SUBJECT: Committee of Adjustment Minor Variance Application FL/A-09:173 for the Property Known as 10 Houndtrail Drive, Flamborough - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED09267) (Ward 15)

RECOMMENDATION:

That Report PED09267, respecting Committee of Adjustment Minor Variance Application FL/A-09:173, for the property known as 10 Houndtrail Drive (Flamborough), as shown on Appendix “A” to Report PED09267, 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 FL/A-09:173 to legalize the existing accessory buildings/structures, consisting of a rear yard deck and pavilion, as well as a cabana, and also to permit the construction of a 2.3 metre high wall attached to the south side of the existing single detached dwelling (see Appendix “B”), notwithstanding that:
SUBJECT: Committee of Adjustment Minor Variance Application FL/A-09:173 for the Property Known as 10 Houndtrail Drive, Flamborough - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED09267) (Ward 15) - Page 2 of 6

1. A maximum lot coverage of 53.0% shall be permitted, instead of the maximum 40.0%;

2. A maximum lot coverage of 18.5% shall be permitted for all accessory buildings/structures instead of the maximum 5% lot coverage permitted;

3. A minimum rear yard of 6.6 metres shall be permitted for the wall, instead of the minimum 7.5 metre rear yard required;

4. A minimum rear yard of 0.6 metre shall be maintained for the existing rear yard cabana, instead of the minimum 1.0 metre rear yard required; and,

5. A minimum northerly side yard of 0.9 metre shall be maintained for the existing rear yard cabana, instead of the minimum 1.0 metre side yard required.

The minor variance application was considered before the Committee of Adjustment on July 30, 2009. Comments to the Committee of Adjustment from staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, in conformity to the Hamilton-Wentworth Official Plan, and would maintain the intent and purpose of the Town of Flamborough Official Plan and Zoning By-law.

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 Ontario Municipal Board hearing has not been scheduled.

BACKGROUND:

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 whenever an appeal is made to the Ontario Municipal Board, of a decision made by the Committee of Adjustment to deny an application 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.”
The subject lands are designated “Urban” within the Hamilton-Wentworth Official Plan. As the nature of the application is for relief from the provisions of the Zoning By-law No. 90-145-Z, as amended, the proposal is consistent with the policies of the Provincial Policy Statement and conforms to the policies of the Hamilton-Wentworth Official Plan. The subject lands are designated “Residential” in the Town of Flamborough Official Plan, which permits a variety of housing types and densities.

The subject property is zoned Urban Residential (Single Detached) “R1-18” Zone, Modified, in the Town of Flamborough Zoning By-law No. 90-145-Z, which permits the existing single detached dwelling (see Appendix “A”). The lands to the north, south, and east of the subject property consist of single detached dwellings, and are also zoned Urban Residential (Single-Detached) “R1-18” Zone. The lands to the west of the subject property also contain single detached dwellings, and are zoned Urban Residential (Single Detached) “R1-1” Zone, Modified.

The applicant is proposing to legalize the existing accessory buildings/structures consisting of a rear yard deck and pavilion, as well as a cabana, and also to permit the construction of a 2.3 metre high wall that will be attached to the south side of the existing single detached dwelling notwithstanding the following:

1. A maximum lot coverage of 53.0% shall be permitted, instead of the maximum 40.0%;
2. A maximum lot coverage of 18.5% shall be permitted for all accessory buildings/structures, instead of the maximum 5% lot coverage permitted;
3. A minimum rear yard of 6.6 metres shall be permitted for the wall, instead of the minimum 7.5 metre rear yard required;
4. A minimum rear yard of 0.6 metre shall be maintained for the existing rear yard cabana, instead of the minimum 1.0 metre rear yard required; and,
5. A minimum northerly side yard of 0.9 metre shall be maintained for the existing rear yard cabana, instead of the minimum 1.0 metre side yard required.

With respect to Application FL/A-09:173, staff noted that the requested minor variance to provide relief of the existing amenities in the rear yard was supportable, as there were sufficient setbacks from the property to properly carry out any maintenance and repairs of the cabana and other accessory structures, and that it would not physically intrude on neighbouring properties. In addition, the variance to increase the lot
coverage for accessory buildings was recommended for approval as it included a deck measuring approximately 16 feet by 14 feet.

Planning staff supported the minor variance application, but noted in their comments that development in the rear yard is currently quite intense due to the number of accessory buildings and structures, and that any further development in the rear yard will further intensify the rear yard, and minor variance application will not be sufficient to address further additions to the rear yard.

It is the opinion of staff that the proposed variances are minor in nature, maintain the intent and purposes of the Town of Flamborough Official Plan and Town of Flamborough Zoning By-law, and in general, represent good planning. Therefore, staff recommended that the minor variance application be approved.

ALTERNATIVES FOR CONSIDERATION:

Option 1

Council may instruct Legal Services to attend the Ontario Municipal Board 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 Ontario Municipal Board Hearing in support of the appeal to the application, and to use City Planning staff as its professional witness.

Option 3

Council may decide to not send Legal Services to the Ontario Municipal Board, either in support of the Committee’s decision, or against the decision.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

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 expertise who can professionally support the denial. If retained, an estimate of the cost and a funding source would be determined at a later date. In addition, one lawyer from Legal Services would be required for preparation and attendance at the hearing.
Staffing: One representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing. One member of planning staff would attend as an expert witness at the hearing should Council support Option 2, above.

Legal: No legal implications are expected.

**POLICIES AFFECTING PROPOSAL:**

**Provincial Policy Statement (PPS)**

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 “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. Urban Areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.

The minor variance application conforms to the Hamilton-Wentworth Official Plan.

**Town of Flamborough Official Plan**

The subject property is designated as “Residential” in the Town of Flamborough Official Plan, which permits a variety of residential uses such as detached and semi-detached single dwellings. In addition, development of residential uses should be guided by the compatibility of the proposed use with surrounding development, and sufficient lands shall be allotted for landscaping to protect the amenity of adjacent residential properties. It is the opinion of staff that the minor variance application is in conformity with the “Residential” designation and Housing Policies of the Town of Flamborough Official Plan.

**RELEVANT CONSULTATION:**

- Legal Services Division.
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
The public is involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety is protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:TL
Attachs. (3)
APPLICATION NO. FLA-09:173
SUBMISSION NO. A-173/09


AND IN THE MATTER OF the Premises known as Municipal number 10 Houndtrail Drive, formerly in the Town of Flamborough, now in the City of Hamilton and in an "R1-16" (Urban Residential - Single Detached) district;

AND IN THE MATTER OF AN APPLICATION by the agent Bob Grotto, on behalf of the owners John and Lisa Gladiator, for relief from the provisions of the Zoning By-Law No. 90-145-Z, as amended, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to legalize the existing accessory buildings/structures consisting of a rear yard deck and pavilion as well as a cabana; and, also to permit the construction of a 2.3m high wall attached to the south side of the existing single detached dwelling notwithstanding that:

1) A maximum lot coverage of 53.0% shall be permitted instead of the maximum 40.0% permitted;

2) A maximum lot coverage of 18.5% shall be permitted for all accessory buildings/structures instead of the maximum 5% lot coverage permitted;

3) A minimum rear yard of 6.6m shall be permitted for the wall instead of the minimum 7.5m rear yard required;

4) A minimum rear yard of 0.6m shall be maintained for the existing rear yard cabana instead of the minimum 1.0m side yard required; and,

5) A minimum northerly side yard of 0.9m shall be maintained for the existing rear yard cabana instead of the minimum 1.0m side yard required.

Notes: The variances are written as requested.

Insufficient information was provided to confirm that the requested lot coverages are accurate and correct.

Subject to the issuance of a building permit in the normal manner.

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, after careful consideration of all oral and written submissions, is of the opinion that approval of the relief requested would have a dramatic negative impact on the neighbouring properties and is therefore 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 approval of the requested variances (particularly variance #2 to increase the lot coverage from 5% to 18.5% for all accessory buildings/structures) would result in an over-intensification of the rear yard and is therefore not supportable.

.../2
DATED AT HAMILTON this 30th day of July, 2009

M. Dudzic (Chairman)  M. Switzer

L. Gaddye  D. Drury

C. Lewis  D. Serwatuk

D. Smith  V. Abraham

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS August 19th, 2009.

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