TO: Chair and Members  
Economic Development and Planning Committee  
WARD(S) AFFECTED: WARD 3  

COMMITTEE DATE: September 21, 2010  

SUBJECT/REPORT NO:  
Committee of Adjustment Minor Variance Application HM/A-10:136, for the Property Located at 3 Minto Avenue (Hamilton), Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED10211) (Ward 3)  

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning and Economic Development Department  
PREPARED BY:  
J. Matthew Blevins  
(905) 546-2424, Ext. 2634  

SIGNATURE:  

RECOMMENDATION  
That Report PED10211, respecting Committee of Adjustment Minor Variance Application HM/A-10:136, for the property located at 3 Minto Avenue (Hamilton), as shown on Appendix “A” to Report PED10211, supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information.  

EXECUTIVE SUMMARY  
The applicant submitted Minor Variance Application HM/A-10:136 to permit the conversion of the existing, single-detached dwelling, to a six person, Residential Care Facility. The subject property is zoned “C” (Urban Protected Residential, etc.) District in Hamilton Zoning By-law No. 6593. A six person Residential Care Facility is a permitted use in the “C” District, subject to compliance with the applicable performance standards in the Zoning By-law.
The application identified 6 required variances to recognize existing, legal non-conforming provisions to allow for conversion to the new use:

1. A minimum lot frontage of 8.4m, instead of the minimum required 12.0m;
2. A minimum lot area of 185m², instead of the minimum required 360m²;
3. A minimum front yard of 0.4m, instead of the minimum required 6.0m front yard;
4. A minimum southerly side yard of 0.5m, instead of the minimum required 1.2m;
5. A minimum northerly side yard of 0.0m, instead of the minimum required 1.2m; and,
6. No parking spaces shall be provided on-site, instead of the minimum required 2 parking spaces.

The minor variance application was considered before the Committee of Adjustment on June 24, 2010. Staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, and satisfied the four tests set out in Subsection 45(1) of the Planning Act in that the variances were determined to be minor in nature, desirable for the appropriate development of the land, and maintained the general intent and purpose of the Official Plan and Zoning By-law No. 6593.

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

Alternatives for Consideration - See Page 6.

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

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, the City must retain an outside planning consultant, and any other experts who can professionally support the denial. In addition, because of staffing constraints in the Legal Department, and a high volume of appeals, outside legal counsel may also have to be retained. The hearing would likely take between one to three days. If an outside planning consultant is retained, the costs would be approximately $3,000 to $5,000 for each day of a hearing. Cost for external legal counsel would be several thousand dollars per day, or greater. In keeping with the funding source for other appeals where Council authorizes the retainer of outside consultants, the amount required
to retain such experts to support the City’s position before the OMB would be funded first, through the 2010 Budget; second, through year-end Corporate Surpluses; and lastly, through the Tax Stabilization Reserve.

**Staffing:** One representative from Legal Services would be required for preparation and attendance at the OMB Hearing. However, as indicated above, Legal Services is currently experiencing staffing constraints and a high volume of hearings. It is highly likely that external legal counsel may need to be retained in respect to this appeal. One member of the planning staff would attend as an expert witness at the hearing should Council support Option 2.

**Legal:** No legal implications are expected.

**HISTORICAL BACKGROUND** (Chronology of events)

**Roles and Responsibilities of the Committee of Adjustment (PD0216(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, 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.”

**Minor Variance Application HM/A-09:343**

The applicant submitted Variance Application HM/A-09:343, which was initially considered by the Committee of Adjustment on February 4, 2010, at which time it was tabled until March 4, 2010. The application was tabled to resolve a boundary dispute between the applicant and the abutting neighbour to the north. The result of the application being tabled was an amended application reducing the northerly side yard setback from 0.7m to 0.0m. Staff supported both the initial and amended applications. The Committee of Adjustment denied the application for the reasons provided in Appendix “D”. The applicant did not file an appeal within the statutory appeal period, and entered into discussions with Hamilton Municipal Parking System staff to enter into a Boulevard Parking Agreement, to recognize the parking space located at the northeast corner of the lot, extending into the road allowance of Minto Avenue (see Appendix “E”). A subsequent application was submitted and also denied by the
Committee of Adjustment (see Appendix “C”), and has been appealed to the Ontario Municipal Board.

Proposal

The subject property is located at 3 Minto Avenue (Hamilton) (see Appendix “A”). The applicant is proposing the conversion of an existing single-detached dwelling to a Residential Care Facility, with space for 6 residents. The applicant is not making any exterior renovations to the dwelling, but a Change of Use Building Permit is required to allow for the conversion. The variances were identified as part of the Building Permit review. The variances are to recognize an existing situation as the location of the dwelling is legal non-conforming, and the property does not currently have any parking spaces available on-site.

The application was reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and City of Hamilton Zoning By-law No. 6593. Planning staff is of the opinion that the application maintains the general intent of the above noted policy documents.

Accordingly, staff recommended approval of the application as the variances were determined to be minor in nature, desirable for the appropriate development of the lands, and maintain the general intent and purpose of the Official Plan and Zoning By-law No. 6593.

The Committee of Adjustment, at its meeting of June 24, 2010, denied the minor variance application (see Appendix “C”).

POLICY IMPLICATIONS

Provincial Policy Statement

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, Policy 1.1.3.1.

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. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.
The Hamilton-Wentworth Official Plan defers to the former Local Official Plans to define the ranges of urban uses and development that are appropriate for the lands that they apply to. The proposed development conforms with the policies set out in the City of Hamilton Official Plan.

Based on the foregoing, staff is satisfied that the proposed variances conform to the Hamilton-Wentworth Official Plan.

**City of Hamilton Official Plan**

The lands are designated “Residential” on Schedule “A” - Land Use Concept Plan, in the City of Hamilton Official Plan. The property is also identified as “Single and Double” in the Gibson Neighbourhood Plan, which was approved by Council on May 8, 1973.

Section A.2.1 of the City of Hamilton Official Plan sets out the objectives for the Residential areas. The intent of the plan for residential areas is to provide a range of housing types and densities of varied styles, while ensuring the maintenance of amenities for residents, and to ensure that new residential re-development is compatible with surrounding existing and proposed development (Policy A.2.1.8).

Section D.2 further sets out policies to establish Planning Units and Neighbourhood Plans for the City. Policy D.2.8 requires that Neighbourhood Plans be adopted by a resolution of Council, and Policy D.2.9 requires staff to have regard for the Neighbourhood Plans when considering development proposals.

Staff is satisfied that the existing dwelling is consistent with the general intent of the Official Plan and the Gibson Neighbourhood Plan. Staff is also satisfied that the proposed use as a 6 person, Residential Care Facility is consistent with the general intent of the Official Plan and Gibson Neighbourhood Plan. Accordingly, the application maintains the objectives of the “Residential” areas of the City of Hamilton Official Plan, and staff recommended approval.

**City of Hamilton Zoning By-law No. 6593**

The lands are zoned “D” (Urban Protected Residential - 1 or 2 Family Dwellings, etc.) District in Hamilton Zoning By-law No. 6593.

The relief requested for the proposed conversion is considered to be minor in nature, desirable for the appropriate development of the property, and maintains the general intent and purpose of the Official Plan and Zoning By-law.
RELEVANT CONSULTATION

- Legal Services Division with respect to staffing and costs if Council supports the Committee of Adjustment’s position.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The application proposes to recognize an existing legal non-conforming situation with respect to minimum lot width and area, minimum side yard setbacks, and parking through the approval of minor variances in order to allow for the conversion to a new use, being a Residential Care Facility for 6 residents. The proposal meets By-law performance criteria respecting minimum radial separation distance and capacity.

The requested variances are considered to be minor in nature, desirable for the appropriate development of the land, and maintain the general intent and purpose of the Hamilton Official Plan and Hamilton Zoning By-law No. 6593, which satisfies the four tests of a minor variance set out in Section 45(1) of the Planning Act.

Based on the foregoing, staff recommended approval of the application by the Committee of Adjustment.

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 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)


Social Development

- Residents in need have access to adequate support services.
- People participate in all aspects of community life without barriers or stigma.

APPENDICES / SCHEDULES

- Appendix “A”: Location Map
- Appendix “B”: Application Sketch
- Appendix “C”: HM/A-10:136 Committee of Adjustment Decision
- Appendix “D”: HM/A-09:343 Committee of Adjustment Decision
- Appendix “E”: Boulevard Parking Agreement Sketch

JMB
Attachs. (5)
COMMITTEE OF ADJUSTMENT

DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-10:136
SUBMISSION NO. A-136/10

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 10 and 18A.

AND IN THE MATTER OF the Premises known as Municipal number 3 Minto Avenue, in the City of Hamilton and in a "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) district;

AND IN THE MATTER OF AN APPLICATION by the owner Robert Goldie, 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 single family dwelling to a residential care facility for six (6) residents notwithstanding that:

1) A minimum lot frontage of 8.4m shall be maintained instead of the minimum required 12.0m;
2) A minimum lot area of 186.0m² shall be maintained instead of the minimum required 360.0m²;
3) A minimum front yard of 0.4m shall be maintained instead of the minimum required 6.0m;
4) A minimum southerly side yard of 0.5m shall be maintained instead of the minimum required 1.2m;
5) A minimum northerly side yard of 0.0m shall be maintained instead of the minimum required 1.2m; and,
6) No parking spaces shall be provided on-site instead of the minimum required two (2) parking spaces. *

* NOTE: The applicant proposes to establish one (1) parking space through a Boulevard Parking Agreement with the Hamilton Municipal Parking System.

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. Duzic (Chairman) D. Smith
M. Switzer V. Abbas
C. Lewis L. Tew

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

NOTE: This decision is not final and binding unless otherwise noted.
APPLICATION NO. HM/A-09:343
SUBMISSION NO. A-343/09

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, 10 and 18A.

AND IN THE MATTER OF the Premises known as Municipal number 3 Minto Avenue, in the City of Hamilton and in a "D" (Urban Protected Residential - 1 & 2 Family Dwellings) district;

AND IN THE MATTER OF AN APPLICATION, AS AMENDED by the owner Robert Goldie, 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 an existing single family dwelling into a residential care facility for 6 residents notwithstanding that:

1) A minimum lot frontage of 8.4m shall be maintained instead of the minimum required 12.0m;

2) A minimum lot area of 185.0m² shall be maintained instead of the minimum required 360 m²;

3) A minimum front yard of 0.4m shall be maintained instead of the minimum required 6.0m front yard;

4) A minimum southerly side yard of 0.5m shall be maintained instead of the minimum required 1.2m;

5) A minimum northerly side yard of 0.0m shall be maintained instead of the minimum required 1.2m; and

6) No parking spaces shall be provided on site instead of the minimum required 2 parking spaces.

Please Note: An Encroachment Agreement with the Roads Department may be required for the stairs shown to encroach on the road allowance.

The lands may be subject to Site Plan Control.

Subject to the issuance of a building permit in the normal manner.

The use and operation of a residential care facility business is subject to the issuance and maintenance of a municipal licence from the Municipal Law Enforcement section of the Parking & By-law Services Division.

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 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 4th day of March, 2010

M. Dudzic (Chairman)
D. Smith
V. Abraham
L. Gaddye
L. Tow

D. Serwatuk
C. Lewis
M. Switzer
D. Drury

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS March 24th, 2010.

NOTE: This decision is not final and binding unless otherwise noted.
### RESIDENTIAL BOULEVARD
### PARKING INFORMATION SHEET

| PROPERTY ADDRESS: 3 Minto Ave. | POSTAL CODE: L8L 6E1 | REQUEST: APRIL 26-01 |
| Mailing Address: 3 Minto Ave. | Postal Code: | Rental: Yes [X] No [ ] |
| Applicant: Robert Goldie | Survey: APRIL 27-01 | By: D.C |
| Owner: Same | Existing Parking: None |
| Phone: 905-924-2255 | Requested Parking: F.Y.P |
| Vehicle Sizes: 0.7 ft Cruiser - 4.29 m | Other Request: |
| Comments: Ramp: 3.0 meter extension southly of existing |

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![Diagram](image)

| Street R.O.W. | 16.4 |
| Total Width | 7.0 |
| Sidewalk Width | 1.36 |
| Boulevard Width | 3.42 |
| Street Line to Back of Walk or Curb | 8.24 |

| SPACE | Yes | No |
| 2.7 x 60 m | | |
| 5.5 x 60 m | | |

Recommended by Boulevard Parking Investigator
Approved by Supervisor, Parking Services

Scale: 1:100

Date: May 3-2010