CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

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<th>TO:</th>
<th>Chair and Members Economic Development and Planning Committee</th>
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| COMMITTEE DATE: | August 9, 2010 |

| SUBJECT/REPORT NO: | Committee of Adjustment Consent Application HM/B-10:13 and Minor Variance Application HM/A-10:132 for the Property Known as 680 Garth Street (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED10160) (Ward 8) |

| SUBMITTED BY: | Tim McCabe General Manager Planning and Economic Development Department |
| PREPARED BY: | Daniel Barnett (905) 546-2424, Ext. 4445 |

| SIGNATURE: | |

| RECOMMENDATION: | That Report PED10160, respecting Committee of Adjustment Consent Application HM/B-10:13 and Minor Variance Application HM/A-10:132, for the property known as 680 Garth Street (Hamilton), as shown on Appendix “A” to Report PED10160, supported by the Planning and Economic Development Department, but Denied by the Committee of Adjustment, be received for information. |

| EXECUTIVE SUMMARY | The applicant submitted Consent Application HM/B-10:13 and Minor Variance Application HM/A-10:132, to permit and facilitate the severance of a single-detached residential lot from a property containing an existing single-detached dwelling, for the lands located at 680 Garth Street. |
Application HM/B-10:13 was considered before the Committee of Adjustment on March 18, 2010, and Application HM/A-10:132 was considered on June 24, 2010. Comments from staff to the Committee of Adjustment supported both applications, as they were considered to be consistent with the Provincial Policy Statement, in conformity to the Hamilton-Wentworth Official Plan, and maintained the intent and purpose of the City of Hamilton Official Plan and the Zoning By-law.

The Committee of Adjustment denied the applications for the reasons provided in attached Appendices "B" and "C". The decisions have been appealed to the Ontario Municipal Board (OMB) by the applicant. To date, an Ontario Municipal Board hearing has not been scheduled.

Alternatives for Consideration - See Page 9.

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

Financial: Planning and Economic Development Department staff supported the subject applications. However, if Council wishes to support the Committee of Adjustment’s decision to deny the applications, the City must retain an outside planning consultant, and any other expertise that 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 the planning staff would attend as an expert witness at the hearing should Council support Option 2, as listed below.

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:

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
“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.”

Proposal

The subject property is located at 680 Garth Street, Hamilton (see Appendix “A”). The consent application (HM/B-10:13) was to sever a vacant 16.03m x 27.43m parcel of land for single-detached residential purposes, and to retain a 17.5m x 27.43m parcel of land containing an existing single-detached dwelling for residential purposes (see Appendix “E”). In order to facilitate the proposed severance, the applicant also applied for minor variance approval (HM/A-10:132), as the proposed lot sizes of 480 sq.m. for the lands to be retained and 439.7 sq.m. for the lands to be severed are below the minimum lot area requirement of 690 sq.m. as set out in the City of Hamilton Zoning By-law. The proposed variance application (HM/A-10:132) was denied by the Committee of Adjustment on June 24, 2010.

The applications were reviewed against all applicable Provincial and local planning policy documents. Planning staff recommended approval of both applications, subject to the applicable condition of consent (see Appendix “D”), as the proposal is consistent with the Provincial Policy Statement, conforms to the Hamilton-Wentworth Official Plan, and maintains the intent and purpose of the City of Hamilton Official Plan and City of Hamilton Zoning By-law.

POLICY IMPLICATIONS

Niagara Escarpment Plan

The subject lands are located within the Niagara Escarpment Plan Area and are designated as “Escarpment Urban Area”. Staff notes that the lands are outside of the Niagara Escarpment Commission’s (NEC) Development Control Area.

Places to Grow

The application has been reviewed with respect to the Places to Grow - Growth Plan for the Greater Golden Horseshoe (P2G).

“2.2.2.1 Population and Employment growth will be accommodated by:
a) Directing a significant portion of new growth to the built-up areas of the community through intensification.

2.2.3.1 By the year 2015, and for each year thereafter, a minimum of 40 per cent of all residential development occurring annually within each upper and single-tier municipality will be within the built-up area.”

As the proposal is to sever and create a new residential lot within the built-up area, the application is consistent with the policies of the Places to Grow Plan.

**Provincial Policy Statement (PPS)**

The application has been reviewed with respect to the Provincial Policy Statement (PPS).

“1.1.3.1 Settlement areas shall be the focus of growth and their vitality and regeneration shall be promoted.

1.1.3.2 Land use patterns within settlement areas shall be based on:

a. Densities and a mix of land uses which:

1. Efficiently use land and resources;

2. Are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion; and,

3. Minimize negative impacts to air quality and climate change, and promote energy efficiency in accordance with Policy 1.8; and,

b. A range of uses and opportunities for intensification and redevelopment in accordance with the criteria in Policy 1.1.3.3.

1.1.3.3 Planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including Brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.
1.4.3 Planning authorities shall provide for an appropriate range of housing types and densities to meet projected requirements of current and future residents of the regional market area by:

b) Permitting and facilitating:

1. All forms of housing required to meet the social, health, and well-being requirements of current and future residents, including special needs requirements; and,

2. All forms of residential intensification and redevelopment in accordance with Policy 1.1.3.3.”

As the proposal is to sever a residential lot from a property containing an existing single detached dwelling within a settlement area, and to obtain minor variances for lot area to facilitate the severance, the proposal is consistent with the Provincial Policy Statement.

**Hamilton-Wentworth Official Plan**

The subject property is designated “Escarpment Urban Area” in the Hamilton-Wentworth Official Plan.

“C.1.5 The Niagara Escarpment is the most prominent natural feature that traverses the breadth of Hamilton-Wentworth. It provides a distinctive landscape and performs many ecological functions. The natural and physical features of the Escarpment should be protected through policies which apply to the physical features themselves and to a protective buffer. Therefore, the Region will:

C.1.5.2 Permit only the following uses:

a) on lands designated as Escarpment Urban Area on Maps No. 3, 3a, and 3b, a range of uses consistent with Policy C-3.1 of this Plan.

C.3.1 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. Accordingly, the Plan establishes a land use strategy for the Urban Area that consists of:
SUBJECT: Committee of Adjustment Consent Application HM/B-10:13 and Minor Variance Application HM/A-10:132 for the Property Known as 680 Garth Street (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED10160) (Ward 8) - Page 6 of 10

- Compact urban form, including mixed-use areas;

C.3.1.1 A compact higher density urban form, with mixed-use development in identified regional and municipal centres, and along corridors, best meets the environmental, social, and economic principles of sustainable development.

Mixed forms of development within an Urban Area are preferable to widespread, low density, residential development and scattered rural development, because:

- Growth can be accommodated by building on vacant or re-developed land, without taking up agricultural lands or natural areas;

- Higher density development can reduce per capita servicing costs, and makes more efficient use of existing services;

As the proposal is to sever a vacant residential lot from a property containing an existing single detached dwelling, and to obtain minor variances for the lot area to facilitate the severance, the proposal conforms to the Hamilton-Wentworth Official Plan.

**City of Hamilton Official Plan**

The subject property is designated “Residential” in the City of Hamilton Official Plan.

“A.2.1.1 The primary uses permitted in the areas designated on Schedule “A” as Residential will be for dwellings. Various types of dwellings are included within this designation, while preference will be given to the locating of similar densities of development together.

C.7.3 Council will encourage a Residential Environment of an adequate physical condition that contains a variety of housing forms that will meet the needs of present and future residents. Accordingly, Council will:

b) Support Residential development such as infilling, redevelopment, and the conversion of non-residential structures that make more efficient use of the existing building stock, and/or physical infrastructure that recognize and enhance the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and areas, building height, coverage, mass, setbacks, privacy, and overview;”
As the proposed new residential lot will maintain the character of the surrounding neighbourhood, and is on full municipal services, the proposal conforms to the policies of the City of Hamilton Official Plan. In addition, the proposed variances to facilitate the proposed severance are minor, are desirable and appropriate for the use of the lands, and meet the intent of the City of Hamilton Official Plan and Zoning By-law, thereby satisfying the four tests of a minor variance, as set out in Section 45 of the Planning Act.

**Urban Hamilton Official Plan (Council Approved)**

The subject property is designated “Neighbourhoods” in the Urban Hamilton Official Plan, which is Council-approved and pending Ministerial approval.

"E.3.2.3 The following uses shall be permitted on lands designated Neighbourhoods on Schedule E-1 - Urban Land Use Designations:

a) residential dwellings, including second dwelling units and housing with supports;

E.3.2.13 The City supports residential intensification on lands within the Neighbourhoods designation in accordance with Section B.2.4 - Residential Intensification Policies, F.1.14 - Lot Creation, and other applicable policies.

B.2.4 Residential intensification is a key component of Hamilton’s growth strategy, and is essential to meet our growth and employment targets. Intensification ensures land, urban services, and the transportation network are used more efficiently and sufficient population is maintained to support existing community facilities. Successfully accommodating more residents within the existing built-up area reduces the need for development of Greenfield lands and urban boundary expansions.

F.1.14.3.1 Consents for new lot creation, for both the severed and retained lands, for residential uses in the Neighbourhoods designation shown on Map E-1 - Urban Land Use Designation, shall be permitted provided the following conditions are met:

a) The lots comply with the policies of this Plan, including secondary plans, where one exists;

b) The lots comply with existing Neighbourhood Plans;
c) The lots are in conformity with the Zoning By-law or a minor variance is approved;
d) The lots reflect the general scale and character of the established development pattern in the surrounding area by taking into consideration lot frontages and areas, building height, coverage, mass, setbacks, privacy, and overview;
e) The lots are fully serviced by municipal water and wastewater systems; and,
f) The lots have frontage on a public road.”

As the proposed residential lots will reflect the general scale and character of the established development pattern in the surrounding area, and are on full municipal services, and as the proposed variances are to facilitate the proposed severance, the proposal conforms to the policies of the Council-approved Urban Hamilton Official Plan.

RELEVANT CONSULTATION

- Legal Services Division.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The subject lands are zoned “B-1” Suburban Agricultural and Residential District in the City of Hamilton Zoning By-law. The “B-1” District permits single detached dwellings; therefore, the proposed use is permitted subject to the applicable performance standards in the Zoning By-law.

Consent Application HM/B-10:13

The proposed lands to be severed and lands to be retained will meet the minimum lot frontage requirement of 15m, however, both the lands to be severed and lands to be retained will not meet the minimum lot area requirement of 690 sq.m. However, the proposed lot sizes for both the lands to be severed and lands to be retained will be compatible with the surrounding neighbourhood and will maintain the streetscape character of the area.
Minor Variance Application HM/A-10:132

Variances (lot area):

The intent and purpose of requiring a minimum lot area of 690 sq.m. is to maintain streetscape character and to ensure that the lot is of adequate size to accommodate a single-detached dwelling unit.

The proposed variances meet the intent and purpose of the By-law. The proposed lot sizes of 439.7 sq.m. for the lands to be severed and 480 sq.m. for the lands to be retained will be compatible with the surrounding neighbourhood. In addition, the proposed lots will meet the minimum lot frontage requirement; therefore, the lots will maintain the streetscape character of the area. Further, staff notes that a dwelling with a building area of 154.5 sq.m. is proposed for the lands to be severed, as indicated on the site plan in Appendix “E”. The proposed dwelling was supported by staff on the lands to be severed while maintaining all of the minimum setback requirements of the “B-1” Zone.

With respect to the proposed applications, staff is of the opinion that the proposal is consistent with all applicable Provincial policies, conforms to the policies of the Hamilton-Wentworth Official Plan, and meets the intent and purpose of the City of Hamilton Official Plan and Zoning By-law. Therefore, staff recommended that the applications be Approved, subject to the conditions outlined in Appendix “D”.

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 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 applications, 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.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Financial Sustainability

- Effective and sustainable Growth Management.

Social Development

- Everyone has a home they can afford that is well maintained and safe.

Healthy Community

- Plan and manage the built environment.

APPENDICES / SCHEDULES

- Appendix “A”: Location Map
- Appendix “B”: HM/B-10:13 Consent Decision
- Appendix “C”: HM/A-10:132 Variance Decision
- Appendix “D”: HM/B-10:13 Consent Conditions
- Appendix “E”: Site Plan Sketch

:DB/RS
Attachs. (5)
Committee of Adjustment
Hamilton City Centre
4th floor, Suite 400, 77 James St N.
Hamilton, ON, L8R 2K3
Telephone (905) 540-2424, ext. 4221
Fax (905) 540-4202

COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENT
LAND SEVERANCE

APPLICATION NO. HM/B-10:13
SUBMISSION NO. B-13/10

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

AND IN THE MATTER OF the Premises known as Municipal number 680 Garth Street, in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the owner Dino Scalia, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of a vacant parcel of land measuring 16.03m² (52.59±) x 27.43m² (89.99±) for single family residential purposes, and to retain a parcel of land measuring 17.5m² (57.41±) x 27.43m² (89.99±) containing an existing dwelling for residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, IS DENIED for the following reasons:

1. The Committee, having personal knowledge of the subject property and surrounding area, is of the opinion that creating two lots that do not meet the minimum lot area requirements of the Zoning By-law is not in the interest of proper planning and development for the area and is not in keeping with the existing character of this neighbourhood.

2. The proposal does not comply with the requirements of the Zoning By-law.

3. The proposal does not comply with Section 51(24) of The Planning Act.

DATED AT HAMILTON this 18th day of March, 2010.

M. Dudgeon, Chairman

M. Switzer

C. Lewis

D. Drury

L. Taw


NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS April 14th, 2010.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.
Committee of Adjustment
Hamilton City Hall
71 Main Street West, 5th Floor
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4302

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-10:132
SUBMISSION NO. A-132/10

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 9 & 19B.

AND IN THE MATTER OF the Premises known as Municipal number 680 Garth Street, in the City of Hamilton and in a "B-1" (Suburban Agricultural and Residential) district;

AND IN THE MATTER OF AN APPLICATION by the owner Dino Scalia, 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 creation of two lots through severance notwithstanding that:

Part 1:
1. A lot area of 439.7m² shall be provided instead of the minimum required 690.0m²; and,

Part 2:
2. A lot area of 480.0m² shall be provided instead of the minimum required of 690.0m².

Note: This application is necessary to facilitate Consent Application HMB-10:13, which was denied by the Committee of Adjustment. The decision of the Committee has been appealed to the Ontario Municipal Board.

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 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 24th day of June, 2010

M. Dudzic (Chairman)

______________________________
M. Switzer

______________________________
D. Smith

______________________________
C. Lewis

______________________________
L. Tew

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS July 14th, 2010.

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

1. That the owner shall submit a deposited Ontario Land Surveyor’s Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.

2. That the owner/applicant shall include the following warning clause in the consent/development agreement and in all purchase and sale and/or lease/rental agreements:

   “Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality’s and the Ministry of the Environment’s noise criteria.”

3. That the proponent shall carry out an archaeological assessment of the entire property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling, or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning and the Ministry of Culture confirming that all archaeological resource concerns have met licensing and conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Culture.

   That should deeply buried archaeological materials be found on the property during any of the above development activities, the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).

4. That the owner shall receive final approval of any necessary variances from the requirements of the Zoning By-law, as determined necessary by the Planning and Economic Development Department (Building Services Division).

5. That the owner shall enter into, and register on title of the lands, a Consent Agreement with the City of Hamilton to deal with grading and drainage of the subject lands, and demonstrate that all drainage can be taken to a suitable outlet, to the satisfaction of the Manager of Engineering Design and Construction.

6. That the owner shall submit to the Committee of Adjustment Office an administration fee of $15.00, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.
7. That the owner/applicant shall satisfy the requirements of the Public Works Department, Operations and Maintenance Division, Forestry and Horticulture Section.

8. That the owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

NOTE:

1. Based on the attached plans, and on this application being approved and all conditions being met, the owner/applicant should be made aware that the lands to be conveyed will be assigned the municipal address of 678 Garth Street, and that the lands to be retained will remain as 680 Garth Street.