



CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT Planning Division

TO: Chair and Members Planning Committee	WARD AFFECTED: WARD 2
COMMITTEE DATE: September 7, 2011	
SUBJECT/REPORT NO: Heritage Permit Application HP2011-044 Under Part V of the <u>Ontario Heritage Act</u> for the Demolition of an Existing Detached Garage and the Erection of New Ancillary Structures at 265 MacNab Street South (Hamilton) (PED11146) (Ward 2)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Meghan House (905) 546-2424, Ext. 1202
SIGNATURE:	

RECOMMENDATION:

That Heritage Permit Application HP2011-044 be approved for the demolition of an existing detached garage and the erection of new ancillary structures at 265 MacNab Street South (Durand-Markland Heritage Conservation District), (Hamilton), as shown on Appendix "A" to Report PED11146, subject to the following conditions:

- (a) That the location, dimensions, materials, and design for the new ancillary structures, including a new shed and deck, are submitted, to the satisfaction and approval of the Heritage Permit Review Sub-committee and Planning staff, prior to submission as part of any application for a Building Permit and/or prior to the commencement of construction.
- (b) That the location, dimensions, materials, and design for any new hard surface areas, fencing, and major plantings are submitted, to the satisfaction and approval of the Heritage Permit Review Sub-committee and Planning staff, prior to installation.

SUBJECT: Heritage Permit Application HP2011-044 Under Part V of the Ontario Heritage Act for the Demolition of an Existing Detached Garage and the Erection of New Ancillary Structures at 265 MacNab Street South (Hamilton) (PED11146) (Ward 2) - Page 2 of 7

- (c) That construction and site alterations, in accordance with this approval, shall be completed no later than September 30, 2013. If the construction and site alterations are not completed by September 30, 2013, then this approval expires as of that date, and no alterations shall be undertaken without a new approval issued by the City of Hamilton.

EXECUTIVE SUMMARY

The subject property, located at 265 MacNab Street South (Hamilton), is designated as part of the Durand-Markland Heritage Conservation District under Part V of the Ontario Heritage Act. A Heritage Permit is required for the alteration of any part of the property, and for the erection or demolition of any structures or buildings on the property. The applicant is applying for the demolition of an existing detached garage and the erection of new ancillary structures in the rear yard. This application is considered to be worthy of support, subject to the conditions in the staff recommendation. The Heritage Permit Review Sub-committee and the Hamilton Municipal Heritage Committee have reviewed this application, and have advised conditional approval of the application.

Alternatives for Consideration - See Page 6.

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

Financial - None.

Staffing - None.

Legal - This Heritage Permit application has been processed and considered within the context of the applicable legislation.

Section 42(1) of the Ontario Heritage Act states that: "No owner of property situated in a Heritage Conservation District that has been designated by a municipality under this Part shall do any of the following, unless the owner obtains a permit from the municipality to do so:

1. Alter, or permit the alteration of, any part of the property other than the interior of any structure or building on the property; or,
2. Erect, demolish, or remove any building or structure on the property, or permit the erection, demolition, or removal of such a building or structure."

SUBJECT: Heritage Permit Application HP2011-044 Under Part V of the Ontario Heritage Act for the Demolition of an Existing Detached Garage and the Erection of New Ancillary Structures at 265 MacNab Street South (Hamilton) (PED11146) (Ward 2) - Page 3 of 7

Section 42(4) of the Ontario Heritage Act states that: “Within 90-days after the notice of receipt is served on the applicant under Sub-section (3), or within such longer period as is agreed upon by the applicant and the Council, the Council may give the applicant:

- (a) The permit applied for;
- (b) Notice that the Council is refusing the application for the permit; or,
- (c) The permit applied for, with terms and conditions attached.”

Section 42(4.1) of the Ontario Heritage Act states that: “If the Council of a municipality has established a Municipal Heritage Committee under Section 28, the Council shall, before taking any action under Sub-section (4) with respect to an application to demolish or remove any building or structure on property in a Heritage Conservation District, consult with its Municipal Heritage Committee.”

Section 42(5) of the Ontario Heritage Act states that: “If the Council fails to do any of the things mentioned in Sub-section (4) within the time period mentioned in Sub-section (4), the Council shall be deemed to have given the applicant the permit applied for.”

Section 42(16) of the Ontario Heritage Act states that: “The Council of a municipality may delegate, by By-law, its power to grant permits for the alteration of property situated in a Heritage Conservation District designated under this Part to an employee or official of the municipality if the Council has established a Municipal Heritage Committee and consulted with it before the delegation.” This power to consent to applications was granted to the Director of Planning by City of Hamilton By-law 05-364. However, Sub-section 42(17) of the Ontario Heritage Act further defines the scope of this power as “Council’s power to consent to alterations,” and does not apply to applications for the demolition of existing structures, or erection of new structures, on a designated property. In addition, By-law No. 05-364 states that: “the delegated powers in Section 1 do not include the power to refuse an application”.

HISTORICAL BACKGROUND

The subject property at 265 MacNab Street South (Hamilton) (see the location map attached as Appendix “A”), is located in the Durand-Markland Heritage Conservation District (HCD), designated by former City of Hamilton By-law 94-184, approved by the Ontario Municipal Board under Part V, Section 41, of the Ontario Heritage Act in 1994. Under Section 42 of the Ontario Heritage Act, a permit is required for alterations to a property. The power to consent to alterations to property designated under the Ontario Heritage Act was delegated by Council to the Director of Planning under City of

SUBJECT: Heritage Permit Application HP2011-044 Under Part V of the Ontario Heritage Act for the Demolition of an Existing Detached Garage and the Erection of New Ancillary Structures at 265 MacNab Street South (Hamilton) (PED11146) (Ward 2) - Page 4 of 7

Hamilton By-law No. 05-364. However, the Ontario Heritage Act provisions exclude the delegation of Council's authority to consent to an application for the demolition of existing structures or erection of new structures (see Legal Implications).

The property currently comprises a two-storey house, built in 1880-81, and a detached one-car garage (photographs of the existing structures are attached as Appendix "B"). The Heritage Permit Review Sub-committee of the City of Hamilton Municipal Heritage Committee reviewed this proposal on July 27, 2011, and the Sub-committee supported the proposed demolition of the existing garage. Detailed plans and elevations for the proposed new shed and deck were not reviewed by the Sub-committee; however, the Sub-committee supported, in principle, the construction of new modestly scaled structures in the rear yard. The location of the proposed structures must also comply with all applicable zoning provisions with respect to setbacks and height. At its meeting on August 18, 2011, the Hamilton Municipal Heritage Committee affirmed the Sub-committee's recommendation, and advised conditional approval of the application.

POLICY IMPLICATIONS

City of Hamilton Official Plan

Section C.6 - Heritage Resources of the former City of Hamilton Official Plan encourages the preservation, maintenance, reconstruction, restoration, and management of property considered to have historic, architectural, or aesthetic value (C.6.1) and provides the basis for the establishment and administration of Heritage Conservation Districts (C.6.3 and C.6.4). The recommendations of this Report do not conflict with these policies.

Urban Hamilton Official Plan

Volume 1, Section 3.4 - Cultural Heritage Resources Policies of the Council-adopted (adopted July 9, 2009) Urban Hamilton Official Plan states that the City shall "protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes" (Volume 1, 3.4.2.1(a)), and "identify cultural heritage resources through a continuing process of inventory, survey, and evaluation, as a basis for the wise management of these resources" (Volume 1, 3.4.2.1(b)). The policies also provide that the "City may, by By-law, designate individual and groups of properties of cultural heritage value under Parts IV and V, respectively, of the Ontario Heritage Act" (Volume 1, 3.4.2.3). The Urban Hamilton Official Plan has been approved by the Ministry of Municipal Affairs and Housing, but has been appealed in its entirety to the Ontario Municipal Board (OMB). While the plan is not in full force and effect, these policies demonstrate Council's commitment to the identification, protection, and conservation of the cultural heritage resources, and the recommendations of this Report do not conflict with these policies.

SUBJECT: Heritage Permit Application HP2011-044 Under Part V of the Ontario Heritage Act for the Demolition of an Existing Detached Garage and the Erection of New Ancillary Structures at 265 MacNab Street South (Hamilton) (PED11146) (Ward 2) - Page 5 of 7

Durand-Markland Heritage Conservation District Plan

Section 4.4 - Construction of New Buildings provides guidance as to the appropriate height, width, location, design features, and construction materials for new buildings and infill development. Section 4.4 states that “ancillary buildings should be located towards the rear of the lot”.

Section 5.0 - Landscape Conservation Guidelines provides general guidance on trees, fences, hedges, and plantings. This Section, in combination with *Section 4.2.2 - Site Guidelines*, will provide the basis for the evaluation of any new fencing, hard surfaces, and major plantings.

RELEVANT CONSULTATION

Pursuant to Sub-sections 42(1) and 42(4.1) of the Ontario Heritage Act, the City of Hamilton Municipal Heritage Committee (HMHC) advises and assists Council on matters relating to Part V of the Ontario Heritage Act. The Heritage Permit Review Sub-committee of the City of Hamilton Municipal Heritage Committee reviewed this proposal on July 27, 2011, and the Sub-committee supported the proposed demolition of the existing garage. Detailed plans and elevations for the proposed new shed and deck were not reviewed by the Sub-committee; however, in principle, the Sub-committee supported the construction of new modestly scaled structures in the rear yard. At its meeting on August 18, 2011, the Hamilton Municipal Heritage Committee affirmed the Sub-committee’s recommendation, and advised conditional approval of the application.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Key factors that are considered in the evaluation of any change affecting a heritage building, or its setting, are: consideration of “displacement effects” (those adverse actions that result in the damage, loss, or removal of valued heritage features); and, “disruption effects” (those actions that result in detrimental changes to the setting or character of the heritage feature).

Displacement: The garage structure was not identified in the Durand-Markland Heritage Conservation District Study - Heritage Assessment Report, and its construction date is unknown. The garage has been subject to contemporary alterations and its construction has deteriorated. Staff is of the opinion that the removal of the garage structure will not result in the displacement of a significant heritage feature of the Heritage Conservation District.

SUBJECT: Heritage Permit Application HP2011-044 Under Part V of the Ontario Heritage Act for the Demolition of an Existing Detached Garage and the Erection of New Ancillary Structures at 265 MacNab Street South (Hamilton) (PED11146) (Ward 2) - Page 6 of 7

Disruption: The existing garage is consistent in scale, massing, and location with the character of the Heritage Conservation District; however, its removal will not result in adverse impacts to the character of the District. The proposed ancillary structures, a new 8' by 10' shed and a new 10' by 10' deck, will be located in the rear yard which is consistent with the Durand-Markland Heritage Conservation District Plan (refer to the preliminary site plan sketch attached as Appendix "C"). Detailed plans and elevations were not submitted with the application for the new construction. The approval of the erection of new structures in a Heritage Conservation District is outside of the scope of delegated approval. Due to the minor nature of the proposed new structures, and to facilitate the process for the applicant, staff recommends that the erection of new structures be approved, in principle, through this Report. The recommended conditions of approval will permit staff and the Heritage Permit Review Sub-committee to review the dimensions, materials, and design of the proposed new structures and landscaping to ensure that these changes will be sympathetic to the character of the area. The location of the proposed structures must also comply with all applicable zoning provisions with respect to setbacks and height.

Accordingly, staff recommends conditional approval of Heritage Permit Application HP2011-044, as per the recommendations of this Report.

ALTERNATIVES FOR CONSIDERATION:

1. Refuse the heritage permit application.

Refusal of the Heritage Permit to demolish the existing garage and construct new ancillary structures does not satisfy the applicant's request to remove a potentially unsafe structure from the property and make new sympathetic changes within an existing residential area.

2. Approve the heritage permit with additional or amended conditions.

Council may approve this application with additional or amended conditions of approval other than the staff recommendations. This is not being recommended.

3. Approve the heritage permit with no conditions.

Council may approve this application with no conditions. This alternative is not recommended, as insufficient details have been submitted to determine if the design and materials of the proposed new structures will be sympathetic to the character of the Heritage Conservation District. Approval with no condition would prevent staff and the Heritage Permit Review Sub-committee from reviewing additional details to ensure that the Heritage Permit approval will result in appropriate new construction.

SUBJECT: Heritage Permit Application HP2011-044 Under Part V of the Ontario Heritage Act for the Demolition of an Existing Detached Garage and the Erection of New Ancillary Structures at 265 MacNab Street South (Hamilton) (PED11146) (Ward 2) - Page 7 of 7

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

Skilled, Innovative, and Respectful Organization

- ◆ A culture of excellence.
- ◆ Council and SMT are recognized for their leadership and integrity.
- ◆ Staff Comment: The approval of the recommendations of this Report demonstrates Council's commitment to the Council-approved Durand-Markland Heritage Conservation District Plan, and to the City's Official Plan policies.

Financial Sustainability

- ◆ Generate assessment growth/non-tax revenues.
- ◆ Staff Comment: The approval of the recommendations of this Report will permit the removal of an existing deteriorated structure and new construction and landscaping on a existing residential property, which may increase the property's assessed value and enhance the character of the surrounding neighbourhood.

Intergovernmental Relationships

- ◆ Maintain effective relationships with other public agencies.
- ◆ Staff Comment: The approval of the recommendations of this Report demonstrates Council's commitment to conserving cultural heritage resources, as directed by provincial and federal level policies.

Healthy Community

- ◆ Plan and manage the built environment.
- ◆ Staff Comment: The proposed demolition of the existing garage will remove a potentially unsafe structure from a residential neighbourhood, and the proposed rear yard and landscaping improvements are intended to conserve and enhance the character of the Durand-Markland Heritage Conservation District.

APPENDICES / SCHEDULES

- Appendix "A": Location Map
- Appendix "B": Photographs of the Existing Buildings
- Appendix "C": Preliminary Site Plan Sketch

:MH - Attachs. (3)



● Site of the Application



Ward 2 Key Map

N.T.S.



Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
HP2011-044

Date:
August 8, 2011

Appendix "A"

Scale:
N.T.S.

Planner/Technician:
MH / MB

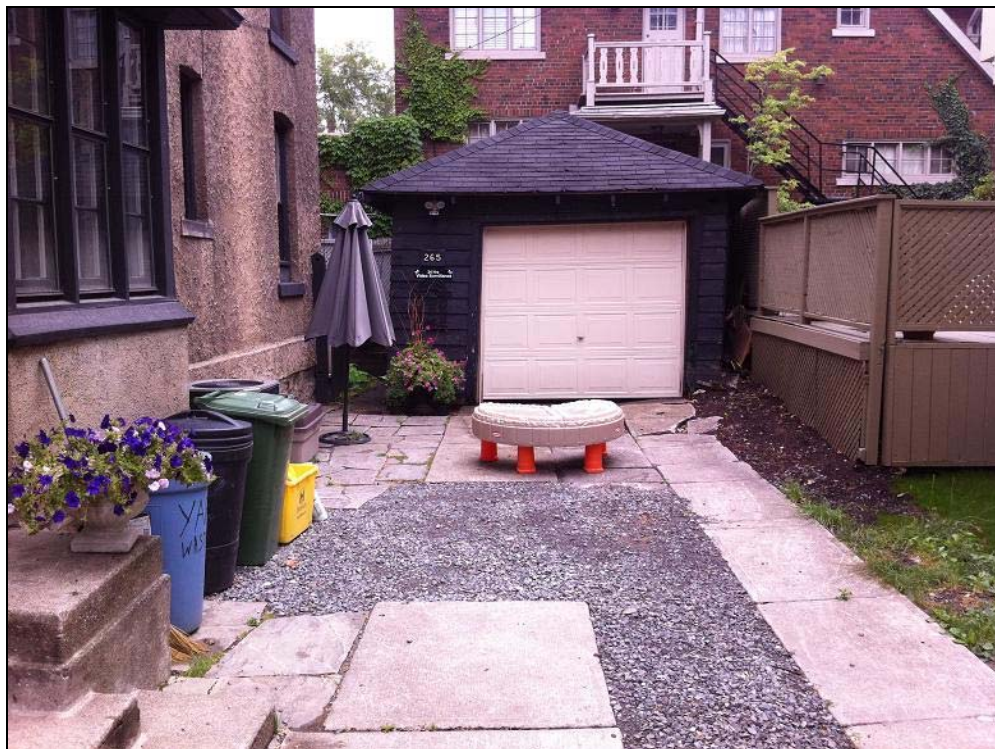
Subject Property



265 MacNab Street South, Hamilton



Front façade (west) of the existing house, showing existing driveway and detached garage.



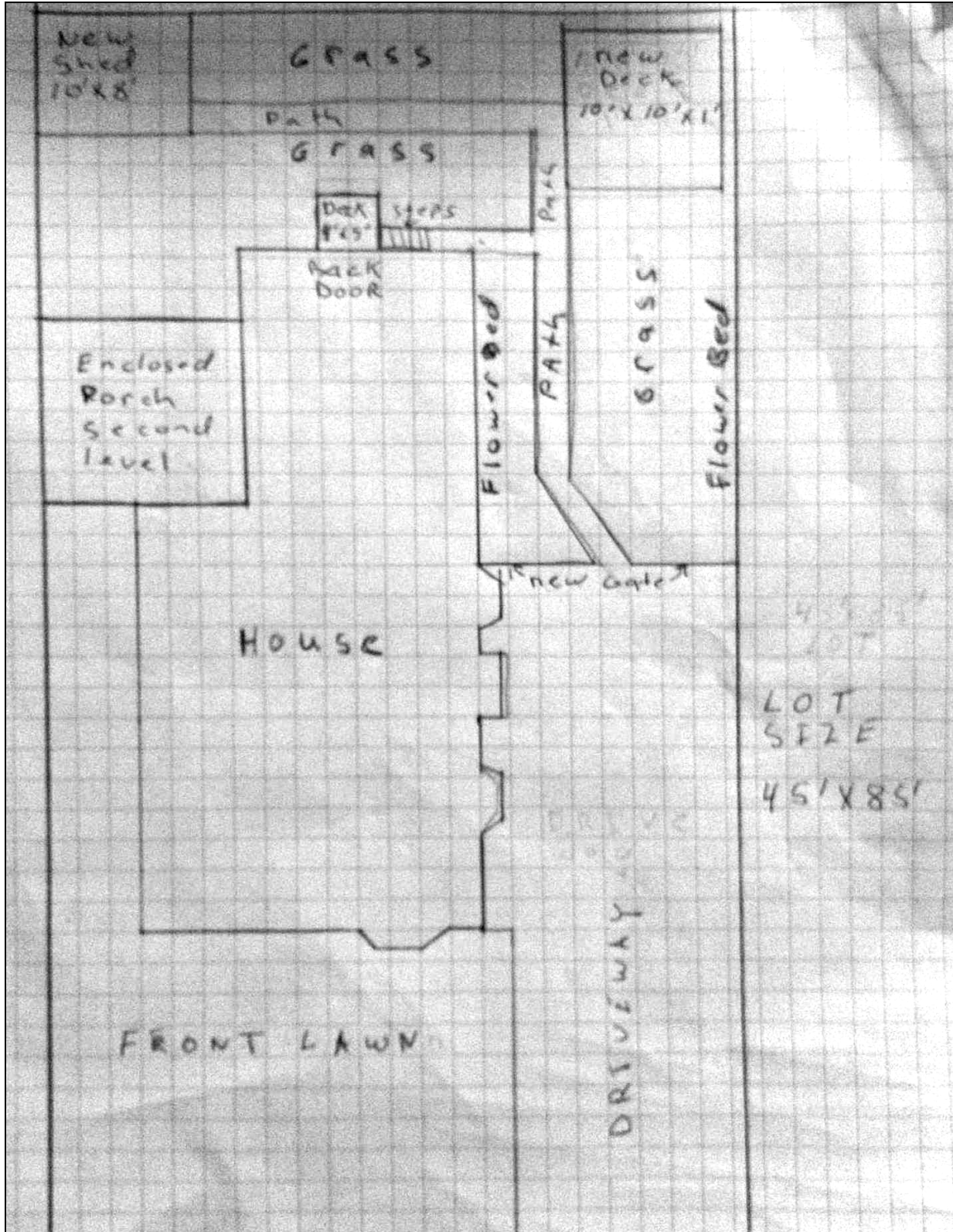
Existing detached garage and driveway.



Deteriorated roof on existing garage.



Deteriorated lower walls and lack of foundation/footings in existing garage.



Preliminary site plan sketch, showing approximate location and dimensions of the new ancillary structures (deck and shed).