TO: Chair and Members
Economic Development and Planning Committee

WARD(S) AFFECTED: WARD 10

COMMITTEE DATE: September 7, 2010

SUBJECT/REPORT NO:
Committee of Adjustment Consent and Minor Variance Applications SC/B-10:50 and SC/A-10:112, for the Property Located at 246 Gray Road (Stoney Creek), Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED10193) (Ward 10)

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 PED10193, respecting Committee of Adjustment Consent and Minor Variance Applications SC/B-10:50 and SC/A-10:112, for the property located at 246 Gray Road (Stoney Creek), as shown on Appendix “A” to Report PED10193, supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information.

EXECUTIVE SUMMARY

The applicant submitted Consent Application SC/B-10:50 to permit the creation of two building lots for single-detached dwellings. The proposed severed parcel has an approximate frontage of 15.0m, and an approximate lot area of 317m². The proposed retained parcel has an approximate frontage of 13.34m, and an approximate area of 304m². The consent application was initially considered before the Committee of Adjustment on May 20, 2010, and was tabled until the subsequent meeting of June 10,
SUBJECT: Committee of Adjustment Consent and Minor Variance Applications SC/B-10:50 and SC/A-10:112, for the Property Located at 246 Gray Road (Stoney Creek), Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED10193) (Ward 10) - Page 2 of 9

2010. Comments to the Committee of Adjustment from staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, in conformity to the Hamilton-Wentworth Official Plan, satisfied the lot creation policies of the City of Stoney Creek Official Plan, and met the tests of Section 51(24) of the Planning Act.

In conjunction with the consent application, the applicant submitted Minor Variance Application SC/A-10:112 to facilitate the creation of the two building lots for the two proposed dwellings notwithstanding that:

1. The severed parcel will have a lot area of 317m$^2$, whereas 400m$^2$ is required for a corner lot.
2. The proposed dwelling for the severed parcel will have a minimum Front Yard Setback of 4.5m, whereas 6.0m is required.
3. The proposed dwelling for the severed parcel will have a minimum Front Yard Setback to the garage of 5.8m, whereas 6.0m is required.
4. The proposed dwelling for the severed parcel will have a minimum setback from the hypotenuse of a daylight triangle of 2.0 where 3.0m is required.
5. The proposed dwelling for the severed parcel will have a minimum Rear Yard Setback of 7.0m, whereas 7.5m is required.
6. The retained parcel will have a lot area of 304m$^2$, whereas 310m$^2$ is required.
7. The proposed dwelling for the retained parcel will have a minimum Front Yard Setback of 4.5m, whereas 6.0m is required.
8. The proposed dwelling for the retained parcel will have a minimum Front Yard Setback to the garage of 5.8m, whereas 6.0m is required.
9. The proposed dwelling for the retained parcel will have a minimum Rear Yard Setback of 7.0m, whereas 7.5m is required.

The minor variance application was considered before the Committee of Adjustment initially on May 20, 2010, at which time it was tabled until June 10, 2010. Comments to the Committee of Adjustment from staff supported the application as it was considered to be consistent with the Provincial Policy Statement, in conformity with the Hamilton-Wentworth Official Plan, and satisfies 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. 3692-92.

The Committee of Adjustment denied the applications for the reasons provided in Appendices "C" and "D". The decision has been appealed to the Ontario Municipal Board (OMB) by the applicant. To date, an Ontario Municipal Board 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 supported the subject applications. However, if Council wishes to support the Committee of Adjustment’s decision to deny the applications, 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 Ontario Municipal Board 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 Ontario Municipal Board Hearing. However, as indicated above, 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 with respect to 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.
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 Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

Proposal

The subject property is located at 246 Gray Road, Stoney Creek (see Appendix “A”). The severance application proposes to convey a parcel of land, having a frontage of 15.0m± (49.2'±) and an area of 317m²± (3,412.27 square feet±), for a residential building lot, and to retain a parcel of land having a frontage of 13.34m± (43.8'±) and an area of 304m²± (3,272.33 square feet±), containing an existing single-detached dwelling to be demolished, as shown on Appendix “B”.

To facilitate the requested severance and proposed development, the applicant requested a total of nine variances to accommodate the proposed building envelopes on the severed and retained parcels (Appendix “C”). The applicant requested a reduction in the setback from the hypotenuse of the daylight triangle for the severed parcel, and reductions in lot area, front yard setbacks to the dwelling and garage, and rear yard setbacks for both the severed and retained parcels.

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 Stoney Creek Official Plan, and former City of Stoney Creek Zoning By-law No. 3692-92. Planning Division staff recommended approval of the applications on the basis of conformity with the above noted policy documents. Additionally, the consent application meets the tests set out in Section 51(24) of the Planning Act.
As the Provincial Policy Statement and the Hamilton-Wentworth Official Plan both defer to the Local Official Plans to identify intensification areas and to determine the appropriate policies to govern those areas, staff recommended approval of the consent application as it maintains the intent and purpose of the severance policies in Sections C.1 and C.2 of the City of Stoney Creek Official Plan and, as such, is consistent with the policies of the PPS.

Staff recommended approval of the associated minor variance 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. 3692-92.

The Committee of Adjustment, at its meeting of June 10, 2010, denied the severance application (see Appendix “D”), and the minor variance application (see Appendix “E”).

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<th>POLICY IMPLICATIONS</th>
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**Places to Grow**

Staff notes that the subject lands are located in a built-up area, as defined by the Places to Grow Plan. Policy 2.2.3.1 states that by the year 2015, and for each year thereafter, a minimum of 40% of all residential development occurring annually within each upper- and single-tier municipality will be within the built-up area.

Policy 2.2.2.1(b) states that population and employment growth will be accommodated by focusing intensification in intensification areas. Furthermore, Policy 2.2.2.6 sets out that: All municipalities will develop and implement, through their Official Plans and other supporting documents, a strategy and policies to phase-in and achieve intensification and the intensification target. This strategy and policies will:

“(c) Identify intensification areas to support achievement of the intensification target;

(e) Recognize urban growth centres, intensification corridors, and major transit station areas as a key focus for development to accommodate intensification; and,

(g) Identify the appropriate type and scale of development in intensification areas.”

Accordingly, staff is satisfied that the proposed severance and minor variances are consistent with the policies focusing growth in the built-up area.
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 former City of Stoney Creek Official Plan.

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

City of Stoney Creek Official Plan

The lands are designated “Residential” on Schedule “A” - General Land Use Plan and “Low Density Residential” on Schedule “A1” - Western Development Area Secondary Plan in the City of Stoney Creek Official Plan.

Section A.1.1 of the Stoney Creek 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 (Policy A.1.1.2), and to ensure that new residential re-development is compatible with surrounding existing and proposed development (Policy A.1.1.3). In addition, Section C.1 sets out the policies governing land division with specific tests set out in Policy C.1.1:

“Severances within the City will be given consideration only if the applicant demonstrates that his application for consent is warranted and in conformity with the following provisions:

(c) Any lot created shall have direct frontage on a public road of an acceptable standard of construction; and,
(d) Consent for severance shall not create a traffic hazard.”

Section C.2 further sets out five tests specific to severances in the Urban Policy Areas. The tests require a property to be severed to have full municipal services, not to expand the Urban Policy Area beyond that which is designated in the Official Plan, must not interfere with land assembly, must comply with the staging policies of the Official Plan, and must be in accordance with the Niagara Escarpment Plan. The proposed severance application satisfies all five of these tests.

The proposed severance supports the intent of the Residential policies of the Stoney Creek Official Plan, and meets the tests set out in Sections C.1 and C.2. Accordingly, staff recommended approval of the consent application.

The requested variances are required to facilitate the consent, as well as the dwellings proposed by the applicant. The variances requested maintain the objectives for the “Residential” areas, as set out in Section A.1.1. Accordingly, the application maintains the general intent and purpose of the Official Plan, and staff recommended approval.

**City of Stoney Creek Zoning By-law No. 3692-92**

The lands are zoned Residential “R6” Zone in Stoney Creek Zoning By-law No. 3692-92. The severed and retained parcels meet the minimum lot frontage requirement of the Zoning By-law. However, the parcels do not meet the minimum lot area requirements of 310m$^2$ for an interior lot, and 400.0m$^2$ for a corner lot. In addition, neither the proposed dwelling for the severed parcel, nor the proposed dwelling for the retained parcel maintain the front or rear yard setbacks required in the “R6” Zone.

The relief requested for the proposed development 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 in respect to staffing and costs if Council supports the Committee of Adjustment’s position.
SUBJECT: Committee of Adjustment Consent and Minor Variance Applications SC/B-10:50 and SC/A-10:112, for the Property Located at 246 Gray Road (Stoney Creek), Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED10193) (Ward 10) - Page 8 of 9

ANALYSIS / RATIONALE FOR RECOMMENDATION
(include Performance Measurement/Benchmarking Data, if applicable)

The application proposes to sever a parcel for infill development, which is consistent with the policies of the Provincial Policy Statement and Places to Grow, and conforms with the Hamilton-Wentworth Official Plan and the City of Stoney Creek Official Plan. The severance also meets the tests set out in Section 51(24) of the Planning Act.

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 Stoney Creek Official Plan and Stoney Creek Zoning By-law No. 3692-92, 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 applications by the Committee of Adjustment.

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 Ontario Municipal Board Hearing, in support of the Committee of Adjustment decisions, and to retain outside professional(s).

Option 2

Council may decide to support the 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 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 decisions, or against the decisions.
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

CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)


Healthy Community
• Plan and manage the built environment.
• Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services).

APPENDICES / SCHEDULES

• Appendix “A”: Location Map
• Appendix “B”: Application Sketch
• Appendix “C”: SC/A-10:112 Committee of Adjustment Notice
• Appendix “D”: SC/B-10:50 Committee of Adjustment Decision
• Appendix “E”: SC/A-10:112 Committee of Adjustment Decision

:JMB
Attachs. (5)
COMMITTEE OF ADJUSTMENT

NOTICE OF PUBLIC HEARING

APPLICATION FOR MINOR VARIANCE

APPLICATION NO. SC/A-10:112

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 3692-92, of the City of Hamilton (formerly Stoney Creek), Sections 4 and 6.7.

AND IN THE MATTER OF the Premises known as Municipal number 246 Gray Road, formerly in the City of Stoney Creek, now in the City of Hamilton and in an "R6" (Residential) district;

AND IN THE MATTER OF AN APPLICATION by the agent DeFilippis Design on behalf of the owner Tolmino DiMartino, for relief from the provisions of the Zoning By-Law No. 3692-92, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the construction of two new single detached dwellings on two new residential building lots notwithstanding that:

Dwelling A – Part 1

1) A lot area of 317m$^2$ shall be provided instead of the minimum required lot area of 400m$^2$;

2) A front yard setback to the living area of the dwelling of 4.5m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m;

3) A front yard setback to the garage of 5.8m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m;

4) A setback to the hypotenuse of the day lighting triangle of 2.0m, with further eave projections shall be provided instead of the minimum required setback to the hypotenuse of the day lighting triangle of 3.0m;
5) A rear yard setback of 7.0m, with further eave projections shall be provided instead of the minimum required rear yard setback of 7.5m

Dwelling B – Part 2

6) A lot area of 304m$^2$ shall be provided instead of the minimum required lot area of 310m$^2$;

7) A front yard setback to the living area of the dwelling of 4.5m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m;

8) A front yard setback to the garage of 5.8m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m; and,

9) A rear yard setback of 7.0m, with further eave projections shall be provided instead of the minimum required rear yard setback of 7.5m

Note: This application is necessary to facilitate Consent Application SC/B-10:50.

TAKE NOTICE that this application will be heard by the Committee as shown below:

<table>
<thead>
<tr>
<th>DATE:</th>
<th>Thursday, May 20th, 2010</th>
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</thead>
<tbody>
<tr>
<td>TIME:</td>
<td>1:35 p.m.</td>
</tr>
<tr>
<td>PLACE:</td>
<td>Room 207</td>
</tr>
<tr>
<td></td>
<td>Hamilton Convention Centre</td>
</tr>
</tbody>
</table>

If there is any further information you may require on this application please contact this office, at (905) 546-2424, ext. 4130 or 4221.

By order of the Committee of Adjustment,


Carol Connor,
Secretary-Treasurer

Note: If you wish to be notified of the decision of the Committee in respect of this application, you must submit a written request to the Committee of Adjustment. This will also entitle you to be advised of a possible Ontario Municipal Board hearing. Even if you are the successful party, you should request a copy of the decision since the Committee’s decision may be appealed to the Ontario Municipal Board by the applicant or another member of the public.

Information respecting this application is being collected under the authority of The Planning Act, R.S.O., 1990, c. P. 13. All comments and opinions submitted to the City of Hamilton on this matter, including the name, address and contact information of
persons submitting comments and/or opinions, will become part of the public record and will be made available to the Applicant and the general public.

Note to Applicant: In default of appearance of yourself or of any person duly authorized by you to appear on your behalf, the Committee may dismiss the application for lack of prosecution.
COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION

APPLICATION FOR CONSENT\LAND SEVERANCE

APPLICATION NO. SC/B-10:50
SUBMISSION NO. B-50/10

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 246 Gray Road, formerly in the City of Stoney Creek, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent DeFilippis Design on behalf of the owner Tolmino DiMartino, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of a parcel of land (Part 1 on attached sketch) having a frontage of 15.0m± (49.21'±) and an area of 317.76m²± (3,420.45 sq.ft±) containing a portion of an existing dwelling (to be demolished) for single family residential purposes, and to retain a parcel of land (Part 2 on attached sketch) having a frontage of 13.34m± (43.76'±) and an area of 304.68m²± (3,279.65 sq.ft±) containing a portion of an existing dwelling (to be demolished) for single family residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, IS DENIED for the following reasons:

1. The Committee, having performed a site inspection of the subject property and surrounding area, is of the opinion that building two houses on two lots that are both deficient in lot area is not in the interest of proper planning and development and is not in keeping with the existing character of this neighbourhood.

2. The Committee is of the opinion that the applicant has not adequately addressed their concerns regarding the potential drainage problems this may create and is therefore not willing to support an application that could have a negative impact on neighbouring properties.

3. The proposal does not comply with the requirements of the Zoning By-law as the proposed lots are both deficient in lot area.

4. The proposal does not comply with Section 51(24) of The Planning Act.
DATED AT HAMILTON this 10th day of June, 2010.

M. Dudzic, Chairman

L. Tew

L. Gaddye

M. Switzer

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS June 17th, 2010.

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS July 7th, 2010.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.
APPLICATION NO. SC/A-10:112
SUBMISSION NO. A-112/10

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 3692-92, of the City of Hamilton (formerly Stoney Creek), Sections 4 and 6.7.

AND IN THE MATTER OF the Premises known as Municipal number 246 Gray Road, formerly in the City of Stoney Creek, now in the City of Hamilton and in an "R6" (Residential) district;

AND IN THE MATTER OF AN APPLICATION by the agent DeFilippis Design on behalf of the owner Tolmino DiMartino, for relief from the provisions of the Zoning By-Law No. 3692-92, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the construction of two new single detached dwellings on two new residential building lots notwithstanding that:

**Dwelling A – Part 1**

1) A lot area of 317m$^2$ shall be provided instead of the minimum required lot area of 400m$^2$;

2) A front yard setback to the living area of the dwelling of 4.5m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m;

3) A front yard setback to the garage of 5.8m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m;

4) A setback to the hypotenuse of the day lighting triangle of 2.0m, with further eave projections shall be provided instead of the minimum required setback to the hypotenuse of the day lighting triangle of 3.0m;

5) A rear yard setback of 7.0m, with further eave projections shall be provided instead of the minimum required rear yard setback of 7.5m

**Dwelling B – Part 2**

6) A lot area of 304m$^2$ shall be provided instead of the minimum required lot area of 310m$^2$;

7) A front yard setback to the living area of the dwelling of 4.5m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m;

8) A front yard setback to the garage of 5.8m, with further eave projections shall be provided instead of the minimum required front yard setback of 6.0m; and,

9) A rear yard setback of 7.0m, with further eave projections shall be provided instead of the minimum required rear yard setback of 7.5m

Note: This application is necessary to facilitate Consent Application SC/B-10:50.
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 performed a site inspection of the subject property and surrounding area, is of the opinion that the relief requested is beyond that of a minor nature due to the potential drainage problems this may create.

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 building two houses on two lots that are both deficient in lot area would not be appropriate development for the lands.

DATED AT HAMILTON this 10th day of June, 2010.

M. Dudzic (Chairman) L. Tew

L. Gaddye M. Switzer

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS June 30th, 2010.

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