TO: Chair and Members  
Economic Development and Planning Committee  
WARD(S) AFFECTED: WARD 15

COMMITTEE DATE: March 23, 2010

SUBJECT/REPORT NO:  
Heritage Permit Application (HP2009-042) Under Part V of the *Ontario Heritage Act* for Erection of Structure at 63 Mill Street South, Waterdown (PED10077) (Ward 15)

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning and Economic Development Department

PREPARED BY:  
Joseph Muller  
(905) 546-2424, Ext. 1214

SIGNATURE:

RECOMMENDATION:

That Heritage Permit (HP2009-042) be approved for the erection of a new gazebo, installation of an in-ground swimming pool, new rear patio bar and barbeque, new fencing, new address plaque, partial paving of the driveway, new driveway gate, and grading and landscaping on the designated property at 63 Mill Street South (Mill Street Heritage Conservation District) (Waterdown), as shown on Appendix “A” to Report PED01077, Waterdown, subject to the following conditions:

(a) That the applicant shall provide City Planning staff with a grading plan for the portion of the property south of the driveway, to the approval and satisfaction of City Planning staff;

(b) That the applicant shall conduct an archaeological assessment in the portion of the property south of the driveway subject to grading, and in the portion of the property subject to the construction of the pool, hot-tub, and related infrastructure;

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That the applicant shall advise City Planning staff on the proposed sign and plaquing for the driveway gate, to the approval and satisfaction of City Planning staff;

(d) That the applicant shall advise City Planning staff on the proposed plantings and replacement tree(s), to the approval and satisfaction of City Planning staff;

(e) That the applicant shall advise City Planning staff on the style and extent of the driveway paver pattern proposed, to the approval and satisfaction of City Planning staff;

(f) That the applicant shall advise City Planning staff on the final design, materials and details for the rear patio, barbeque and bar, to the approval and satisfaction of City Planning staff;

(g) That the applicant shall advise City Planning staff of the final design, materials and details of the pool and hot-tub to be used, to the approval and satisfaction of City Planning staff; and,

(h) That this approval expires March 31, 2012.

EXECUTIVE SUMMARY

The subject property, located at 63 Mill Street South, Waterdown, is designated as part of the Mill Street Heritage Conservation District under Part V of the Ontario Heritage Act. A Heritage Permit is required for the alteration of any part of the property, and for the erection or demolition of any structures or buildings on the property. The applicant is applying for a number of alterations and construction activities, including: the erection of a new gazebo; installation of a new in-ground pool and hot-tub complex; grade alteration to a portion of the property; fence restoration and the installation of new fencing; replacement of existing driveway posts and installation of a new driveway gate; replacement of the existing property sign; partial paving of the driveway; installation of various paths, benches and arbours; and, related landscaping activities. The Heritage Permit Review Subcommittee and the Hamilton Municipal Heritage Committee have reviewed this application, and have advised conditional approval of the application.

Alternatives for Consideration - See Page 7.

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

Financial - None.

Staffing - None.
Legal - This Heritage Permit application has been processed and considered within the context of the applicable legislation.

Section 42(1) of the Ontario Heritage Act states that: “No owner of property situated in a heritage conservation district that has been designated by a municipality under this Part shall do any of the following, unless the owner obtains a permit from the municipality to do so: 1. Alter, or permit the alteration of, any part of the property, other than the interior of any structure or building on the property; or, 2. Erect, demolish or remove any building or structure on the property or permit the erection, demolition or removal of such a building or structure.”

Section 42(4) of the Ontario Heritage Act states that “Within 90 days after the notice of receipt is served on the applicant under Subsection (3), or within such longer period as is agreed upon by the applicant and the Council, the Council may give the applicant,

(a) The permit applied for;

(b) Notice that the Council is refusing the application for the permit; or,

(c) The permit applied for, with terms and conditions attached.”

Section 42(4.1) of the Ontario Heritage Act states that: “If the Council of a municipality has established a Municipal Heritage Committee under Section 28, the Council shall, before taking any action under Subsection (4) with respect to an application to demolish or remove any building or structure on property in a Heritage Conservation District, consult with its Municipal Heritage Committee.”

Section 42(5) of the Ontario Heritage Act states that: “If the Council fails to do any of the things mentioned in Subsection (4) within the time period mentioned in Subsection (4), the Council shall be deemed to have given the applicant the permit applied for.”

Section 42(16) of the Ontario Heritage Act states that: “The Council of a municipality may delegate, by By-law, its power to grant permits for the alteration of property situated in a Heritage Conservation District designated under this Part to an employee or official of the municipality if the Council has established a Municipal Heritage Committee, and consulted with it before the delegation.” This power to consent to applications was granted to the Director of Planning by City of Hamilton By-law 05-364. However, Subsection 42(17) of the Ontario Heritage Act further defines the scope of this power as “Council’s power to consent to
alterations,” and does not apply to applications for the demolition of existing structures, or erection of new structures, on a designated property. In addition, By-law No. 05-364 states that: “the delegated powers in Section 1 do not include the power to refuse an application”.

HISTORICAL BACKGROUND

The subject property at 63 Mill Street South, Waterdown (Appendix “A”), is located in the Mill-John-Union-Griffin Heritage Conservation District (HCD), designated by the former Town of Flamborough, and approved by the Ontario Municipal Board in 1996 under Part V, Section 41, of the Ontario Heritage Act. Under Section 42 of the Ontario Heritage Act, a permit is required for alterations to a property. The power to consent to alterations to property designated under the Ontario Heritage Act was delegated by Council to the Director of Planning under City of Hamilton By-law No. 05-364. However, the Ontario Heritage Act excludes the power to consent to an application for the demolition of existing structures or erection of new structures (see Legal Implications).

The subject property at 63 Mill Street South, Waterdown (Appendix “B”), contains a two-storey, residential building, and a detached, one-and-a-half storey, three-bay side-gable garage. The applicant has applied for consent to erect a new gazebo, install a new in-ground pool and hot-tub complex, alter the grade of the property to the south of the driveway, restore the existing fence and install new fencing, replace the existing driveway posts and install a new driveway gate, replace the existing property sign, partially pave the driveway, install various paths, benches and arbours, and conduct related landscaping activities (Appendix “C”).

The Heritage Permit Review Subcommittee of the City of Hamilton Municipal Heritage Committee reviewed this application on August 5 and October 7, 2009, and January 6, 2010, and advised conditional approval of the application. At its meeting on February 25, 2010, the Hamilton Municipal Heritage Committee affirmed this recommendation, and advised conditional approval of the application.

POLICY IMPLICATIONS

Subsection C.6-Heritage Resources: The City of Hamilton Official Plan states that it is the intent of Council to encourage the preservation, maintenance, reconstruction, restoration, and management of property that is considered to have historic, architectural, or aesthetic value (Section 6.1). The Official Plan also states that encouragement may be given to Commercial development schemes, in appropriate locations, proposed to incorporate a building, or group of buildings, with historic character or architectural value.

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One of the goals of Section 3.4 - Cultural Heritage Resources Policies of the Council approved Hamilton Urban Official Plan (adopted July 9, 2009) is for the City to "ensure that all new development, site alterations, building alterations, and additions are contextually appropriate, and maintain the integrity of all on-site or adjacent heritage resources" (3.4.1.3). Additional goals are to "protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes" (3.4.2.1.a), and to "conserve the character of areas of cultural heritage significance, including designated heritage conservation districts and cultural heritage landscapes, by encouraging those land uses and site alteration activities that protect, maintain, and enhance these areas within the City" (3.4.2.1.h). Although the new Urban Hamilton Official Plan has not been approved by the Ministry of Municipal Affairs and Housing, and is not in effect, these policies demonstrate Council's commitment to the identification, protection, and conservation of the cultural heritage resources.

The Mill-John-Union-Griffin Heritage Conservation District Plan (Section 4.0 - Guidelines for Alterations, Additions and New Construction) identifies Features and Space Around Buildings (4.2.2) as significant cultural heritage values within the Heritage Conservation District, and seeks the maintenance of traditional view of the property by not masking prominent building features with new additions, and the retention of front lawns, tree plantings, hedges, and fences. Parking and other outbuildings are intended to be in the rear yard, and traditional means of access (driveways, paths, and doorways) kept or restored for use. New buildings should not replicate existing buildings (4.5.1), and should be of a sympathetic height (4.5.2), width (4.5.3), and proportion (4.5.4), with ancillary buildings situated either to the rear of the lot, or set back from the principal façade (4.5.5). The intent is to use materials and styles sympathetic to the existing building fabric (4.5.6 - 4.5.9). The guidelines seek front-yard landscaping to be generally open, with a direct walk from the street to the front door (5.2), with the plantings and design of Victorian front yards organized to identify this as semi-private space. The guidelines also intend vegetation used to be from an inventory of traditional plantings (5.3).

**RELEVANT CONSULTATION**

Pursuant to Subsections 42(1) and 42(4.1) of the Ontario Heritage Act, the City of Hamilton Municipal Heritage Committee (MHC) advises and assists Council on matters relating to Part V of the Ontario Heritage Act. At its meetings of August 5 and October 7, 2009, and January 6, 2010, the Heritage Permit Review Subcommittee of the City of Hamilton MHC considered this application, together with staff memoranda, and recommended to Council that the subject application be approved, subject to the following conditions:
That the applicant shall provide City Planning staff with a grading plan for the portion of the property south of the driveway, to the approval and satisfaction of City Planning staff;

That the applicant shall conduct an archaeological assessment in the portion of the property south of the driveway subject to grading, and in the portion of the property subject to the construction of the pool, hot-tub, and related infrastructure;

That the applicant shall advise City Planning staff on the proposed sign and plaquing for the driveway gate, to the approval and satisfaction of City Planning staff;

That the applicant shall advise City Planning staff on the proposed plantings and replacement tree(s), to the approval and satisfaction of City Planning staff;

That the applicant shall advise City Planning staff on the style and extent of driveway paver pattern proposed, to the approval and satisfaction of City Planning staff;

That the applicant shall advise City Planning staff on the final design, materials and details for the rear patio, barbeque and bar, to the approval and satisfaction of City Planning staff;

That the applicant shall advise City Planning staff of the final design, materials and details of the pool and hot-tub to be used, to the approval and satisfaction of City Planning staff; and,

That this approval expires March 31, 2012.

These conditions are included as part of the recommended approval. At its meeting on February 25, 2010, the Hamilton Municipal Heritage Committee affirmed this recommendation, and advised conditional approval of the application.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

Key factors that are considered in the evaluation of any change affecting a heritage building, or its setting, are consideration of “displacement effects” (those adverse actions that result in the damage, loss, or removal of valued heritage features) and “disruption effects” (those actions that result in detrimental changes to the setting or character of the heritage feature).

**Displacement:** Displacement effects are minor with this application, as there is no direct impact to existing buildings on the subject property. The most visible displacement effects are on the landscape, with the installation of the new gazebo, grading to the south of the driveway, installation of a driveway gate, and installation of new fencing...
and vegetation to the south of the driveway. The grading will impact an area of archaeological potential, and requires an archaeological assessment prior to soil disturbance taking place.

**Disruption:** Disruption effects can be made within the district by the erection of new structures and installation of landscape features that are not sympathetic to the existing original building fabric and heritage landscape. The guidelines for new construction around existing buildings within the Mill Street Heritage Conservation District seek the maintenance of traditional views by not masking with new structures, and placing the majority of new features to the rear of existing buildings. Front yards are intended to be maintained, along with fences, trees and hedges. The proposed new structure and other installations and alterations conform to these guidelines. The gazebo placement does not substantially alter the view of the property from the north, while the proposed fence and plantings to the south of the driveway have been reduced in height to ensure that the view of the house from this direction is maintained. The arbors, benches, and walkways in the front and side yard are not detrimental to the character, while the pool and hot-tub complex, and barbeque installation, are to the rear of the house and property. Traditional access to the property is maintained or enhanced, and the new gate and fence match and continue the line of the existing fence. If proposed construction of the new building and other installations are carried out according to the recommended conditions, it is anticipated that they will conform to district guidelines, and shall contribute positively to the district and streetscape.

Accordingly, staff recommends that Heritage Permit Application HP2009-042 be approved with an expiry date of March 31, 2012. An expiry date of two years after approval is standard on all approved Heritage Permits, and the March, 2012 date will reflect the expected end date of the renovations.

**ALTERNATIVES FOR CONSIDERATION:**

1. **Refuse the Heritage Permit application.**

   Refusal of the Heritage Permit to erect the new structure does not contribute to the built heritage landscape of the Mill Street Heritage Conservation District (HCD), and does not advance the Mill Street HCD Guidelines that permit the erection of new buildings sympathetic to the existing building fabric and other alterations that maintain the landscape features and views of the property.

2. **Approve the Heritage Permit with additional conditions.**

   The Hamilton Municipal Heritage Committee may recommend that Council approve this application with alternative conditions to those recommended by staff. This is not being recommended.
3. Approve the Heritage Permit with no conditions.

The Hamilton Municipal Heritage Committee may recommend that Council approve this application with no conditions. The alternative is not recommended as it would remove other approvals on the quality of the final implementation of the project design.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


**Skilled, Innovative & Respectful Organization**
- A culture of excellence.
- Ensuring that staff are able to enforce high standards in the management of heritage resources.

**Financial Sustainability**
- Generate assessment growth/non-tax revenues.
- Increasing the quality and value of designated properties.

**Intergovernmental Relationships**
- Maintain effective relationships with other public agencies.
- Complying with Provincial legislation, regulations, standards, and process in managing heritage resources.

**Growing Our Economy**
- A skilled and creative labour pool that supports new employers.
- Contributing to a market for heritage specialists and contractors working in the City.

**Social Development**
- Everyone has a home they can afford that is well maintained and safe.
- Ensuring the appropriate upkeep and improvements to residential heritage properties.
Environmental Stewardship

- Reduced impact of City activities on the environment.
- Conserving built heritage through maintaining continued viability and use.

Healthy Community

- Plan and manage the built environment.
- Managing built heritage resources to ensure their ongoing conservation.

APPENDICES / SCHEDULES

- Appendix “A” - Location Map.
- Appendix “B” - Existing Conditions.
- Appendix “C” - Proposed Work.

:JM
Attachs. (3)
Appendix "A" to Report PED10077

Location Map

File Name/Number:
63 Mill St S, HP2009-042
Date:
Sep. 23, 2009

Appendix "A" 
Scale:
N.T.S.
Planner/Technician:
JMN/MB

Subject Property

63 Mill Street South, Waterdown

Ward 15 Key Map
N.T.S.
Existing Front Driveway and Pillars

View from Front Door to Front Gate (future walkway)
North Yard to Street (walkways, gazebo, garden)

South Yard to Street (leveling, fence and plantings)
Existing Patio (patio bar and barbeque)

Garage and Shed (pool and hot tub patio complex)
Existing Garage and Driveway (pavers)

Upper Driveway (pavers)
Driveway Gate

Galvalume Fencing
Cedar Fencing for Pool Area

Yard Pergola Design
Pergola Over Parts of Back Patio and Pool

Flagstone for Paths and Decks
Stonework for Driveway Entry Gate Pillars, Pool Area Walls and Pillars, and Barbeque Walls and Faces

Coping for Gate and Pool Pillars, Pool Coping, Pool Wall, and Barbeque Deck
Coping for Gate and Pool Pillars, Pool Coping, Pool Wall, and Barbeque Deck

Driveway Pavers
Paver Pattern for Barbeque Patio, Pool Patio, and Driveway at Gagage