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

COMMITTEE DATE: December 7, 2010

SUBJECT/REPORT NO:
Committee of Adjustment Minor Variance Application HM/A-10:164 for the Property Located at 601 Barton Street East (Hamilton), Recommended for Tabling by the Planning and Economic Development Department, Approved by the Committee of Adjustment, and Appealed by the Planning and Economic Development Department (PED10261) (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 Council agrees to the following actions, as detailed in Report PED10261, respecting the appeal of the City of Hamilton, Committee of Adjustment, Minor Variance Application HM/A-10:164 (Gibson Green Development Inc.), 601 Barton Street East, former City of Hamilton, as shown on Appendix “A” to Report PED10261, approved by the Committee of Adjustment, but recommended to be Tabled by the Planning and Economic Development Department:

(a) That Council of the City of Hamilton proceed with the appeal to the Ontario Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Application HM/A-10:164.

(b) That Council directs appropriate Legal Services and Planning staff to attend the future Ontario Municipal Board (OMB) Hearing in support of the appeal.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application HM/A-10:164 to facilitate the establishment of a private college for natural and holistic medicine notwithstanding that:

1) A commercial school is not a permitted use in the “D” District.

2) A minimum of 36 parking spaces will be provided onsite, instead of the minimum required 48 parking spaces.

3) A minimum parking space length of 4.1m shall be permitted for the barrier-free parking space only, instead of the minimum required parking space length of 6.0m.

4) A minimum parking space length of 4.9m shall be permitted for the parking spaces located directly west of the barrier-free parking space, adjacent to the Gibson Street entrance, where a length of 6.0m is required.” (See Appendix “C”).

The application was considered before the Committee of Adjustment on July 15, 2010, at which time, the Committee Tabled the application. The use of the subject lands for a private college was supported by staff. However, based on additional information provided by the applicant with respect to parking and the use of the building, and a subsequent site visit, the September 30, 2010, staff comments to the Committee of Adjustment recommended that the application be Tabled as there was insufficient justification for the reduction in parking to satisfy conformity with the City of Hamilton Official Plan (Policy A.2.2.38).

The Committee of Adjustment approved the application for the reasons provided in Appendix “C”. The decision has been appealed to the OMB by the Planning and Economic Development Department, on behalf of the City, because the appeal period could not be met. In addition, the decision has also been appealed by a third party. To date, an OMB hearing has not been scheduled.

Alternatives for Consideration - See Page 8.

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

Financial: Planning and Economic Development Department staff recommended Tabling of the subject application. However, if Council wishes to support the Committee of Adjustment’s decision to Approve the application, the City must retain an outside planning consultant, and any other experts who can
professionally support the Committee’s decision. In addition, because of staffing constraints in the Legal Department, 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 Legal Services is currently experiencing staffing constraints and a high volume of hearings, it is highly likely external legal counsel may need to be retained in respect of this appeal. One member of Planning staff would attend as an expert witness at the hearing should Council support Option 2.

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

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**HISTORICAL BACKGROUND (Chronology of events)**

**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 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 (“OMB”) Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

In keeping with the intent of Council’s direction, staff has been advising Council of those circumstances where staff has appealed the decision of the Committee of Adjustment to the OMB and has sought Council direction in the continuation of the appeal. This is required due to statutory appeal time lines in the Planning Act, which may preclude
staff’s ability to present a report to Committee and Council prior to the filing of an appeal.

**Proposal**

The subject property is located at 601 Barton Street East (Hamilton) (see Appendix “A”).

To facilitate the conversion of the existing, vacant elementary school to a private college, the applicant requested four variances. The applicant requested permission to establish a private college in a “D” District, and reductions in the number of parking spaces, as well as the required length of the accessible parking space and those spaces located directly west of the accessible space.

The applications were reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the former City of Hamilton Official Plan, and former City of Hamilton Zoning By-law No. 6593. As previously noted, Planning staff supports the use of the subject lands for a private college, and initially recommended approval of the application in July, 2010, however, the application was Tabled at the Committee. Subsequently, based on additional information provided by the applicant with respect to parking and the use of the building, as well as another site visit, the September 30, 2010, staff comments to the Committee of Adjustment recommended that the application be Tabled, as there was insufficient justification for the reduction in parking to satisfy conformity with the City of Hamilton Official Plan (Policy A.2.2.38).

The Committee of Adjustment, at its meeting of September 30, 2010, approved the minor variance application subject to the conditions that the approval be limited to a private college of natural and holistic medicine registered with, and regulated by, the Province of Ontario, and that said private college be limited to eight classrooms and not contain an auditorium (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.
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Hamilton-Wentworth Official Plan

The subject property is designated as “Urban Area - High Density Mixed-use Corridor” 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. Policy C-3.1.1.1 states that a compact higher density urban form, with mixed-use development in identified regional and municipal centres and along corridors, best meets the environmental, social, and economic principles of sustainable development.

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 “Commercial” on Schedule “A” - General Land Use Plan in the City of Hamilton Official Plan.

Section A.2.2 of the Hamilton Official Plan sets out the objectives for the Commercial areas. The intent of the plan for Commercial areas is to provide areas for varied commercial ventures, while minimizing impacts on adjacent sensitive land uses. Policy A.2.2.1.ii) permits Institutional Uses in accordance with the provisions of Subsection A.2.6. Policy A.2.6.3 permits all MAJOR INSTITUTIONAL USES, except public and separate schools, within Commercial areas provided that the location and integration of the use with established or proposed development is acceptable. Staff was satisfied that the proposed adaptive re-use of the existing school building as a private college was appropriate, but that there was insufficient information regarding the requested reduction in parking to determine if the application maintained the general intent and purpose of the City of Hamilton Official Plan. Policies A.2.2.37 and A.2.2.38 state:

“2.2.37 In addition to the provisions of Subsection B.3.3 of this Plan, adequate parking and loading space will be required in clearly defined areas for all development and re-development within the COMMERCIAL designation, and will include adequate space for owners, employees, customers, and delivery vehicles. Council will require that, in all normal circumstances, a high standard of parking and loading facilities will be maintained in accordance with current practices. (O.P.A. No. 46)

2.2.38 Where a proposal is made for a COMMERCIAL development in which proposed parking and/or loading space is less than generally required, it must be demonstrated by the proponent, to the satisfaction of Council, that the
proposal will not lead to nuisances through the parking or loading of vehicles on land or streets adjacent to the use. (O.P.A. No. 46)"

While the applicant has indicated that only a maximum of 29 spaces can be accommodated on the property, staff is of the opinion that there is insufficient information to determine whether the proposed use satisfies Policy A.2.2.38. As a result, staff recommended that the application be Tabled until such time as the applicant provided the necessary information to address this policy.

Staff also noted that the parking spaces adjacent to the Gibson Street road allowance would require a Boulevard Parking Agreement, and an Encroachment Agreement may be required for the existing chain link fence.

Staff opined that the proposed school could be supported with the appropriate restrictions. Staff also encouraged the applicant to explore the possibility of securing additional off site parking, and that the parking management strategy should be resolved prior to any decision of the Committee of Adjustment on this matter.

Based on the foregoing, staff recommended that the application be Tabled until such time as the applicant provides the necessary information to address Policy A.2.2.38.

City of Hamilton Zoning By-law No. 6593

The lands are zoned “D” (Urban Protected Residential - 1or 2 Family Dwelling, etc.) District in Hamilton Zoning By-law No. 6593. The applicant requested minor variance approval to establish a private college on the subject property. Under the current zoning requirements, a public college would be permitted to operate in the building, but because the proposed tenant is a private college it is considered a commercial school and is not permitted under Hamilton By-law No. 6593. As a result, the applicant is attempting to add a permitted use to the property. Staff is aware that the proposed use would be defined as an Educational Establishment under Hamilton By-law No. 05-200, and would only be permitted in an Institutional (I3) Zone. Since the property is not zoned under By-law No. 05-200, staff is of the opinion that the variance can be considered provided that the proposed school be considered an Educational Establishment, as defined in By-law No. 05-200, and be limited to a private college for Alternative and Holistic Medicine regulated by, and registered with, the Province of Ontario.

Staff does not typically support the addition of uses through minor variance applications, but staff was satisfied that there would not be undue impact to abutting property owners from a private college that would not be present with a public college, provided all of the other provisions for a public college were met. As a public college is a permitted use in
the “D” District, staff was willing to consider the variance provided that adequate justification was provided, and the other By-law requirements were addressed.

The requested variance does constitute a change of use, and the applicant did not provide appropriate justification to demonstrate that all of the By-law requirements for a college had been addressed. Accordingly, the proposed variance does not maintain the general intent and purpose of the Zoning By-law.

The applicant also requested a reduction in the number of required parking spaces from 48 to 36 spaces. Staff was not satisfied that the reduction had been adequately justified in the applicant’s submissions and recommended Tabling of the application to allow for the submission of additional information so that a thorough and accurate review of the impacts could be completed.

Staff had no issues with the final two variances requesting a reduction in the length of the barrier-free parking space, as well as a reduction in the length of the spaces directly to the west of the barrier-free space. The variances were determined to be minor in nature, desirable for the appropriate development of the property, and maintain the general intent and purpose of the Official Plan and Zoning By-law.

Accordingly, staff supported Variances 3 and 4, but recommended Tabling of the application to allow for justification of the reduction in required parking.

RELEVANT CONSULTATION

- Legal Services.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The application proposes the adaptive re-use of an existing, vacant elementary school, which is consistent with the policies of the Provincial Policy Statement and conforms to the Places to Grow Growth Plan and the Hamilton-Wentworth Official Plan. However insufficient information was provided to determine conformity with the City of Hamilton Official Plan.

The adaptive re-use of the former public elementary school for a college for Natural and Holistic Medicine has merit, and is consistent with the direction established in Zoning By-law 05-200, which removes the distinction between private and public schools, provided that the educational establishment is registered with and regulated by the Province. However, based on additional information provided by the applicant with
respect to parking and the use of the building, and a subsequent site visit, the September 30, 2010, staff comments to the Committee of Adjustment recommended that the application be Tabled as there was insufficient justification for the reduction in parking to satisfy conformity with the City of Hamilton Official Plan (Policy A.2.2.38). If the application had been Tabled, then staff would have been provided with an opportunity to work with the applicant to develop and implement an acceptable parking management strategy to ensure that the proposed use would not result in spill-over parking nuisances in the immediate neighbourhood in accordance with the requirements of the Official Plan.

As the applicant has not demonstrated that the proposed use will not result in off-site parking impacts, the requested variances are not considered to be minor in nature and desirable for the appropriate development of the land, and do not maintain the general intent and purpose of Hamilton Zoning By-law No. 6593.

Accordingly, Planning staff filed an appeal on behalf of Council to meet the statutory time lines and have prepared this Report for further direction.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

**Option 1**

Council may instruct Legal Services to attend the OMB Hearing, in support of the Committee of Adjustment decision to approve the application, and to retain outside professional(s).

**Option 2**

Council may decide to support the appeal against the Committee of Adjustment’s decision to approve, and direct Legal Services to attend the OMB 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 OMB Hearing, either in support of the Committee’s decision, or against the decision. In this instance, Council should direct staff to withdraw the appeal. However, there would still be a hearing as the decision has also been appealed by a third party.
CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Growing Our Economy

• A skilled and creative labour pool that supports new employers

Healthy Community

• Plan and manage the built environment

APPENDICES / SCHEDULES

• Appendix “A”: Location Map
• Appendix “B”: Application Sketch
• Appendix “C”: HM/A-10:164 Committee of Adjustment Decision

:JMB
Attachs. (3)
Appendix "A" to Report PED10261 (Page 1 of 1)

Committee of Adjustment

Subject Property

601 Barton Street East

File Name/Number: HM/A-10:154
Date: September 17, 2010
Technician: SW
Map Not to Scale
Appendix "A"
COMMITTEE OF ADJUSTMENT

DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-10:164
SUBMISSION NO. A-164/10

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 601 Barton Street East, in the City of Hamilton and in a "D" (Urban Protected Residential - One and Two Family Dwellings) district;

AND IN THE MATTER OF AN APPLICATION, AS AMENDED, by the agent IBI Group on behalf of the owner Gibson Green Development Inc., 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 establishment of a commercial school, containing a total of 8 classrooms, within the existing building notwithstanding that:

1) A commercial school is not a permitted use within the “D” district; and,

2) A minimum of thirty-six (36) parking spaces shall be provided onsite instead of the minimum required forty-eight (48) parking spaces.

3) A minimum parking space length of 4.1m shall be permitted for the barrier-free space only instead of the minimum required parking space length of 6.0m.

4) A minimum parking space length of 4.9m shall be permitted for the parking spaces located directly west of the provided barrier-free parking space instead of the minimum required parking space length of 6.0m.

Notes:

i) Parking for a commercial school is required to be provided at a rate of six (6) spaces per classroom.

ii) The dimensions of the “existing parking (7 spaces)” has not been provided on the submitted site sketch. As such, zoning compliance with regards to the “existing parking (7 spaces)” cannot be verified and further variances may required.

THE DECISION OF THE COMMITTEE IS:
That the variances, as set out in paragraph three above, are GRANTED AS AMENDED for the following reasons:

1. The Committee having regard to the evidence is of the opinion that the relief granted is of a minor nature.

2. The relief granted is desirable for the appropriate development of the land and building and is not 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 evidence is satisfied that there will be no adverse impact on any of the neighbouring lands.

That the said application is GRANTED subject to the following conditions:

1. That the approval be limited to an Educational Establishment, consisting of a Private College of Natural of Holistic Medicine regulated by, and registered with, the Province of Ontario.

2. That the Educational Establishment be limited to eight (8) classrooms and prohibit the inclusion of an auditorium.

DATED AT HAMILTON this 30th day of September, 2010

D. Smith (Acting Chairman)

________________________________________   ________________________________
M. Switzer                                    L. Gaddye

________________________________________   ________________________________
D. Drury                                     L. Tew

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS October 20th, 2010.

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