SUBJECT: Minor Variance Application DN/A-06:129, 11 ½ York Street (Former Town of Dundas) - Denied by the Committee of Adjustment, (Urban) Supported by the Planning and Economic Development Department (PED06338) (Ward 13)

RECOMMENDATION:

That Report PED06338 respecting Committee of Adjustment Application (Urban) Minor Variance Application DN/A-06:129, Former Town of Dundas, as shown on Appendix ‘A’, denied by the Committee but supported by the Planning and Economic Development Department, be received for information.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Application DN/A-06:129 was considered by the City of Hamilton Committee of Adjustment (Urban) on June 7, 2006, to recognize an existing lot frontage of 3.0m; for relief from the required 50% front yard landscaped area; and, for a reduced rear yard setback from 7.5m to 4.2m for a proposed semi-detached dwelling on the subject property (see Appendix “A”). The application was tabled until June 21, 2006, to allow the Committee to conduct a site visit. At the June 21, 2006, Committee of Adjustment meeting the application was denied. However, the Committee approved the requested variances for a single detached dwelling (see Appendix “B”).
The Committee's decision to deny the variances for a proposed semi-detached dwelling was appealed to the Ontario Municipal Board 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

The application was submitted to permit a reduced lot frontage from 21.0m to 3.0m (existing), relief from the required 50% front yard landscaped area and for a portion of the proposed semi detached dwelling to provide a reduced rear yard set back from 7.5m to 4.2m. The requested variances were required to permit the construction of a semi-detached dwelling.

**ANALYSIS/RATIONALE:**

The subject property is irregular in shape (key shaped lot), the bulk of which is located behind 9 and 11 York Street with existing street frontage provided by a 3.05m wide by 21.34m long driveway between these lots. The lot and existing use (vacant commercial) are considered legal non-conforming, which status would not apply to a change in use to a semi detached dwelling. While semi-detached dwellings are permitted in the existing (R4) Low Density Residential Zone, variances to the regulations were required.

With respect to lot frontage, the variance was supported on the basis that it recognizes an existing situation. The requested relief from the minimum required 50% front yard landscaped area was also supportable on the basis that the functional front yard would be located in front of the proposed semi detached dwelling at the end of the driveway and not adjacent to the York Street frontage. The third variance, to permit a portion of the proposed semi-detached dwelling to provide a reduced rear yard setback from 7.5m to 4.2m, was supported on the basis that adequate rear yard amenity area would still be provided.
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.

The Committee denied the requested variances for the proposed semi-detached dwelling, but granted the variances for a single detached dwelling, which in staff’s opinion, has the effect of denial since the applicant specifically requested the variances for a semi-detached dwelling and did not request amendments to the application.

**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 denial, 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. 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:

Dundas Official Plan

The subject lands are designated “Downtown Mixed Use” on Schedule A – Land Use of the Dundas Official Plan. The proposal conforms to the Official Plan.

Dundas Zoning By-law No. 3581-86

The subject lands are zoned (R4) Low Density Residential Zone, which permits semi-detached dwellings on lots having a minimum frontage of 21.0m and a minimum lot area of 630m². In addition, semi-detached dwellings are required to provide a rear yard setback of 7.5m and a minimum 50% front yard landscaped area.

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

:JG
Attachs. (2)
COMMITTEE OF ADJUSTMENT

DECISION OF THE COMMITTEE

APPLICATION NO. DN/A-06:129
SUBMISSION NO. A-129/06

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 3581-86, as amended, of the City of Hamilton (formerly Dundas), Sections 11.

AND IN THE MATTER OF the Premises known as Municipal number 11½ York Road, formerly in the Town of Dundas, now in the City of Hamilton and in an "R4" (Low Density Residential) district;

AND IN THE MATTER OF AN APPLICATION by the agent Joe Mayer on behalf of the owner Mary Donovan, for relief from the provisions of the Zoning By-Law No. 3581-86, as amended, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the construction of a semi-detached dwelling notwithstanding that:

1) A minimum 3.0m lot frontage shall be provided instead of the minimum required 21.0m lot frontage;
2) A minimum 4.2m rear yard setback shall be provided instead of the minimum required 7.5m rear yard setback; and,
3) No front yard landscaped area shall be provided whereas the By-law requires a minimum fifty percent (50%) of the required front yard to be landscaped.

Note: The By-law defines the proposed use as a Semi-detached dwelling (a building divided vertically into two dwelling units) not a duplex (a building divided horizontally into two units).

The rear yard variance is an approximation and is required to be confirmed, otherwise, additional variances will be required.

No elevation plans were provided to confirm the maximum 10.5m permitted height.

THE DECISION OF THE COMMITTEE IS:

That the said application to permit the construction of a semi-detached dwelling 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.
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.

THE DECISION AS AMENDED BY THE COMMITTEE IS:

To permit variances 1, 2, and 3, for the construction of a single family dwelling only IS GRANTED 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.

DATED AT HAMILTON this 21st day of June, 2006.