Council Direction:

The purpose of this report is to respond to the motion by Economic Development and Planning Committee, dated November 4, 2008, directing staff to:

“review and report back on the existing zoning regulations for the Sherwood Heights Subdivision, which is the area along Mountain Brow Boulevard, from Upper Ottawa Street to 344 Mountain Brow Boulevard, with respect to the existing built form and restrictive covenants registered on title”.

Information:

The portion of the Mountain Brow Boulevard corridor subject to this review consists of 25 existing residential lots (see Location Map in Appendix “A”). The lots have various dimensions ranging from frontages of approximately 19.8m to 51.8m, depths of approximately 62.5m to 83.8m, and lots areas of approximately 1,456.9 sq.m to 3,844.7 sq.m. These lots, which are evidently generously sized by urban residential lot standards, contain dwellings with similarly generous front yard setbacks ranging from approximately 16.7 metres to 38.7 metres. The following table illustrates the approximate lot dimensions for each of the lots within the study, as identified by assessment rolls:
Lot Details - 100 to 344 Mountain Brow Blvd

<table>
<thead>
<tr>
<th>Address</th>
<th>Frontage</th>
<th>Depth</th>
<th>Lot Area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In feet</td>
<td>In metres</td>
<td>In feet</td>
</tr>
<tr>
<td>100 Mountain Brow Blvd.</td>
<td>99.66</td>
<td>30.4</td>
<td>205</td>
</tr>
<tr>
<td>114 Mountain Brow Blvd.</td>
<td>100</td>
<td>30.5</td>
<td>205</td>
</tr>
<tr>
<td>118 Mountain Brow Blvd.</td>
<td>100</td>
<td>30.5</td>
<td>275</td>
</tr>
<tr>
<td>122 Mountain Brow Blvd.</td>
<td>100</td>
<td>30.5</td>
<td>275</td>
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<tr>
<td>126 Mountain Brow Blvd.</td>
<td>150</td>
<td>45.7</td>
<td>275</td>
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<td>140 Mountain Brow Blvd.</td>
<td>118</td>
<td>36.0</td>
<td>275</td>
</tr>
<tr>
<td>154 Mountain Brow Blvd.</td>
<td>130</td>
<td>39.6</td>
<td>275</td>
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<tr>
<td>164 Mountain Brow Blvd.</td>
<td>111.67</td>
<td>34.0</td>
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<tr>
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<td>40.7</td>
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<td>214 Mountain Brow Blvd.</td>
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<td>224 Mountain Brow Blvd.</td>
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<td>234 Mountain Brow Blvd.</td>
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<td>30.5</td>
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<td>244 Mountain Brow Blvd.</td>
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<td>30.5</td>
<td>250</td>
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<tr>
<td>254 Mountain Brow Blvd.</td>
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<td>30.5</td>
<td>250</td>
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<tr>
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<td>30.5</td>
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<tr>
<td>274 Mountain Brow Blvd.</td>
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<td>30.5</td>
<td>250</td>
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<tr>
<td>284 Mountain Brow Blvd.</td>
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<tr>
<td>290 Mountain Brow Blvd.</td>
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<td>250</td>
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<td>328 Mountain Brow Blvd.</td>
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<td>30.5</td>
<td>250</td>
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<tr>
<td>338 Mountain Brow Blvd.</td>
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<td>30.5</td>
<td>260</td>
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<td>340 Mountain Brow Blvd.</td>
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<td>34.5</td>
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<td>344 Mountain Brow Blvd.</td>
<td>64.91</td>
<td>19.8</td>
<td>247.86</td>
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</table>

Zoning Regulations:

The lands are currently zoned “B” (Suburban Agriculture and Residential, etc.) District Zone. A complete copy of the regulations of the “B” zone is found in Appendix “B”. Among other uses, the “B” District permits single detached residential dwellings, subject to the following regulations:

- Minimum Lot Width: 20 metres
- Minimum Lot Area: 1,100 square metres (11,840.69 sq. ft.)
- Minimum Front Yard Setback: 12.0 metres
- Minimum Side Yard Setback: 3.0 metres
- Minimum Rear Yard Setback: 9.0 metres
- Maximum Building Height: 2.5 storeys (11.0 metres)

Subject to a building permit, development of additions to existing residential buildings and/or new residential construction is permitted as-of-right provided it meets these minimum regulations. In such a case, there is no need for a property owner to undertake the public process of a Minor Variance or Zoning By-law Amendment application.
Restrictive Covenants:

A copy of restrictive covenants was provided to staff by one of the owners within the study area. After conducting a search at the Land Registry Office to determine if such covenants affected other lots within the study area, it was found that the properties known municipally as 126, 140, 154, 174, 234, 340 and 344 Mountain Brow Boulevard also had restrictive covenants registered against them. Of these seven properties, one of them has covenants that are less than 40 years old, and the others have covenants which were registered more than 40 years ago.

If, in a Land Titles search, there are restrictions with no expiry date which have been registered for 40 years or more, the land registrar may delete them on application pursuant to s. 119(9) of the Land Titles Act. Under s. 119(5) of the Land Titles Act, an owner of property burdened by a restrictive covenant can make an application to the Superior Court of Justice to modify or discharge a restrictive covenant. This procedure is normally used where the original purpose of the covenant is no longer applicable due to lapse of time or a change in circumstances. The applicant must show that the benefit to him from such a modification or discharge will far outweigh any possible detriment to any person objecting to the application. In all of these cases, it is the registered owner that must consult their solicitor in order to determine whether or not these restrictive covenants can be removed from the title to their lands. The City has no role in enforcing or administering these restrictive covenants.

Although the restrictive covenants are not the same for each property, they all note that the owners and successors “observe and perform” a number of restrictions including, among other things:

(a) The properties only be used for residential purposes;

(b) The properties only contain one dwelling;

(c) Minimum value of dwellings;

(d) Minimum ground floor areas of dwellings ranging from 111.48 sq.m. to 130 sq.m. (1,200 sq. ft. to 1,400 sq. ft.);

(e) Fencing heights of no more than 0.9m. (3 ft.);

(f) Front yard setbacks of: 15.2m (50 ft.) for two of the seven lots, 32.8m (100 ft.) for one lot, 33.5m (110 ft.) for one lot, and 36.6m (120 ft.) for three lots;

(g) Setbacks for yards other than the front yard of: 3.28m (10 ft.) for three lots, and 4.6m. (15 ft.) for four lots;

(h) That no earth be removed from the properties;
(i) That no activities take place that may be deemed a nuisance, unpleasant, or unhealthy; and,

(j) No clothesline be erected, except in very limited circumstances.

According to the covenants, all buildings, structures, etc., were to be built only after the plans had been approved by the grantors of the covenants. The covenants also maintain a clause that allows the grantor the authority to modify, waive, or release these restrictions. It is unclear if the grantors have ever exercised any of their authority.

Analysis:

1. With the exception of the conversion of the zoning regulations from imperial to their metric equivalents, the various “B” District regulations have been in place since the inception of the original City of Hamilton Zoning By-law in 1950.

2. Of the 25 lots within the study area, 18 were not found to have restrictive covenants and, therefore, have nothing on title that would potentially inhibit their ability to develop in accordance with the standards of the “B” District Zone regulations.

3. Of the 7 lots within the study area that were found to have restrictive covenants, the lot width and front yards, as well as the 4.6m (15 ft.) side yards referred to in the expired covenants found on title, are more restrictive than the respective regulations of the City of Hamilton Zoning By-law. The 3.28m (10 ft.) side yard noted on three of the restrictive covenants is similar to the side yards required within the Zoning By-law.

4. Although a surveyed review of each individual property and its buildings is not possible, it is evident from site inspections and an analysis of aerial photographs that the front yard setbacks of existing development on the lots along this portion of Mountain Brow Boulevard exceed the minimum front yard requirement of the “B” District regulations of the City of Hamilton Zoning By-law (see Appendix “B”). However, without the benefit of surveyed dimensions, staff is unable to determine if the 15.2m to 36.6m front yards, and other side yard requirements referred to in the seven lots where restrictive covenants were found, have been maintained.

Alternatives for Consideration:

1. Maintain Status Quo

The City could maintain “status quo”, and continue to use the existing development regulations of the “B” District in City of Hamilton Zoning By-law No. 6593. The majority of the lots (100-338 Mountain Brow Boulevard) were created through Registered Plan No. 829, which was registered in 1950, while two lots (340 and 344 Mountain Brow Boulevard) were created through Registered Plan No. 1303, which was registered in 1965. The current zoning has been in place
since that time, and no new lots have been created. There has only been one minor variance application at 244 Mountain Brow Boulevard for a reduced side yard setback from 3 metres to 1.5 metres. The application was denied by the Committee of Adjustment, appealed by the applicant, but the appeal was subsequently withdrawn.

2. As-Built

Under this option, the existing ‘as-built’ site conditions (e.g. minimum lot size, lot frontage, yard setbacks, building height) would become the new minimum standard on a lot by lot basis. Accordingly, any proposed building additions or re-development beyond the existing ‘building envelopes’ would require a minor variance or zoning application. Similarly, any proposed lot creation would also necessitate a minor variance or zoning application, which would be a public process and require notice to surrounding property owners.

3. Maintain Streetscape

In order to maintain the established streetscape character of the area, which is typified by lots with large front yards in excess of the minimum required 12m setback, the zoning would only be modified to recognize the existing ‘as-built’ front yard setbacks. This would preclude any proposed additions or redevelopment, on a lot by lot basis, from encroaching beyond the current front yard setbacks. All other provisions of the “B” District (e.g. minimum lot size, lot frontage, rear and side yard setbacks, building height) would continue to apply. Any proposal(s) to reduce the existing ‘as-built’ front yard setback would necessitate a minor variance, which is a public process and would require notice to be given to surrounding property owners.

Given the stability of the area since the lots were registered, that is, no new lots have been created and only one minor variance application for a reduced side yard setback has been submitted, staff is of the opinion that over-all, the current “B” District provisions remain appropriate. However, in order to maintain the established streetscape character of the area, staff could support Option 3. However, the minimum 12.0m (40ft.) front yard setback is considered substantial already, as compared to standard zoning regulations. Committee’s direction is requested.

Tim McCabe
General Manager
Planning and Economic Development Department

:CPB
Attachs. (2)
SECTION EIGHT - "B" DISTRICTS

(SUBURBAN AGRICULTURE AND RESIDENTIAL, ETC.)

REQUIREMENTS AS TO USE

8. (1) Subject to the provisions of Sections 3, 18, 18A, and 19, in a "B" District, no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, for other than one or more of the following uses, namely: (71-327) (83-66)

RESIDENTIAL USES

(i) A single family dwelling, together with the accommodation of lodgers to the number of not more than three; (71-327) (81-27)

(ii) (71-327) (81-27) (Deleted by 92-281)

(iia) A Foster Home; (86-326)

(iib) Residential care facility for the accommodation of not more than six residents; (01-143 - Deleted by 06-188)

(iic) Retirement home for the accommodation of not more than six residents. (01-143 - Deleted by 06-188)

INSTITUTIONAL USES

(iii) A public hospital, private hospital, home for the aged, children's residence; (71-327) (81-27)

Provided that:

(a) it has sleeping accommodation for at least one hundred inmates,

(b) the lot on which same is situate has a horizontal area of at least 20,000.0 square metres (4.94 acres), (79-288) [80-049]

(c) at least ninety per cent of said area is unoccupied by any building or structure, and

8-1
(d) wherever any lands adjoining or any lands immediately opposite on the other side of any highway upon which the hospital lands abut, are in a residential district, every building and structure be either at least 30.0 metres (98.43 feet) from the nearest lot line, or at least 1.0 metre (3.28 feet) for every 0.5 metre (1.64 feet) of height of the building or structure, whichever is the greater distance, (79-288) (80-049)

(iiiia) A day nursery, provided that: (90-248)

(a) Subject to subsection (b), every such day nursery,

(i) shall accommodate not more than 25 children, and

(ii) shall be situated on a lot having a minimum radial separation of 180.0 metres from the lot line to the lot line of any other lot occupied or as may be occupied by a day nursery.

(b) Subsection (a) shall not apply to a day nursery located within a school, church, community centre, or other public building.

(iv) A monastery, nunnery or other like religious use, conditional upon observance of clauses (b), (c) and (d) of the provision for public hospitals above: (71-237)

PUBLIC USES

(v) A school, college, university or seminary of learning, public or private, with or without a dormitory and dining room but excepting a commercial school or a sanatorium school, and conditional upon observances of clauses (b) and (d) of the provision for public hospitals above; (71-327)

(va) A school for the blind or deaf, with or without a dormitory and dining room, together with a workshop or factory where only inmates and other blind persons and their instructors are employed, and a shop where goods produced in the school may be sold and such offices, recreation rooms and other uses as may be appropriate to the conduct of such a school. (71-327)

(vi) A library, art gallery, museum, observatory, community centre, gymnasium, swimming pool or other such cultural, recreational or community building or structure, except one carried on as a business, or of a kind that is customarily carried on as a business;
Provided that a Community Centre, permitted under this paragraph shall be one that is operated for the benefit of all residents of a given neighbourhood, and where all such residents are afforded opportunity for recreational activities, and where individuals may be permitted to combine into groups to do their own canning and for any other self-help programs with respect to home economy or the household arts; (71-327)

(vii) A cemetery, mausoleum or columbarium, together with any chapel or other building or structure appurtenant to such use, including a crematorium if within a cemetery,

Provided that:

(a) The lot on which same is situate has a horizontal area of at least 8.0 hectares (19.77 acres), and (79-288) (80-049)

(b) every building or structure save a memorial stone or monument, or a boundary fence, is at least a 30.0 metres (98.43 feet) from the nearest lot line; (71-327) (79-288) (80-049)

(viii) A public or private forest, wildlife reservation or other conservation project, or a reservation for hiking, picnicking, skiing or other such outdoor sports; (71-327)

(ix) A fairground or exhibition ground;

(x) A golf course, bowling green, tennis court, playground, playfield, play lot, picnic ground or other such recreational use except one carried on as a business, or of a kind that is customarily carried on as a business,

Provided, however, that any building permitted in connection with any such tennis court, bowling green or other recreational use shall be limited to such locker-rooms, dressing rooms, shower baths, and other such accessory uses necessary for their operation; (71-327)

COMMERCIAL USES

(xi) A livery stable, riding academy, kennel, animal hospital or the keeping or raising of animals,

Provided that:

(a) the lot on which same is situate has an area of at least 12,000.0 square metres (2.97 acres), and (79-288) (80-049)
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(b) every building or corral or other structure for the housing of animals, save a boundary fence, is at least 30.0 metres (98.43 feet) from the nearest lot line; (71-327) (79-288) (80-049)

(xii) A broadcasting station for radio, facsimile or television, with or without a studio or theatre,

Provided that:

(a) the lot on which same is situate has a horizontal area of at least 8.0 hectares (19.77 acres), and (79-288) (80-049)

(b) every building or structure save a boundary fence is distant from the nearest lot line at least 0.5 metres (1.64 feet) for each 0.5 metres (1.64 feet) of height of the building or structure; (71-327) (79-288) (80-049)

FARMING USES

(xiii) Any farming use except the commercial feeding of garbage or swill to swine or other animals,

Provided that:

(a) the lot on which any such farming use is carried on has an area of at least 12,000.0 square metres (2.97 acres), and (79-288) (80-049)

(xii) (b) every building or corral or other structure used for housing or enclosing animals, except a boundary fence, is at least 30.0 metres (98.43 feet) from the nearest lot line; (71-327) (79-288) (80-049)

MISCELLANEOUS AND INCIDENTAL USES

(xiv) A booth in a public hospital, private hospital or home for the aged for the sale of flowers, magazines, refreshments and comforts; (71-327) (81-27)

(xv) A private garage; (92-170)

(xvi) Parking spaces to such a number as is reasonably necessary for a permitted use to which the same is appurtenant, provided that the same are hard-surfaced and abut upon a hard-surfaces driveway giving ready access to a street or alley, and that same are used only as appurtenant to such permitted use,
And provided further that the foregoing shall not be construed so as to permit the expansion for such purpose of a non-conforming use; (71-327)

(xvii) A storage garage of such capacity as is reasonably necessary for a permitted use to which the same is appurtenant, provided that the same is used only as appurtenant to such permitted use.

And provided further that the foregoing shall not be construed so as to permit the expansion for such purpose of a non-conforming use. (71-327)

HEIGHT REQUIREMENTS

(2) In a "B" District; no building shall exceed two and a half storeys and no structure shall exceed 11.0 metres (36.09 feet), in height. (9141/60) (79-288) (80-049)

AREA REQUIREMENTS

(3) The following yards shall be provided within the district, and maintained, as appurtenant to every building or structure in a "B" District: (8927/60)

(i) a front yard of a depth of at least 12.0 metres (39.37 feet); (79-288) (80-049)

(ii) a side yard along each side lot line of a width of at least 3.0 metres (9.84 feet); and (79-288) (80-049)

(iii) a rear yard of a depth of at least 9.0 metres (29.53 feet). (79-288) (80-049)

INTENSITY OF USE

(4) Every lot or tract of land in a "B" District shall have a width of at least 20.0 metres (65.62 feet) and an area of at least 1,100.0 square metres (11,840.69 square feet) within the district. (8927/60) (71-327) (79-288) (80-049)

(5) Except as provided in Subsection 6, every residential care facility and retirement home shall be situated on a lot having a minimum radial separation distance of 300.0 metres from the lot line to the lot line of any other lot occupied or as may be occupied by a residential care facility, retirement home, emergency shelter, corrections residence or correctional facility. (01-143 - Deleted by 06-188)
Where the radial separation distance from the lot line of an existing residential care facility or an existing retirement home is less than 300.0 metres to the lot line of any other lot occupied by a residential care facility, retirement home, emergency shelter, corrections residence or correctional facility, the existing residential care facility or existing retirement home may be expanded or redeveloped to accommodate not more than the permitted number of residents. (01-143 - Deleted by 06-188)