



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 15, 2023
SUBJECT/REPORT NO:	Request for Direction to Proceed with Appeal of Committee of Adjustment Decision regarding Minor Variance Application DN/A-23:75 for Lands Located at 245 Mill Street, Dundas (PED23177) (Ward 13)
WARD(S) AFFECTED:	Ward 13
PREPARED BY:	Morgan Gowans (905) 546-2424 Ext. 5865
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 PED23177, respecting Committee of Adjustment decision regarding Minor Variance application (DN/A-23:75) submitted by Nicole Wilson on behalf of the Owner (Christian Science Society), for lands located at 245 Mill Street, Dundas as shown on Appendix "A" attached to Report PED23177, approved 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 Ontario Land Tribunal (OLT) against the decision of the Committee of Adjustment to approve application DN/A-23:75;
- (b) That Council directs appropriate Legal Services and Planning Staff to attend the future Ontario Land Tribunal Hearing in opposition to the decision of the Committee of Adjustment to approve application DN/A-23:75.

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EXECUTIVE SUMMARY

The applicant, Nicole Wilson, submitted Minor Variance application DN/A-23:75 on behalf of the property owner (Christian Science Society) to permit a medical clinic and personal services in an existing building for lands located at 245 Mill Street, Dundas within the Neighbourhood Institutional (I1) Zone.

The Minor Variance application was presented to the Committee of Adjustment on May 4, 2023, where the application was approved by the Committee. The Decision is attached as Appendix "B" to Report PED23177.

City staff recommended refusal of the application as the medical clinic and personal service uses proposed are not permitted uses in the Neighbourhood Institutional (I1) Zone. Staff could not support the adding of these uses through a minor variance application and indicated that a Zoning By-law Amendment Application is the correct application to add a use to the subject lands.

In order for a variance to be supported it must meet the four tests outlined in the *Planning Act*; in keeping with the general intent and purpose of the Zoning By-law and Official Plan, minor in nature and is desirable for the appropriate development or use of the land, building or structure. Through staffs' review, the minor variance to add uses was not considered minor in nature and did not meet the intent of the Zoning By-law. Medical clinic and personal services are permitted in larger scale institutional and commercial zoning categories that must satisfy additional requirements when abutting residential uses, such as planting strips and visual barriers. Additionally, the proposed uses require alternative loading requirements which were not included in the plans, and staff were unable to determine if they could be accommodated on site. Staff therefore recommended that the application be denied.

Under the *Planning Act*, appeals must be filed within 20 days of the decision. As such, on May 24, 2023, Planning and Economic Development staff submitted an appeal and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council's approval/ratification as per the standing instructions to staff. The purpose of this report is to seek Council direction on the appeal.

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Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff has submitted the required fee of \$400 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. Should outside professionals be retained as necessary in support of Council's opposition to the proposal, such costs of retainers will be charged to the Development Stabilization Reserve Account No. 110086. The Hearing would likely take one or two days.

Staffing: One representative each from Planning and Legal Services would be required for preparation and attendance at the Ontario Land Tribunal Hearing.

Legal: No legal implications are expected.

BACKGROUND

Committee of Adjustment Application DN/A-23:73

Minor Variance application DN/A-23:75 was submitted by Nicole Wilson on behalf of the current property owner (Christian Science Society) to permit a medical clinic and personal services in an existing building on the lands located at 245 Mill Street, Dundas. The subject lands are designated "Neighbourhoods" in the Urban Hamilton Official Plan and zoned Neighbourhood Institutional (I1) Zone in Hamilton Zoning By-law No. 05-200. The proposed use of a medical clinic and personal services are not permitted in the Neighbourhood Institutional (I1) Zone.

The Minor Variance application was presented to the Committee of Adjustment on May 4, 2023 where the application was approved by the Committee. The Decision is attached as Appendix "B" to Report PED23177.

The subject lands are currently functioning as a place of worship, which is permitted within the I1 Zone and the Christian Science Society has operated at this location for approximately 20 years. These lands were reviewed and added to Zoning By-law No. 05-200 through By-law No. 07-101 on March 29, 2007 which created new Institutional Zones.

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Staff provided a report of consolidated comments to the Committee of Adjustment in which staff advised that a Zoning By-law Amendment would be required to permit the proposed additional uses on the subject property.

In order for a variance to be supported, it must satisfy the four tests of the *Planning Act*; in keeping with the general intent and purpose of the Official Plan and Zoning By-law, minor in nature, and desirable for the appropriate development or use of the land, building or structure. After a review of Minor Variance application DN/A-23:73, Planning staff concluded the variance was not minor in nature and did not meet the intent of the Zoning By-law under section 45(1) of the *Planning Act*. A medical clinic and personal services are permitted in larger scale institutional and commercial zones, which would also require additional zoning requirements when these uses are abutting residential uses such as planting strips and visual barriers. Additional parking and loading regulations may apply to the proposed uses, which are required to be assessed by staff.

Additionally, the subject lands are regulated by the Hamilton Conservation Authority who noted that the available information for this area suggests that the floodplain may include an elevation of 103.01 metres in the surrounding area of the subject lands during a regional storm event. The Hamilton Conservation Authority recommended that the application be Tabled so that the applicant could determine whether the grades around the building are above the regulatory flood evaluation of 103.01 metres. The applicant has not submitted the necessary elevation information to address the comments of the Hamilton Conservation Authority.

Therefore, Planning staff recommended that the application be denied.

Appeal to the Ontario Land Tribunal

On May 24, 2023, Development Planning staff filed an appeal to the Ontario Land Tribunal on behalf the Planning and Economic Development Department of the Committee of Adjustment decision to approve the application. The reasons for the appeal can be summarized as follows:

- a) The proposed variance fails the four tests for a Minor Variance and cannot be considered as “minor” relief from the provisions of the City of Hamilton Zoning By-law No. 05-200.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Planning Act

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

Provincial Policy Statement, 2020

The application has been reviewed with respect to the provisions of the Provincial Policy Statement, 2020.

Urban Hamilton Official Plan

The Urban Hamilton Official Plan designates the property as “Neighbourhoods” in Schedule E-1 – Urban Land Use Designation which permits a range of residential and commercial uses. Section F.1.5 of the Urban Hamilton Official Plan states:

“F.1.5 The Zoning By-law is one of the key implementation tools to ensure the City’s goals, objectives and policies of this Plan are

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realized. The Zoning By-law regulates permitted uses and associated performance standards, setbacks, lot areas, height, landscaping and parking requirements.”

Hamilton Zoning By-Law No. 05-200

The subject lands are zoned “Neighbourhood Institutional” (I1) Zone in Hamilton Zoning By-law No. 05-200. The I1 Zone permits Community Garden, Day Nursery, Duplex Dwelling, Educational Establishment, Emergency Shelter, Museum, Place of Worship, Residential Care Facility, Retirement Home, Semi Detached Dwelling, Single Detached Dwelling, Urban Farm, and Urban Farmers Market subject to the applicable zoning regulations.

The following variance was requested through Minor Variance application DN/A-23:75:

1. To include the uses of a Medical Clinic and Personal Services under the permitted uses for the Neighbourhood Institutional (I1) Zone.

The applicant is seeking to permit a medical clinic and personal services on the subject lands. The proposed uses are not permitted in the Neighbourhood Institutional (I1) Zone under Zoning By-law No. 05-200. The intent of the Neighbourhood Institutional (I1) Zone is to allow for smaller scale institutional uses for the surrounding neighbourhood. Typically, a medical clinic and personal services are permitted in larger scale Institutional and Commercial zones in order to accommodate all the applicable zoning regulations.

Staff did not support the variance as it does not meet the general intent and purpose of the Zoning By-law and as previously noted, the request is not considered “minor” relief from the provisions of the City of Hamilton Zoning By-law No. 05-200. A Zoning By-law Amendment Application would be the appropriate application process to permit the uses as the requested variance does not meet the four tests and is not considered “minor” relief from the regulations of Hamilton Zoning By-law No. 05-200.

RELEVANT CONSULTATION

- Corporate Services Department, Legal Services Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Role and Responsibilities of 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 include the following:

“That where the *Planning Act* appeal periods cannot be met, the Planning and Development Department be authorized and directed to file an appeal with the Secretary Treasurer of the Committee of Adjustment, in the name of and on behalf of the City, 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 and is deemed not to be in keeping with the intent and purpose of the By-law. Such an appeal shall be made subject to Council approval/ratification or withdrawal. The Planning and Development Department shall prepare a report to the Committee of the Whole. The response to such a report, The City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

The proposal cannot be supported for the following reasons:

- Minor Variance application (DN/A-23:75) does not meet the four tests established in Section 45(1) of the *Planning Act*. Namely, the variance does not meet the intent of Hamilton Zoning By-law No. 05-200 and the variance is not minor in nature.

It is staff's opinion that the appropriate process to establish uses is through a Zoning By-law Amendment application.

ALTERNATIVES FOR CONSIDERATION

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the Ontario Land Tribunal. Provided that no further appeals are filed; this option would allow the Committee of Adjustment's minor variance approval to stand.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED23177 – Location Map

Appendix “B” to Report PED23177 – Committee of Adjustment Decision