



Hamilton

STAFF COMMENTS

HEARING DATE: September 24, 2024

A-24:189 – 852 Upper Wentworth Street, Hamilton

Recommendation:

Development Planning - Approve

Proposed Conditions:

1. That the variances only apply to the provided drawings as identified in Notice of Public Hearing for Application Number A-24-189. (Drawing No. SP.02, A1.01, A1.02, A2.01, A2.02 and S1.01) dated August 6, 2024, issued for Minor Variance.
2. That the Owner shall complete a Zoning Compliance review that confirms the existing single detached dwelling is a legal non-conforming use, to the satisfaction of the Director of Development Planning.

Proposed Notes:



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STAFF COMMENTS

HEARING DATE: September 24, 2024

Development Planning:

Background

The purpose of this application is to permit the expansion of a legal non-conforming single detached dwelling through the addition of an attached garage in the rear yard. The following variances were requested:

1. A minimum rear yard setback of 1.78 metres shall be permitted instead of a minimum rear yard setback of 7.5 metres; and,
2. A maximum increase of 17.1% of the Gross Floor Area of the building existing at the date of the passing of the by-law shall be permitted instead of an increase shall not exceed a maximum of 10% Gross Floor Area of the building existing at the date of the passing of the by-law.

Urban Hamilton Official Plan

The subject property is designated as “Mixed use – Medium Density” under Schedule E1 -Urban Land Use Designations in the Urban Hamilton Official Plan. Section 4.6.5 does not permit Single Detached Dwellings. The Applicant has indicated that the use is already existing and not subject to this application. The subject property is not located in any secondary plan area found in Volume 2 of the Urban Hamilton Official Plan.

The policies of the Mixed Use - Medium Density designation state that new development shall respect the existing built form of adjacent neighbourhoods by providing a gradation in building height and densities, and by locating and designing new development to minimize the effects of shadowing and overview on properties in adjacent neighbourhoods.

Section F.1.12 of the Urban Hamilton Official Plan contains the policies related to existing, non-complying and non-conforming uses. Policy F.1.12.9 states that the expansion or enlargement or change in legal non-complying uses shall be permitted provided they maintain the intent and purpose of this Plan and the Zoning By-law. Policy 1.13.1 states that Council may appoint a Committee of Adjustment to authorize extensions or enlargement of legal non-conforming uses provided they maintain the intent and purpose of this Plan and any other requirements of the *Planning Act*.

Accordingly, subject to the proposal otherwise conforming to the Urban Hamilton Official Plan and meeting the requirements of the *Planning Act*, the expansion to the existing legal non-conforming single detached dwelling is permitted.

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

The subject property is zoned as Mixed-Use Medium Density (C5) in Zoning By-Law 05-200. Single detached dwellings are not permitted in the “C5” Zone. Based on the information provided, the use of



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an existing single detached dwelling appears to be legal non-conforming. Expansions to such uses are permitted through the Urban Hamilton Official Plan through an application to the Committee of Adjustment.

Analysis

The applicant is proposing to construct a single-storey garage addition to an existing legal non-conforming single detached dwelling.

Variance 1

The applicant has applied to reduce the required rear yard setback from the required 7.5 metres to the proposed 1.78 metres. The intent of this provision is to ensure sufficient space in the rear yard for amenity purposes, to limit the massing impacts of the structure on adjacent properties, including shadowing, overlook, and visual impacts, and for grading and drainage purposes. Staff defer any grading and drainage concerns to Development Engineering.

Staff are of the opinion that the variance is minor in nature and shall not generate any adverse or unwanted impacts to neighbouring properties. Staff don't foresee any overlook concerns as the addition is a single storey garage without windows facing to the west and is strictly for the purposes of a garage and there is no proposed living space. Furthermore, the portion of the property where the garage is proposed to be located is currently paved and is being used for surface parking. The proposed attached garage will not remove any amenity area, nor will it change how this portion of the lands are being used (parking). Staff also note that if the garage were to be proposed as a detached garage the setback required would be 1.2 metres as per section 4.8.1.1 d) of Zoning By-Law 05-200. Staff are of the opinion that as the proposed garage is similar in use to an accessory building it maintains the general intent and purpose of the zoning by-law. Staff support the variance.

Variance 2

The applicant has applied to permit a gross floor area increase for a legal non-conforming use from the required maximum of 10% to 17.1%. Staff have reviewed and consider this increase to be minor in nature and have determined that it will not generate any adverse impacts. Staff also note that the proposed expansion to the legal non-conforming use is for an attached garage, and not an expansion to the residential living area. Through the addition of the garage staff are of the opinion that this variance meets the four tests of a minor variance.

Based on the foregoing, staff recommend approval of both variances as they meet the general intent and purpose of the Official Plan and Zoning By-law, are minor in nature, and are desirable for the appropriate development of the lands.



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Zoning:

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	<p>i. Please note, insufficient information has been provided to determine if parking is to be proposed within the attached garage. Please note, should additional parking spaces be indicated, regulations under Section 5 of Zoning By-law 05-200 shall apply to all proposed parking spaces.</p> <p>ii. Be advised, Zoning By-Law Amendment 24-051 and 24-052 was passed on April 10, 2024. The Amendments remain Not Final and Binding and as such, both regulations under the current Hamilton Zoning By-Law 05-200 and those regulations applicable under Zoning By-Law Amendment 24-051 and 24-052 are applicable to the subject property. For the purposes of this review, an additional review has been conducted as it relates to any additional regulations required under Zoning By-Law Amendment 24-051 and 24-052. Until such time that Zoning By-Law Amendment 24-051 and 24-052 are deemed Final and Binding, regulations under both the current Zoning By-Law and the Amending By-laws shall apply. In addition to comment i) above, should parking be indicated within the proposed garage, the requirements of Section 5 under Zoning By-law amendment 24-052 shall also apply to the parking spaces, with the most restrictive requirements under Zoning By-law 05-200 and Zoning By-law amendment 24-052 being applied.</p> <p>Such requirements include, but are not limited to parking space size, minimum garage elevation above grade, and electric vehicle parking for all proposed spaces not currently existing. Should parking spaces be proposed that do not meet the requirements under Section 5, additional variances may be required.</p> <p>iii. Please note, insufficient information has been provided to confirm the amount of landscaped area provided on the lot as a result of the proposed garage. Be advised, as per Section 4.35 c), a minimum area of 3.75 metres x 3.75 metres is required within a landscaped area for tree protection or planting and shall not include hard landscaping or structures. Should the proposed garage result in a reduction of landscaping in which the minimum 3.75 metres x 3.75 metres area can no longer be provided, additional variances may be required.</p>
Notes:	



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Development Engineering:

Recommendation:	Approve
Proposed Conditions:	
Comments:	As long as existing drainage conditions are maintained, Development Engineering does not have other concerns for this application.
Notes:	

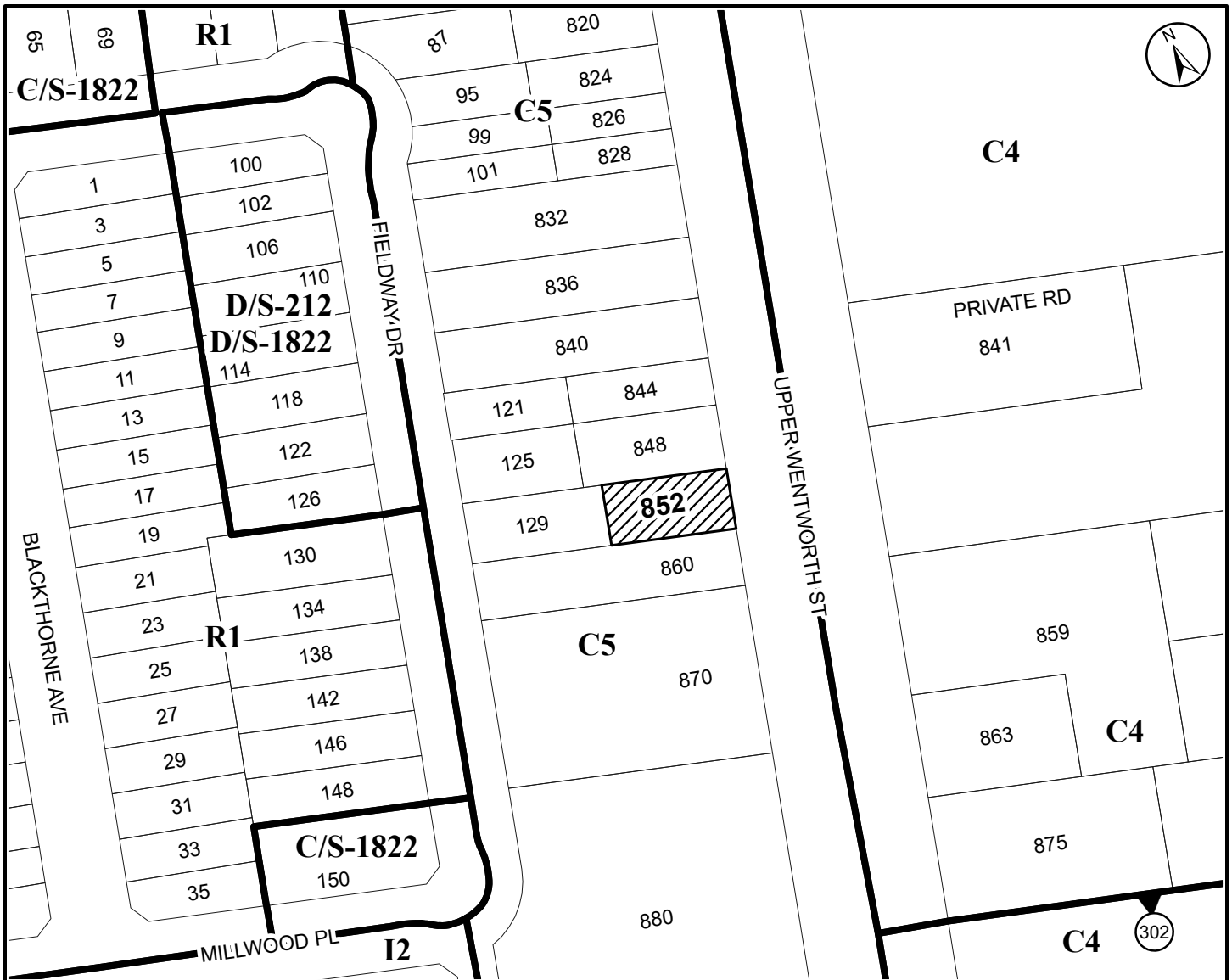
Building Engineering:

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	
Notes:	<p>Building Permit # 15-116438, issued on October 26, 2015, for alterations to the existing 2-storey building used as Kitchen Cabinet Showroom (1st Floor) and Accessory Offices (2nd floor) to install stucco for façades and to construct a patio on the 2nd floor remains not finalized.</p> <p>A building permit is required for the construction of the proposed Addition to the existing single-family dwelling.</p> <p>Be advised that Ontario Building Code regulations may require specific setback and construction types.</p>

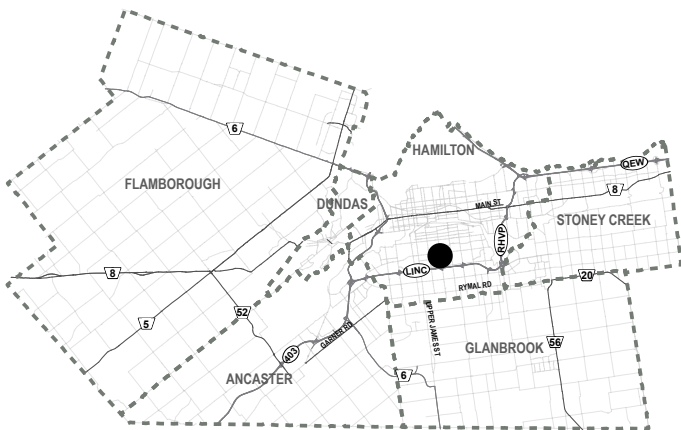
Transportation Planning:

Recommendation:	Approve
Proposed Conditions:	
Comments:	
Notes:	

Please Note: Public comment will be posted separately, if applicable.



● Site Location



City of Hamilton

Committee of Adjustments

Subject Property



852 Upper Wentworth Street,
Hamilton (Ward 7)

File Name/Number:
A-24:189

Date:
September 9, 2024

Technician:
SH

Scale:
N.T.S.

Appendix "A"



Hamilton

Planning and Economic Development Department