




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 14, 2025
SUBJECT/REPORT NO:	Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Minor Variance Application GL/A-24:09 for Lands Located at 2016 Regional Road No. 56, Glanbrook (PED25009) (Ward 11)
WARD AFFECTED:	Ward 11
PREPARED BY:	David Bonaventura (905) 546-2424 Ext. 3364
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Council gives approval to the following actions, as detailed in Report PED25009, respecting Committee of Adjustment Minor Variance application GL/A-24:09 by Jen Vanderherberg, on behalf of Mitchell Gelms, Elza Gelms and Patricia Gelms (owners), for the lands located at 2016 Regional Road No. 56, Glanbrook, as shown in Appendix “A” attached to Report PED25009, granted by the Committee of Adjustment, and 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 against the decision of the Committee of Adjustment to approve Minor Variance application GL/A-24:09; and,
- (b) That Council directs appropriate Legal Services, Planning staff and Source Protection Planning staff to attend the future Ontario Land Tribunal hearing in opposition to the decision of the Committee of Adjustment to approve Minor Variance application GL/A-24:09.

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EXECUTIVE SUMMARY

The applicant, Jen Vanderherberg, on behalf of Mitchell Gelms, Elzo Gelms and Patricia Gelms (owners), submitted Minor Variance application GL/A-24:09 to permit the construction of an additional dwelling unit within the existing single detached dwelling on lands municipally known as 2016 Regional Road No. 56, shown on the Location Map in Appendix “A” attached to Report PED25009. Minor Variance application GL/A-24:09 is seeking relief from the required minimum lot area of 0.6 hectares for an additional dwelling unit.

The subject lands have a lot area of 0.15 hectares and contain an existing single detached dwelling serviced by a septic system and cistern. The Minor Variance application is requesting to permit a minimum lot area of 0.15 hectares whereas the Zoning By-law requires a minimum lot area of 0.6 hectares for an additional dwelling unit.

The application was considered and approved by the Committee of Adjustment at the September 10, 2024, Committee of Adjustment hearing. Staff’s recommendation was not to support the application since the requested variance does not maintain the general intent of the Rural Hamilton Official Plan and City of Hamilton Zoning By-law No. 05-200. The application is not considered minor in nature due to potential impacts on neighbouring properties. The application is not considered desirable for the appropriate development or use of the land as described in Section 45(1) of the *Planning Act* since the proposed development could potentially impact the health and safety of private water systems of neighbouring dwellings.

Policy C.3.1.2 d) of the Rural Hamilton Official Plan and Section 4.33.3 a) of Zoning By-law No. 05-200 require a minimum lot size of 0.6 hectares for an additional dwelling unit. These requirements are meant to ensure rural properties can sustainably and safely support private water and wastewater services. Source Protection Planning staff have indicated that the subject lands are too small to sustainably support an additional dwelling unit in accordance with Section C.5.1, Private Water and Wastewater Services (refer to Appendix “B” attached to Report PED25009 for staff comments).

Under the *Planning Act*, appeals must be filed within 20 days of the date of giving notice of the decision. As such on September 24, 2024, Development Planning staff, in consultation with Source Protection Planning staff, appealed the decision of the Committee of Adjustment to the Ontario Land Tribunal, subject to Council’s approval/ratification. Staff recommend proceeding with the appeal. A hearing was set for December 10, 2024, and was adjourned upon consent of the parties.

Alternatives for Consideration – See Page 9

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning 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.

Staffing: One representative from Legal Services, one representative from the Development Planning Section, and one representative from Source Protection Planning would be required for the preparation and attendance at the Ontario Land Tribunal hearing.

Legal: No legal implications are expected.

BACKGROUND

The applicant, Jen Vanderherberg, on behalf of Mitchell Gelms, Elzo Gelms and Patricia Gelms (owners), submitted Minor Variance application GL/A-24:09 to permit the construction of an additional dwelling unit within the existing single detached dwelling on lands municipally known as 2016 Regional Road No. 56, Glanbrook, shown on the Location Map as Appendix “A” attached to Report PED25009.

Minor Variance application GL/A-24:09 was originally applied for on January 17, 2024, and was scheduled to be heard at the February 27, 2024, Committee of Adjustment meeting but the application was tabled at the request of the applicant. The application was subsequently brought forward to the Committee of Adjustment meeting held on September 10, 2024.

Minor Variance application GL/A-24:09 proposed to vary the minimum lot area required for an additional dwelling unit. The minimum required lot size for an additional dwelling unit within the Agriculture (A1) Zone is 0.6 hectares. However, the subject lands have a lot area of 0.15 hectares and do not meet the required minimum lot area.

Staff comments recommended the Minor Variance application be denied as it does not satisfy the four tests of a Minor Variance as described in Section 45(1) of the *Planning Act*, is not consistent with the Provincial Planning Statement (2024), does not conform with the Greenbelt Plan (2017) and does not comply with the policies of the Rural Hamilton Official Plan as the subject lands do not meet the minimum lot area requirements to sustainably support an additional dwelling unit in accordance with Section C.5.1 of the Rural Hamilton Official Plan (see Appendix “B” attached to Report PED25009). The Committee of Adjustment granted approval of Minor Variance

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application GL/A-24:09 on September 10, 2024. Please refer to the Decision attached as Appendix “D” to Report PED25009.

Under the *Planning Act*, Minor Variance appeals must be filed within 20 days of the date of decision. As such on September 24, 2024, Development Planning staff in consultation with Source Protection Planning submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council’s approval/ratification.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENT

Planning Act

The application has been reviewed with respect to the criteria of the *Planning Act*.

Powers of the Committee of Adjustment

“44(1) If a municipality has passed a by-law under section 34 or a predecessor of such section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, 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).”

Through the review of the submitted Minor Variance application, staff noted that the proposed development does not comply with the policies of the Rural Hamilton Official Plan. Per Policy C.3.1.2 d) an additional dwelling unit may be permitted within an existing single or semi-detached dwelling on a lot within the “Agriculture” designation if the lot has a minimum lot area of 0.6 hectares and if the proposed development complies with all other applicable policies and Zoning By-law regulations. Staff determined that the size of the subject land is not sufficient to meet this policy.

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Similarly, Source Protection Planning staff determined that the existing lot, at 0.15 hectares in size, is insufficient to support an additional dwelling unit per the policies found in Section C.5.1 - Private Water and Wastewater Services of the Rural Hamilton Official Plan.

Based on the foregoing, the Minor Variance application does not meet the four tests of a Minor Variance described by the *Planning Act* and should be denied.

Provincial Planning Statement (2024)

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Planning Statement (2024). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the Provincial Planning Statement (2024).

Policy 3.6.4 of the Provincial Planning Statement (2024) permits the use of private water and wastewater services where municipal services are unavailable and the long-term provision of said private services has no negative impacts. Policy 4.3.2.5 permits up to two additional residential units on a lot within a prime agricultural area provided the additional residential units, amongst other requirements, have appropriate sewage and water services and address any public health and safety concerns. Source Protection Planning staff have indicated that the subject lands are too small to sustainably support an additional dwelling unit. Based upon these policies, it is staff's opinion that the proposal is not consistent with the Provincial Planning Statement (2024) as the size of the subject property is insufficient to sustainably support the proposed additional dwelling unit.

Greenbelt Plan (2017)

Policy 4.5.3 of the Greenbelt Plan (2017) permits second dwelling units within single detached dwellings or within existing accessory structures on the same lot. However, Policy 4.1.1.2 b) requires that proposals for non-agricultural uses within prime agricultural areas demonstrate that the type of water and sewer servicing proposed is appropriate for the proposed type of use. As previously noted, Source Protection Planning staff have indicated that the subject lands are too small to sustainably support an additional dwelling unit. Therefore, it is staff's opinion that the size of the subject property is insufficient to sustainably support the proposed additional dwelling unit.

Rural Hamilton Official Plan

The subject site is designated "Agriculture" within Schedule D – Rural Land Use Designations. The following policies, amongst others, apply to the proposal.

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- “C.3.1.2 The following uses shall be permitted in the Agriculture, Specialty Crop, Rural and Rural Settlement Area designations, provided the applicable conditions are met: (OPA 5)
d) A secondary dwelling unit may be permitted within a single or semi-detached dwelling on a lot with a minimum size of 0.6 ha, provided it complies with all applicable policies and Zoning By-law regulations. (OPA 26) (OPA 30)
- C.3.1.4 The following uses shall be permitted in the Agriculture, Specialty Crop and Rural designations, provided the applicable conditions are met: (OPA 5)
a) Except as permitted in Sections D.2.1.1.6 and C.3.1.4 b) and c) of this Plan, a maximum of one dwelling per lot shall be permitted in designations where residential uses are permitted. The Zoning By-law shall limit permitted dwellings to a maximum of one residence per lot in designations where residential uses are permitted; and (OPA 23)
- C.5.1.1 No draft, conditional, or final approval of development proposals shall be granted by the City for any development in Rural Hamilton that could impact existing private services or involves proposed private services until the development proposal has complied with all of the following: (OPA 23)(OPA 26)
a) Prior to or at the time of application for a proposal that could impact existing private services or involves proposed private services, development proponents shall submit complete information regarding existing or proposed private water and wastewater services. This information shall be complete to the satisfaction of the City. Where sufficient information is not available to enable a full assessment of on-site and off-site water supply and/or sewage disposal impacts or if the proponent does not agree with the City’s calculations, the proponent shall be required to submit a hydrogeological study report completed in accordance with Section F.3.2.5 – Hydrogeological Studies of this Plan and Hydrogeological Study Guidelines as maybe approved or amended from time to time.(OPA 23)
b) Any information submitted, or study required in Policy C.5.1.1 a) shall be completed to the satisfaction of the City in accordance with Section F. 3. 2.5 of this Plan and Hydrogeological Study Guidelines as may be amended from time to time. The City may request or

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conduct a peer review of the study or servicing information, which shall be completed by an agency or professional consultant acceptable to the City and retained by the City at the applicant's expense. (OPA 23)

- d) Development of a new land use or a new or replacement building on an existing lot that require(s) water and/or sewage servicing, may only be permitted where it has been determined by the requirements of Policies C.5.1.1 a) and b) that the soils and size of the lot are sufficient to accommodate the water system and sewage disposal system within acceptable levels of on-site or off-site impacts including nitrate impact, and shall include sufficient land for a reserve discharge site or leaching bad. The maximum lot size shall be in accordance with F.1.14.2.1 f). (OPA 26)
- e) The private water supply and sewage disposal systems shall be capable of sustaining the proposed and existing uses within acceptable levels of on-site and off-site water quantity and quality impacts, including nitrate impact;
- g) The existing or proposed water supply system shall include a well with sufficient quantity of water and with potable water supply to sustain the use. A cistern system that meets current accepted standards, may, to the satisfaction of the City, be an additional component of the water supply system. (OPA 26)”
- h) Notwithstanding Policy C.5.1.1 g), a cistern that meets accepted standards may be used as a primary water source in the following circumstances: (OPA 18)
 - i) The building of a dwelling on an existing lot in accordance with Policy F.1.12.6, where insufficient water supply is due to the impacts of dewatering for mineral aggregate extraction as demonstrated by a quarry area of influence study, approved by the Province and provided by the proponent.
 - ii) Redevelopment of an existing use on an existing lot, which is serviced by an existing water cistern, provided there is no negative impact of the proposal on the cistern.
 - iii) New development on an existing lot if it is demonstrated by an applicant, through submission of evidence in the form of a

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well test, hydrogeological study or other, that groundwater quality or quantity is inadequate to support the use, to the satisfaction of the City.

- iv) The severance of an existing dwelling in accordance with Section F.1.14.2, serviced by an existing water cistern, provided there is no negative impact on the cistern.”

Staff note that the Minor Variance application is to permit an additional dwelling unit within an existing single detached dwelling on a lot with an area of 0.15 hectares. Per Policy C.3.1.2 d) of the Rural Hamilton Official Plan an additional dwelling unit may be permitted within a single detached dwelling on a lot with a minimum size of 0.6 ha, provided it complies with all other applicable policies and Zoning By-law regulations. Staff note that the proposal does not meet the criteria identified in Policy C.3.1.2 d), with the subject property being undersized compared to the minimum required lot area of 0.6 hectares.

In addition, Policy C.5.1.1 d) of the Rural Hamilton Official Plan only permits development of a new land use on an existing lot where it has been determined by the requirements of Policies C.5.1.1 a) and b) that the soils and size of the lot are sufficient to accommodate the water system and sewage disposal system within acceptable levels of on and off-site impacts, including nitrate impacts. Additionally, there must be sufficient land for a reserve discharge site or leaching bed.

Source Protection Planning staff recommended denial of the Minor Variance application. The subject property is not of a size sufficient to sustainably support an additional dwelling unit, per Section C.5.1 Private Water and Wastewater Services.

As such, Source Protection Planning and Development Planning staff are of the opinion that the Minor Variance application does not maintain the general intent of the Rural Hamilton Official Plan. The proposal does not comply with the policies regarding additional dwelling units in the “Agriculture” designation nor does it comply with the sustainable private servicing policies found in Section C.5.1, Private Water and Wastewater Services.

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

The subject property is zoned Agriculture (A1) Zone. Staff note that the minimum lot area for single detached dwellings within the Agriculture (A1) Zone is 0.4 hectares and the minimum lot area for additional dwelling units within the Agriculture (A1) Zone is 0.6 hectares. The subject property is an existing lot of record that has a lot area of 0.15

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hectares. Minor Variance application GL/A-24:09 was submitted to seek relief from the minimum lot area requirement for an additional dwelling unit.

RELEVANT CONSULTATION

- Corporate Services Department, Legal Services Division; and,
- Public Works Department, Hamilton Water Division, Watershed Management Section, Source Protection Planning Group.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The proposed Minor Variance application does not meet the four tests of a minor variance as described in Section 45(1) of the *Planning Act* on the basis that the proposal does not meet the private servicing policies of the Rural Hamilton Official Plan or minimum lot area requirements of the Zoning By-law. These requirements are meant to ensure rural properties can sustainably and safely support private water and wastewater services for existing and proposed residential uses.

Based on the foregoing, it is appropriate for the City to appeal the Committee of Adjustment's approval of Minor Variance application GL/A-24:09 to the Ontario Land Tribunal.

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 decision to permit the Minor Variance application.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A" to Report PED25009 – Location Map
- Appendix "B" to Report PED25009 – Staff Comments for GL/A-24:09
- Appendix "C" to Report PED25009 – GL/A-24:09 Minor Variance Application
- Appendix "D" to Report PED25009 – GL/A-24:09 Committee of Adjustment Decision

DB/mb