SUBJECT: Appeal of the City of Hamilton Committee of Adjustment (Urban) Decision to Approve Minor Variance Application FL/A-06:80, 59 Dundas Street East (Former Town of Flamborough) (PED06192) (Ward 15)

RECOMMENDATION:

That Council agrees to the following actions, as detailed in Report PED06192, respecting the appeal of the City of Hamilton Committee of Adjustment (Urban) Minor Variance Application FL/A-06:80, 59 Dundas Street East, former Town of Flamborough, as shown on Appendix “A” to Report PED06192, approved by the Committee of Adjustment (Urban) 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 (Urban) to approve application FL/A:06-80.

(b) That Council direct appropriate Legal Services and Planning staff to attend the future Ontario Municipal Board (OMB) Hearing.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

Application FL/A-06:80 was considered by the City of Hamilton Committee of Adjustment (Urban) on April 12, 2006, to establish public worship services as a use which is not permitted by the current zoning, within the existing building on the subject lands (Appendix “A”). Comments to the Committee of Adjustment from the Planning and Economic Development Department did not support the application. It was the opinion of staff that the proposal should be considered as a rezoning application on the basis it did not meet the purpose and intent of the Flamborough Official Plan and Zoning By-law as recently approved by Ontario Municipal Board Order No. 0717 for the property together with adjacent lands to the east and north for a proposed power centre (Appendix “B”), and because it was not minor in nature. Planning and Economic Development staff has submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process.

BACKGROUND:

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 where the Planning Act appeal periods cannot be met, the Planning and Development Department be authorized and directed to file an appeal with the Secretary Treasurer of the Committee of Adjustment, in the name of and on behalf of the City, whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law and is deemed not to be in keeping with the intent and purpose of the By-law. Such an appeal shall be made subject to Council approval/ratification or withdrawal. The Planning and Development Department shall prepare a report to the Committee of the Whole. In response to such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

Due to the short appeal time frame regulated through the Planning Act, the prescribed fee and appeal letter were submitted to begin the appeal process, subject to confirmation of this direction from Council.

Proposal

The application was submitted to permit the existing building on the subject property (Appendix “A”) to be used as a privately owned and operated community centre with public worship services (church).
The property together with the adjacent lands to the east and north were the subject of Official Plan and Zoning By-law Amendments to accommodate a proposed power centre (Appendix “B”). The applications for these amendments were appealed to the Ontario Municipal Board (OMB). In this regard, OMB Order No. 0717 was issued on March 8, 2006, outlining specific uses permitted for the area in the Flamborough Official Plan and Zoning By-law. The list of permitted uses does not include public worship services. As a result, Planning and Economic Development Department staff recommended denial of the application.

The Committee of Adjustment (Urban) approved the application on April 12, 2006 (Appendix “C”).

**ANALYSIS/RATIONALE:**

While the proposed privately owned community centre use and public worship service use are intended to be temporary, the application had the effect of adding a use that is not permitted under the Zoning By-law. Staff did not support the application on the basis that the requested variances did not satisfy three of the four tests for a minor variance. More specifically, the addition of a prohibited use is not considered minor, and the proposed use does not meet the purpose and intent of the Flamborough Official Plan or Zoning By-law as amended by OMB Order No. 0717. It was, therefore, recommended that the proposal be appropriately dealt with by way of a temporary use By-law (Zoning By-law Amendment) to be considered by the City’s Planning and Economic Development Committee and Council.

**ALTERNATIVES FOR CONSIDERATION:**

Option 1

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the Ontario Municipal Board Hearing in opposition to the variance application.

Option 2

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment (Urban) to the Ontario Municipal Board (OMB).

The City of Hamilton was the only party which appealed the application. Should the appeal be withdrawn, the application will be considered approved, with no other options for appeal.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: Planning and Economic Development 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. Therefore, no additional funds would be required.

Staffing: One representative from each of Development Planning and Legal Services would be required for preparation and attendance at an Ontario Municipal Board Hearing.

Legal: No legal implications are expected.

POLICIES AFFECTING PROPOSAL:

Flamborough Official Plan

OMB Order No. 0717, dated March 8, 2006, outlines specific uses permitted within newly added subsection A.6.2.2.6 Prestige Industrial – Commercial – Site-Specific Area 14 (Flamborough Power Centre – North East) of the Flamborough Official Plan. This order follows Council’s approval of early 2005 for an Official Plan Amendment for this site and lands to the east and north to accommodate a power centre. While a community centre is listed as a permitted use, public worship services is not. Such use is permitted in the “Institutional” designation.

The requested variance to permit public worship services does not conform to the Official Plan as approved by the OMB.

Flamborough Zoning By-law No. 90-145-Z

OMB Order No. 0717, dated March 8, 2006, indicates the subject lands are now zoned M1-12-1 (H), M1-12-2 (H) and M1-12-3 (H) (Prestige Industrial) in Flamborough Zoning By-law No. 90-145-Z. This order follows Council’s approval of early 2005 for a Zoning By-law Amendment for this site and lands to the east and north to accommodate a power centre. In this regard, these zones do not permit the proposed public worship services use and the parent By-law which applies defines a Community Centre (permitted) as follows:

“Community Centre shall mean any lot, building or structure owned and/or operated by the Region or the Town used for the purpose of social and recreational activities and may include a day nursery but shall not include a private club.”
The requested variances to permit the proposed Community Centre to be privately owned and operated, and to permit the proposed public worship services use within the proposed community centre, do not meet the purpose and intent of the Zoning By-law as approved by the OMB.

As the application has the effect of changing the definition of a community centre and adding a use that is not permitted by the zoning, the proposal should be appropriately dealt with by way of a temporary use By-law (Zoning By-law Amendment) to be considered by the City’s Planning and Economic Development Committee and Council.

**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
  To ensure the public are involved in the definition and development of local solutions, proposals to add prohibited uses should be circulated to a wider area as required through the rezoning process.

- **Environmental Well-Being is enhanced.** ☑ Yes ☐ No
  Ecological function and the natural heritage system are 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

:JG

Attaches. (3)
Committee of Adjustment

Subject Property
59 Dundas Street East

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

Hamilton

Site of the Application

City of Hamilton

File name/number:
FLA-06-80

Date:
April 6, 2006

Technician:
SD

Map Not to Scale

Appendix "A"
Recommended Zoning

File Name/Number: ZAC-03/10/2/08/9/RCPA-04/02/0PA-04/12
Date: December 8, 2004
Schedule “A” Scale: N.T.S Technician: CT/LM

Subject Property

- **Block 1**: Change in Zoning to Modified M1-1(H) Zone
- **Block 2**: Change in Zoning to Modified M1-2(H) Zone

Change in zoning to Modified M1-1(H), Modified M1-2(H), Modified M1-3(H).

59 Dundas Street East

Ward 15

Keymap

N.T.S
Appendix "C" to Report PED06192 (Page 1 of 1)

Committee of Adjustment
City Hall
7th floor, 71 Main Street West
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

Hamilton

Committee of Adjustment
Decision of the Committee

Application No. FL/A-06:80
Submission No. A-80/06

In the Matter of The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 90-145-Z, as amended, of the City of Hamilton (formerly Flamborough), Sections 3 and 29.

And in the Matter of the Premises known as Municipal number 59 Dundas Street East, formerly in the Town of Flamborough, now in the City of Hamilton and in an "M1-1, M1-12-1 (NOT FINAL), M1-12-2 (NOT FINAL), M1-12-3 (NOT FINAL)" (Prestige Industrial) district;

And in the Matter of an Application by the agent Community Church (Jason Small) on behalf of the owner Flamborough Power Centre (John Rosart), 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 permit the establishment of a community centre within the existing building notwithstanding that:

1) The community centre shall not be owned and/or operated by the Region or the Town as per the definition of Community Centre contained within the Zoning By-Law; and,

2) The community centre will offer public worship services, which is not permitted.

The Decision of the Committee Is:

That the said application is 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.

Dated at Hamilton this 12th day of April, 2006

M. Dube (Chairman)

D. Delullo

C. Lewis

D. Drury

D. Servello

Note: The last date on which an appeal to the Ontario Municipal Board may be filed is May 2nd, 2006.

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