



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	May 4, 2021
SUBJECT/REPORT NO:	Request for Direction to proceed with Appeal of Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:258, for lands located at 1575 Upper Ottawa Street, Hamilton (PED21098) (Ward 6)
WARD AFFECTED:	Ward 6
PREPARED BY:	Tage Crooks (905) 546-2424 Ext. 1252
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 PED21098, respecting Committee of Adjustment Minor Variance application HM/A-20:258 by the Applicant IBI Group, (c/o John Ariens) on behalf of the Owner GPM REAL PROPERTY (12) LIMITED PARTERSHIP for the lands located at 1575 Upper Ottawa Street, Hamilton, as shown on Appendix "A" to Report PED21098, 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-20:258;
- (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-20:258.

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:258, for lands located at 1575 Upper Ottawa Street, Hamilton (PED21098) (Ward 6) – Page 2 of 10

EXECUTIVE SUMMARY

The applicant submitted Minor Variance application HM/A-20:258 seeking relief from the provisions of Zoning By-law No. 05-200 through two requested variances which seek to:

- Increase the required maximum combined gross floor area for retail uses in the existing shopping centre from 1,500 square metres to 2,150 square metres; and,
- That the minimum number of required parking spaces be based on the “shopping centre” regulations instead of being based on individual uses as required by Zoning By-law No. 05-200. Staff note that this variance was required due to the “shopping centre” regulations being under appeal with the exception of the lands known locally as 2506-2520 Regional Road 56, Binbrook.

Minor Variance application HM/A-20:258 was considered by the Committee of Adjustment on January 21, 2021. Planning staff recommended that the variance to increase the required maximum combined gross floor area for retail uses 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 PED21098). Staff were in support of the variance to apply the “shopping centre” parking regulations. The Committee of Adjustment granted the application on January 21, 2021.

In accordance with *Section 45(12)* of the *Planning Act*, Planning and Economic Department staff filed its appeal of the City of Hamilton Committee of Adjustment decision to approve the minor variance for lands located at 1575 Upper Ottawa Street by submitting an appeal letter along with the required fee to the Secretary-Treasurer of the Committee of Adjustment on February 5, 2021.

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning has submitted the required fee of \$400.00 to the Minister of Finance for the appeal. Other costs associated with the LPAT hearing will be drawn from the Work Programs/Budgets of any of departments participating in the hearing.

Staffing: One representative from Legal Services and one from Planning and Economic Department will be required to prepare and attend the LPAT hearing.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND

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

“That the Planning and Economic Department be authorized and directed to prepare an Information Report, to the Committee of the Whole, when an appeal is made to the Ontario Municipal Board (now LPAT) of a decision made by the Committee of Adjustment to support an application(s) that was not supported by staff. In response to such a Report, Council may determine its position on the Committee of Adjustment decision and may instruct Legal Services to attend the Ontario Municipal Board (now LPAT) Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

The subject property is located at 1575 Upper Ottawa Street in Hamilton, at the northeast corner of Upper Ottawa Street and Rymal Road East (see Appendix “A” to PED21098).

In March of 2016, the Owner submitted an application to amend the Urban Hamilton Official Plan (UHOPA-16-009) to establish a site-specific policy permitting additional commercial uses within the “Arterial Commercial” designation. The application was to recognize retail stores, personal services, offices, and financial establishments as permitted uses as these uses had existed before the subject lands were re-designated to “Arterial Commercial”.

Staff recommended approval of the amendment based on a cap being placed on the amount of GFA allocated to the proposed additional uses (Report PED16190). UHOPA-16-009 received Council approval on October 12, 2016 and came into force and effect on November 16, 2016.

Subsequent to the approval of UHOPA-16-009, Council approved By-Law 17-240 which amended Zoning By-Law 05-200 enacting the site-specific zoning classification Arterial Commercial (C7, 600) Zone. This allowed for the recognition of retail stores, personal services, offices, and financial establishments as permitted uses. While it also enacted performance standards that placed a maximum combined gross floor area for retail uses to be 1500 square metres for each lot and a maximum combined gross floor area for office uses to be 1767 square metres for each lot.

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

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Minor Variance Application

The applicant submitted a Minor Variance application in January of 2021 proposing two variances.

The first, which staff supported, was that the minimum number of required parking spaces be based on the “shopping centre” performance standards instead of being based on the individual uses of each unit as required by the Zoning By-law.

With the exception of one site specific LPAT approval, the ‘shopping centre’ performance standards are currently under appeal. The requested variance to apply the ‘shopping centre’ regulations was necessitated by the proposed increase in floor area, once these regulations are in force and effect the current parking configuration would be compliant for a “shopping centre” with the proposed gross floor area of 2,150 square metres.

The second variance proposed to increase the maximum combined gross floor area for retail uses on the site from 1,500 square metres to 2,150 square metres, an overall increase of 650 square metres. During the Official Plan Amendment process (in Report PED16190) staff noted that the lands have developed into a shopping, service commercial, and office hub rather than functioning as a regional or highway commercial use. Based on these functional changes it was determined that additional non-arterial commercial uses on the subject lands would be appropriate.

Staff supported the 2016 application to amend the UHOP as well as the 2017 amendment to Zoning By-law 05-200, which implemented these policies, because of the proximity of the subject lands to varied uses (employment, residential, and commercial). Notwithstanding, staff also determined that caps on GFA for these additional uses must be provided with the intent to provide flexibility with the existing non-arterial commercial uses while ensuring that the greater range of retail uses being provided would not be to the detriment of future arterial commercial development.

Subsection 45(1) of the *Planning Act* gives the Committee of Adjustment the power to grant variances which seek relief from the provisions of the Zoning By-law if the four tests are met. Specifically, it must be demonstrated that the intent of the Official Plan is maintained. Because the UHOP entrenches a site-specific of 1,500 square metres for all retail uses on the subject lands, staff recommended denial of the minor variance application as the request does not meet the intent of the Official Plan. The City of Hamilton Committee of Adjustment approved the Minor Variance application as submitted.

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:258, for lands located at 1575 Upper Ottawa Street, Hamilton (PED21098) (Ward 6) – Page 5 of 10

The Committee of Adjustment's decision is being appealed as staff have determined that a Minor Variance application is not the appropriate mechanism for increasing the combined GFA of the retail uses. The approval of the Minor Variance request is not in keeping with the intent of the Official Plan or Zoning By-law.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Planning Act

The application has been reviewed with respect to 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).”

Staff has determined that the variance to permit the increase of combined GFA for retail uses on the subject lands does not maintain the general intent of the Urban Hamilton Official 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. The Minor Variance application does not meet the four tests of a Minor Variance under the *Planning Act*. Therefore, staff recommended denial of the Minor Variance application.

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

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Provincial Planning Policy Framework

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the 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 that follows.

Based on staff's review, the application is:

- consistent with Section 3 of the Planning Act;
- consistent with the Provincial Policy Statement (2020); and,
- conforms to A Place to Grow Plan: Growth Plan for the Greater Golden Horseshoe 2019, as amended.

Urban Hamilton Official Plan (UHOP)

The property is identified as "Secondary Corridor" in Schedule "E" – Urban Structure and is designated "Arterial Commercial" in Schedule "E-1" – Urban Land Use Designations. The following policies, amongst others, apply to the application.

General Commercial Policies and "Arterial Commercial Policies"

- "E.4.2.4 The majority of retail and service commercial uses shall be directed to the Mixed-use designations in the Urban Nodes and Urban Corridors. The Mixed-use designations also apply to smaller mixed-use areas outside the Urban Nodes and Urban Corridors. These smaller mixed-use areas are intended to serve the needs of the surrounding neighbourhoods.
- E.4.2.6 A limited range and scale of retail and service commercial uses catering to the traveling consumer, are land extensive retail establishments, or cannot be appropriately accommodated in areas designated Mixed Use, shall be permitted in and directed to the Arterial Commercial designation.
- E.4.8 Arterial Commercial Designation
- The Arterial Commercial designation is intended to provide for a range of uses catering to the traveling or drive-by consumer as well as retail stores,

which are land extensive and require outdoor storage or sales and cannot be appropriately accommodated in the other designations.

Function

- E.4.8.1 The range of permitted uses is intended to cater to the traveling or drive-by consumer. As well, the designation is intended to accommodate a limited range of land extensive retail stores which require outdoor storage or sales.

Permitted Uses

- E.4.8.2 The following uses shall be permitted on lands designated Arterial Commercial on Schedule E-1 – Urban Land Use Designations:
- a) commercial uses including banquet halls, restaurants including garden centres, furniture stores, building and lumber supply establishment, home improvement supply store, and retail primarily for the sale of building supplies;
 - b) automotive related uses primarily for vehicle sales, service and rental, parts sales, gas bars, car washes, and service stations;
 - c) commercial recreational uses, commercial entertainment uses, excluding theatres;
 - d) industrial supply and service and contractor sales; e) accommodation, excluding residential uses;
 - f) enclosed storage including mini warehousing; and,
 - g) accessory uses.

Design

- E.4.8.4 Site plan standards shall be developed to address the unique siting and design challenges of areas designated Arterial Commercial including those inherent in siting and buffering large buildings, large parking lots, blank building walls, and drive-throughs. As well, landscape standards shall be developed to provide buffer plantings along boulevards and within the site to address these matters.”

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

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:258, for lands located at 1575 Upper Ottawa Street, Hamilton (PED21098) (Ward 6) – Page 8 of 10

UHOP Amendment No. 66 identified permitted uses and established a cap for the GFA. Amendment No. 66 did not allow for the expansion of non-arterial uses but rather recognized existing non-arterial uses (retail, offices, financial establishments and personal services) while protecting for the full range of permitted arterial commercial uses. As such, the Minor Variance request is not in keeping with the intent of the Arterial Commercial policies of the UHOP as they will expand the existing non-arterial commercial uses beyond their existing condition.

Volume 3: Urban Site-Specific Policies

The subject lands are also subject to these Site-Specific policy UHC – 5:

“UHC-5

- 1.0 That in addition to Policy E.4.8.2 and notwithstanding Policy E.4.8.3 of Volume 1 that retail uses, offices, personal services and financial establishments shall also be permitted.
- 1.1 That in addition to the Policies of Section E.4.8 of Volume 1 that office uses on the same lot shall not exceed 1,767 square metres of combined gross floor area and retail uses on the same lot shall not exceed 1,500 square metres of combined gross floor area.

The intent of Site-Specific Policy UHC-5 is to maintain the land uses permitted in arterial commercial designation while also permitting personal services, financial establishments, and office uses. The permissions considered the existing site context, recognizing the existing uses to promote retail uses within the surrounding residential areas. However, policy 1.1 (UHC-5) restricted the maximum GFA of all retail uses on the same lot to not exceed 1,500 square metres which maintains the intent of the UHOP to provide for a range of commercial uses.

The Minor Variance request to increase the floor area for retail uses from 1,500 square metres for the existing lot is not consistent with the intent of the UHOP as OPA No. 66 established the maximum GFA to restrict the recognized existing uses. An OPA is the appropriate mechanism to review the proposal to increase the maximum GFA established by UHC - 5.

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

The subject lands are zoned Arterial Commercial (C7, 600) Zone. The applicant requested a variance to increase the maximum combined gross floor area for retail uses on each lot from 1,500 square metres to 2,150 square metres.

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:258, for lands located at 1575 Upper Ottawa Street, Hamilton (PED21098) (Ward 6) – Page 9 of 10

The variance does not meet the general intent and purpose of the Zoning By-law and the UHOP as both establish a maximum GFA to ensure that the existing retail uses were recognized but not allowed to expand and limit the opportunity for the site to develop Arterial Commercial uses. A Zoning By-law Amendment is the appropriate mechanism to review a proposal for an increase to the GFA on this subject site.

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 the staff report related to the following Roles and Responsibilities of the Committee of Adjustment:

“That where the *Planning Act* appeal periods can be met, the Planning and Economic 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 an increase in the permitted maximum combined GFA for retail uses in the existing shopping centre does not meet the four tests of a Minor Variance as stipulated by the *Planning Act*. The Minor Variance request does not maintain the intent of the UHOP and Zoning By-law No. 05-200 as the site specific OPA and ZBA were granted in order to recognize the existing situation and cap it, allowing the site to develop with Arterial Commercial uses.

Staff are in support of the variance requesting that the minimum number of required parking spaces be based on the “shopping centre” performance standards instead of being based on the individual uses of each unit as required by the Zoning By-law. This is because the variance will be in conformity with the Council adopted parking requirements of the CMU zoning that are currently under appeal.

Notwithstanding this support, staff are of the opinion that it is appropriate for the City to appeal the Minor Variance to the Local Planning Appeal Tribunal.

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

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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, to oppose the Committee of Adjustment decision, related to the subject application.

Option 2

Council may direct staff to withdraw the appeal, which was filed by staff against the decision of the Committee of Adjustment to the Local Planning Appeal Tribunal. If the City's appeal is withdrawn, the Committee of Adjustment's decision to permit the increase of the maximum GFA for retail uses from 1,500 square metres to 2,150 square metres on the subject lands will be upheld.

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 People and Performance

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

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" - Location Map for 1575 Upper Ottawa Street

Appendix "B" - Staff Comments for HM/A-20:258

Appendix "C" - HM/A-20:258 Committee of Adjustment Decision

Appendix "D" - HM/A-20:258 Committee of Adjustment Application

Appendix "E" - Minutes of Public Meeting