SUBJECT: Committee of Adjustment (Rural) Severance Application FL/B-06:24, for Property Known as 392 Moxley Road, Flamborough - Supported by the Planning and Economic Development Department (PED06368) (Ward 14)

RECOMMENDATION:

That Report PED06368 respecting Committee of Adjustment (Rural) Severance Application FL/B-06:24, 392 Moxley Road, Flamborough, as shown on Appendix ‘A’ to Report PED06368, denied by the Committee but supported by the Planning and Economic Development Department, be received for information.

EXECUTIVE SUMMARY:

A severance application to permit the conveyance of a vacant parcel of land having frontage on Brock Road measuring 89.5 metres with an area of 4,048 square metres for a single detached dwelling, and to retain a parcel of land having frontage on Moxley Road measuring 31.86 metres with an area of 4,048 square metres containing an existing single detached dwelling (see Appendix “A”), was considered before the Committee of Adjustment (Rural) on March 22, 2006. Comments to the Committee of Adjustment from staff supported the requested severance in accordance with the Provincial Policy Statement and conformity with the purpose and intent of the Hamilton Wentworth and Flamborough Official Plans.

The Committee’s decision to deny the application (Appendix “B”) was appealed to the Ontario Municipal Board by the applicant. An Ontario Municipal Board Hearing has been scheduled for November 7, 2006.
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 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(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

Severance application FL/B-06:24 was submitted to permit the conveyance of a vacant parcel of land with frontage on Brock Road measuring 89.5 metres and an area of 4,048 square metres for a single detached dwelling, and to retain a parcel of land with frontage on Moxley Road measuring 31.86 metres and an area of 4,048 square metres containing an existing single detached dwelling. The proposed lot configuration is shown on Appendix "A".

ANALYSIS/RATIONALE:

The predominate zoning in this immediate area is Settlement Residential “R2” Zone (Appendix “A”), with some lands containing a site-specific provision relating to lot size. The lots in the area vary in frontage and area.

The Settlement Residential “R2” Zone requires a minimum lot frontage of 30 metres and the site-specific “R2-9” Zone, which applies to the subject and northerly lands, requires a minimum lot frontage of 36 metres. The average lot frontage of properties fronting onto Moxley Road is 33.3 metres with the proposed frontages being 31.86 metres on Moxley Road and 89.5 metres on Brock Road. The subject land’s frontage onto Moxley Road currently serves as the main access for the existing dwelling located on these lands. While a minor variance would be required for the proposed frontage of the retained lot on Moxley Road, the proposed frontages are considered compatible with those in the immediate area.

The Settlement Residential “R2” Zone permits a minimum lot area of 2,000 square metres with the site-specific provisions of the “R2-9” Zone which apply to the subject and northerly lands requiring a minimum lot area of 6,000 square metres. The lots in the vicinity average lot areas of 2,650 square metres with the proposed lots having an area of 4,048 square metres. While minor variances would be required for both proposed lot
areas, the proposed lots are considered compatible with the surrounding lots. A hydrogeological study was requested by staff to verify that the proposed lot areas are capable of supporting development.

Staff also notes that additional minor variances would be required to recognize the location of the existing dwelling on the proposed retained lot.

In staff’s opinion, the proposal is appropriate residential infill for the area. The proposed severance meets the Provincial Policy Statement (Policy 1.1.3.1) which indicates that growth shall be focused in the growth or settlement areas. The property is listed in the Inventory of Buildings or Architectural and/or Historical Interest (“Hamilton’s Heritage Volume 2”). An archaeological assessment would be required to be performed prior to final approval, to ensure that any historical artifacts would be preserved, satisfying the policies of the PPS. The lands are listed “Rural Settlement” in the Hamilton-Wentworth Official Plan and the proposal conforms to the Plan.

The Flamborough Official Plan designates the lands “Settlement Residential” as contained within the Greensville Secondary Plan. The policies of the secondary plan provide for infill development within the settlement area. Policy B11.1.1.1 indicates that the predominant land use of newly developable areas is to be single detached dwellings. Policy B.11.1.2.4 permits development of land by consent where a plan of subdivision is not feasible due to the size of the land involved. This property is not of a sufficient size to require a plan of subdivision. A condition requiring a hydrogeological assessment that would ensure that the lot sizes would be sufficient to accommodate a dwelling with private services would satisfy Policy B.11.1.9.3 of the Plan.

In staff’s opinion, the proposal satisfies Section 51(24) of the Planning Act regarding the criteria for provisional consent approval.

**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 denial, the City must retain an outside planning consultant who can professionally support the denial. If retained, the cost of hiring the planner for the hearing is estimated at $2,500 to $5,000. In addition, one lawyer from Legal Services would be required for preparation and attendance at the hearing. Legal and planning staff costs are covered by the respective Departmental Work Programs/Budgets.

**Staffing:** One representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing, and one member of planning staff would attend as an expert witness at the hearing should Council support Option 2 above.

**Legal:** N/A.

**POLICIES AFFECTING PROPOSAL:**

**Hamilton-Wentworth Official Plan**

The subject property is designated “Rural Settlement” in the Hamilton-Wentworth Official Plan. The Hamilton-Wentworth Official Plan, under Section 3.2.1.6, states that limited development by severance may be permitted if in conformity with the secondary plan and located in a manner that will not interfere with future development.

The proposal conforms to the Official Plan.

**Flamborough Official Plan**

The subject lands are designated “Settlement Residential” by the Greensville Secondary Plan and the proposal conforms to the Flamborough Official Plan’s land use designation. Servicing issues are addressed under Subsection B.11.1.9 – Servicing. Flamborough Official Plan Policy B.11.1.9.3 specifically requires a hydrogeologic and soils study for residential development by plan of subdivision or consent.

The proposal conforms with the Official Plan.
Flamborough Zoning By-law No. 90-145-Z

The subject lands are zoned Settlement Residential “R2-9” Zone in Flamborough Zoning By-law No. 90-145-Z. This zone requires a minimum lot frontage of 36.0 metres and a minimum lot area of 6,000 square metres.

The lands to be retained (Appendix “A”) will have a minimum lot frontage of 31.86 metres whereas 36.0 metres is required, and a minimum lot area of 4,048 square metres whereas 6,000 square metres is required. As a result, the applicant will need to seek the approval of minor variances for the deficient lot frontage and lot area.

The lands to be conveyed will have a minimum lot frontage of 89.5 metres whereas 36.0 metres is required, and a minimum lot area of 4,048 square metres whereas 6,000 square metres is required. The applicant will need to seek the approval of a minor variance in order to recognize the deficient lot area.

This parcel also contains an existing dwelling on the proposed retained lot which will require variances to recognize the existing setbacks.

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 are involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Ecological function and the natural heritage system are protected through hydrogeological and archaeological assessments.

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

:SB
Attachs. (2)
Committee of Adjustment  
City Hall  
3rd floor, 1 Main Street West  
Hamilton, ON L8P 4Y5  
Telephone (905) 546-2424, ext. 4221  
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Appendix "B" to Report PED06368  
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COMMITTEE OF ADJUSTMENT  
NOTICE OF DECISION  
APPLICATION FOR CONSENT/LAND SEVERANCE  
APPLICATION NO. FL/B-06:24  
SUBMISSION NO. B-24/06

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 392 Moxley Road, formerly in the Town of (West) Flamborough, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the owner Donald G. Jones, 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 having a frontage on Brock Road of 89.5m (293.6'), and an area of 4048m² (1 acre) for single family residential purposes, and to retain a parcel of land having a frontage of 31.86m (104.5'), and an area of 4048m² (1 acre) containing an existing single family dwelling for residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The Committee having regard for the evidence, is of the opinion that the proposal does not appear to be in the interest of proper planning and development for the area.

2. The proposed lot to be conveyed as well as the lot to be retained would not comply with the requirements of the Zoning By-law.

DATED AT HAMILTON this 26th day of April, 2006.

[Signatures]


NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS May 23rd, 2006.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.