SUBJECT: Committee of Adjustment (Urban) Severance Application HM/B-06:63 and Minor Variance Application HM/A-06:16, for Property Known as 34 Albert Street, Hamilton – Supported by the Planning and Economic Development Department (PED06348) (Ward 3)

RECOMMENDATION:

That Report PED06348 respecting Committee of Adjustment (Urban) Severance Application HM/B-06:63 and Minor Variance Application HM/A-06:16, 34 Albert Street, Hamilton, as shown on Appendix ‘A’ to Report PED06348, denied by Committee but supported by the Planning and Economic Development Department, be received for information.

EXECUTIVE SUMMARY:

Severance and minor variance applications to permit the conveyance of a vacant parcel of land with a lot frontage of approximately 13 metres and a lot area of approximately 364 square metres for single residential purposes, and to retain a parcel of land with a lot frontage of approximately 17.4 metres and lot area of 1214.1 square metres containing an existing legal non-conforming three family dwelling and concrete block commercial storage building was considered before the Committee of Adjustment (Urban) on May 17, 2006 (Appendix ‘B’ to Report PED06348). Comments to the Committee of Adjustment from staff supported the requested severance and minor variance applications on the basis of appropriate intensification and consistency with the intent of the Official Plan. The Committee’s decisions to deny the applications (Appendix
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 HM/B-06:63 and Minor Variance application HM/A-06:116 were submitted to permit the conveyance of a vacant parcel of land having a lot frontage of approximately 13 metres and a lot area of approximately 364 square metres for single residential purposes, and to retain a parcel of land with a lot frontage of approximately 17.4 metres and lot area of 1214.1 square metres containing an existing legal non-conforming three family dwelling and concrete block commercial storage building.

ANALYSIS/RATIONALE:

The proposed lots are located on the west side of Albert Street between Main Street East and Maplewood Avenue (Appendix ‘A’). The east side of Albert Street is characterized mainly by smaller lot frontages ranging from approximately 5.8 metres to 9.1 metres. A few larger lot frontages can be found along the west side of Albert Street. These frontages range from approximately 7.3 metres to 18.6 metres.

The predominant zoning along Albert Street is “D” (Urban Protected Residential – One and Two Family Dwellings) District, which requires a minimum lot frontage of 12.0 metres and a minimum lot area of 360 square metres.

In staff’s opinion, the proposal is an appropriate residential infill for the area. The proposed 13.0 metre and 17.4 metre lots meet the requirements of the Zoning By-law, while providing lots that are in keeping with the character of the neighbourhood.
**ALTERNATIVES FOR CONSIDERATION:**

**Option 1**

Council may instruct Legal Services to, attend the Ontario Municipal Board Hearing, in support of the Committee of Adjustment’s decisions, and to retain outside planning professional(s).

**Option 2**

Council may decide to support the applicant’s appeal against the Committee of Adjustment’s decisions to deny, and direct Legal Services to attend the Ontario Municipal Board Hearing in support of 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 decisions or against the decisions.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee denials, the City must retain an outside planning consultant who can professionally support the denials. 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 “Urban Area” and the proposal conforms with the Hamilton-Wentworth Official Plan.
Hamilton Official Plan

The subject lands are designated “Residential” on Schedule ‘A’ Land Use Concept in the Hamilton Official Plan. Subsection C.7 – Residential Environment and Housing Policy of the City of Hamilton Official Plan provides guidance for infill development. The following polices are applicable:

“Subsection C.7.7.1

(i) Provision and Maintenance of adequate off-street parking;

(iv) Acquisition, removal or improvement of buildings or uses incompatible with a zoning district; and,

(vi) Investigation into, and application of, other methods of encouraging the maintenance and improvements of buildings in RESIDENTIAL area.”

The existing legal non-conforming concrete block storage building was constructed with 0.0 metre setbacks from the rear and side lot lines of the existing lot. Approval of this severance application creates more 0.0 metre setbacks. While a public unassumed lane abuts the south side and rear lot lines, maintenance easements for the north side lot line and for the rear of the parcel to be conveyed shall be required as a condition of approval in order for the owner of the retained parcel to perform any required building maintenance.

Upon the approval of the severance, the concrete storage building will only be able to be accessed from the public unassumed lane. Deeded Right-of-Way access should be confirmed.

The new lot created by this severance should be able to provide adequate off-street parking. The retained lot is not able to provide adequate off-street parking for the legal non-conforming three family dwelling. Four parking spaces are required and two parking spaces can be provided.

The subject property is the largest residential lot within the immediate area and the proposed severance will create two residential lots that are in keeping with the character of the neighbourhood. The proposal conforms with the policies of the Official Plan.

Neighbourhood Plan

The lands are identified as “Single and Double Residential” on the Blakely Neighbourhood which was approved by Council on June 24, 1975, and last amended November 13, 1984.

The proposal conforms to the approved Neighbourhood Plan.
Hamilton Zoning By-law No. 6593

The subject lands are zoned “D” (Urban Protected Residential - One and Two Family Dwellings) District in Hamilton Zoning By-law No. 6593. The lands to be severed will meet the minimum lot frontage of 12.0 metres and minimum lot area of 360 square metres. The “D” District does not have a regulation for three dwellings. The retained lands do not meet the frontage requirements for two family dwellings (17.4 metres provided, whereas 18 metres are required), but does meet the frontage requirements for single family dwellings. The discrepancy in the lot frontage is minor.

The existing legal non-conforming concrete block storage building and three family dwelling does not conform to the “D” District regulations. Variances are required, approval of the severance application was conditional upon the applicant/owner applying for and receiving final approval of the variances identified below for the lands to be conveyed and retained.

Variance 1

A variance was required in order to recognize the existing 0.0 metre setback to the side and rear lot lines for the legal non-conforming contractors yard building.

Variance 2

A variance was required to recognize the existing 5.87 metre front yard setback for the legal non-conforming three family dwelling.

Variance 3

A variance was requested for the side yard of 0.0 metres to the newly created lot line from the contractor’s yard building, instead of the 1.2 metres required. Staff requires a maintenance easement to be registered on title in order for maintenance to be performed on the contractor’s yard building.

Variance 4

A variance was also requested in order to permit the provision of one parking space instead of the required four. From the City’s mapping information, it appears that this lot can provide two parking spaces between the southerly lot line and the side of the building. The second parallel space would encroach into the required front yard. As this is a legal non-conforming three family dwelling, it is assumed that the building was built before December 14, 1971. Section 18 (A)(14a) permits part of a required parking space for a three family dwelling to be located within the required front yard. As the subject lands are within a short walk to a major transit line, this reduction in the parking is supportable.
Variance 5

A variance was required to permit the legal non-conforming three family dwelling and contractor’s yard building to have a lot width of 17.4 metres and area of 1214 square metres.

Variance 6

Finally, a variance was required in order to permit the two existing legal non-conforming principle buildings to exist on the same lot.

The majority of the variances were required in order to legalize the existing situation, there are only three newly created variances (due to the severance application HM/B-06:63). Based on the foregoing, the requested variances are considered to be minor in nature and desirable for the appropriate development of the lands. The general intent and purpose of the Zoning By-law and Official Plan will be maintained.

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
Grading and drainage will be addressed through a Consent Agreement.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Intensification minimizes land consumption and makes more efficient use of municipal services.

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

:DF
Attachs. (4)
IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Section 10.

AND IN THE MATTER OF the Premises known as Municipal number 34 Albert Street, in the City of Hamilton and in a "D" (Urban Protected Residential - 1 & 2 Family Dwellings) district;

AND IN THE MATTER OF AN APPLICATION by the agent Rick Cutler on behalf of the owner Janice Glover, 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 severance of a portion of the lot containing an existing legally established non-conforming one (1) storey contractors yard for the storage of materials in the existing building at the rear of property and an existing legal non-conforming 2½ storey three (3) family dwelling at the front of the property notwithstanding that:

1. A 0.0m setback shall be maintained for the existing side yard and rear yard for the legal non-conforming contractors yard building;

2. An existing 5.87m (19.26') shall be maintained for the existing front yard of the legal non-conforming three (3) family dwelling;

3. A 0.0m side yard width shall be provided for the legal non-conforming contractors yard building adjacent to the newly created lot line instead of the minimum required 1.2 m (3.94');

4. One (1) parking space shall be provided for the legal non-conforming three (3) family dwelling instead of the minimum required four (4);

5. The existing legal non-conforming three (3) family dwelling and legal non-conforming contractors yard for the storage of construction materials within the existing building shall remain having a lot width of 17.4m (57') and a lot area of 1214 m² (130.07m²); and,

6. Two (2) existing legal non-conforming principle buildings shall remain on one lot notwithstanding that the By-Law only permits one principal building containing residential uses to be located on one lot.

Note: This application is necessary to facilitate consent application HMB-06:63.

THE DECISION OF THE COMMITTEE IS:

That the said application IS 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.

CERTIFIED A TRUE COPY
SECRETARY-TREASURER
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 7th day of June, 2006

M. Dudzić (Chairman) C. Lewis
D. DeLullo D. Senwatuk
D. Drury V. Abraham

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS June 27th 2006.

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

NOTICE OF DECISION

APPLICATION FOR CONSENT/LAND SEVERANCE

APPLICATION NO. HM/B-06:63
SUBMISSION NO. B-63/06

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 34 Albert Street, in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent Rick Cutler on behalf of the owner Janice Glover, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of an irregular shaped vacant parcel of land having a frontage of 13m. (42.7') and an area of 364m² (3,920ft²) for residential purposes, and to retain an irregular shaped parcel of land having a frontage of 17.4m. (57.3') and an area of 1214.1m² (13,068ft²) containing an existing legal non-conforming three (3) family dwelling and concrete block storage building.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reason:

1. The proposal does not appear to be in the interest of proper planning and development for the area.
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 7th day of June, 2006.

__________________________  _________________________
M. Dudzic, Chairman        V. Abraham

__________________________  _________________________
D. Drury                    D. DeLulio

__________________________  _________________________
C. Lewis                    D. Serwatuk

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS June 14th, 2006.

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS July 4, 2006.

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

CERTIFIED A TRUE COPY

SECRETARY-TREASURER