



Hamilton

**STAFF COMMENTS**

**HEARING DATE: February 13, 2024**

DN/A-23:339 – 12 Napier Street North, Dundas

**Recommendation:**

Development Planning - Denial

**Proposed Conditions:**

1. The Applicant is required to establish an encroachment agreement with the City of Hamilton for the parking spaces located within the municipal right-of-way (To the satisfaction of the Manager of Transportation Planning).

**Proposed Notes:**

N/A



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## **Development Planning:**

### **Background**

The application is proposing to permit an office use within the existing building and associated parking spaces.

Currently there is an office use within the ground floor of the existing structure and a dwelling unit on the second floor. Based upon previous staff correspondence, the last recognized use by the City on the subject lands was a tin smithing sales outlet as well as a cleaning and pressing plant limited to 400 square feet, pursuant to a Committee of Adjustment Decision dated November 15, 1963. The current office does not appear to have been operating or established until 2007. An application under Section 45(2) of the *Ontario Planning Act* was not submitted to establish the office use on the subject property in 2007. Therefore, it cannot be considered a legal non-conforming use.

#### *Ontario Planning Act*

The application has been submitted under Section 45(2)(a)(ii) under the *Ontario Planning Act* which states where a legally non-conforming use exists which is prohibited by the [zoning] by-law, the Committee of Adjustment may permit:

- “(ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee.”

The previous tin smithing sales outlet as well as cleaning and pressing plant uses were confirmed by City staff as Legal Non-Conforming uses under Dundas Zoning By-law No. 1964 on the subject lands. Based upon a Zoning Compliance Review completed on February 8, 2023, City staff determined that the existing office use was not legally established as a legal non-conforming use within the Zoning By-law. As such, this application cannot be considered under Section 45(2)(a)(ii) of the *Ontario Planning Act* and instead must be considered under Section 45(1) of the *Ontario Planning Act*.

### **Analysis**

#### **Urban Hamilton Official Plan**

The subject lands are designated as “Neighbourhoods” in Schedule E-1 – Urban Land Use Designations and “Neighbourhoods” in Schedule E – Urban Structure of the Urban Hamilton Official



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Plan. Policy E.3.2.3, amongst others, apply. Per Policy E.3.2.3, local commercial uses (such as an office) are permitted in the “Neighbourhoods” designation.

### **Colborne Neighbourhood Plan**

The subject property is identified as “Single and Double” in the Colborne Neighbourhood Plan. The existing residential use is in keeping with the intent of the plan. The requested variances and proposed office use are not in keeping with the intent of the Neighbourhood Plan.

### **Archeology**

No comment.

### **Cultural Heritage**

No comment.

### **Dundas Zoning By-law No. 3851-86**

The subject lands are zoned Single Detached Residential (R2) Zone under Dundas Zoning By-law No. 3581-86. An office is not a permitted use in this zone.

### **Variance 1**

1. An Office shall be permitted within the ground floor of the existing building.

Staff note that the permitted uses in the R2 zone are currently limited to single detached dwellings, semi-detached dwellings, duplex dwellings, street townhouse dwellings, retirement homes, bed and breakfast establishments, urban farms, community gardens and accessory buildings, structures and uses thereto. Staff are of the opinion that an Office use is not in keeping with the intent of the Zoning By-law with regards to the residential nature of the permitted uses within the R2 zone. As noted above, the office use is not considered a legal non-conforming use. The proposal to add an office use does not meet the intent of the existing Zoning By-law and is not considered minor. Therefore, staff do not support Variance 1.

### **Variances 2 to 4**

2. Parking spaces shall be provided within the required front yard whereas the By-law requires that no required parking or loading space shall be located in a required front yard.

3. No manoeuvring space shall be provided for a parking space whereas the By-law requires a 6.0 metre maneuvering space for 90 degree parking spaces.



4. A minimum of three parking spaces shall be provided instead of the required five parking spaces for a dwelling unit and office use.

The intent of these provisions is to ensure sufficient parking is provided on-site and ensure that parking does not encroach into the streetscape.

Staff note that one of the proposed parking spaces is required for the existing dwelling unit on the second floor of the structure and the remaining two spaces for the office use.

**Variances 5 to 7**

5. A 1.9 metre landscaping area shall be provided directly abutting a street line whereas the By-law requires a 3.0 metre landscaping area directly abutting a street line.

6. No buffer strip shall be provided abutting a residential zone or lot whereas the By-law requires a 3.0 metre buffer strip when the side or rear lot line abuts an RU/S-5, R1, R2, R3, R4, RM1, RM2, RM3 or RM4 zone.

7. A minimum 40% landscaping in the front yard shall be provided for a building containing a residential use whereas the By-law requires a minimum of 50% landscaping in the front yard for residential buildings.

Staff note that Variances 5 to 7 are existing circumstances of the subject property, such as the existing structure’s placement near the lot lines. Staff also note that the reduced landscaping buffers and area would not be in keeping with the character of the existing neighbourhood or streetscape, which is characterized by landscaped yards and residential uses.

Staff note that Variances 2 to 7 are intended to bring the office use and associated parking into compliance with the Zoning By-law. As the office use is not a permitted use within the R2 zone and has not been established as a legal non-conforming use, staff are of the opinion that Variances 2 to 7 would not be in keeping with the intent of the Zoning By-law, are not desirable for the proposed development and are not minor in nature.

Staff are of the opinion that the variances do not meet the four tests of a minor variance. Based on the foregoing, **staff do not support the variances.**

**Zoning:**

Recommendation:	Comments Only
Comments:	1. Additional variances may be required if the existing shed located in the rear yard is less than 1.0 metres for a structure having less than 10m2 floor area or 2.0 metres for a structure having between 10m2 and 18 m2



	<p>floor area from the rear property line. Please note, insufficient information has been provided to confirm zoning compliance based on the height and size of the Accessory Structure.</p> <p>2. Please note, an Encroachment Agreement with Public Works is required for any work or alterations, including the driveway extension landscaping area, indicated within the Napier Street North Road Allowance.</p> <p>3. The City of Hamilton is continuing to develop Hamilton Zoning By-law 05-200 which encompasses the former City of Hamilton and the five (5) outlining municipalities. Please be advised that the next phase is the Residential Zones Project which will include Low Density Residential Zones. The subject property may be impacted by upcoming changes scheduled to be heard at the Planning Committee meeting of February 23, 2024.</p>
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**Development Engineering:**

Recommendation:	Approve
Proposed Conditions:	N/A
Comments:	Provided the existing drainage pattern is maintained, Development Engineering has no objection to the proposed minor variances.

**Transportation Planning:**

Recommendation:	Approve with Conditions
Proposed Conditions:	The Applicant is required to establish an encroachment agreement with the City of Hamilton for the parking spaces located within the municipal right-of-way (To the satisfaction of the Manager of Transportation Planning).

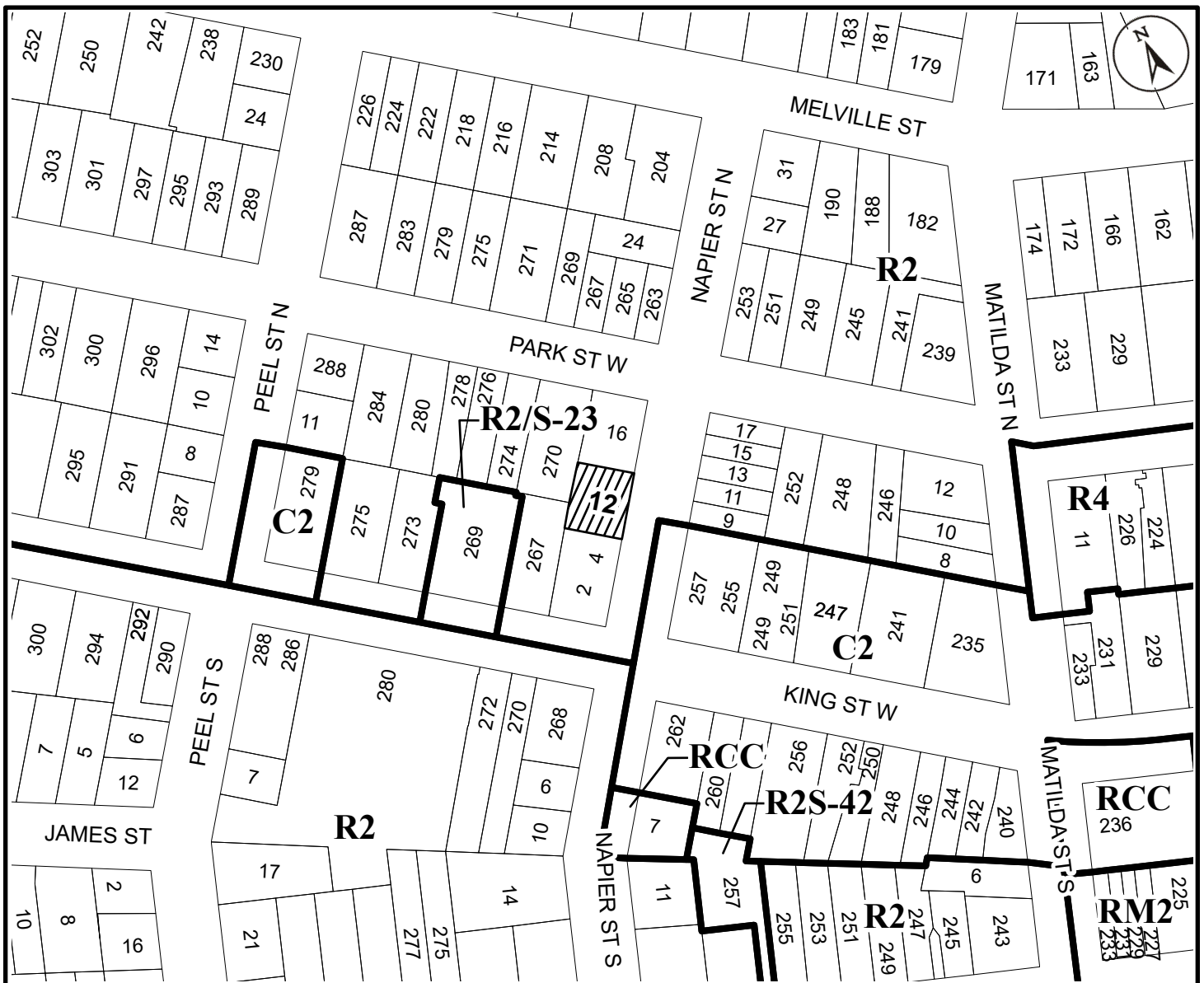
**Building Engineering:**

Recommendation:	No comments.
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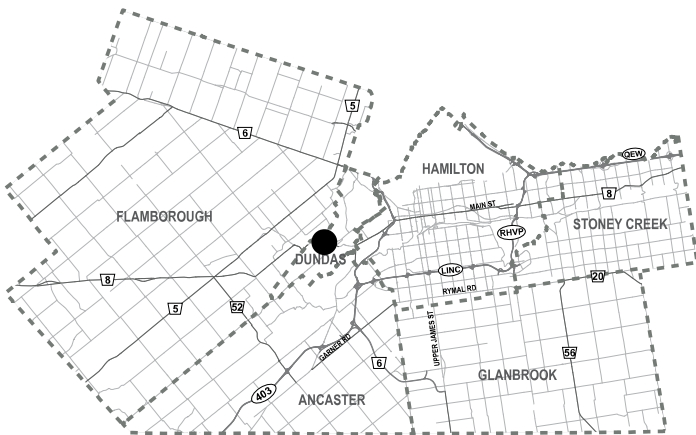
**Legislative Approvals:**

Recommendation:	No comments.
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Please Note: Public comment will be posted separately, if applicable.



● Site Location



**City of Hamilton**

# Committee of Adjustment

**Subject Property**



12 Napier Street North, Dundas (Ward 13)

**File Name/Number:**  
DN/A-23-339

**Date:**  
January 29, 2024

**Technician:**  
AL

Map Not To Scale

**Appendix "A"**



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