



# Hamilton

Planning and Economic  
Development Department

## Memorandum

**To:** Jamila Sheffield, Secretary-Treasurer, Committee of Adjustment  
**From:** Joe Buordolone, Planning Technician I  
**Phone:** 905-546-2424 Ext. 7856  
**Date:** August 11, 2021  
**Subject:** Committee of Adjustment Meeting – August 12, 2021

---

The following comments are submitted with respect to the matters before the Committee of Adjustment at its meeting to be held on August 12, 2021.

**HM/A-21:221**

**44 Hughson Street South, Hamilton**

The purpose of this application is to permit the construction of a thirty-four storey (111.0 metre) mixed use building containing a 635 unit multiple dwelling and 1290.0 square metres of commercial space notwithstanding the variances below.

The proposal was processed and reviewed through Site Plan Control Application DA-19-174 which was conditionally approved on April 16, 2020. The conditionally approved site plan contemplated a 91.4 metre (30 storey) building and included a special condition for one variance to allow a reduced setback to the alleyway for any portion of the building that is greater than 44 metres in height, notwithstanding the 9.5 metre requirement.

Staff note that the Building Division has confirmed that Variances 9, 11, and 12 are no longer required. The proposed variances have not been reviewed comprehensively through the Site Plan Control process and should not be perceived to grant approval to the plans associated with the Site Plan Control application.

### **Urban Hamilton Official Plan**

The subject site is identified as Downtown Urban Growth Centre within Schedule E and designated Mixed-Use Area within Schedule E-1 within the Urban Hamilton Official Plan (UHOP). Policies E.4.4.4, E.4.4.7, E.4.4.9, and E.4.4.11, amongst others, are applicable and permit a mixed use building. Urban Design policies B.3.3.3.1, B.3.3.3.2, B.3.3.3.3, B.3.3.3.4, and B.3.3.3.5, among others, are applicable and require the proposal to be properly massed, designed to minimize impacts on neighbouring buildings, and to provide a comfortable pedestrian environment by including ample glazing on ground floors, amongst other policies.

## **Downtown Hamilton Secondary Plan**

The subject site is designated as Downtown Mixed Use in the Downtown Hamilton Secondary Plan and the western portion is identified as Pedestrian Focused within Map B.6.1-1 of the Secondary Plan. The eastern portion of the subject site is further identified as High-rise 1 while the western portion of the subject site is identified as High-rise 2 on Map B.6.1-2 of the Secondary Plan. Policies B.6.1.4.18, B.6.1.4.19, B.6.1.4.21, B.6.1.4.23, B.6.1.4.27, B.6.1.4.30, and B.6.1.6.2, among others are applicable and permit a mixed use building.

Staff note that the subject site is subject to an Ontario Land Tribunal (OLT) appeal (Case No. PL180548), which through the Minutes of Settlement, stated that the proposal cannot exceed 94.2 metres in height. Staff are of the opinion that the proposed height does not maintain the general intent of the Official Plan.

In conclusion, staff are of the opinion that the general intent of the Official Plan is not being maintained regarding Variance 5 and that an Official Plan Amendment application be submitted to evaluate additional height beyond the permissions established in the Downtown Hamilton Secondary Plan.

## **Cultural Heritage**

The subject property comprises a two-storey red brick building constructed in 1890 (former Bell Telephone Company Building) and is included in the City’s Register of Property of Cultural Heritage Value or Interest as a non-designated property. The property is additionally located within the Corktown Established Historic Neighbourhood.

The property is located adjacent to the following properties included in the City’s Register of Property of Cultural Heritage Value or Interest:

- 6 Main Street East, Hamilton (Hamilton Club);
- 8 Main Street East, Hamilton (Bell Telephone Exchange Building); and,
- 50 Main Street East, Hamilton (Hamilton Court House and Prince’s Square).

Additionally, the subject property is adjacent to the following properties included on the City’s Inventory of Buildings of Architectural and/or Historical Interest.

- 79 James Street, Hamilton (YMCA).

As part of the submission requirements for DA-19-174, cultural heritage staff required the submission of the reports and plans noted below.

That the applicant submit and implement a Cultural Heritage Impact Assessment (CHIA) to the satisfaction and approval of the Manager of Development Planning, Heritage and Design prior to any site plan approval.

- Any recommendations for alternatives or mitigative measures coming out of the Cultural Heritage Impact Assessment shall be included as conditions of future development applications;

- The applicant provide a Construction Management Plan prepared by a qualified Professional Engineer which addresses the mitigation of potential construction and vibration impacts to the adjacent and on-site cultural heritage resources (64 James Street South, 98 James Street South and 44 Hughson Street South), including periodic monitoring of the buildings throughout construction, to be prepared at the cost of the owner and submitted to the satisfaction and approval of the Director of Planner and Chief Planner. Should a peer review of the Construction Management Plan be warranted, all associated costs shall be borne by the owner / applicant and shall be submitted to the satisfaction of the City of Hamilton, Director of Planning and Chief Planner.

Submission of the required documents has been received as part of a resubmission package for DA-19-174 and is currently being circulated for review. Should the proposed variances be approved staff recommend a condition be added that requires that the Elevations receive final approval through Site Plan application DA-19-174.

### **Archaeology**

**The** subject property meets two (2) of the ten criteria used by the City of Hamilton and Ministry of Heritage, Sport, Tourism and Culture Industries for determining archaeological potential:

- 1) In areas of pioneer EuroCanadian settlement; and,
- 2) Along historic transportation routes.

These criteria define the property as having archaeological potential. Accordingly, Section 2 (d) of the Planning Act and Section 2.6.2 of the Provincial Policy Statement apply to the subject application. If this site plan is approved, Staff require that an acknowledgement be added to the Site Plan as follows:

"Acknowledgement Note: The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances. If archeological resources are encountered, the proponent may be required to conduct an archaeological assessment prior to further impact in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Site-specific Assessment and Stage 4 Mitigation of Development Impacts may be required as determined by the Ontario Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI). All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the MHSTCI.

Should deeply buried archaeological materials be found on the property during any of the above development activities the MHSTCI should be notified immediately (416-212-8886). In the event that human remains are encountered during construction, the

proponent should immediately contact both MHSTCI and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-212-7499).”

### **Hamilton Zoning By-law 05-200**

The subject site is zoned Downtown Central Business (D1, H17, H19, H20) Zone and Downtown Prime Retail Streets (D2, H17, H19, and H20) Zone, which permits a mixed-use residential building. The portion of the proposed development fronting onto Hughson Street South is identified on Figure 2 of Schedule F – Special Figures as being within the Heritage Character Zone.

Figure 1 of Schedule F – Special Figures was revised through the OLT appeal to allow for 94.2 metres of height on the portion of the property fronting onto James Street South and 71 metres of height on the portion of the property fronting onto Hughson Street South. The proposed development exceeds the approved height established by the OLT.

Additionally, the lands are subject to Holding provision 17 which requires that the applicant demonstrate that the proposed building meets the intent of the Downtown Hamilton Secondary Plan through the submission of a Visual Impact Study, Pedestrian Wind Level Study, Shadow Impact Study, Transportation Impact Study and Functional Servicing Report. Staff note that studies have been submitted to satisfy the Holding provision however comments have not been submitted to provide clearances. Should the variances be approved, and further modifications are required through the Site Plan approval and Holding Provision removal process additional variances may be required.

### **Variance 1, 2 and 3**

While Variances 1, 2 and 3 appear to conform to the regulations of the Zoning By-law, staff are supportive of the proposed modifications. Based on the submitted Site Plan, it appears that Variances 1, 2 and 3 conform to the Zoning By-law and are not required for the proposal.

### **Variance 4**

The applicant is requesting a variance to allow for a maximum lot coverage of 90% to be permitted, notwithstanding the required maximum lot coverage of 85%. The general intent of this provision is to ensure adequate space is being provided for stormwater management on site. Staff defer any drainage issues to Development Engineering Approvals.

Staff are of the opinion that the variance to allow for a maximum lot coverage of 90% is maintaining the general intent of the By-law as sufficient space for stormwater management is being maintained on site. Development Engineering Approvals comments, dated May 26, 2021, note that no further comments are required for the Stormwater Management on site. Staff are of the opinion that the variance is desirable for the development and minor in nature as no negative impacts are anticipated for the subject site or surrounding area.

Based on the foregoing, the general intent of the Official Plan and Zoning By-law is being maintained, the variance is desirable for the development and minor in nature, therefore, staff support the variance.

### **Variance 5**

The applicant is requesting a variance to allow for a maximum building height of 108.0 metres to be provided, notwithstanding the maximum building height of 94.2 metres in a D2 Zone. The intent of this provision is to ensure a proper built form and massing and to limit building heights to not exceed the height of the Escarpment.

Staff are of the opinion that the variance to allow for a maximum building height that exceeds the height of the Niagara Escarpment, being 189.4 metres above sea level as indicated on Appendix D – Niagara Escarpment Height of the Downtown Hamilton Secondary Plan to Report PED21198 does not meet the intent and purpose of the Official Plan. Policy B.6.1.4.14 limits all building height within the Downtown Hamilton Secondary Plan area to the height of the Niagara Escarpment as shown on Appendix “D”.

Furthermore, Staff note that the subject site is subject to an OLT appeal (Case No. PL180548), which through the Minutes of Settlement, stated that the proposal cannot exceed 94.2 metres in height. Staff are of the opinion that the variance does not meet the general intent of the Zoning By-law as the proposed building height exceeds the height of the Niagara Escarpment. Staff are of the opinion that the variance is not minor in nature and the appropriate method of evaluating the proposed height is through an Official Plan Amendment and Zoning By-law Amendment.

Based on the foregoing, the general intent of the Official Plan and Zoning By-law is not being maintained, the variance is neither desirable for the development nor minor in nature, therefore, staff do not support the variance.

### **Variance 6 and 7**

Staff note that the Elevation drawings (dated April 20, 2021) submitted in support of the Minor Variance application differ from the Elevation drawings (dated June 25, 2021) submitted for review for the Site Plan Control application. The applicant should confirm that the modifications proposed reflect the most up to date Elevation drawings to avoid further modifications.

The applicant is requesting a variance to allow for a minimum of 44% of the ground floor façade along Jackson Street East to be comprised of glazing, notwithstanding the minimum required 60% ground floor façade glazing, and a variance to allow for a maximum 48% of the second and third floor façade along Jackson Street East to be comprised of glazing, notwithstanding the maximum permitted 40% façade glazing at the second and third storeys. The variance recognizes an existing condition as the requirement is only applicable for the portion of the development fronting on Hughson Street South which is largely occupied by the existing historic building.

While the variances can be supported, staff note that the Elevations associated with Site Plan Application DA-19-174 have not received final approval and further modifications to the Elevations may be required to address staff comments, including Urban Design and Cultural Heritage Planning. Staff recommend a condition be added that requires that the Elevations receive final approval through Site Plan application DA-19-174.

Based on the foregoing, the general intent of the Official Plan and Zoning By-law is being maintained, the variance is desirable for the development and minor in nature, therefore, staff support the variance on condition.

### **Variance 8**

The applicant is requesting a variance to allow the exterior building cladding at the first three storeys of a building within a Heritage Character zone shall not be required to be comprised of either one or a combination of not more than two of the following materials: Brick, concrete panels, stone, stucco or metal/metal panels. The variance recognizes the existing condition as the proposed development incorporates the existing historic building which falls within the Heritage Character Zone as shown on Figure 2 of Schedule F – Special Figures of Zoning By-law 05-200.

Based on the foregoing, the general intent of the Official Plan and Zoning By-law is being maintained, the variance is desirable for the development and minor in nature, therefore, staff support the variance.

### **Variance 9, 11, and 12**

Variances are no longer required in accordance with Building Division comments.

### **Variance 10**

The applicant is requesting a variance to allow a parking space designed for small vehicles is provided abutting a wall or column, the width of the parking space shall not be required to provide an additional width of 0.3m whereas the by-law requires all parking spaces within a parking structure which abuts a wall or column to provide an increased width of 0.3m. The intent of this provision is to ensure adequate space is being provided to enter and exit a vehicle.

That applicant has verified that the variance is meant to apply to all parking spaces. Staff are of the opinion the variance does not maintain the general intent of the By-law as no additional space is being provided where a parking space abuts a wall or column. Staff are of the opinion the variance is neither minor nor desirable for the development as negative impacts are anticipated for the vehicle spaces.

Based on the foregoing, the general intent of the Official Plan and Zoning By-law is not being maintained, the variance is neither desirable for the development nor minor in nature, therefore, staff do not support the variance.

**Recommendation:**

Variances 1, 2, 3, 4, 6, 7, and 8 meet the general intent and purpose of the Urban Hamilton Official Plan and Zoning By-law No. 05-200. The variances are considered minor in nature and desirable for the appropriate use of the property.

Variances 5 and 10 do not maintain the general intent and purpose of the Urban Hamilton Official Plan and Zoning By-law No. 05-200. The variances are also considered not to be minor in nature nor desirable for the appropriate use of the property.

In conclusion, **Staff recommends that the application be denied.**

**CONDITIONS: (If Approved)**

- (1) That the owner received final approval of the Elevation drawings associated with Site Plan application DA-19-174 to the satisfaction of the Manager of Development Planning, Heritage and Design.