

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 11
COMMITTEE DATE: December 4, 2012	
SUBJECT/REPORT NO: Committee of Adjustment Consent Application GL/B-11:102 for Lands Located at 6355 White Church Road (Glanbrook) (PED12238) (Ward 11)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Scott Baldry (905) 546-2424 Ext. 4144
SIGNATURE:	

RECOMMENDATION

That no action be taken with respect to any financial reimbursement to the applicant related to Committee of Adjustment Application GL/B-11:102, for the property known municipally as 6355 White Church Road (Glanbrook), for the reasons set out in staff Report PED12238.

EXECUTIVE SUMMARY

At the October 2, 2012, Planning Committee meeting, a public hearing was held regarding an application for a Zoning By-law Amendment for these lands (ZAA-12-012). Committee approved the application, with an amendment, to add a new Sub-section (c), as follows:

“(c) That Schedule “A” of the draft By-law, attached to Report PED12177 as Appendix “B”, be amended to revise the configuration of the lands to be rezoned to reflect the revised 0.6 ha (1.5 acre) lot configuration, being a rectangular configuration approximately 75m wide x 80m deep”.

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Subsequently, at the October 10, 2012, Council meeting, staff was directed to “review the process to ensure that there was no duplication of costs for the applicant and to consider reimbursement, if warranted”. This direction was in response to revisions to the shape and configuration of the proposed lot to be created to address comments and concerns expressed by the adjacent landowner. The applicant agreed to the changes proposed by the Ward Councillor, in response to the concerns raised by the adjacent landowner, which resulted in the requirements for a new reference plan to be prepared.

The review concluded that no additional fees or costs have been assessed by the City to the applicant regarding this application. The costs related to the processing of the application by the City have been administered in the normal manner, with no additional municipal fees being levied, and no errors or omissions by staff related to the application processing. Council also requested that staff report back to the Planning Committee related to the process, notice, and authority of the Committee of Adjustment when changes to the application are made at the Hearing.

Alternatives for Consideration - See Page 6.

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

Financial: The recommendation will not adversely affect the municipality financially.

Staffing: None.

Legal: None.

HISTORICAL BACKGROUND (Chronology of events)

The owners of 6355 White Church Road, in the former municipality of Glanbrook, submitted an application for consent on November 9, 2011. The application was for a farm consolidation that resulted in the creation of a surplus farm dwelling. The proposed farm dwelling lot was approximately 1 acre in size, and of a regular shape (see Appendix “A”). The application was set to the December 8, 2011, Committee of Adjustment Hearing. The notice was compiled and sent to the area residents, located within 60m of the subject lands, on November 22, 2011. A sign was also posted on the subject lands, as required under the provisions of the Planning Act.

Comments were received by various City Departments and Divisions regarding this application. No comments were received by the Committee or its staff from the public as a result of the circulation. The comments received by the Committee of Adjustment indicated that the proposed lot size for the surplus farm dwelling was deficient. The Source Water Protection Division indicated that based on the type of soil, the property

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would not meet the Ministry regulations and, as such, they requested that the property be increased in size to 1.5 acres.

The applicants indicated that they had a concern with trying to enlarge the property due to several restrictions on the property. The property has an access road that the farmland utilizes to the west of the proposed surplus farm dwelling lot. This restricted the expansion of the lot in this direction, as it would interfere with the farming operation. An expansion of the lot in this direction would result in the removal of prime agricultural land from the farming operation. The applicants indicated that to the rear of the property is the operating farm. The immediate area behind the proposed surplus farm dwelling lot contains drainage tiles for the farming operation. Concerns were expressed that extending the lot to the rear would impact the farming operation and the drainage of the farming operation.

The recommendation presented to the Committee proposed that the surplus farm dwelling lot be extended around the adjacent residential property (see Appendix "B"). Staff in attendance indicated that this expansion, projecting behind the existing residential property, would meet the requirements and regulations of the Provincial Greenbelt Plan by protecting the agricultural operation and saving prime agricultural land. The proposed configuration would result in the least impact on the agricultural farmland.

The Committee discussed the proposed configuration, deliberating that the change was minor in nature, and did not fundamentally change the application. The Planning Act, Section 53, grants the Committee the same powers bestowed upon Planning Committee/Council in dealing with plans of subdivisions, and even changes to Zoning By-laws. The Committee of Adjustment conditionally approved Application GL/B-11:102 regarding a farm consolidation and associated removal of a surplus farm dwelling located at 6355 White Church Road. The original application was amended at the public hearing, based on comments received regarding the lot size by the Source Water Protection Division of the Public Works Department. The decision was rendered at the hearing, and sent out in the mail on December 15, 2011, to all parties who requested a copy of the decision. The appeal period for the decision expired on January 4, 2012, with no appeals being filed within the prescribed period.

The Regulations under the Planning Act require that the Committee of Adjustment provide written copies of the decision to everyone who provided either comments in writing or verbally at the hearing, or who had requested a copy of the decision. No area residents provided comments, either in writing or verbally at the hearing, and no requests were received requesting a copy of the Committee's decision. The applicant was provided with the conditional approval and, as such, commenced the task of satisfying the conditions placed on the decision.

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The applicant commissioned a surveyor to create the necessary reference plan to describe the new surplus farm dwelling lot. During the surveying of the property, the adjacent property owner questioned the area that was being surveyed. This property owner was opposed to the new lot configuration, and expressed this to municipal staff who were processing the requisite Zoning By-law Amendment for the lands. Calls and correspondence were subsequently received by Committee of Adjustment staff questioning the layout of the proposed lot.

The adjacent property owner had no concerns with the original lot configuration and, as such, did not participate in the public hearing nor request a decision from the Committee of Adjustment. Upon witnessing the surveying of the new proposed property limits, inquiries were made regarding the actions of the surveyor. These inquiries led to the discovery that the lot configuration had been altered from the original notice sent to area residents. The adjacent property owner was of the opinion that the change adversely affected their lands.

The Ward Councillor intervened in the matter trying to assist the landowner in having their concerns addressed. The applicant agreed to the changes proposed by the Ward Councillor, thus appeasing the neighbour (see Appendix "C"). This resulted in Planning Committee approving the related Zoning Application with the revised lot configuration at its meeting of October 2, 2012. Subsequently, Council, at its meeting of October 10, 2012, directed staff "to review the process to ensure that there was no duplication of costs for the applicant and to consider reimbursement, if warranted." Generally, additional fees are waived where City staff has erred or made an omission in the procedural process.

The review concluded that no additional fees or costs have been assessed by the City to the applicant regarding this application, and no errors or omissions were made related to the application. The costs related to the processing of the application by the City have been administered in the normal manner, with no additional fees being levied by the City with respect to either the Consent Application or the implementing Zoning By-law Amendment application.

The applicant has incurred the normal costs associated with surveying the lands for the original layout. The surveying firm has indicated that all subsequent costs related to the new configuration were billed directly to the neighbouring property owner and not the applicant. The costs to create a reference plan, describing the lands to be created, are a normal cost associated with the Committee of Adjustment consent process. Changes to the original survey would be subject to additional time by the surveyor. This additional time would be subject to additional fees assessed to the person requesting or commissioning the changes. Staff was advised by the solicitor for the neighbouring property owner, during negotiations/mediation, that his client would pay the extra costs related to the change in the reference plan.

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The Committee of Adjustment has the power to make amendments to applications that are minor, based on the opinion of the Committee. This situation was such an occurrence, and the Committee was of the opinion that the required change was, indeed minor, and required to address Ministry of the Environment regulations. The application was amended, and the Committee granted conditional approval based on a number of factors presented during the hearing.

The decision to amend the application was within the powers of the Committee of Adjustment. Neither the Committee of Adjustment, nor staff, erred in the making of the decision or the processing of the application and subsequent decision.

The appeal period for the Committee of Adjustment application had expired several months prior to the receipt of the concerns of the adjacent property owner. The landowner was advised of this, and indicated their displeasure. They expressed to Committee staff that this was not satisfactory, and contacted their Ward Councillor to try to rectify the situation.

The Ward Councillor contacted Planning staff to discuss the matter to determine what the issues were. The Ward Councillor contacted the applicant, and discussed the concerns of the neighbour with them. It was during this process that the applicant conceded to amending the lot configuration based on some compromises and concessions.

POLICY IMPLICATIONS

This Report is the result of the direction of Planning Committee.

RELEVANT CONSULTATION

Consultation with Planning staff occurred. The consensus was that no technical errors were made by either the Committee of Adjustment or City staff as a result of the Committee's decision.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The alteration to the proposed lot configuration maintains the intent of the initial application and adheres to the decision of the Committee of Adjustment. The proposed lot configuration will achieve the necessary size to meet the Ministry of the Environment regulations regarding the septic system. The farm access road has been, or will be, relocated to accommodate the requirements of the agricultural farm operation.

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The applicant is required to satisfy conditions attached to the Committee's decision prior to certificates being issued to create the new surplus farm dwelling lot. One of the conditions is the requirement for a reference plan prepared by an Ontario Land Surveyor. The applicant will have other costs associated with finalizing the application and obtaining the certificate required to create the new lot and finalize the application.

The neighbouring property owner agreed to pay the costs associated with the requested change in lot configuration as part of the negotiations/mediation. As a result of this negotiated/mediated agreement, no additional fees were assessed to the applicant by City staff. The surveying firm confirmed that no additional fees were billed to the applicant as a result in the change of lot configuration.

The review of the application has determined that there were no errors made by the Committee of Adjustment or City staff. The recommendation is to maintain the current application and continue processing the application in the normal manner. Staff is of the opinion that financial reimbursement should be provided to the applicant as a result of the amendment to the application as a result of the alteration of the property configuration.

Providing financial compensation to the applicant may result in additional requests from other applicants, where negotiations with adjacent landowners trigger the requirement for revisions to the application. The Committee of Adjustment operates on a cost-recovery model, with operating costs offset by application fees.

ALTERNATIVES FOR CONSIDERATION

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

- (a) That staff be directed to waive all remaining Committee of Adjustment processing costs associated with Application GL/B-11:102, for the property known municipally as 6355 White Church Road (Glanbrook).

This alternative Recommendation would require Committee of Adjustment staff to waive the processing fees for reviewing and endorsing the certificates that are issued to finalize the Committee's decision. The cost to the municipality would be minimal (\$150.00) and could be absorbed in the Committee of Adjustment's operating budget, and would represent a form of 'compromise' if the Committee/Council wants to pursue. This limited fee reduction would not impact the Department's overall budget, and would still maintain the Committee's self-sufficiency. No financial obligation would be passed on to the municipal taxpayer.

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- (b) That staff be directed to reimburse the applicant for all associated surveying costs related to Application GL/B-11:102, for the property known municipally as 6355 White Church Road (Glanbrook), as it relates only to the change in lot configuration.

The revision to the shape and dimension of the lot was in direct response to concerns from the abutting property owner. This resulted in the requirement for the preparation of a new reference plan by the owner of 6355 White Church Road. A surveyor's typical fees range between approximately \$2,000 and \$4,000 for a simple reference plan for a small urban lot. Rural lots and larger complex reference plans increase substantially from this amount. In this case, since survey field work had already been completed, the costs may be lower than the initial survey costs. The surveying firm has confirmed that the neighbouring property owner was billed \$1,808.00 for the revised reference plan to accommodate the reconfigured lot.

The Committee of Adjustment process and its fees are regulated through Provincial Legislation. The Committee of Adjustment is intended to be a cost neutral process based on the actual costs of processing the applications, including such things as staffing, mailings, and material costs. The increase in costs, as a result of reimbursing applicants, may create a situation where there will be a negative budget variance for the Committee of Adjustment due to unbudgeted expenses. Furthermore, as the costs to the applicant are not directly related to the City's Fee By-law and processing costs, staff may not have the statutory authority to reimburse the applicant for these costs.

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

- ◆ More innovation, greater teamwork, better client focus.

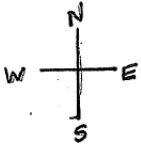
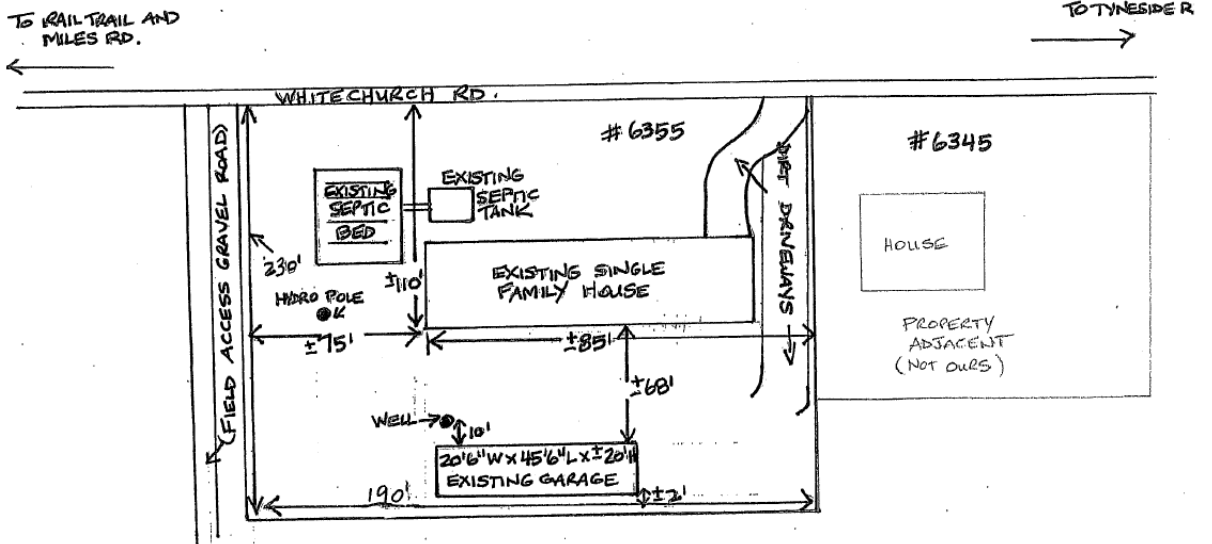
Financial Sustainability

- ◆ Financially Sustainable City by 2020.

APPENDICES / SCHEDULES

- Appendix "A": Original Layout of Proposed Lot
- Appendix "B": Amended Layout of Proposed Lot
- Appendix "C": Compromised Layout of Proposed Lot

:SB - Attachs. (3)



— SCHEDULE B — LANDS TO BE RETAINED

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