SUBJECT: Committee of Adjustment Minor Variance Application HM/A-08:53, for the Property Located at 908 King Street East, Hamilton - Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED08206) (Ward 3)

RECOMMENDATION:

That Report PED08206, respecting Committee of Adjustment Minor Variance Application HM/A-08:53, 908 King Street East, Hamilton, as shown on Appendix “A” to Report PED08206, denied by the Committee of Adjustment but supported by the Planning and Economic Development Department, be received for information.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Minor Variance Application HM/A-08:53 sought relief from the provisions of Zoning By-law No. 6593 to permit the conversion of the existing mixed use building to an eight room lodging house, notwithstanding that two parking spaces will be provided, one of which is located within the front yard and being 2.5m x 5.4m in size, and the second located within the rear detached garage being 3.6m x 5.4m in size. No onsite manoeuvring area for the parking space in the front yard was provided on the subject property (see Appendix “A”).
The proposed variances (see Appendix “B”) were considered before the Committee of Adjustment on June 19, 2008. Comments to the Committee of Adjustment from staff supported the proposed variances as the variances were considered to be minor in nature, desirable for the appropriate use of the lands, and in keeping with the general intent and purpose of the Official Plan and Zoning By-law.

The Committee of Adjustment denied the application for the reasons provided in Appendix “B”. The decision has been appealed to the Ontario Municipal Board (OMB) by the owner of the land. To date, an Ontario Municipal Board Hearing has not been scheduled.

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 to the Ontario Municipal Board, of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff, occurs. In response to such a report, the City may determine its position on the Committee of Adjustment decision and 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

Minor Variance Application HM/A-08:53 was submitted to request four variances to the City of Hamilton Zoning By-law No. 6593, so as to permit the conversion of the existing mixed use building (ground floor medical office with one dwelling unit on the second floor) to an eight room lodging house notwithstanding that:

(1) Two parking spaces shall be provided instead of the minimum required four parking spaces;

(2) One parking space stall (located within the front yard), being 2.5m x 5.4m in size, shall be provided instead of the minimum required parking space stall size of 2.7m x 6.0m;

(3) No onsite manoeuvring for the parking space located within the front yard shall be provided instead of the minimum required 6.0m manoeuvring area; and,

(4) ...
(4) One parking space stall (located within the rear detached garage), being 3.6m x 5.4m in size, shall be provided instead of the minimum required parking space stall size of 2.7m x 6.0m.

On December 18, 2007, the owner was issued an Order to Comply by the City of Hamilton’s Building and Licensing Division for the conversion of the existing mixed use building to an eight room lodging house, as the change of use and construction had commenced without the required permit being issued by the Chief Building Official (see Appendix “C”).

In order to bring the structure into compliance with Zoning By-law No. 6593, the owner applied for a Minor Variance to address parking requirements, minimum parking stall size and onsite manoeuvring (see Appendix “D”). The Committee of Adjustment denied the Minor Variance Application HM/A-08:53 at the June 19, 2008 meeting (see Appendix “B”).

At the time the applicant submitted the above noted Minor Variance application, staff proposed an option to locate the two parking spaces at the rear of the property, which would result in having to demolishing the existing garage. Consequently, this option would have alleviated the variances for minimum parking space stall size and manoeuvring on site. The applicant preferred not to demolish the existing garage.

**ANALYSIS/RATIONALE:**

The subject property is rectangular in shape and has frontage onto King Street East. While a lodging house with a maximum capacity of fifty persons is permitted in the existing “H” (Community Shopping and Commercial, etc.) District, the following variances to the Hamilton Zoning By-law No. 6593 regulations were required.

**Variance 1**

Two parking spaces shall be provided instead of the minimum required four parking spaces. The general intent and purpose of the By-law is to ensure adequate parking is provided for lodgers. Staff is of the opinion that while the property provides only two of the required four parking spaces, the subject property is situated along a major transit route, allowing for convenient use of public transit.

In addition, Parking Operations indicated for the information of the Committee of Adjustment that one-hour metered parking is available on King Street East on a “first-come-first-serve” basis.

**Variance 2**

One parking space stall (located within the front yard), being 2.5m x 5.4m in size, shall be provided instead of the minimum required parking space stall size of 2.7m x 6.0m. The general intent and purpose of the By-law is to ensure that parking spaces provide a
minimum width and length to ensure adequate space for vehicular parking. Staff is of the opinion that the reduction will not affect the ability to park a vehicle. In addition, the proposed parking space dimensions are similar to the new City of Hamilton Zoning By-law No. 05-200 minimum parking space standard of 2.6m x 5.5m.

Comments provided to the Committee of Adjustment by Traffic Engineering and Operations Division indicated that a vehicle parked in the proposed spot would obstruct sightlines for eastbound pedestrians and persons with wheel chairs using the sidewalk. It was also indicated that vehicles parked in the proposed parking stall may overhang into the sidewalk due to the reduced length.

**Variance 3**

No on site manoeuvring for the parking space located within the front yard shall be provided instead of the minimum required 6.0m wide manoeuvring area. The general intent and purpose of the By-law is to ensure that there is adequate manoeuvring area on site for vehicles to pull in and out of the parking spaces. Based on 2007 City of Hamilton Aerial Photography, there appears to be some manoeuvring space in the front yard. However, staff indicated that comments from Traffic Engineering and Operations Division should be reviewed when considering the approval of this variance.

Comments provided to the Committee of Adjustment by Traffic Engineering and Operations indicated that no onsite manoeuvring is considered unsafe for vehicles backing onto King Street, which is a busy arterial roadway.

**Variance 4**

One parking space stall (located within the rear detached garage), being 3.6m x 5.4m in size, shall be provided instead of the minimum required parking space stall size of 2.7m x 6.0m. The general intent and purpose of the By-law is to ensure that parking spaces, including those within a garage, provide minimum length to ensure adequate space for vehicular parking. The reduction of the parking stall length from 6.0m to 5.4m is minor in nature, and staff is of the opinion that the reduction will not affect the ability to park a vehicle in the garage. In addition, the new City of Hamilton Zoning By-law No. 05-200 has a minimum parking stall size 2.6m x 5.5m.

In staff’s opinion, the requested variances were considered to be minor in nature, desirable for the appropriate use of the lands, and maintained the general intent and purpose of the Official Plan and Zoning By-law.

**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 applicant’s 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 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 of Adjustment’s decision to deny the application, then the City must seek out 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. These costs are covered by the respective Departmental Work Program/Budget. Therefore, no additional funds would be required.

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: No legal implications are expected.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement (PPS)

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that focus growth in settlement areas 1.1.3.1. As the nature of the application is for the conversion of an existing mixed use building to an eight room lodging house, the proposal is consistent with the policies of the Provincial Policy Statement.

Hamilton-Wentworth Official Plan

The subject property is designated as “Urban Area” in the Hamilton-Wentworth Official Plan. Policy C-3.1 outlines that 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. Urban Areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020. As the nature of the application is for the conversion of an existing mixed use building to an eight room lodging house, the proposal is consistent with the policies of the Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan

The subject lands are designated “Commercial” on Schedule A - Land Use of the City of Hamilton Official Plan. The proposal conforms to the policies of the Official Plan.

City of Hamilton Zoning By-law No. 6593

The subject lands are zoned “H” (Community Shopping and Commercial, etc.) District, which permits a lodging house for the accommodation of not more than fifty persons.

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.

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

:KJ

Attachs. (4)
Appendix "B" to Report PED08206 (Page 1 of 1)

Committee of Adjustment
Hamilton City Centre
4th Floor, Suite 400, 77 James St. N.
Hamilton, ON L8S 1K3
Telephone (905) 548-2404, ext. 4211
Fax (905) 548-4037

Hamilton

COMMITTEE OF ADJUSTMENT

DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-08:53
SUBMISSION NO. A-53/06

IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 14 and 18A.

AND IN THE MATTER OF the Premises known as Municipal number 906 King Street East, in the City of Hamilton and in an "H" (Community Shopping and Commercial, etc.) district.

AND IN THE MATTER OF AN APPLICATION by the owner, Serge Gelly, 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 conversion of the existing mixed use building (ground floor medical office with one dwelling unit on the second floor) to an eight (8) room lodging house notwithstanding that:

1. Two parking spaces shall be provided instead of the minimum required four parking spaces;

2. One parking space stall (located within the front yard) being 2.5m x 4.5m in size shall be provided instead of the minimum required parking space stall size of 2.7m x 6.0m;

3. No on-site manoeuvring for the parking space located within the front yard shall be provided instead of the minimum required 6.0m wide manoeuvring area; and,

4. One parking space stall (located within the rear detached garage) being 3.6m x 5.4m in size shall be provided instead of the minimum required parking space stall size of 2.7m x 6.0m.

Note: The plans submitted indicate two additional rooms on the third floor that are indicated as common rooms. These rooms are not permitted to be rented as lodging rooms unless additional variances are obtained (additional parking is required). The variance has been written as requested.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The Committee, after carefully considering the submissions by area residents regarding concerns with respect to parking and taking into account the comments submitted by the Traffic, Engineering and Operations Division recommending denial of variances #2 and 3 to permit the proposed parking space in the front yard while providing no manoeuvring, 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 19th day of June, 2008

[Signatures]

V. Abraham (Acting Chairman)
M. Switzer
C. Lewis

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS July 9th, 2008.

NOTE: This decision is not final and binding unless otherwise noted.
Order to Comply

Pursuant to Subsection 12(2) of the Building Code Act, 1992

Order Number: 07-295029-00 EN

Date Order Issued:
December 18, 2007

Application/Permit Number:

Address to which Order applies:
908 KING ST. E

formerly HAMILTON now The City of Hamilton

Order issued to:
SERGE GELLY
27 AVONBRIDGE CRT
HAMILTON ON L8E 3G1

The inspection on or about December 18, 2007 at the above-referenced address found the following contravention(s) of the Building Code or the Building Code Act, 1992.

You are hereby ordered to correct the contraventions itemized below immediately, by the dates listed below, or by January 2, 2008.

<table>
<thead>
<tr>
<th>Item</th>
<th>Reference</th>
<th>Description and location</th>
<th>Required action and compliance date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Subsection 10.- (1) of the Building Code Act, 1992</td>
<td>A change of use at the above address has commenced without the required permit being issued by the Chief Official.</td>
<td>Obtain a change of use permit for the above address</td>
</tr>
</tbody>
</table>

Order issued by:

Name: Christine Hey

Signature: Christine Hey

Telephone No.: 905.546.2424 ext. 4675

BCIN: 19374

Note:
- It is illegal to obstruct the visibility of a posted Order. It is also illegal to remove a posted Order unless authorized by an Inspector or Registered Code Agency. [Building Code Act, 1992 s. 26]
- An Order may be appealed to the Superior Court of Justice. [Building Code Act, 1992 s. 25]. It may also be appealed to the Building Code Commission concerning the sufficiency of compliance with the technical requirements of the Building Code. [Building Code Act, 1992 s. 24]
- Failure to comply with this Order could result in a Stop Work Order. [Building Code Act, 1992 s. 14]
- Failure to comply with this Order is an offence which could result in a fine. [Building Code Act, 1992 s.36]
- No construction affected by this Order is to be covered until inspected and approved. [Building Code Act, 1992 s.13]
Order to Comply
Pursuant to Subsection 12(2) of the Building Code Act, 1992

Order Number. 07-295029-00 EN
Address to which Order applies:
908 KING ST. E
formerly HAMILTON now The City of Hamilton

Order issued to:
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Subsection 8. – (1) of the Building Code Act, 1992</td>
<td>Construction at the above address has commenced without the required permit being issued by the Chief Building Official.</td>
<td>Obtain a permit for all construction at the above address.</td>
</tr>
</tbody>
</table>

Order issued by:

Name: Christine Hay
Signature: [Signature]

BCIN: 19374
Telephone No.: 905.546.2424 ext. 4675

Note:
- It is illegal to obstruct the visibility of a posted Order. It is also illegal to remove a posted Order unless authorized by an inspector or Registered Code Agency. [Building Code Act, 1992 s. 20]
- An Order may be appealed to the Superior Court of Justice. [Building Code Act, 1992 s. 25]. It may also be appealed to the Building Code Commission concerning the sufficiency of compliance with the technical requirements of the Building Code. [Building Code Act, 1992 s. 24]
- Failure to comply with this Order could result in a Stop Work Order. [Building Code Act, 1992 s. 14]
- Failure to comply with this Order is an offence which could result in a fine. [Building Code Act, 1992 s.36]
- No construction affected by this Order is to be covered until inspected and approved. [Building Code Act, 1992 s.13]

This Order is authorized by the Minister of Municipal Affairs and Housing under the Building Code (Reg 403/97)