



Hamilton

STAFF COMMENTS

HEARING DATE: November 12, 2024

A-24:217 (1135 Stone Church Rd. E., Hamilton)

See full Comments from October 22, 2024 Agenda

Recommendation:

Deny

Proposed Conditions:

1. That the owner shall investigate the noise and vibration levels on the subject lands and determine and implement the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of Environment, Conservation and Parks (MECP) recommended sound level limits. An acoustical report prepared by a qualified Professional Engineer containing the recommended noise control measures shall be submitted to the satisfaction of the City of Hamilton, Director of Planning and Chief Planner. Should a peer review of the acoustical report be warranted, all associated costs shall be borne by the owner and shall be submitted to the satisfaction of the Director of Planning and Chief Planner.
2. That the owner shall submit and receive approval of a Land Use Compatibility Assessment, to the satisfaction of the Director of Planning and Chief Planner that:
 - a. Addresses potential impacts created by the proposed Place of Worship on the long-term economic viability of employment uses within the adjacent employment area, and identifies any recommended mitigation measures; and,
 - b. Addresses any potential impacts of the adjacent employment area on the proposed Place of Worship and identifies any recommended mitigation measures.

Proposed Notes

If this variance is approved, the proponent must be advised by the Committee of Adjustment as follows:

“Acknowledgement: 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 and the proponent is advised to conduct an archaeological assessment prior to such impacts 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



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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 Citizenship and Multiculturalism. All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the Ministry Citizenship and Multiculturalism. Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry Citizenship and Multiculturalism (MCM) should be notified immediately (416-212-0036).

In the event that human remains are encountered during construction, the proponent should immediately contact both MCM and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-212- 7499).



Development Planning:

Background

This application was tabled at the October 22, 2024 hearing. The submission has not been modified since the previous tabling. The purpose of the application is to permit the use of a Place of Worship with 62 parking spaces; whereas Place of Worship is not permitted in the C6 (District Commercial) Zone. The site is currently vacant and contains three structures that appear to be vacant and are not being currently utilized. It is staff's understanding that the existing structures are proposed to be removed through the redevelopment of the site.

Please note that the Notice of Public Hearing that was sent out stated that the proposed variance was for the addition of a "Place of Assembly" as a permitted use. Staff have confirmed that the Notice of Public Hearing should have reflected a variance "To permit the use of a Place of Worship whereas the zoning by-law does not permit this use in a C6 (District Commercial) Zone." The proposed variance has been amended below.

The Provincial Planning Statement 2024 came into force on October 20, 2024 and is applicable.

Amended Variance

1. To permit the use of a Place of Worship; whereas, the zoning by-law does not permit this use in a C6 (District Commercial) Zone.

Provincial Planning Statement 2024

Section 3 of the *Planning Act* requires that decisions affecting planning matters shall be consistent with policy statements issued under the Act. The following Provincial Planning Statement policies, among others, are applicable:

2.8 Employment

- 2.8.1 3. In addition to policy 3.5, on lands within 300 metres of employment areas, development shall avoid, or where avoidance is not possible, minimize and mitigate potential impacts on the long-term economic viability of employment uses within existing or planned employment areas, in accordance with provincial guidelines.
- 2.8.2 1. Planning authorities shall plan for, protect and preserve employment areas for current and future uses, and ensure that the necessary infrastructure is provided to support current and projected needs.

3.5 Land Use Compatibility



- 3.5.2 Where avoidance is not possible in accordance with policy 3.5.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other major facilities that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses is only permitted if potential adverse affects to the proposed sensitive land use are minimized and mitigated, and potential impacts to industrial, manufacturing or other major facilities are minimized and mitigated in accordance with provincial guidelines, standards and procedures.

Based on the above policy analysis, the proponent has not demonstrated that the proposal is consistent with the Provincial Planning Statement (2024). Adequate information has not been provided to demonstrate that adverse impacts resulting from the addition of the sensitive use have been avoided or appropriately mitigated. These impacts would typically be demonstrated through technical studies and analyses by qualified professionals.

Urban Hamilton Official Plan

District Commercial Designation

The subject property is designated as District Commercial on schedule E1- Urban Land Use Designations of the Urban Hamilton Official Plan. Policy E.4.7.2 permits the following:

- a) commercial uses including retail stores, personal services, financial establishments, live work units, restaurants, including gas bars, car washes, and service stations;
- b) medical clinics and offices provided they are located above the first storey;
- c) residential uses provided they are located above the first storey of a mixed use building; and,
- d) accessory uses

Community Service Facilities or a Place of Worship are not listed as a permitted uses within the District Commercial designation. Section E.4.7 states that the intent of the District Commercial designation is to provide retail and service commercial uses to the immediate neighbourhood and District Commercial areas shall contain a range of retail shops and services that cater primarily to the weekly and daily shopping needs of residents in the surrounding neighbourhoods. Policy E.4.7.1 states that the function of the District Commercial designation is to provide a range of retail uses intended to serve the daily and weekly shopping needs of residents in the surrounding neighbourhood. The proposed Place of Worship would not be considered a retail or service commercial use that caters to the daily and weekly needs of residents in the neighbourhood.

A Place of Worship is expressly permitted in the Neighbourhoods, Mixed Use – Medium Density, and Mixed Use – High Density designations. Policy B.5.2 provides design guidance for community facilities (including places of worship) located within the Neighbourhoods designation (E.3.5.2.3) and along Nodes and Corridors (E.3.5.2.4 & E.3.5.2.6), which generally aligns with the uses being permitted in the Neighbourhoods, Mixed Use – Medium Density, and Mixed Use – High Density



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designations in the Urban Hamilton Official Plan. The subject lands are not located in a Node or along a Corridor. It is notable that the Urban Hamilton Official Plan does not contain design guidance for community service facilities located in Commercial designations, which further reinforces the policy intent that community facilities, such as Places of Worship are not intended to be located within Commercial designations.

Staff note that the Zoning by-law implements the policies of the Urban Hamilton Official Plan. The District Commercial (C6) Zone implements the permitted uses of the District Commercial designation. It's important to note that the uses identified in the District Commercial Zone are commercial uses, save and except for Dwelling Units, Mixed Use, which are only permitted in conjunction with a commercial use.

Based on the above analysis, it is Staff's opinion that the proposed addition of a Place of Worship is not in keeping with the general intent and purpose of the District Commercial designation.

Land Use Compatibility

The subject lands are directly adjacent to an Employment Area, accordingly the policies related to land use compatibility apply.

C.3.2.4 Land use compatibility between sensitive land uses, major facilities, major retail uses and major office uses in all land use designations shall be in accordance with policy E.5.2.7.1.

E.5.2.7.1 b) Sensitive land uses shall be protected from the potential adverse impacts of major facilities, and major facilities shall be protected from sensitive land uses as follows:

- i) The City shall follow provincial guidelines concerning land use compatibility between industrial facilities and sensitive land uses. Major facilities, sensitive land uses, major retail uses and major office uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety, to ensure the long-term viability of major facilities in accordance with provincial guidelines, standards and procedures.
- ii) Where avoidance of impacts is not possible in accordance with Policy E.5.2.7.1 b) i), the City shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the development of proposed adjacent sensitive land uses, major retail uses and major office uses are only permitted if the development proponent submits a Land Use Compatibility Study to the satisfaction of the City detailing that following are demonstrated in accordance with provincial guidelines, standards and procedures:



1. there is an identified need for the proposed use;
 2. alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
 3. adverse effects to the proposed sensitive land use are minimized and mitigated; and, (OPA 167)
 4. potential impacts to industrial, manufacturing or other uses are minimized and mitigated.
- iii) The proponent of either a new sensitive land use within the Neighbourhoods, Institutional or Commercial and Mixed Use designations, or a new industrial facility within an Employment Area designation, shall be responsible for addressing and implementing the necessary mitigation measures to the satisfaction of the City.

The proposed place of worship is considered a sensitive land use in both Provincial guidelines (D-Series Guidelines) and as defined in the Urban Hamilton Official Plan. The surrounding Business Park land use designation permits a variety of uses, including those that would be considered Major facilities, such as manufacturing, waste processing facilities and waste transfer facilities.

Based on the above Urban Hamilton Official Plan polices, staff are of opinion that the proponent has not demonstrated that the proposal is in keeping with the general intent and purpose of the Urban Hamilton Official Plan. The proponent has not demonstrated that the proposed Place of Worship is being planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety, to ensure the long-term viability of major facilities in accordance with provincial guidelines, standards and procedures. The Business Park designation, which is the predominate land use designation that surrounds the subject lands, permits land uses that may present existing and future land use compatibility concerns with the proposed Place of Worship. The applicant has not provided any information to address land use compatibility.

Archaeology

The subject property meets two (2) of the ten criteria used by the City of Hamilton and Ministry of Citizenship and Multiculturalism for determining archaeological potential:

- 1) In the vicinity of distinctive or unusual landforms; 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.

Cultural Heritage



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The subject property is adjacent to 1150 Stone Church Road a property listed on the City's Inventory of Heritage Properties.

Accordingly, section B.3.4.1.3 and B.3.4.2.1(g) of the Urban Hamilton Official Plan, Volume 1, apply.

The proponent proposes to permit the construction of a Place of Assembly with 62 parking spaces.

Notwithstanding that the adjacent property is listed on the Inventory of Heritage Properties, Staff have reviewed the application and are of the opinion that the cultural heritage value or interest of the adjacent cultural heritage resource will be conserved.

Staff have no further comments on the application as circulated.

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

The subject lands are zoned District Commercial (C6) Zone in the City of Hamilton Zoning By-law No. 05-200. The C6 Zone does not permit a Place of Worship under section 10.6.1.

Analysis

Variance

1. To permit the use of a Place of Worship whereas the zoning by-law does not permit this use in a District Commercial (C6) Zone.

Does the variance maintain the general intent and purpose of the Urban Hamilton Official Plan?

Based on the Urban Hamilton Official Plan policy analysis, above, in staff's opinion the proposed addition of the Place of Worship use does not maintain the general intent and purpose of the District Commercial designation. Furthermore, the proponent has not provided sufficient information to demonstrate that the proposal is consistent with the Provincial Planning Statement (2024) or maintains the general intent and purpose of the Urban Hamilton Official Plan with respect to land use compatibility in proximity to Employment Areas.

Does the variance maintain the general intent and purpose of Zoning By-law No 05-200?

The District Commercial (C6) Zone does not permit a Place of Worship under section 10.6.1. The intent of the District Commercial (C6) Zone is to permit retail and service commercial uses which cater to the weekly and daily shopping needs of residents in the immediate and surrounding neighbourhoods, in accordance with the District Commercial designation. In Staff's opinion, the addition of the Place of Worship use, which is considered an institutional use, does not maintain the general intent and purpose of the District Commercial (C6) Zone.



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Is the variance minor in nature?

In staff's opinion the addition of a use that does not comply with the Urban Hamilton Official Plan is not considered to be minor in nature. Furthermore, the addition of a sensitive land use without completing a land use compatibility analysis relative to the adjacent Employment Area is not considered minor in terms of potential impact on the proposed sensitive land use, and existing/future employment uses.

Is the variance desirable for the appropriate development of the lands?

Staff do not have sufficient information to determine whether the addition of the Place of Worship use to the District Commercial (C6) Zone is desirable for the appropriate development of the lands. The applicant has not submitted any materials that analyze the proposed use from a land use compatibility perspective, as required by the Urban Hamilton Official Plan and the Provincial Planning Statement (2024). Based on the foregoing, in Staff's opinion the applicant has not demonstrated that the variance is desirable for the appropriate development of the lands.

Based on the forgoing, staff recommend that the variance application be **denied**.

Development Engineering:

Recommendation:	No Comments
Proposed Conditions:	N/A
Comments:	N/A
Notes:	N/A

Building Engineering:

Recommendation:	Comments Only
Proposed Conditions:	
Comments:	
Notes:	A building permit is required for the construction of the proposed detached garage. Be advised that Ontario Building Code regulations may require specific setback and construction types.

Transportation Planning:

Recommendation:	No Comments
Proposed Conditions:	



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STAFF COMMENTS

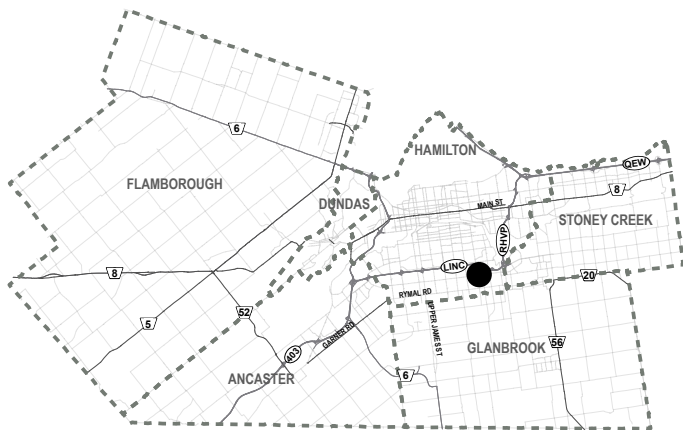
HEARING DATE: November 12, 2024

Comments:	
Notes:	

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



● Site Location



City of Hamilton

Committee of Adjustments

Subject Property



1135 Stone Church Road East,
Hamilton (Ward 6)

File Name/Number:
A-24:217

Date:
October 8, 2024

Technician:
SH

Scale:
N.T.S.

Appendix "A"



Hamilton