of a Minor Variance under the *Planning Act*, and the variance should be denied.

Provincial Policy Framework:

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (2020) (PPS). 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 Local Planning Appeal Tribunal 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 and balanced growth) are reviewed and discussed in the Official Plan analysis below.

Urban Hamilton Official Plan (UHOP)

The property is identified as “Downtown Urban Growth Centre” in Schedule “E” – Urban Structure and is designated “Downtown Mixed Use Area – Pedestrian Focus Streets” in Schedule “E-1” – Urban Land Use Designations. The following policies, amongst others, apply to the proposal.

“E.4.3.4 In addition to the policies of the specific Commercial and Mixed Use designations, the following policies shall apply to pedestrian focus streets:

- d) Notwithstanding Policy E.4.6.9 Mixed Use – Medium Density Designation, commercial uses shall only be permitted on the ground floor, and a place of worship and day nursery shall only be permitted above the ground floor of a building facing a Pedestrian Focus Street. (OPA 69)

E.4.4.5 Notwithstanding Policy E.4.4.4, the full range of uses shall not be permitted throughout the lands designated Downtown Mixed Use. The Downtown Secondary Plan and zoning by-law establish more detailed land

use designations and permitted uses which apply to specific areas of the Downtown.”

Volume 2 - Downtown Hamilton Secondary Plan

The subject lands are designated “Downtown Mixed Use – Pedestrian Focus” within the Downtown Hamilton Secondary Plan in Volume 2 of the UHOP. The following policies, amongst others, apply to the proposal.

“B.6.1.6.2 A portion of the lands designated Downtown Mixed Use are also identified as Pedestrian Focus Streets on Map B.6.1.1 – Downtown Hamilton Secondary Plan - Land Use Plan. In addition to Section E.4.3 – Pedestrian Focus Streets of Volume 1, the following policies shall apply to areas identified as Pedestrian Focus Streets:

- a) the vision for Pedestrian Focus Streets is to complete the streetwall and provide an uninterrupted building line at the street level through compatible development and infill development along the corridor;
- e) the articulation of façades shall retain a similar rhythm and scale to the street front shops in its surroundings;
- f) the articulation of the façade of new buildings shall reflect or complement the traditional patterns of fenestration in adjacent buildings;
- g) limited articulation of the front façades may be permitted in order to create sheltered areas at ground level or to allow for the incorporation of architectural design elements and access to significant views, provided that the sense of enclosure is maintained and that the articulation does not detract from the retention of the traditional building line;
- h) the ground floor frontage shall be clearly articulated in the massing of the façade, substantially glazed, with generous floor-to-floor heights and designed to accommodate signage.”

The intent of the UHOP is to increase the proportion of multiple storey, mixed use buildings that have retail and service commercial stores at grade and to create a pedestrian oriented environment in Downtown Hamilton. Volume 1, Policy E.4.4.5 states that the Downtown Hamilton Secondary Plan and the Zoning By-law establish more detailed land use designations and permitted uses which apply to specific areas of the

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SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 7 of 9

Downtown. Additionally, the Downtown Mixed Use policies found within the Downtown Hamilton Secondary Plan refer back to the policies of Volume 1 and specifically Policy E.4.3 as it relates to permitted uses, in particular Policy E.4.3.4 d) which provides direction that commercial uses should only be located on the ground floor. Per Policy E.4.4.5 the implementing zoning establishes more detailed regulations to implement the intent of the Pedestrian Focus designation which only permits commercial on the ground floor except for access, accessory office and utility areas related to a multiple dwelling.

The proposal to allow a multiple dwelling on the ground floor of the existing building does not meet the general intent and purpose of the UHOP as the use is not permitted by the existing policy framework.

City of Hamilton Zoning By-law No. 05-200

The subject lands are zoned Downtown Mixed Use – Pedestrian Focus (D2, H21) Zone. The applicant requested a variance to allow a multiple dwelling to be permitted on the ground floor whereas multiple dwellings are not permitted within the ground floor, except for accesses, accessory office and utility areas.

The variance does not meet the general intent and purpose of the Zoning By-law as the effect of the decision is to allow residential uses on the ground floor whereas only commercial uses shall be permitted on the ground floor except for access, accessory office and utility areas within the D2 Zone. The appropriate mechanism to review the proposal is a Zoning By-law Amendment.

RELEVANT CONSULTATION

- Legal Services Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

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 where the *Planning Act* appeal periods can be met, the Planning and Development Department be directed to report to the Committee of the Whole whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law. In response to

such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

The proposed variance to permit a multiple dwelling on the ground floor of the existing building does not meet the four tests of a Minor Variance as stipulated by the *Planning Act* on the basis that the use is not a permitted use in the UHOP and Zoning By-law No. 05-200. Therefore, it is appropriate for the City to appeal the Minor Variance to the Local Planning Appeal Tribunal.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may proceed with the appeal and direct Legal Services and Planning staff to attend the Local Planning Appeal Tribunal Hearing, in opposition of the Committee of Adjustment decision, as recommended in this Report. Where an appeal has been filed, staff are available to meet on a without prejudice basis with the applicant in the event the applicant proposes potential settlement options.

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 Local Planning Appeal Tribunal. Provided that no further appeals are filed; this option would allow the Committee of Adjustment’s decision to permit multiple dwelling on the ground floor of the subject property.

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.

Built Environment and Infrastructure

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

OUR Vision: To be the best place to raise a child and age successfully.

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SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 9 of 9

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Location Map

Appendix "B" – Staff Comments for HM/A-20:271

Appendix "C" – HM/A-20:271 Committee of Adjustment Decision

Appendix "D" – HM/A-20:271 Committee of Adjustment Application

Appendix "E" – Minutes of Public Meeting

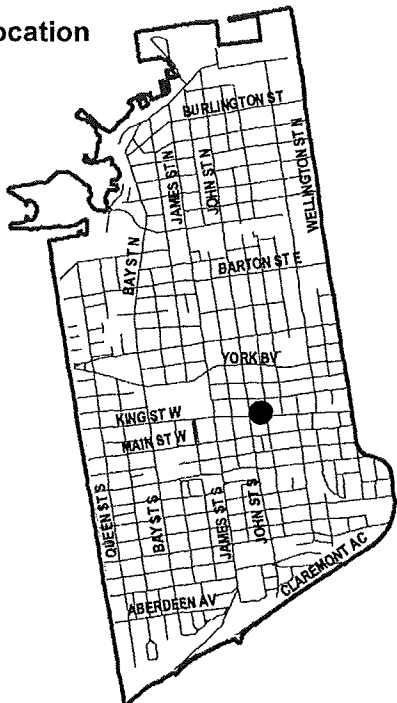
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● Site Location



Key Map - Ward 2



Location Map



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
121 & 125 King St E


Date:
February 23, 2021

Appendix "A"

Scale:
N.T.S

Planner/Technician:
JA/NB

Subject Property

 121 and 125 King Street East, Hamilton
(Ward 2)



Hamilton

Planning and Economic
Development Department

Memorandum

To: Jamila Sheffield, Secretary-Treasurer, Committee of Adjustment
From: Jennifer Allen, Planning Technician I
Phone: 905-546-2424 Ext. 4672
Date: January 15, 2021
Subject: Committee of Adjustment Meeting – January 21, 2021

The following comments are submitted with respect to the matters before the Committee of Adjustment at its meeting to be held on January 21, 2021.

HM/A-20:271

121 & 125 King St E., Hamilton

The purpose of this application is to permit the establishment of a multiple dwelling containing six dwelling units on the ground floor of the existing building, notwithstanding the following variances.

Site Plan Amendment application SPA-17-086 received final approval on March 21, 2019 to establish a six storey building containing 40 residential dwelling units and three ground floor commercial units which is currently under construction. No elevation drawings have been submitted to demonstrate how the proposed conversion will impact the approved East Elevation. An amendment to SPA-17-086 will be required to implement the proposal.

Urban Hamilton Official Plan

The property is identified as "Downtown Urban Growth Centre" in Schedule E– Urban Structure and is designated "Downtown Mixed Use Area – Pedestrian Focus Streets" in Schedule E-1 – Urban Land Use Designations. Policies E.4.3.1, E.4.3.2, E.4.3.4, E.4.4.2, E.4.4.4 a) and e), and E.4.4.5, amongst others, are applicable and permit multiple dwellings.

Downtown Hamilton Secondary Plan

The subject lands are designated "Downtown Mixed Use – Pedestrian Focus" within the Downtown Hamilton Secondary Plan. Policy B.6.1.6.1 amongst others, is applicable and permits multiple dwellings.

City of Hamilton Zoning By-law No. 05-200

The subject lands are zoned Downtown Mixed Use – Pedestrian Focus (D2, H21) Zone, which permits a multiple dwelling above the ground floor.

Variance 1

The applicant is requesting a variance to allow a multiple dwelling to be permitted within the ground floor, notwithstanding that a multiple dwelling is not permitted within the ground floor, except for access, accessory office and utility areas. The intent of the Zoning By-law is to create an environment that is oriented and accessible to pedestrians, particularly along pedestrian oriented streets.

The applicant is proposing to convert the three commercial units with frontage onto Catharine Street North into residential six dwelling units on the ground floor. A Zoning By-law Amendment application is the appropriate mechanism to review the proposed conversion given the use is not permitted on ground floor of the subject lands.

No elevation drawings have been submitted to demonstrate how the proposed conversion will impact the approved East Elevation in accordance with SPA-17-086.

Based on the foregoing, while the general intent of the Urban Hamilton Official Plan is being maintained, the general intent of the Zoning By-law is not being maintained. The variance is desirable for the development nor minor in nature; therefore, staff do not support the variance.

Recommendation:

Based on the preceding information, the requested variance does not maintain the general intent and purpose of the Urban Hamilton Official Plan, the Downtown Hamilton Secondary Plan or City of Hamilton Zoning By-law No. 05-200. The requested variance is considered to be minor in nature and desirable for the appropriate use of the property. In conclusion, Staff recommends the application be denied.

CONDITIONS: (If Approved)

NOTE:



Committee of Adjustment
Hamilton City Hall
71 Main Street West, 5th floor
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424
ext. 4221, 3935
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-20:271
SUBMISSION NO. A-271/20

APPLICATION NO.: HM/A-20:271

APPLICANTS: Owner: 121 King (Hamilton) GP Inc.
Agent: Their & Curran Architects Inc.

SUBJECT PROPERTY: Municipal address **121 & 125 King St. E., Hamilton**

ZONING BY-LAW: Hamilton Zoning By-law 05-200, as Amended

ZONING: D2 and H21 district (Downtown Mixed use - Pedestrian Focus)

PROPOSAL: To permit the establishment of a multiple dwelling containing six (6) dwelling units on the ground floor of the existing building notwithstanding that;

1. A multiple dwelling is not permitted within the ground floor, except for access, accessory office and utility areas.

Notes: No parking spaces are required for any use, except a medical clinic, located in an existing building within the Downtown Mixed Use zone, provided that the existing number of parking spaces which existed on the effective date of the By-law shall continue to be maintained.

The applicant has described the proposed use as live/work units where each unit will consist of both the residence and the business as the principle use. Please note that live/work units are not permitted in this zone. However, a home business may be conducted in a dwelling unit which is secondary to the use of a dwelling unit as a private residence.

A home business is subject to compliance with the requirements Section 4.21 c) and d) "Home Business" of the Hamilton Zoning By-law 05-200, (i.e. type of home business, maximum gross floor areas, outdoor storage, etc.). However, insufficient information was provided from which to confirm compliance; as such, further variances may be required.

This property is included in the City of Hamilton's Register of Property of Cultural Heritage Value or Interest as a non-designated property.

The lands are subject to "H21" holding provision.

That the variances, as set out above, are **GRANTED** for the following reasons:

1. The Committee, having regard to the evidence, is of the opinion that the relief granted is of a minor nature.
2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.

HM/A-20:271
PAGE 2

3. The Committee, having regard to the evidence, is satisfied that there will be no adverse impact on any of the neighbouring lands.
4. The submissions made regarding this matter did not affect the decision.

DATED AT HAMILTON this 21st day of January, 2021.

M. Dudzic (Chairman)

D. Smith

L. Gaddy

N. Mieczko

B. Charters

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE LOCAL PLANNING APPEAL TRIBUNAL (LPAT) MAY BE FILED IS **February 10th, 2021.**

NOTE: This decision is not final and binding unless otherwise noted.

COMMITTEE OF ADJUSTMENT

City Hall, 5th floor, 71 Main Street West, Hamilton, ON L8P 4Y5

Telephone (905) 546-2424, ext. 4221, 3935 Fax (905) 546-4202

E-mail: cofa@hamilton.ca



Hamilton

NOTICE OF PUBLIC HEARING
Minor Variance

You are receiving this notice because you are either:

- Assessed owner of a property located within 60 metres of the subject property
 - Applicant/agent on file, or
 - Person likely to be interested in this application
-

APPLICATION NO.: HM/A-20:271

APPLICANTS: Owner: 121 King (Hamilton) GP Inc.
Agent: Their & Curran Architects Inc.

SUBJECT PROPERTY: Municipal address **121 & 125 King St. E., Hamilton**

ZONING BY-LAW: Hamilton Zoning By-law 05-200, as Amended

ZONING: D2 and H21 district (Downtown Mixed use - Pedestrian Focus)

PROPOSAL: To permit the establishment of a multiple dwelling containing six (6) dwelling units on the ground floor of the existing building notwithstanding that;

1. A multiple dwelling is not permitted within the ground floor, except for access, accessory office and utility areas.

Notes: No parking spaces are required for any use, except a medical clinic, located in an existing building within the Downtown Mixed Use zone, provided that the existing number of parking spaces which existed on the effective date of the By-law shall continue to be maintained.

The applicant has described the proposed use as live/work units where each unit will consist of both the residence and the business as the principle use. Please note that live/work units are not permitted in this zone. However, a home business may be conducted in a dwelling unit which is secondary to the use of a dwelling unit as a private residence.

A home business is subject to compliance with the requirements Section 4.21 c) and d) "Home Business" of the Hamilton Zoning By-law 05-200, (i.e. type of home business, maximum gross floor areas, outdoor storage, etc.). However, insufficient information was provided from which to confirm compliance; as such, further variances may be required.

This property is included in the City of Hamilton's Register of Property of Cultural Heritage Value or Interest as a non-designated property.

The lands are subject to "H21" holding provision.

This application will be heard by the Committee as shown below:

HM/A-20:271
PAGE 2

DATE: Thursday, January 21st, 2021
TIME: 3:35 p.m.
PLACE: Via video link or call in (see attached sheet for details)
To be streamed at www.hamilton.ca/committeeofadjustment
for viewing purposes only

PUBLIC INPUT

Written: If you would like to submit written comments to the Committee of Adjustment you may do so via email or hardcopy. Please see attached page for complete instructions, including deadlines for submitting to be seen by the Committee.

Orally: If you would like to speak to this item at the hearing you may do so via video link or by calling in. Please see attached page for complete instructions, including deadlines for registering to participate.

Important note: *If a person or public body that files an appeal of a decision of the Committee of Adjustment in respect of the proposed consent does not make written submission to the Committee of Adjustment before it gives or refuses to give a provisional consent, the Local Planning Appeal Tribunal (LPAT) may dismiss the appeal.*

MORE INFORMATION

For more information on this matter, including access to drawings illustrating this request:

- Visit www.hamilton.ca/committeeofadjustment
- Call 905-546-CITY (2489) or 905-546-2424 extension 4221, 4130, or 3935
- Email Committee of Adjustment staff at cofa@hamilton.ca

DATED: January 5th, 2021.

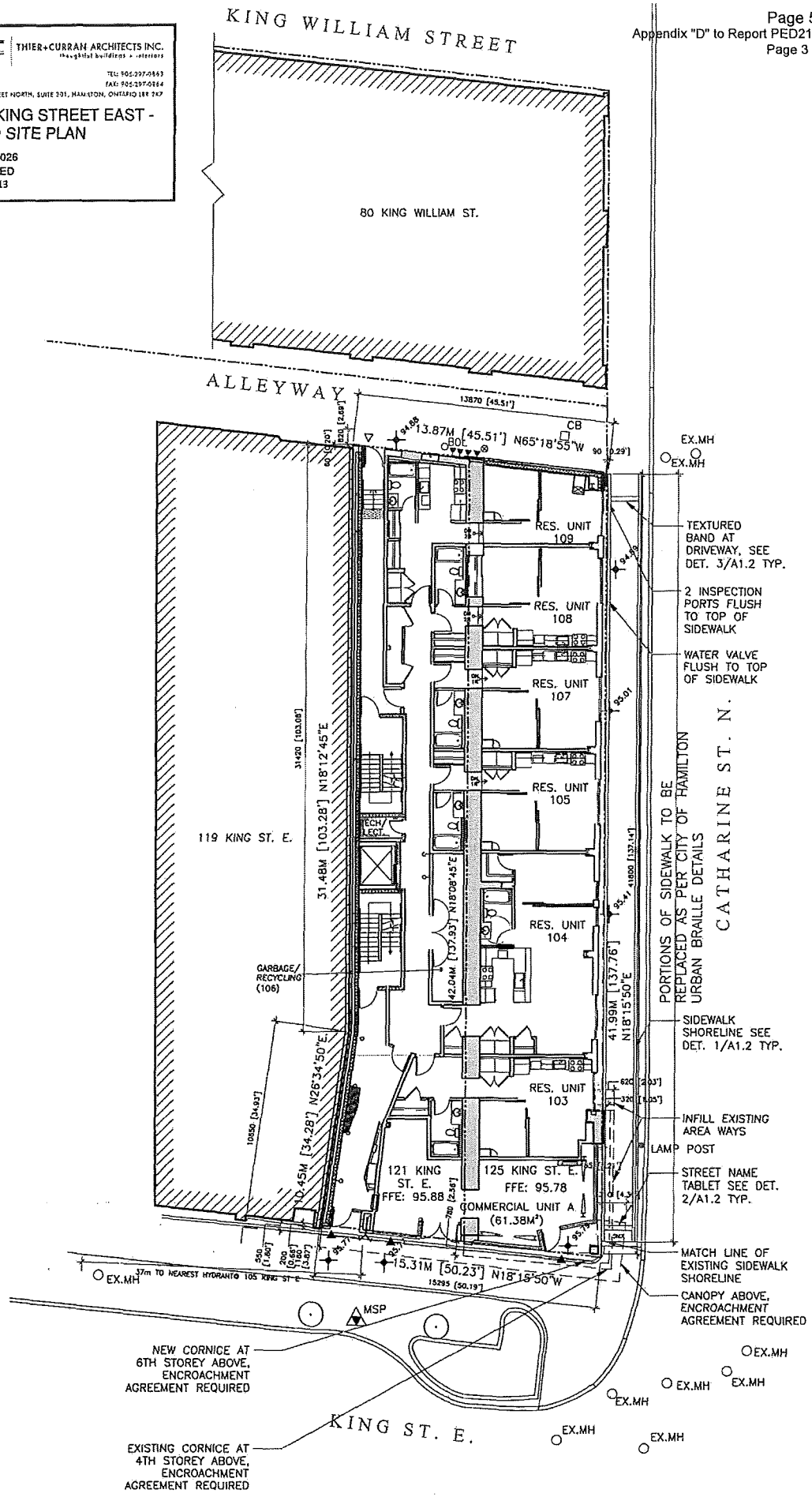
Jamila Sheffield,
Secretary-Treasurer
Committee of Adjustment

Information respecting this application is being collected under the authority of the Planning Act, R.S.O., 1990, c. P. 13. All comments and opinions submitted to the City of Hamilton on this matter, including the name, address, and contact information of persons submitting comments and/or opinions, will become part of the public record and will be made available to the Applicant and the general public.

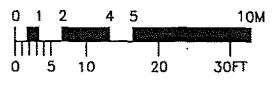
TCA **THIER+CURRAM ARCHITECTS INC.**
 thoughtful buildings + interiors
 TEL: 905-297-0863
 FAX: 905-297-0164
 116 JAMES STREET NORTH, SUITE 201, HAMILTON, ONTARIO L8R 2K7

**121-125 KING STREET EAST -
 REVISED SITE PLAN**

Project No.: 16026
 Scale: AS NOTED
 Date: 2020-11-13



1 SITE PLAN
 A1.1 1:200





Hamilton

Planning and Economic Development Department
Planning Division

Committee of Adjustment
City Hall
5th floor 71 Main Street West
Hamilton, Ontario L8P 4Y5

Phone (905) 546-2424 ext.4221
Fax (905) 546-4202

PLEASE FILL OUT THE FOLLOWING PAGES AND
RETURN TO THE CITY OF HAMILTON PLANNING
DEPARTMENT.

| | |
|-----------------------------|--|
| FOR OFFICE USE ONLY. | |
| APPLICATION NO. _____ | DATE APPLICATION RECEIVED _____ |
| PAID _____ | DATE APPLICATION DEEMED COMPLETE _____ |
| SECRETARY'S SIGNATURE _____ | |

CITY OF HAMILTON
COMMITTEE OF ADJUSTMENT
HAMILTON, ONTARIO

The Planning Act

Application for Minor Variance or for Permission

The undersigned hereby applies to the Committee of Adjustment for the City of Hamilton under Section 45 of the *Planning Act*, R.S.O. 1990, Chapter P.13 for relief, as described in this application, from the Zoning By-law.

- Name of Owner 121 King (Hamilton) GP Inc. Telephone No. [REDACTED]
FAX NO. _____ E-mail address. [REDACTED]
- Address [REDACTED]
Postal Code [REDACTED]
- Name of Agent TCA/Thiel+Curran Architects Inc. Telephone No. [REDACTED]
FAX NO. _____ E-mail address. [REDACTED]
- Address [REDACTED]
Postal Code [REDACTED]

Note: Unless otherwise requested all communications will be sent to the agent, if any.

- Names and addresses of any mortgagees, holders of charges or other encumbrances:
TD Bank, 100 King St W., 1st Fl., Hamilton, ON L8P1A2
Postal Code _____

Postal Code _____

6. Nature and extent of relief applied for:
Permit multiple dwelling use and live/work units at portions of ground floor facing
Catharine St N only
Note that retail will still provided along King St. E including at the Catharine St.
N corner.

7. Why it is not possible to comply with the provisions of the By-law?
The commercial market in downtown Hamilton remains very soft, has been significantly worsened by Covid and
no tenants have been engaged in the last 24 months since marketing began.
The owners remain committed to commercial space along King Street.
Allowing residential or live/work uses along Catharine Street will make them viable and will avoid
more empty storefronts downtown. Should market conditions change, the commercial uses could resume.
There remains a significant demand for housing and these small units will serve an affordable market segment.

8. Legal description of subject lands (registered plan number and lot number or other legal description and where applicable, street and street number):
121 & 125 King street East, 7 & 11 Catharine Street North, Hamilton,
Part of Lot 12, Nathaniel Hughson Survey (Unregistered) City of Hamilton, 2017.

9. PREVIOUS USE OF PROPERTY

Residential Industrial Commercial
 Agricultural Vacant
 Other _____

9.1 If Industrial or Commercial, specify use
Retail

9.2 Has the grading of the subject land been changed by adding earth or other material, i.e. has filling occurred?

Yes No Unknown

9.3 Has a gas station been located on the subject land or adjacent lands at any time?

Yes No Unknown

9.4 Has there been petroleum or other fuel stored on the subject land or adjacent lands?

Yes No Unknown

9.5 Are there or have there ever been underground storage tanks or buried waste on the subject land or adjacent lands?

Yes No Unknown

9.6 Have the lands or adjacent lands ever been used as an agricultural operation where cyanide products may have been used as pesticides and/or sewage sludge was applied to the lands?

Yes No Unknown

9.7 Have the lands or adjacent lands ever been used as a weapon firing range?

Yes No Unknown

9.8 Is the nearest boundary line of the application within 500 metres (1,640 feet) of the fill area of an operational/non-operational landfill or dump?

Yes No Unknown

- 9.9 If there are existing or previously existing buildings, are there any building materials remaining on site which are potentially hazardous to public health (eg. asbestos, PCB's)?
 Yes No Unknown
- 9.10 Is there any reason to believe the subject land may have been contaminated by former uses on the site or adjacent sites?
 Yes No Unknown
- 9.11 What information did you use to determine the answers to 9.1 to 9.10 above?
 ESA Ph I & ESA Ph II
-
- 9.12 If previous use of property is industrial or commercial or if YES to any of 9.2 to 9.10, a previous use inventory showing all former uses of the subject land, or if appropriate, the land adjacent to the subject land, is needed.
 Is the previous use inventory attached? Yes No

ACKNOWLEDGEMENT CLAUSE

I acknowledge that the City of Hamilton is not responsible for the identification and remediation of contamination on the property which is the subject of this Application – by reason of its approval to this Application.

Nov 16 2020
 Date _____ Signature Property Owner
 Tyler Ross
 Print Name of Owner

10. Dimensions of lands affected:
 Frontage 15.29 m
 Depth 41.99 m
 Area 582.86 m²
 Width of street ±14.8 m
11. Particulars of all buildings and structures on or proposed for the subject lands; (Specify ground floor area, gross floor area, number of stories, width, length, height, etc.)
 Existing: 570 m² ground floor area
2855 m² gross floor area
5 storeys
15.3 m W x 42 m L (irregular) x 19.15m H
 Proposed: 570 m² ground floor area
4043 m² gross floor area
6 storeys
15.3m W x 42 m L (irregular) x 22.8m H
12. Location of all buildings and structures on or proposed for the subject lands; (Specify distance from side, rear and front lot lines)
 Existing: Front: 121 King: -0.2m (façade encroachment), 125 King: 0.08m
Side: 0m (west, centreline of party-wall), -0.05m (east, Catharine st cladding encroachment)

Rear: 121 King: -0.82m (stair encroachment), 125 King: 0.03m
 Proposed: Front: 121 King: -0.2m (façade encroachment), 125 King: 0.08m
 Side: 0m (west, centreline of party-wall), -0.05m (east, Catharine st
 cladding encroachment)
 Rear: 121 King: -0.82m (stair encroachment), 125 King: 0.03m

13. Date of acquisition of subject lands:
 2018
14. Date of construction of all buildings and structures on subject lands:
 1850 (estimated)
15. Existing uses of the subject property:
 Commercial Retail at ground floor and second floor of 121 King St E,
 Residential above
16. Existing uses of abutting properties: East/West: Commercial Retail with residential / office above, North: Residential Condominium incl. ground floor (Film Lofts), South: Residential Condominium (The Royal Connaught)
17. Length of time the existing uses of the subject property have continued:
 50+ years
18. Municipal services available: (check the appropriate space or spaces)
 Water Connected
 Sanitary Sewer Connected
 Storm Sewers
19. Present Official Plan/Secondary Plan provisions applying to the land:
 "D2" Downtown Prime Retail Streets Zone; "Heritage Character Zone"
20. Present Restricted Area By-law (Zoning By-law) provisions applying to the land:
 17-082
21. Has the owner previously applied for relief in respect of the subject property?
 Yes No
 If the answer is yes, describe briefly.
 1. Allow for the proposed increased building height of 23.8m (78.05ft)
 2. Allow for no additional parking spaces to be required for the addition.
 3. Allow for three (3) materials on the elevations.
22. Is the subject property the subject of a current application for consent under Section 53 of the *Planning Act*?
 Yes No
23. The applicant shall attach to each copy of this application a plan showing the dimensions of the subject lands and of all abutting lands and showing the location, size and type of all buildings and structures on the subject and abutting lands, and where required by the Committee of Adjustment such plan shall be signed by an Ontario Land Surveyor.

NOTE: It is required that two copies of this application be filed with the secretary-treasurer of the Committee of Adjustment together with the maps

January 21, 2021
HM/A-20:271

121 King (Hamilton) GP Inc., Owner
121 & 125 King St. E., Hamilton

Appearances were: TCA Architects W. Curran on behalf of the owner; T. Ross, owner

Interested parties were: None.

Those members present for the hearing of the application were M. Dudzic (Chairman), D. Smith, B. Charters, M. Smith, T. Lofchik, N. Mleczko, M. Switzer, L. Gaddy, D. Serwatak.

A summary comment from the Planning and Economic Development Division together with comments from other departments and agencies were entered into the record.

Letters were entered into the record from: Councillor J. Farr (e-mail of support)

W. Curran
Redeveloping a pair of building into condos
6 storey building
Cannot secure any commercial tenants and highly unlikely for commercial
Would like to make the ground floor units into residential
Explained everything they will be doing to the condos
Should the market shift could become back to commercial
Ask that the commercial zoning to remain, some commercial unit will stay, maybe some residential units might become home occupation units or live-work space.

Mark Dudzic
Agrees with concept

D.Serwatak
Agrees with concept but should have some kind of control.

N. Mleczko
Will these be sold units?

W. Curran
Condos and there will be condo rules
Rebuilt the building (high quality residential development)

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Owner T.Ross
Uniformity will be inducted with the condo board

B. Charters
Good concept, live space work is excellent idea
Could ground floor units be designated as live-work space?

D. Smith
Can a condition be added as a condition that a zoning by-law amendment be added?

T. Lofchik
Concerned about street frontage for small business – will the demand be there.
What is the size of the units? Seems like a Toronto standard instead of Hamilton standard?

B. Charters
What is the size of the units 550 and 900 sq. ft.?
Small business that could work out of a small space
They all have direct access to Catharine and explained what small businesses would be

D. Serwatak
There will be no room for commercial space

T. Ross
Incredibly high 14 ft ceilings and put in a half loft for bedroom and create more space for their business on the ground floor
Street frontage is on Catherine St. with windows and French balcony and can have stairs and doors installed easily for direct access.

M. Smith
Not in support
Trying to rezone by minor variance

J. Allen
If approved would like a condition approved with commercial fronting onto King but feels appropriate to go through proper process

D. Serwatak – Motion for approval
B. Charters – Seconded

M. Smith, D. Smith, M. Switzer, T. Lofchik was opposed to the motion for approval

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Following discussion, it was moved by D. Serwatak and seconded by B. Charters that the relief requested be **GRANTED** per the applicants request for the following reasons:

1. The Committee, having regard to the evidence, is of the opinion that the relief granted is of a minor nature.
2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee, having regard to the evidence, is satisfied that there will be no adverse impact on any of the neighbouring lands.
4. The submissions made regarding this matter did not affect the decision.

CARRIED.