SUBJECT: Committee of Adjustment (Urban) Minor Variance Application AN/A-07:150 for the Property Known as 125 Wilson Street West, Ancaster - Supported by the Planning and Economic Development Department (PED07242) (Ward 12)

RECOMMENDATION:

That Report PED07242 respecting Committee of Adjustment Minor Variance Application AN/A-07:150, for the property known as 125 Wilson Street West, Ancaster, as shown on Appendix “A” to Report PED07242, denied by the Committee of Adjustment but supported by the Planning and Economic Development Department, be received for information.

EXECUTIVE SUMMARY:

Minor Variance Application AN/A-07:150 sought relief from the provisions of Ancaster Zoning By-law No. 87-57 for a slight increase in density (62 vs. 59 units), a reduction in parking for the resulting number of units (1.96 spaces/unit vs. 2.0 spaces/unit), and for clarification of the “Building Height” definition for a proposed 62 unit apartment building.
The variances were considered before the Committee of Adjustment (Urban) on July 11, 2007. Comments to the Committee of Adjustment from staff supported the requested variances as they were consistent with the Provincial Policy Statement and they met the purpose and intent of the Hamilton-Wentworth and Ancaster Official Plans, and the Ancaster Zoning By-law.

The Committee denied the application at their July 11th meeting (Appendix “B”) for the reasons provided in Appendix “B”. The decision has been appealed to the Ontario Municipal Board (OMB) by the applicant, Helmuth Strobel. An Ontario Municipal Board Hearing has yet to be 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 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

Minor Variance Application AN/A-07:150 was submitted to request three variances to the Ancaster Zoning By-law, so as to permit the construction of a 4-storey, 62 unit apartment building notwithstanding that:

(1) A maximum density of 82 units per hectare shall be permitted instead of the maximum density of 77.5 units per hectare.

(2) 1.96 parking spaces per unit, for a total of 122 parking spaces, and including a minimum of 20 visitor parking spaces, shall be provided on site instead of the 2.0 parking spaces per unit, for a total of 124 parking spaces, including a minimum of 20 visitor parking spaces, as required by the OMB.

(3) Furthermore, for clarification purposes only to add the word “west” between the words “south” and “of” so that the definition reads: “Notwithstanding Subsection 3.2, “Building Height” shall mean the vertical distance measured from the existing
established grade of 249.57m, which is taken at a point measured 14.517m southwest of the southeast corner of the lot lines, to the lowest point of the concrete roof slab and shall not exceed 10.53m.”

**ANALYSIS/RATIONALE:**

The subject lands are designated “Residential” in the Ancaster Official Plan and located within a “RM6-530” (Residential Multiple) Zone in the former Town of Ancaster Zoning By-law (as recently amended by the OMB), which both permit a multiple unit residential building.

Concerning the requested relief to permit a slight increase in maximum density from 59 to 62 units, the three additional units would not result in changes to the proposed building as the units would utilize space within the building approved under Site Plan Application DA-05-184. The requested variance for increased density allows an opportunity for intensification through the creation of more one bedroom units. The original proposal for 59 apartment units comprised 20 one bedroom units and 39 two bedroom units. The current request for 62 apartment units through Minor Variance Application AN/A-07:150 proposes 26 one bedroom units and 36 two bedroom units.

Concerning the requested relief to reduce the minimum parking space requirement to 1.96 spaces per unit from 2 spaces per unit, it is noted that the resulting change would amount to only a difference of 2 parking spaces, which is considered minor. The requested rate of 1.96 spaces per unit would be within the established parking rate norms for the other former municipalities within the amalgamated City of Hamilton and would be at the high end of this range (parking requirements range from 1.25 spaces per unit for Hamilton to 2.0 spaces per unit plus 0.5 spaces per unit for visitors parking for the former Township of Glanbrook). Staff’s recommendation to support this variance was based on the requirement for 20 visitor parking spaces within the total parking being provided.

The currently approved site plan is based on 59 apartment units and identifies the provision of 122 parking spaces. Prior to the Committee of Adjustment meeting, the applicant submitted a Site Plan Amendment Application to expand the underground parking area to accommodate 2 additional parking spaces, which would enable the proposed 62 unit apartment building to comply with the current parking requirement of 2.0 spaces per unit. This change requires the footprint of the underground parking to be slightly expanded and proposes the removal of 11 trees from the site near the end of the driveway. The application was submitted in the event the parking variance was denied and is being held in abeyance pending the decision by the OMB.

The variance relating to the issue of “Building Height” is technical in nature and is to clarify the point from which height for the proposed multiple residential building should be measured at the front of the property. The extent of the variance is to establish the
specific direction for measuring building height as “southwest” rather than “south” of the southeast corner of the lot lines. This wording was originally supported by the OMB and agreed to by the parties through the OMB mediated settlement in March, 2006. The building height would not exceed 10.513 metres, whereas 10.53 metres is permitted, and there would be no increase in the height of the building resulting from this variance.

With respect to application AN/A-07:150, staff noted that the requested variances are minor in impact, are appropriate and desirable for the use of the lands, and meet the intent and purpose of the Official Plan and Zoning By-law, satisfying the four tests of Section 45 of the Planning Act.

**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 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 retain 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:

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 “Urban Area” in the Hamilton-Wentworth Official Plan. The Hamilton-Wentworth Official Plan, under 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.

The proposal meets the purpose and intent of the Hamilton-Wentworth Official Plan.

Town of Ancaster Official Plan

The subject property was redesignated from “Institutional” to “Residential” through the Ontario Municipal Board Order 1075, issued April 11, 2006. The Official Plan supports a range of residential housing forms in the Residential land use designation. Staff’s recommendation to support the applications for the Official Plan Amendment and Rezoning to permit a 59 unit apartment building was based on the evaluation of Policy 4.4.8, which addresses locational requirements for higher density development and Policy 4.4.10, which addresses intensification.

The proposed variances are considered to be minor in nature and meet the purpose and intent of the Ancaster Official Plan, as amended by the OMB, including the above-referenced policies.

Town of Ancaster Zoning By-Law

The subject property is zoned “RM6-530” (Residential Multiple) Zone in the former Town of Ancaster Zoning By-law. This zoning was approved through Ontario Municipal Board Order 1075, issued April 11, 2006. There are special regulations for the “RM6-530” Zone to address maximum density, minimum parking, a children’s play area, and
maximum building height. Staff is of the opinion that the minor variances to permit a slight increase in density (3 additional units), a minor reduction in the amount of parking per dwelling unit (1.96 spaces per unit vs. 2.0 spaces per unit), and for clarification of the “Building Height”, meet the purpose and intent of the Zoning By-law.

**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
Human health and safety 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
Appendix “A” to Report PED07242

Location Map

File Name/Number: AN/A-07:150
Date: August 29, 2007
Appendix “A”
Scale: N.T.S
Planner/Technician: CT/MC

Subject Property
125 Wilson Street West

Ward 12
Keymap
N.T.S
DECISION OF THE COMMITTEE

APPLICATION NO. AN/A-07:150
SUBMISSION NO. A-150/07

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 87-57, of the City of Hamilton (formerly Ancaster), Sections 19 and 34.

AND IN THE MATTER OF the Premises known as Municipal number 125-139 Wilson Street West, formerly in the Town of Ancaster, now in the City of Hamilton and in an "RM6-530" (Residential Multiple Zone area) amended by OMB decision No. 1075) district;

AND IN THE MATTER OF AN APPLICATION by the agent Helmut Strobel on behalf of the owner Gates of Ancaster II Limited, for relief from the provisions of the Zoning By-Law No. 87-57, under Section 456 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the construction of a four (4) storey sixty two (62) unit apartment building as approved by Ontario Municipal Board (O.M.B.) decision No. 1075 notwithstanding that:

1. A maximum density of 82/units per hectare shall be permitted instead of the maximum density of 77.5 units per hectare;

2. 1.96 parking spaces per unit for a total of one hundred and twenty two (122) parking spaces and including a minimum of 20 visitor parking spaces shall be provided on site instead of the 2.0 parking spaces per unit for a total of 124 parking spaces including a minimum of 20 visitor parking spaces as required by the O.M.B.; and

3. Furthermore, for clarification purposes only to add the word "west" between the words "south" and "of" so that the definition reads as follows: "Notwithstanding Subsection 3.2 "Building Height" shall mean the vertical distance measured from the existing established grade of 249.57/ft, which is taken at a point measured 14.517/m southwest of the southeast corner of the lot lines, to the lowest point of the concrete roof slab and shall not exceed 10.53/m.

Please note that variances were written as indicated by the applicant. Parking layout has not been submitted by the applicant for the proposed new parking.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The Committee, after carefully considering the submissions and arguments of both the applicant and area residents, finds no reason why they should disturb an Ontario Municipal Board decision where the parties already reached a negotiated settlement.

2. The Committee having regard to the evidence pertaining to a previously negotiated settlement is of the opinion that the relief requested is beyond that of a minor nature.

3. The Committee is of the opinion that 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 Rezoning and Official Plan Amendment which was approved (through a negotiated settlement) by the Ontario Municipal Board.

4. The Committee having regard to the intensity of use of the subject parcel of land in comparison to the surrounding neighbourhood, is of the opinion that such development would not be appropriate for the lands.

DATED AT HAMILTON this 11th day of July, 2007.

M. Dudzic (Chairman) V. Abraham

G. Lewis D. Drury

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS JULY 31ST, 2007.

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