



CITY OF HAMILTON

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division**

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 3
COMMITTEE DATE: February 15, 2011	
SUBJECT/REPORT NO: Committee of Adjustment Minor Variance Application HM/A-10:271, for the Property Located at 22-24 Emerald Street South (Hamilton), Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED11023) (Ward 3)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: J. Matthew Blevins (905) 546-2424, Ext. 2634
SIGNATURE:	

RECOMMENDATION

That Report PED11023, respecting Committee of Adjustment Minor Variance Application HM/A-10:271, for the property located at 22-24 Emerald Street South (Hamilton), as shown on Appendix "A" to Report PED11023, supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information.

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application HM/A-10:271 to permit the construction of a second and third-storey addition to the existing first floor at the rear of the building, as well as a one-storey addition at the front of the existing building, to facilitate Site Plan Control Application SPA-10-081. The subject property is zoned "H" (Community Shopping and Commercial, etc.) District in Hamilton Zoning By-law No. 6593.

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The applicant requested variances for reduction in the northerly side yard setback to 0.2m, whereas a minimum 2.7m is required, a reduction in the number of parking spaces to 6, whereas 12 on-site spaces are required, an aisle width manoeuvring space of 2.4m, whereas a minimum 6.0m is required, and to permit off-site manoeuvring space on the public laneway, whereas on-site manoeuvring is required.

The minor variance application was considered before the Committee of Adjustment on December 2, 2010. Staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, and satisfied the four tests set out in Subsection 45(1) of the Planning Act in that the variances were determined to be minor in nature, desirable for the appropriate development of the land, and maintained the general intent and purpose of the Official Plan and Zoning By-law No. 6593.

The Committee of Adjustment denied the application for the reasons provided in Appendix "C". The decision has been appealed to the Ontario Municipal Board (OMB) by the applicant. To date, an OMB hearing has not been scheduled.

Alternatives for Consideration - See Page 6.

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

Financial: Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee of Adjustment's decision to deny the application, the City must retain an outside planning consultant, and any other experts who can professionally support the denial. 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. If an outside planning consultant is retained, the costs would be approximately \$3,000 to \$5,000 for each day of a hearing. 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 authorizes 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 year-end Corporate Surpluses; and lastly, through the Tax Stabilization Reserve.

Staffing: One representative from Legal Services would be required for preparation and attendance at the 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

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retained with respect to this appeal. One member of planning staff would attend as an expert witness at the hearing should Council support Option 2.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND (Chronology of events)

Roles and Responsibilities of the Committee of Adjustment (PD02116(a))

In December, 2002, City Council endorsed a staff report related to the Roles and Responsibilities of the Committee of Adjustment. The recommendations included the following:

“That the Planning and Development Department be authorized and directed to prepare an Information Report, to the Committee of the Whole, when an appeal is made to the Ontario Municipal Board of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a Report, Council may determine its position on the Committee of Adjustment decision, and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

City of Hamilton Committee of Adjustment Minor Variance - HM/A-83:145:

The subject property currently contains a Residential Care Facility, which is a permitted use within the ‘H’ District, to a maximum of 20 beds. On October 11, 1983, the City of Hamilton Committee of Adjustment granted Minor Variance Application HM/A-83:145, which allowed for the expansion of the subject facility from 20 beds to 36 beds.

Proposal

The subject property is located at 22-24 Emerald Street South (Hamilton) (see Appendix “A”). The applicant is proposing to construct a second and third-storey addition on the existing first floor at the rear of the existing building, and a one-storey addition to the front of the existing building, containing a residential care facility with a maximum of 36 residents (see Appendix “B”). The current proposed variances are to recognize existing site conditions, and are required for final approval of Site Plan Control Application SPA-10-081 (conditionally approved on August 20, 2010) to permit the construction of the additions.

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The application was reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and City of Hamilton Zoning By-law No. 6593. Planning staff is of the opinion that the application maintains the general intent of the above noted policy documents.

Accordingly, staff recommended approval of the application as the variances were determined to be minor in nature, desirable for the appropriate development of the lands, and maintain the general intent and purpose of the Official Plan and Zoning By-law No. 6593. The Committee of Adjustment, at its meeting of December 2, 2010, denied the minor variance application (see Appendix “C”).

POLICY IMPLICATIONS

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that focus growth in Settlement Areas, Policy 1.1.3.1.

Hamilton-Wentworth Official Plan

The subject property is designated as “Urban Area” in the Hamilton-Wentworth Official Plan. Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.

The Hamilton-Wentworth Official Plan defers to the former Local Official Plans to define the ranges of urban uses and development that are appropriate for the lands that they apply to. The proposed development conforms with the policies set out in the City of Hamilton Official Plan.

Based on the foregoing, staff is satisfied that the proposed variances conform to the Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan

The lands are designated “Commercial” on Schedule “A” - Land Use Concept Plan, in the City of Hamilton Official Plan.

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Section A.2.2 of the City of Hamilton Official Plan sets out the objectives for the “Commercial” areas. The intent of the plan for “Commercial” areas is to ensure that commercial development occurs in an orderly manner, consistent with the needs of the community. The plan also promotes a hierarchy of commercial categories to best serve the residents of the City, and provides for the inclusion of residential uses within “Extended Commercial” areas provided they will not restrict or interfere with the function of the primary permitted uses (Policy A.2.2.17).

Section A.2.2.1 further sets out policies for residential uses within “Commercial” areas requiring that the access driveways and parking be screened to buffer potentially unwanted noise or light from the abutting commercial uses, as well as minimizing potential impacts detracting from the amenity area of the residential use and, furthermore, that the residential uses satisfy the requirements of Sections A.2.1 and C.7 of the Official Plan (Policy A.2.2.1.i)).

Section A.2.1 sets out the objectives for the “Residential” areas. The intent of the plan for “Residential” areas is to provide a range of housing types and densities of varied styles, while ensuring the maintenance of amenities for residents, and to ensure that new development or re-development will contribute to the desired mix of housing, where practicable (Policy A.2.1.8).

Staff is satisfied that the existing use is consistent with the general intent of the Official Plan. Staff is also satisfied that the proposed expansion of the building is consistent with the general intent of the Official Plan. Accordingly, the application maintains the objectives of the “Commercial” designation of the City of Hamilton Official Plan.

The proposed additions are also consistent with the “Residential Environment and Housing” policies of the Official Plan, as the additions make more efficient use of existing building stock and are consistent with the character of the existing residential area in terms of height, coverage, mass, privacy, and overview (Policy C.7.3.iii). Accordingly, this application maintains the objectives of the “Residential Environment and Housing” policies of the City of Hamilton Official Plan.

Based on the forgoing, the application maintains the general intent and purpose of the Official Plan. Accordingly, staff recommended approval.

City of Hamilton Zoning By-law No. 6593

The lands are zoned “H” (Community Shopping and Commercial, etc.) District in Hamilton Zoning By-law No. 6593.

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The relief requested for the proposed additions is considered to be minor in nature, desirable for the appropriate development of the property, and maintains the general intent and purpose of the Zoning By-law.

RELEVANT CONSULTATION

- Legal Services Division, in respect to staffing and costs.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The application is to recognize an existing reduced northerly side yard, an existing reduction in the number of required parking spaces, an existing reduction in the manoeuvring aisle width, and that the manoeuvring space is being provided off-site.

The requested variances are considered to be minor in nature, desirable for the appropriate development of the land, and maintain the general intent and purpose of the Hamilton Official Plan and Hamilton Zoning By-law No. 6593, which satisfies the four tests of a minor variance set out in Section 45(1) of the Planning Act.

Based on the foregoing, staff recommended approval of the application by the Committee of Adjustment.

ALTERNATIVES FOR CONSIDERATION

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

Option 1

Council may instruct Legal Services to attend the OMB Hearing, in support of the Committee of Adjustment decision, and to retain outside professional(s).

Option 2

Council may decide to support the appeal against the Committee of Adjustment's decision to deny, and direct Legal Services to attend the OMB Hearing in support of the appeal to the applications, and to use City Planning staff as its professional witness.

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Option 3

Council may decide to not send Legal Services to the OMB Hearing, either in support of the Committee's decision, or against the decision.

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

Social Development

- ◆ Everyone has a home they can afford that is well maintained and safe.
- ◆ Residents in need have access to adequate support services.
- ◆ People participate in all aspects of community life without barriers or stigma.

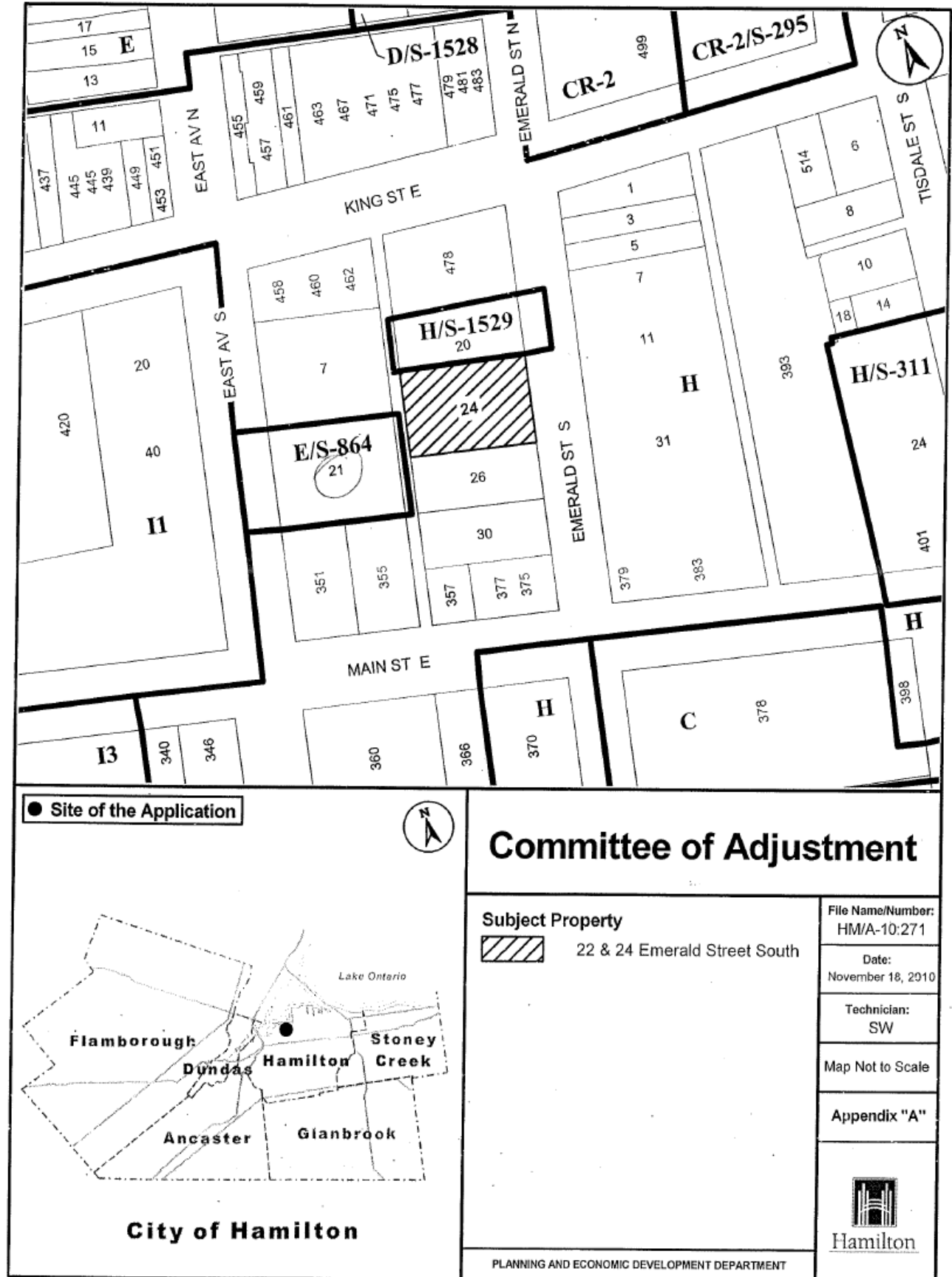
Healthy Community

- ◆ Plan and manage the built environment.
- ◆ Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services).

APPENDICES / SCHEDULES

- Appendix "A": Location Map
- Appendix "B": Application Sketch
- Appendix "C": HM/A-10:271 Committee of Adjustment Decision

:JMB
Attachs. (3)




● Site of the Application



Committee of Adjustment

Subject Property

 22 & 24 Emerald Street South

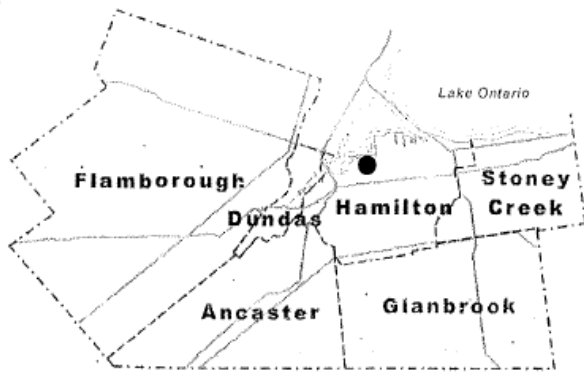
File Name/Number:
HM/A-10:271

Date:
November 18, 2010

Technician:
SW

Map Not to Scale

Appendix "A"



City of Hamilton



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT



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. HM/A-10:271
SUBMISSION NO. A-271/10

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13 as amended and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 14, 18 and 18A.

AND IN THE MATTER OF the Premises known as Municipal numbers 22 - 24 Emerald Street South, in the City of Hamilton and in an "H" (**Community Shopping and Commercial, etc.**) district;

AND IN THE MATTER OF AN APPLICATION by the agent Zebroski Associates Ltd. on behalf of the owner The Astra Society of Hamilton & District, for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the construction of a second and third storey addition on the existing first floor at the rear of the existing building and to construct an addition at the front of the existing building which contains a residential care facility with a maximum of thirty-six (36) residents notwithstanding that:

1. A minimum northerly side yard width of 0.2m, with further eave projection, shall be provided instead of the minimum required side yard width of 2.7m;
2. Six (6) parking spaces shall be provided instead of the minimum required twelve (12) parking spaces;
3. An aisle width manoeuvring space of 2.4m shall be provided instead of the minimum required aisle width manoeuvring space of 6.0m; and,
4. Manoeuvring space shall be provided off the lot and on the public laneway instead of being only on the lot on which the principle use is located.

NOTE:

- (i) The roof, eaves and gutters shall not project beyond the property boundaries.
- (ii) Elevation and building plans were not submitted with the application.
- (iii) The variances are necessary to facilitate site plan application SPA-10-081.

THE DECISION OF THE COMMITTEE IS:

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

1. The Committee having regard to the evidence is of the opinion that the relief requested is beyond that of a minor nature.
2. The relief requested is undesirable for the appropriate development of the land and building and is inconsistent with the general intent and purpose of the By-law and of the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee having regard to the intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.

DATED AT HAMILTON this 2nd day of December, 2010

M. Dudzic (Chairman)

M. Switzer

L. Gaddy

D. Serwatak

D. Drury

V. Abraham

C. Lewis

L. Tew

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD
MAY BE FILED IS December 22nd, 2010.

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