

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 13
COMMITTEE DATE: May 17, 2011	
SUBJECT/REPORT NO: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application DN/A-11:08, Sisters of St. Joseph (Owner), 154 and 574 Northcliffe Avenue (Dundas) (PED11080) (Ward 13)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Daniel Barnett (905)-546-2424, Ext.4445
SIGNATURE:	

RECOMMENDATION:

That Council agrees to the following actions, as detailed in Report PED11080, respecting the appeal of City of Hamilton Committee of Adjustment Minor Variance Application DN/A-11:08 (Sisters of St. Joseph, Owner), 154 and 574 Northcliffe Avenue (Dundas), as shown on Appendix "A" to Report PED11080, 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 Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Application DN/A-11:08.
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Ontario Municipal Board (OMB) Hearing in opposition to the decision of the Committee of Adjustment to approve Application DN/A-11:08.

EXECUTIVE SUMMARY

Application DN/A-11:08, to permit a commercial school and dormitories within an existing building occupied by a religious organization, was considered by the City of Hamilton Committee of Adjustment on February 10, 2011. Comments to the Committee of Adjustment from the Planning Division did not support the application, as it was the opinion of staff that the proposal does not have regard to the Parkway Belt West Plan, is not consistent with the Provincial Policy Statement, does not conform to the policies of the Hamilton-Wentworth Official Plan, and does not conform to the policies of the Town of Dundas Official Plan (see Appendix "B"). The Committee of Adjustment approved the minor variance application for the reasons set out in Appendix "C". Due to the appeal period, Planning and Economic Development staff 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. It should be noted that the decision has also been appealed by a local resident.

Alternatives for Consideration - See Page 12.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: Planning and Economic Development Department staff has submitted the required fee of \$125.00 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. In addition, because of staffing constraints in the Legal Department and a high volume of appeals, outside legal counsel may also have to be retained. The hearing would likely take between one to three days. The cost for external legal counsel would be several thousand dollars per day, or greater. In keeping with the funding source for other appeals where Council authorized the retainer of outside consultants, the amount required to retain such experts to support the City's position before the OMB would be funded first, through the 2011 Budget; second, through the year-end Corporate Surpluses; and lastly, through the Tax Stabilization Reserve.

Staffing: One representative each from Development Planning and Legal Services would be required for preparation and attendance at an OMB Hearing. However, as indicated above, Legal Services is currently experiencing staffing constraints and a high volume of hearings. It is highly likely that external legal counsel may need to be retained with respect to this appeal. One member of Planning staff would attend as an expert witness at the hearing should Council support Option 1.

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Legal: No legal implications are expected.

HISTORICAL BACKGROUND (Chronology of events)

Proposal

The subject property is located at 154 and 574 Northcliffe Avenue (Dundas) (see Appendix “A”).

The proposed variances are to permit an existing building occupied by a religious organization (Sisters of St. Joseph Convent) to also be used for a dormitory, together with teaching facilities for a commercial school (Columbia International College of Canada).

To facilitate the use of a dormitory and teaching facilities for a commercial school within an existing building occupied by a religious organization, the applicant requested 2 variances to add the use within the existing building and to permit an existing driveway to be used for both existing and proposed uses. The applicant requested that:

1. A portion of Building B shall be used for a dormitory, together with teaching facilities for a commercial school (Columbia International College of Canada), notwithstanding that the site-specific “PPS/S-56” Zone only permits those uses existing at the date of the passing of the By-law (February 15, 1993) and those determined by the Committee of Adjustment to be similar to the purpose for which the land, building, or structure was used on the day the By-law was passed; and,
2. An existing driveway located on lands zoned “PPS/S-56” and “U/S-57” shall be used to access all uses (both the existing and proposed) in both Buildings A and B notwithstanding that a religious organization (Sisters of St. Joseph Convent and Sisters of Precious Blood Convent) and a dormitory, together with teaching facilities for a commercial school (Columbia International College of Canada), are not permitted in both zones.

The application was reviewed against all applicable planning policy documents, which included the Parkway Belt West Plan, the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the Town of Dundas Official Plan, and the Town of Dundas Zoning By-law. Planning Division staff recommended denial of the application on the basis of non-conformity with the above noted policy documents due to a lack of information and the broad scope of the proposed variances. As the proposed variances would permit the establishment of a commercial school and dormitories without any restrictions to the number of classes or number of dormitory residents, and as staff has not been provided with any information to justify that the proposed use would not cause compatibility, servicing, traffic, or environmental problems, the proposal is not consistent

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with the Provincial Policy Statement and does not conform to the policies of the Town of Dundas Official Plan.

The Committee of Adjustment, at its meeting of February 10, 2011, approved the minor variance application (see Appendix "C").

POLICY IMPLICATIONS

Niagara Escarpment Plan

On July 1, 2010, the subject lands were included within the Niagara Escarpment Planning Area through Ontario Regulation 235/10.

Parkway Belt West Plan

The portion of the subject lands containing Building B are designated as "Special Complementary Use Area" and are located within the Escarpment Link under the Parkway Belt West Plan. The following policies, among others, would apply:

"6.2.3 n) "In the Special Complementary Use Area west of Highway 6, permit uses set out in Sub-section 5.5.1.

Subject to Sub-section 5.1.3, the Plan permits some further development in this area. The density of this development should be similar to that generally existing in the area on the date of adoption of the Plan. A comprehensive study setting out the appropriate conditions for the preparation of a comprehensive restricted area By-law and development agreements under Section 35a of the Planning Act shall be prepared in consultation with municipal authorities, Provincial ministries, and other concerned persons and agencies. The plan does not permit uses beyond those set out in Sub-section 5.5.1 until such a study is carried out and the required By-law and development agreements have been prepared in consultation with the above-mentioned participants, and subsequently approved by the appropriate authorities.

Such development shall meet, to the maximum possible degree, the following conditions:

- i) Ensure that development in the vicinity of Patterson Road, Valley Road, and the northern limit of the Royal Botanical Gardens be designed so as to preserve the existing open-space setting of the Niagara Escarpment, Hopkins Creek Valley, and the Royal Botanical Gardens, including Cootes Paradise.

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- ii) Ensure free movement of wildlife through major valleys from the wildlife sanctuary of Cootes Paradise to the Niagara Escarpment and the rural areas beyond.
- iii) Ensure that any development adjacent to major valleys is designed and located in such a manner as to protect the valleys physically and visually, and to enhance them as important natural open-space areas within the area covered by the Plan.
- iv) Protect wooded areas, hedgerows, and trees.
- v) Minimize the number of roads crossing the major valleys.
- vi) Minimize run-off, siltation, and other forms of pollution of Cootes Paradise.
- vii) Satisfy any other conditions required to secure the provisions of the Plan.

5.5.1 Subject to Sub-section 5.5.3, the uses permitted in the General Complementary Use Area are:

- a) Existing Use: All legally existing uses of land, buildings, and structures subject to the provisions of the Planning Act, R.S.O. 1970, c. 349 respecting legal non-conforming uses.
- b) Low-density, low-intensity agricultural uses, including buildings and structures accessory to the farm operation, provided that such uses comply with the Agricultural Code of Practice for Ontario. Such uses shall meet, to the maximum possible degree, the following conditions:
 - i) The proposed uses of land, buildings, or structures secure the open space character of the area by low-density development.
 - ii) Major natural features, such as streams, valleys, tree strands, hedgerows, and orchards, are preserved.
 - iii) The uses permitted enhance the open-space character by landscaping, tree planning, berms, and screening.

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- iv) The location and design of buildings and structures are such that the open-space character of the area is secured.
- v) Any other conditions required to secure the provisions of the Plan are satisfied.
- c) Institutional Uses: Low-density, low intensity outdoors institutional uses and associated buildings and structures that meet to the maximum possible degree the conditions set out in Paragraph 5.5.1(b).
- g) Other uses of land, buildings, or structures, except residential and industrial, provided that the following conditions are met to the maximum possible degree:
 - i) The proposed uses of land, buildings, or structures secure the open-space character of the area by very low-density development.
 - ii) Major natural features, such as streams, valleys, tree stands, hedgerows, and orchards, are preserved.
 - iii) The uses enhance the open-space character by landscaping, tree planting, berms, and screening.
 - iv) The location and design of buildings and structures are such that open-space character of the area is secured.
 - v) An agreement under Sub-section 5.1.4 is entered into, wherever necessary, to achieve the above conditions.
- i) Additions to uses, buildings, and structures, subject to the following conditions:
 - i) All natural features are preserved to the maximum possible degree.
 - ii) The existing open-space character of the area is retained to the maximum possible degree.
 - iii) The resulting buildings and structures have a low lot coverage and are of limited height and low mass appearance.

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- iv) Any other conditions required to secure the provision of the Plan are satisfied.
- j) Change of uses of land, buildings, and structures, subject to the following conditions:
 - i) New uses are as compatible with the provisions of the Plan as existing uses, or more compatible.
 - ii) All natural features are preserved to the maximum possible degree.
 - iii) Any other conditions required to secure the provisions of this Plan are satisfied.”

As the proposed variance is for a change of use for an existing building for a full educational establishment with an unspecified number of students living in an on-site dormitory, and as no information has been submitted to determine if the proposal is as compatible or more compatible than existing uses, the proposal does not conform to the policies of the Parkway Belt West Plan.

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS).

“1.1.4.1 In rural areas located in municipalities:

- a. permitted uses and activities shall relate to the management or use of resources, resource-based recreational activities, limited residential development, and other rural land uses;
- b. development shall be appropriate to the infrastructure which is planned or available, and avoid the need for the unjustified and/or uneconomical expansion of this infrastructure; and,
- d. development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted.”

As the proposed variance would permit the existing building to be used for a full educational establishment and an unspecified number of students living in an on site dormitory, and as no information has been submitted to determine if the proposed

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development is compatible with the rural landscape and can be sustained by rural service levels, the proposal is not consistent with the Provincial Policy Statement.

Places to Grow Plan

The application has been reviewed with respect to the Places to Grow Plan. The following policies would apply:

“2.2.9 Rural Area

2) Development outside the settlement areas may be permitted in rural areas in accordance with Policy 2.2.2.1(i).

2.2.2.1i) Directing development to settlement areas, except where necessary for development related to the management or use of resources, resource-based recreational activities, and rural land uses that cannot be located in settlement areas.”

As the proposed variance would permit the existing building to be used for a full education establishment and an unspecified number of students living in an on site dormitory, and as the applicant has not demonstrated that the use cannot be located in settlement areas, the proposed use would not conform to the policies of the Places To Grow Plan.

Hamilton-Wentworth Official Plan

The subject property is designated “Parkway Belt West Policy Area” within the Hamilton-Wentworth Official Plan.

“C-1.6 The Parkway Belt West Plan provides a system of linked natural areas and protected utility corridors which originates in Dundas and runs through the Regions of Halton, Peel, and York. To protect the lands in Hamilton-Wentworth which form part of this system, the Region will:

1.6.1 Apply the provisions of the Parkway Belt West Plan to development of lands that are identified on Map No. 2. In the case of discrepancy between the Parkway Belt West Plan and this Plan, the Parkway Belt West Plan, as may be amended from time to time, will prevail.”

As the proposed variance would permit the existing building to be used for a full education establishment and an unspecified number of students living in an on site dormitory, and as the applicant has not demonstrated that the proposal will conform to the policies of the Parkway Belt West Plan, and as the Hamilton-Wentworth Official Plan

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requires conformity to the Parkway Belt West Plan for those properties designated Parkway Belt West Policy Area, the proposal does not conform to the policies of the Hamilton-Wentworth Official Plan.

Town of Dundas Official Plan

The subject property is designated “Rural Settlement Area” in the Town of Ancaster Official Plan.

- “3.11.1 To preserve the character and environmental quality of the rural area of the Town.
- 3.11.2.1 To minimize future servicing costs by limiting additional development outside of the current urban boundary.
- 3.11.2.2 To preserve the environmental quality of the rural areas of the Town.
- 3.11.2.3 To support the objectives and policies of the Niagara Escarpment Plan and the Parkway Belt West Plan.
- 3.11.2.4 To ensure that any future development in the rural area proceeds only where it is in accordance with this Plan, the Regional Plan, and the Niagara Escarpment Plan, where applicable. Development proposals not in accordance with these plans may only proceed by amendment to this Plan, the Regional Plan, or where appropriate, an amendment to the Niagara Escarpment Plan, subject to a comprehensive planning and environmental analysis.
- 3.11.3.1 The permitted uses will generally consist of agriculture (including cultivated field crops, animal husbandry, perennial forage crops, greenhouses and nurseries), forestry and reforestation projects, wildlife, including wildlife reserves, and limited single-detached residential development subject to the requirements of Section 3.11.4 Niagara Escarpment Plan Area, the requirements of the Parkway Belt West Plan, and the applicable provisions of the Regional Plan and this Plan.”

As the proposed variance would permit the existing building to be used for a full education establishment and an unspecified number of students living in an on site dormitory, and as the applicant has not demonstrated that the proposed conversion will preserve the character and environmental quality of the rural area, and as the proposal does not conform to the policies of the Parkway Belt West Plan and the Hamilton-Wentworth Official Plan, the proposed conversion does not conform to the policies of the Town of Dundas Official Plan.

Rural Hamilton Official Plan (Council Adopted)

The subject property is designated as “Rural” and “Open Space” within the Council Adopted Rural Hamilton Official Plan.

“D.4.1.2 Institutional uses serving the rural community are permitted provided the following conditions are met:

a) The institutional use must be primarily related to and directly serving the needs of the rural population. Permitted rural institutional uses shall be limited to schools, school bus depots, small scale places of worship, rural community centres, and residential care facilities; and,

b) The use shall be subject to the policies of Section D.4.1.1 b) to e).

D.4.1.1 b) The use shall not adversely impact surrounding agricultural uses or existing farm operations. Where non-farm development is proposed on lands used for agriculture, it must be demonstrated, to the satisfaction of the City, that no reasonable alternative exists and the need and demand for the use at the proposed location is justified for the amount of land proposed based on existing undeveloped lands available for development in Rural Settlement Areas designation and the Urban Area;

d) The development shall be compatible with surrounding land uses and the rural landscape.

C.1.3 The Parkway Belt West Plan provides a system of linked natural areas and protects utility corridors which extend from Dundas through the Regions of Halton, Peel, and York.

C.1.3.1 The provisions of the Parkway Belt West Plan shall apply to development of lands that are identified as Parkway Belt West Plan Area on Schedule A - Provincial Plans, of this Plan. In the case of discrepancy between the Parkway Belt West Plan and this Plan, the most restrictive policies shall prevail.”

As the proposed variance would permit the existing building to be used for a full education establishment and an unspecified number of students living in an on site dormitory, as the applicant has not demonstrated that the proposed use will meet the needs of the rural community, nor that the proposed use will be compatible with surrounding land uses and the rural landscape, and as the applicant has not

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demonstrated conformity with the Parkway Belt West Plan, the proposal does not conform to the policies of the Rural Hamilton Official Plan.

Town of Dundas Zoning By-law No. 3561-86

The subject property is zoned Open Space - Conservation "OS" Zone, Public and Private Service "PPS/S-56" Zone, Public Utilities "U/S-57" Zone, and Rural "RU/S-58" Zone in the Town of Dundas Zoning By-law, to which the proposed use does not conform.

The "PPS/S-56" Zone only permits those uses existing at the date of the passing of the By-law (February 15, 1993) and those determined by the Committee of Adjustment to be similar to the purpose for which the land, building, or structure was used on the day the By-law was passed. As the proposed variance would permit a full commercial school and an unspecified number of dormitory spaces, the relief requested for the proposed development is not considered minor in nature, nor desirable and appropriate for the use of the lands, and does not maintain the intent and purpose of the Zoning By-law.

RELEVANT CONSULTATION

- Legal Services Division.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The approved variance would permit a full commercial school with no restrictions with respect to the number of class rooms, staff, or students to operate within Building 'B' (see Appendix "D"), and would also permit student dormitories within Building 'B' with no restriction with respect to the number of students.

At the Committee of Adjustment meeting on February 10, 2011, the applicant stated that there would be a maximum of 32 students staying within the dormitory, and that there would be only 1 evening English as a Second Language (ESL) class available to the dormitory students (see Appendix "E"). The variances were approved without restricting the student dormitory use to a maximum of 32 students or the commercial school component of the proposal to a maximum of 1 classroom. In the absence of these restrictions and/or the absence of supporting documentation to demonstrate the compatibility of a full school and dormitory use with respect to character, impact on abutting uses, traffic, the environment, and private services, the proposed conversion from a religious organization to a commercial school and dormitories would not be minor in nature, would not be desirable and appropriate for the use of the lands, and would not

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meet the intent and purpose of the Official Plan and Zoning By-law. Therefore, the proposed conversion does not meet the four tests of a minor variance under Section 45 of the Planning Act.

If the applicant wishes to establish a full commercial school with dormitories on-site, it should appropriately be dealt with through an application for rezoning along with proper planning justification and supporting information.

ALTERNATIVES FOR CONSIDERATION:

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Option 1

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the OMB Hearing in opposition to the approved variance application, as recommended in this Report.

Option 2

Council may direct staff to withdraw the appeal and have no Legal or Planning representative at the Hearing.

Option 3

Council may direct staff to withdraw the appeal and direct Legal Services staff to retain an outside Planner and attend the OMB in support of the Committee of Adjustment decision to approve the proposed variances with respect to the third party appeal.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ◆ Effective and sustainable Growth Management.

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Environmental Stewardship

- ◆ Natural resources are protected and enhanced.
- ◆ Reduced impact of City activities on the environment.
- ◆ Aspiring to the highest environmental standards.

Healthy Community

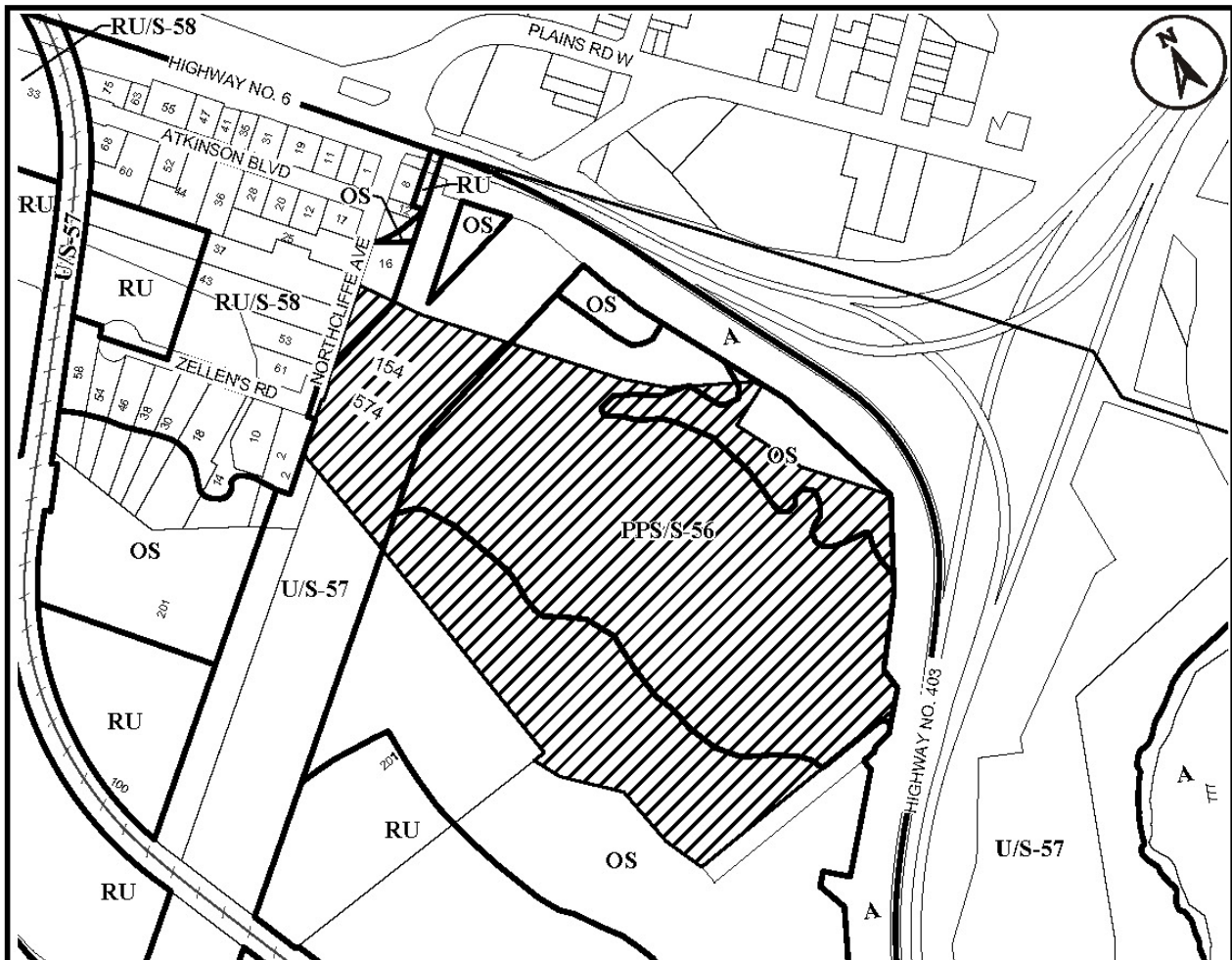
- ◆ Plan and manage the built environment.

APPENDICES / SCHEDULES

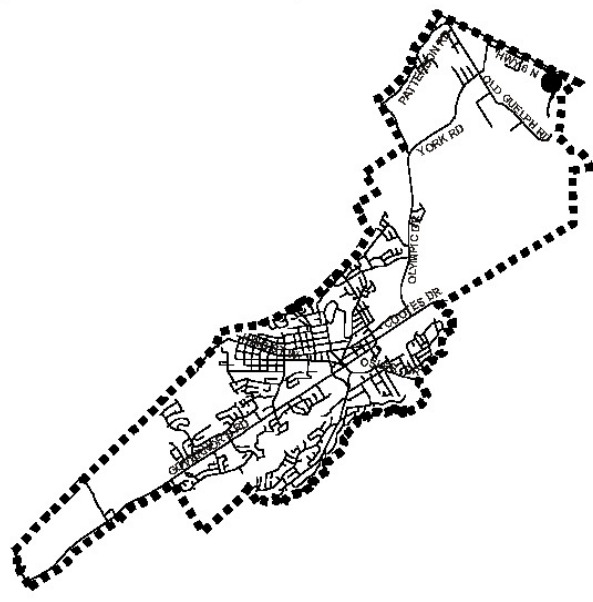
- Appendix "A": Location Map
- Appendix "B": Development Planning Comments
- Appendix "C": DN/A-11:08 Committee of Adjustment Decision
- Appendix "D": Minor Variance Sketch
- Appendix "E": DN/A-11:08 February 10, 2011, Minutes of the Committee of Adjustment

:DB

Attachs. (5)



● Site of the Application



Ward 13 Key Map

N.T.S.

Location Map



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
DN/A-11-08

Date:
April 20, 2011

Appendix "A"

Scale:
N.T.S.

Planner/Technician:
DB/NB

Subject Property



154 and 574 Northcliffe Avenue, Dundas

February 10th, 2011

DN/A-11:08 (154 and 574 Northcliffe Avenue, Dundas)

PLANNING and ECONOMIC DEVELOPMENT DEPARTMENT

Development Planning – West:

The applicant requires minor variance approval in order to permit the conversion of a building from a religious organization (Convent) to a dormitory and teaching facility for a commercial school.

Niagara Escarpment Plan

Staff advise that on July 1, 2010 the subject lands were included within the Niagara Escarpment Planning Area through Ontario Regulation 235/10. As such, please refer to any comments provided by the Niagara Escarpment Commission.

The portion of the subject lands containing Building B are designated as "**Special Complementary Use Area**" and are located within the Escarpment Link under the Parkway Belt West Plan.

Policy 6.2.3 n) states that in the Special Complementary Use Area west of Highway 6, permit uses set out in Subsection 5.5.1.

Subject to Subsection 5.1.3, the Plan permits some further development in this area. The density of this development should be similar to that generally existing in the area on the date of adoption of the Plan. A comprehensive study setting out the appropriate conditions for the preparation of a comprehensive restricted area by-law and development agreements under Section 35a of the Planning Act shall be prepared in consultation with municipal authorities, Provincial ministries, and other concerned persons and agencies. The plan does not permit uses beyond those set out in Subsection 5.5.1 until such a study is carried out and the required by-law and development agreements have been prepared in consultation with the above-mentioned participants, and subsequently approved by the appropriate authorities.

Such development shall meet to the maximum possible degree the following conditions:

- i) Ensure that development in the vicinity of Patterson Road, Valley Road, and the northern limit of the Royal Botanical Gardens be designed so as to preserve the existing open-space setting of the Niagara Escarpment, Hopkins Creek Valley, and the Royal Botanical Gardens, including Cootes Paradise.
- ii) Ensure free movement of wildlife through major valleys from the wildlife sanctuary of Cootes Paradise to the Niagara Escarpment and the rural areas beyond.

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- iii) Ensure that any development adjacent to major valleys is designed and located in such a manner as to protect the valleys physically and visually and to enhance them as important natural open-space areas within the area covered by the Plan.
- iv) Protect wooded areas, hedgerows, and trees.
- v) Minimize the number of roads crossing the major valleys.
- vi) Minimize run-off, siltation, and other forms of pollution of Cootes Paradise.
- vii) Satisfy any other conditions required to secure the provisions of the Plan.

Staff note, that Policy 5.1.3 states that no municipality or local board shall carry out an undertaking that conflicts with the Plan, and no by-law shall be passed for any purpose that is in conflict with the Plan. The Minister may, upon request from municipalities, declare by-laws, improvements, or undertakings to conform with the intent and purpose of the Plan. Municipalities are not required to permit every land use that may be permitted under this Plan. By-laws implementing the Plan may be more restrictive than the provisions of the Plan, provided that they are consistent with its intent and purpose.

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS).

Staff note that Policy 1.1.4.1 a) states that in rural areas located in municipalities permitted uses and activities shall relate to the management or use of resources, resource-based recreational activities, limited residential development and other rural land uses. In addition, Policy 1.1.4.1 b) states that development shall be appropriate to the infrastructure which is planned or available, and avoid the need for the unjustified and/or uneconomical expansion of this infrastructure.

Hamilton-Wentworth Official Plan

The subject lands are designated as "**Parkway Belt West Policy Area**" within the Hamilton-Wentworth Official Plan. Policy C-1.6.1 states that to protect the lands in Hamilton-Wentworth which form part of this system, the Region will apply the provisions of the Parkway Belt West Plan to development of lands that are identified on Map No. 2. In the case of discrepancy between the Parkway Belt West Plan and this Plan, the Parkway Belt West Plan, as may be amended from time to time, will prevail.

Ministerial approved Rural Hamilton Official Plan (for information purposes only):

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The subject lands are designated as "**Rural**" and "**Open Space**", are located within the Parkway Belt West Plan Area on Schedule A and are identified as "**Special Policy Area A**" on Map A – Special Policy Areas of the Ministerial approved Rural Hamilton Official Plan.

Policy C.1.3.1 states that the provisions of the Parkway Belt West Plan shall apply to development of lands that are identified as Parkway Belt West Plan Area on Schedule A – Provincial Plans, of this Plan. In the case of discrepancy between the Parkway Belt West Plan and this Plan, the most restrictive policies shall prevail provided that they are consistent with its intent and purpose.

In addition, Volume 3 of this Plan addresses Rural Special Policy Areas and states that Special Policy Areas (SPA) are geographic areas where additional studies are required to determine ultimate land uses, establish detailed and specific policies to address unique local conditions that are not presently reflected by the Volume 1 or 2 of this Plan. The following policies for each Special Policy Area provide direction for interim land use decisions and clarify the scope and direction of future studies and amendment procedures that will address relevant land use, infrastructure, transportation, environment, urban design or other issues in future.

Finally, Policy A.1.1 states that notwithstanding Section C.1.3.1 or any other applicable policies in Volume 1 of this Plan, the lands identified as Special Policy Area A on Map A - Special Policy Areas, remain subject to provisions of the Official Plan of the former Town of Dundas as set out by the Ontario Municipal Board Decision (dated June 28, 1995). Following completion of a comprehensive growth management study known as GRIDS (Growth Related Integrated Development Strategy), Council has approved SPA A to remain as a part of the Rural Area. To reflect the unique circumstances of these lands and permanently resolve their status under the Provincial Parkway Belt West Plan, the City shall conduct future studies, prepare Secondary Plan policies and undertake community consultation to adopt a future amendment to this Plan for SPA A in conformity with applicable provincial plans and policies.

Town of Dundas Official Plan

The subject property is designated "Rural" in the Town of Dundas Official Plan. Policy 3.11.2 states "General Objectives:

- 3.11.2.1 To minimize future servicing costs by limiting additional development outside of the current urban boundary.
- 3.11.2.2 To preserve the environmental quality of the rural areas of the Town.
- 3.11.2.3 To support the objectives and policies of the Niagara Escarpment Plan and the Parkway Belt West Plan.

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- 3.11.2.4 To ensure that any future development in the rural area proceed only where it is in accordance with this Plan, the Regional Plan and the Niagara Escarpment Plan, where applicable. Development proposals not in accordance with these plans may only proceed by amendment to this Plan, the Regional Plan, or where appropriate an amendment to the Niagara Escarpment Plan subject to a comprehensive planning and environmental analysis."

Policy 3.11.3.1 states "The permitted uses will generally consist of agriculture (including cultivated field crops, animal husbandry, perennial forage crops, greenhouses and nurseries), forestry and reforestation projects, wildlife, including wildlife reserves, and limited single detached residential development subject to the requirements of section 3.11.4, Niagara Escarpment Plan Area, the requirements of the Parkway Belt West Plan and the applicable provisions of the Regional Plan and this Plan."

As the proposal is to convert a building for an existing religious organization to a dormitory and teaching facility for a commercial school and as the applicant has not demonstrated that the conversion will minimize future servicing costs and preserve environmental quality, the proposal does not conform to the policies of the Town of Dundas Official Plan.

Town of Dundas Zoning By-law

The subject property is zoned Open Space – Conservation "OS" Zone, Public and Private Service "PPS/S-56" Zone, Public Utilities "U/S-57" Zone, and Rural "RU/S-58" Zone in the Town of Dundas Zoning By-law, to which the proposed use does not conform.

Variances 1 & 2:

The Zoning By-law only permits uses existing at the date of the passing of the By-law (February 15, 1993) and those determined by the Committee of Adjustment to be similar to the purpose for which the land, building, or structure was used on the day the by-law was passed.

The applicant has not provided any information to demonstrate whether the proposed commercial school and dormitory will be similar to the use that existed on the day the by-law was passed, nor has the applicant provided any information to demonstrate whether the impacts of the commercial school and dormitory will be similar to the use that existed on the day the by-law was passed.

It is the opinion of staff, a commercial school and dormitory is likely to be a more intense use than a religious organization (Convent) and will therefore have a greater impact with respect to traffic, parking, servicing, the environment, etc. In the absence of information

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demonstrating that the proposed commercial school and dormitory will not have a greater impact, staff cannot support the proposed variances. Therefore, staff recommends that the applicant consider tabling the application to provide staff with further information.

Recommendation:

Staff recommends that the applicant **Table** the application in order to provide staff with further information. If the applicant wishes to proceed with the application at this time staff make the following recommendation:

It is the opinion of staff that the proposed variances are not minor in nature, are not desirable and appropriate for the use of the lands, and do not meet the intent and purpose of the Official Plan and Zoning By-law. Therefore, staff recommends that the proposed variances be **Denied**.

Building Services Division:

Building A (known municipally as 154 Northcliffe Avenue) and Building B (574 Northcliffe Avenue) have both been used by religious organizations (convents/monasteries known as the Sisters of Precious Blood and the Sisters of St. Joseph respectively) since prior to February 15, 1993.

Existing Buildings A and B are located on the portion of the lot zoned "PPS/S-56". The driveway accessing both buildings are located on the portion of the lands zoned "PPS/S-56" and "U/S-57".

As details respecting the number of residents and gross floor area within the existing convent/monastery and the number of residents and teaching areas for the proposed commercial school (Columbia International College of Canada) have not been provided, required parking cannot be determined. Additionally, a site plan showing the existing parking area has not been submitted. As such, if the required parking spaces for all intended/existing uses cannot be accommodated on the subject lands in compliance with zoning by-law requirements, further variance may be required.

A building permit may be required for the change of use from a convent to a dormitory together with teaching facilities for a commercial school (Columbia International College of Canada).

The lands are subject to Site Plan Control.

Development Engineering – West:

No comment.

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Hamilton Municipal Parking System (Parking Services):

No concerns.

PUBLIC WORKS DEPARTMENT

Traffic, Engineering and Operations Division:

No comment.

See attached for additional comments.



Committee of Adjustment
Hamilton City Hall
71 Main Street West, 5th floor
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. DN/A-11:08
SUBMISSION NO. A-08/11

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 3581-86, as amended, of the City of Hamilton (formerly Dundas), Sections 6, 25, 27, 28, 29A and 32.

AND IN THE MATTER OF the Premises known as Municipal numbers 154 and 574 Northcliffe Avenue, formerly in the Town of Dundas, now in the City of Hamilton and in a "**OS**" (**Open Space - Conservation**) zone, "**PPS/S-56**" (**Public and Private Service**) zone, "**U/S-57**" (**Public Utilities**) zone and "**RU/S-58**" (**Rural**) zone district;

AND IN THE MATTER OF AN APPLICATION by the agent IBI Group (c/o John Ariens) on behalf of the owner Sisters of St. Joseph (c/o Mike McDonald), for relief from the provisions of the Zoning By-Law No. 3581-86, as amended, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the existing Building B which is occupied by a religious organization (Sisters of St. Joseph Convent) to also be used for a dormitory together with teaching facilities for a commercial school (Columbia International College of Canada) notwithstanding that:

1. A portion of Building B shall also be used for a dormitory together with teaching facilities for a commercial school (Columbia International College of Canada) notwithstanding that the site-specific "PPS/S-56" zone only permits those uses existing at the date of the passing of the by-law (February 15, 1993) and those determined by the Committee of Adjustment to be similar to the purpose for which the land, building or structure was used on the day the by-law was passed; and,
2. An existing driveway located on lands zoned "PPS/S-56" and "U/S-57" shall be used to access all uses (both the existing and proposed) in both Buildings A and B notwithstanding that a religious organization (Sisters of St. Joseph Convent and Sisters of Precious Blood Convent) and a dormitory together with teaching facilities for a commercial school (Columbia International College of Canada) are not permitted in both zones.

NOTES:

- iv) Building A (known municipally as 154 Northcliffe Avenue) and Building B (574 Northcliffe Avenue) have both been used by religious organizations (convents/monasteries known as the Sisters of Precious Blood and the Sisters of St. Joseph respectively) since prior to February 15, 1993.
- v) Existing Buildings A and B are located on the portion of the lot zoned "PPS/S-56". The driveway accessing both buildings is located on the portion of the lands zoned "PPS/S-56" and "U/S-57".
- vi) As details respecting the number of residents and gross floor area within the existing convent/monastery and the number of residents and teaching areas for the proposed commercial school (Columbia International College of Canada) have not been provided, required parking cannot be determined. Additionally, a site plan showing the existing parking area has not been submitted. As such, if the required parking spaces for all intended/existing uses cannot be accommodated on the subject lands in compliance with zoning by-law requirements, further variance may be required.

THE DECISION OF THE COMMITTEE IS:


That the variances, as set out in paragraph three above, are **GRANTED** for the following reasons:

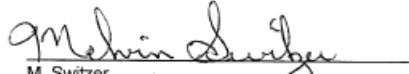
1. The Committee having regard to the evidence is of the opinion that the relief granted is of a minor nature.
2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.

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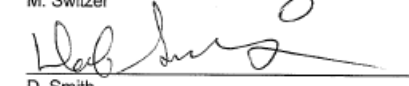
3. The Committee having regard to the evidence is satisfied that there will be no adverse impact on any of the neighbouring lands.

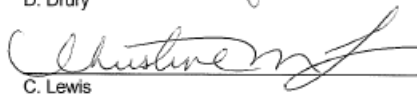
DATED AT HAMILTON this 10th day of February, 2011.


M. Dudzic (Chairman)



M. Switzer


D. Drury


D. Smith


C. Lewis

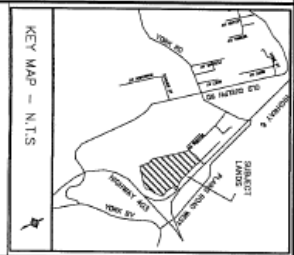

D. Serwatak


L. Tew


L. Gaddy

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS **March 2nd, 2011**.

NOTE: This decision is not final and binding unless otherwise noted.



KEY MAP - N.T.S.

VARIANCE RELIEF:
PURSUANT TO SECTION 45.2b TO ALLOW DORMITORY BUILDINGS TO BE USED FOR A SIMILAR DORMITORY USE FOR INTERNATIONAL STUDENTS AND TO ALSO ALLOW FOR TEACHING FACILITIES

IBI GROUP
SUITE 206, EAST WING
380 JAMES STREET NORTH
HAMILTON, ONTARIO
(905) 566-1010
www.ibigroup.com

SCALE: 1/8" = 1'-0"
DATE: JANUARY 10, 2011
PROJECT No.: 20098
574 NORTHCLIFFE AVENUE
DUNDAS
MINOR VARIANCE
SKETCH

L&P SURVEY BY: AGENCY/CLIENT: [unreadable] DRAWN BY: [unreadable] CHECKED BY: [unreadable] DATE: [unreadable]
 L&P SURVEY BY: AGENCY/CLIENT: [unreadable] DRAWN BY: [unreadable] CHECKED BY: [unreadable] DATE: [unreadable]

*SKETCH
DN/A-11-08*

February 10th, 2011

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Sisters of St. Joseph (c/o Mike McDonald)
154 and 574 Northcliffe Avenue, Dundas

Appearances were:

S. Manchia & M. Johnston agents on behalf of the applicant;
M. McDonald (Sisters of St. Joseph. Interested parties were:
W. & J. Nancekivell, 10 Zellens Rd., Dundas, ON L9H 7A9

Those members present for the hearing of this application
were: M. Dudzic, (Chairman), V. Abraham, L. Gaddy, D. Serwatak,
D. Smith, M. Switzer, L. Tew, D. Drury, C. Lewis.

A summary comment from the Planning and Economic
Development Division together with comments from other
departments and agencies were entered into the record.

Letters were entered into the record from: nil

M. Johnston

- this is a unique application of a prestigious property located off of Hwy 6 and the 403
- the sisters have been located here since 1949
- presently, there are 43 sisters occupying the premises
- a great amount of time and money invested all these years to maintain the grounds
- this proposal will allow the sisters to generate some money by leasing property to Columbia students
- this proposal is not far off from what the sisters are doing today
- Building B is a three storey convent plus a basement
- the sisters dormitories are located on the second and third floors
- the ground floor and basement are comprised of a 17 bed infirmary, two chapels, two kitchens, conference rooms
- the convent has the ability to house 70-75 sisters, but only 43 remain

M. McDonald

- the majority of renovations took place in 2004 by adding the 17 bed infirmary
- now this part of building is underutilized which decreases the source of revenue
- dormitory will be for 32 students

M. Johnston

- Columbia International College has entered into an agreement where the students would occupy portion of the convent only the remainder would stay unchanged

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- the site specific public and private zone states that only the uses existing at the date of passing of the by-law and those determined by the Committee of Adjustment to be similar to the purpose for which the land, building or structure was used on the day the by-law was passed be permitted
 - this application under Section 45(2)(b) is requesting the Committee to allow dormitory and conference buildings to be used for educational and spiritual component
- D. Drury
(Committee member)
- does not see this request being any different that having 32 nuns attending the convent from other parts of the world for spiritual retreats
- W. Nancekivell
- does not have an objection to the use
 - his primary issue is traffic
 - what will be the mode of transportation used
 - would his offer the opportunity for other changes
 - the sister's property is a ways up from him, but traffic would be his only concern
- M. McDonald
- have the capacity for more than 32 students but intentions are for only 32 students and there will be only 1 bus/per day
 - 3 parking spots for staff
- D. Barnett
(Staff)
- staff's opinion that a commercial school and dormitory is likely to be a more intense use than a religious organization and therefore will impact traffic parking and servicing
 - staff is requesting that the application be tabled until the applicant can demonstrate that the proposed commercial school and dormitory will not have a greater impact
 - the applicant has not demonstrated whether the conversion will minimize future servicing costs and preserve environmental quality
- M. McDonald
- the septic bed has been approved by the Ministry of Environment
 - ability to provide 30,000L a day and know for a fact that the usage is under 10,000 presently
 - have retro-fitted every toilet with energy saving equipment

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S. Manchia

- are getting entangled on words
- application is to allow 32 international students lecturing and learning off campus there may be a portion being used for teaching English
- this is for sleeping accommodations; no changes to the use
- there is a time restraint and need ruling today
- can accommodate more than 75 nuns but only 43 nuns reside there today
- there will be no change to the interior portion for the nuns they will remain on the 3rd floor of the establishment

Following discussion it was moved by Mr. Drury and seconded by Mr. Serwatuk that the relief requested be **GRANTED** for the following reasons:

1. The Committee having regard to the evidence is of the opinion that the relief granted is of a minor nature.
2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee having regard to the evidence is satisfied that there will be no adverse impact on any of the neighbouring lands.

V. Abraham opposed the motion for approval.

CARRIED.