




**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**Engineering Services Division**

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	July 7, 2021
<b>SUBJECT/REPORT NO:</b>	Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 315B Aberdeen Avenue, Hamilton (PW21041) (Ward 1)
<b>WARD(S) AFFECTED:</b>	Ward 1
<b>PREPARED BY:</b>	Cetina Farruggia (905) 546-2424 Ext. 5803
<b>SUBMITTED BY:</b>	Gord McGuire Director, Engineering Services Public Works
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the application of the owner of 315B Aberdeen Avenue, Hamilton, to permanently close and purchase a portion of the unassumed alleyway abutting 315B Aberdeen Avenue, Hamilton, ("Subject Lands"), as shown on Appendix "A" attached to Report PW21041, be approved, subject to the following conditions:

- (a) That the applicant makes an application to the Ontario Superior Court of Justice, under Section 88 of the Registry Act, for an order to permanently close the Subject Lands, if required by the City, subject to:
  - (i) The General Manager of Public Works, or designate, signing the appropriate documentation to obtain any required court order; and
  - (ii) The documentation regarding any required application to the Ontario Superior Court of Justice being prepared by the applicant, to the satisfaction of the City Solicitor;
- (b) That the applicant be fully responsible for the deposit of a reference plan in the proper land registry office, and that said plan be prepared by an Ontario Land Surveyor, to the satisfaction of the Manager, Geomatics and Corridor Management

**SUBJECT: Proposed Permanent Closure and Sale of a Portion of Public  
Unassumed Alley Abutting 315B Aberdeen Avenue, Hamilton  
(PW21041) (Ward 1) - Page 2 of 8**

---

Section, and that the applicant also deposit a reproducible copy of said plan with the Manager, Geomatics and Corridor Management Section;

- (c) That, subject to any required application to the Ontario Superior Court of Justice to permanently close the Subject Lands being approved;
  - (i) The City Solicitor be authorized and directed to prepare all necessary by-laws to permanently close and sell the alleyway, for enactment by Council;
  - (ii) That the City Solicitor be authorized to amend and waive such terms as they consider reasonable to give effect to this authorization and direction;
  - (iii) The Real Estate Section of the Planning and Economic Development Department be authorized and directed to secure any requisite easement agreements (subject to the obligations of the applicant to negotiate such agreements as set out in recommendation (d)), right of way agreements, and/or other agreements deemed necessary to affect the orderly disposition of the Subject Lands and to proceed to sell the Subject Lands to the owners of 315B Aberdeen Avenue, Hamilton, as described in Report PW21041, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204;
  - (iv) The City Solicitor be authorized to complete the transfer of the Subject Lands to the owners of 315B Aberdeen Avenue, Hamilton and transfers of easement to all land owners requiring access to the Subject Lands as outlined in Report PW21041, pursuant to an Agreement of Purchase and Sale or Offer to Purchase as negotiated by the Real Estate Section of the Planning and Economic Development Department;
  - (v) The City Solicitor be authorized and directed to register a certified copy of the by-laws permanently closing and selling the alleyway in the proper land registry office;
  - (vi) The Public Works Department publish any required notice of the City's intention to pass the by-laws and/or permanently sell the closed alleyway pursuant to City of Hamilton Sale of Land Policy By-law 14-204;
- (d) That the applicant be responsible to arrange, negotiate, and obtain agreements, at the applicant's sole cost, with respect to all necessary transfers of right of way easements as outlined and as a condition of the transfer of the Subject Lands and for all legal costs associated with the aforesaid as well as the registration of required right of way agreements on title with the land owners who require access as indicated within Report PW21041 and such agreements ensure the following terms are included;

---

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: Proposed Permanent Closure and Sale of a Portion of Public  
Unassumed Alley Abutting 315B Aberdeen Avenue, Hamilton  
(PW21041) (Ward 1) - Page 3 of 8**

---

- (i) That 72 hours prior written notice delivered to all abutting landowners of the private right of way lands as shown on Appendix "C" attached to Report PW21041, of any construction or other activities on or over the laneway;
- (ii) That any such construction or other activity not interfere with or impede access to or over the laneway except between the hours of 9:00am and 5:00pm on the days specified in the prior written notice;
- (iii) That at all other times there is to be unobstructed access to all abutting land owners;
- (e) That the applicant prepares a site drainage plan to the satisfaction of the Manager, Development Approvals;
- (f) That the applicant works with the City of Hamilton to ensures all sight lines are clear at the intersection of Aberdeen Avenue and Locke Street South, Hamilton which fall on City property, to the satisfaction of the Manager, Traffic Safety;
- (g) That the applicant abides by Committee of Adjustment decision HM/A-19:290 and subsequent Local Planning Appeal Tribunal decision PL200334;
- (h) That the applicant be responsible for all costs associated with any construction related damages to the retaining wall and landscaping at 315 Aberdeen Avenue, Hamilton, excluding any costs related to the works proposed under recommendation "j" attached to report PW21041;
- (i) That the proposed "right of way" lands as shown on Appendix "C" attached to Report PW21041 be paved at the expense of the applicant once recommendation "e" and "j" attached to Report PW21041 have been cleared;
- (j) That a portion of the proceeds of the sale of the Subject Lands not exceeding \$40,000.00 be transferred to the appropriate account as determined by the Manager, Transportation, Operations, and Maintenance Division for the purpose of widening the sidewalk at the southwest corner of the intersection located at Locke Street South and Aberdeen Avenue, Hamilton, subject to the following;
  - (i) That no building permits be submitted by the owner of 315B Aberdeen Avenue, Hamilton, or issued by the City of Hamilton until all works related to recommendation "j" attached to report PW21041 be completed;
  - (ii) That the City of Hamilton retain ownership and maintenance responsibility of all works completed by the City of Hamilton related to recommendation "j" attached to report PW21041;

- (iii) That the owner of 315B Aberdeen Avenue, Hamilton, install at his own expense a stop sign at the south side of the property boundary between the proposed “right of way” lands and City of Hamilton road allowance;
- (iv) That the retaining wall be constructed of concrete to match the existing retaining walls at 315 Aberdeen Avenue, Hamilton and ensure the newly constructed retaining wall is adequately tied in to the existing step retaining wall at 315 Aberdeen Avenue, Hamilton.

## **EXECUTIVE SUMMARY**

The owner of 315B Aberdeen Avenue, Hamilton, has applied to permanently close and purchase a portion of the public unassumed alleyway running East/West between his properties and North/South along the East side of the property. The applicant’s property is land-locked and requires road frontage in order to pursue the development of a single-family dwelling. The applicant has made a successful application for Minor Variance for road frontage approved through Committee of Adjustment decision HM/A-19:290 subject to the approval of the closure and sale of the Subject Lands and was successful in coming to an agreement with abutting land owners through Local Planning Appeal Tribunal case number PL200334. A sketch of the proposed Site Plan can be seen in Appendix “C” attached to Report PW21041. As there were no objections received from any City Department, Division, or Public Utility, and objections received from residents have been addressed through recommendations within Report PW21041, staff are supportive of the closure and sale of the Subject Lands to the owner of 315B Aberdeen Avenue, Hamilton.

## **Alternatives for Consideration – N/A**

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

- Financial:** The applicant has paid the Council approved user fee of \$4,634.00. The Subject Lands will be sold to the owners of 315B Aberdeen Avenue, Hamilton, as determined by the Real Estate Section of the Planning and Economic Development Department, in accordance with the City of Hamilton Sale of Land Policy By-law 14-204.
- Staffing:** An agreement to purchase the Subject Lands will be negotiated by the Real Estate Section of the Planning and Economic Development Department.
- Legal:** Subject to any required application to the Ontario Superior Court of Justice to permanently close the Subject Lands being approved, the City Solicitor will prepare all necessary by-laws to permanently close and sell the Subject Lands and will register such by-laws in the Land Registry Office once Council

**SUBJECT: Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 315B Aberdeen Avenue, Hamilton (PW21041) (Ward 1) - Page 5 of 8**

---

has approved the by-law. The by-law does not take effect until the certified copy of the by-law is registered in the proper land registry office. The City Solicitor will complete the transfer of the Subject Lands to the owners of 315B Aberdeen Avenue, Hamilton, pursuant to an agreement negotiated by the Real Estate Section of the Planning and Economic Development Department.

## **HISTORICAL BACKGROUND**

The Subject Lands were created by Registered Plan 272 in 1881 and is public unassumed. The southern portion of the North/South leg of this laneway is untravelled. The northern portion of the North/South leg and East/West leg provide rear access to abutting property owners.

The property known as 315B Aberdeen Avenue, Hamilton, consists of two (2) lots separated by the East/West leg of this alleyway. Unfortunately, this property lost its legal non-conforming status when the existing building was partially demolished by a previous owner, prior to the applicant taking ownership of the lands. As such, in order to develop the land-locked parcels and build a single-family dwelling, Planning staff advised the applicant that road frontage was required.

On May 19, 2019, staff received an application from the owner of 315B Aberdeen Avenue, to close and purchase the Subject Lands indicating the intent to build and also provide legal right of way for those who require access. Comments came back from zoning that a minor variance would be required as the required frontage did not meet current zoning requirements. On July 15, 2020, the Committee of Adjustment granted the required variances through HM/A-19:290 on the condition of successful acquisition of the alleyway from the City. Residents expressed concerns related to the location and size of the building that were not appropriately addressed through Committee of Adjustment and a subsequent appeal was filed through the Local Planning Appeal Tribunal as case number PL200334. The applicant worked with the appellants to come to an agreement which was supported by the Local Planning Appeal Tribunal on January 8, 2021. A sketch of the proposed Site Plan can be seen in Appendix "C" attached to Report PW21041.

As there were no objections from any City Department, Division, or Public Utility, and objections received from abutting land owners and residents have been addressed through recommendations within Report PW21041, staff are supportive of the closure and sale of the Subject Lands to the owner of 315B Aberdeen Avenue, Hamilton.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The closure of the Subject Lands will be subject to any application required by the City. In addition, a by-law must be passed to permanently close the Subject Lands in accordance with the *Municipal Act, 2001*.

Alleyway Management Strategy - Classification System (Report PW17008(a)):  
The Subject Lands are classified as Hierarchy Class "D": Alleyway is unassumed and could be used for any of the following:

- commercial parking;
- public/private waste collection;
- special consideration; and access to rear yards or overland flow routes

## **RELEVANT CONSULTATION**

The following public utilities, City departments and divisions were provided with a copy of the application and were invited to provide comments:

- Planning and Economic Development Department: Development Engineering, Building, Economic Development, Real Estate, and Planning
- Public Works Department: Engineering Services, Hamilton Water, Operations, Environmental Services, and Transportation
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance
- Mayor and Ward Councillor
- Bell, Alectra Utilities, Hydro One, and Enbridge Gas

There were no objections received from any public utilities, City departments and divisions.

The Ward Councillor expressed safety concerns at the intersection of Locke Street South, Hamilton and Aberdeen Avenue, Hamilton. Traffic Safety provided comments that have been included as recommendation (f) within Report PW21041, to ensure sightlines are clear to the satisfaction of the Traffic Safety Division, and as an added measure, to have the sidewalk widened at the southwest corner of the intersection of Locke Street South and Aberdeen Avenue, Hamilton and install a traffic slowing/stop sign at the end of the "right of way" lands as per recommendation (j) within Report PW21041.

Bell and Alectra have advised that they will require easement protection.

**SUBJECT: Proposed Permanent Closure and Sale of a Portion of Public  
Unassumed Alley Abutting 315B Aberdeen Avenue, Hamilton  
(PW21041) (Ward 1) - Page 7 of 8**

---

Notice of the proposal was sent to all abutting and neighbouring property owners of the Subject Lands, as shown on Appendix “B” attached to Report PW21041 for comment. In this instance, there were 64 notices mailed, and the results are as follows:

In favour: 3

Opposed: 37

No comment: 0

25 of the opposed responses did not provide comment or reason for objection.

A number of objections were received related to public use of the laneway. As per Report PW17008(a), this laneway is public unassumed with a Hierarchy Class “D”. The laneway is only maintained on a reactive basis by the City, and due to the location of the applicant’s property, those who use the laneway frequently trespass onto private property in doing so.

A number of objections were received related to parking concerns. As the laneway does not provide access to any public parking, there is no impact to parking through this proposal.

A number of objections were received related to rear access for abutting land owners. As per the recommendations within Report PW21041, private right of way agreements will be required for abutting properties who expressed the need to maintain property access off the laneway. Although the need for access has been requested, the owners have the right to waive this need at any time. The following properties that expressed the need for access are as follows:

9/11 Mountain Avenue, Hamilton  
7 Mountain Avenue, Hamilton  
315 Aberdeen Avenue, Hamilton  
2 Undermount Avenue, Hamilton  
4 Undermount Avenue, Hamilton  
12 Undermount Avenue, Hamilton  
16 Undermount Avenue, Hamilton  
20 Undermount Avenue, Hamilton  
24 Undermount Avenue, Hamilton

A few objections were received related to student housing. The applicant is proposing to build a single-family dwelling in line with all applicable zoning provisions subject to conditions set forth through Committee of Adjustment decision HM/A-19:290 and the Local Planning Appeal Tribunal decision PL200334.

A few objections were received related to the size/location of the proposed dwelling. As the applicant engaged with the residents and came to an agreement through the Local

**SUBJECT: Proposed Permanent Closure and Sale of a Portion of Public  
Unassumed Alley Abutting 315B Aberdeen Avenue, Hamilton  
(PW21041) (Ward 1) - Page 8 of 8**

---

Planning Appeal Tribunal case no. PL200334, the resident's concerns have been addressed.

A few objections were received related to safety concerns at the intersection of Locke Street South, Hamilton and Aberdeen Avenue, Hamilton. Traffic Safety provided comments that have been included as recommendation (f) within Report PW21041, to ensure sightlines are clear to the satisfaction of the Traffic Safety Division, and as an added measure, to have the sidewalk widened at the southwest corner of the intersection of Locke Street South and Aberdeen Avenue, Hamilton and install a traffic slowing/stop sign at the end of the "right of way" lands as per recommendation (j) within Report PW21041.

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

As there were no objections received by any City department, Division or Public Utility, and as all concerns brought forward by residents have been addressed through recommendations within Report PW21041, staff are supportive of the closure and sale of the Subject Lands to the owner of 315B Aberdeen Avenue, Hamilton.

### **ALTERNATIVES FOR CONSIDERATION**

N/A

### **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

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

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

### **APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to Report PW21041 - Aerial Drawing

Appendix "B" to Report PW21041 - Location Plan

Appendix "C" to Report PW21041 - Proposed Site Sketch