CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

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<th>Report to:</th>
<th>Chair and Members Economic Development and Planning Committee</th>
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| Submitted by:     | Tim McCabe
                      General Manager
                      Planning and Economic Development Department |
| Date:             | June 22, 2007
                      SC/B-07:21
                      SC/A-07:59 |
| Prepared by:      | Joe Gravina
                      (905) 546-2424, Ext.1284 |

SUBJECT: Committee of Adjustment (Urban) Consent/Land Severance Application SC/B-07:21 and Minor Variance Application SC/A-07:59, for the Property Located at 101 Margaret Avenue, Stoney Creek - Supported by the Planning and Economic Development Department (PED07188) (Ward 10)

RECOMMENDATION:

That Report PED07188, respecting Committee of Adjustment (Urban) Consent/Land Severance Application SC/B-07:21 and Minor Variance Application SC/A-07:59, 101 Margaret Avenue, Stoney Creek, as shown on Appendix “A” to Report PED07188, denied by the Committee but supported by the Planning and Economic Development Department, be received for information.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

A proposed severance and associated variances to create two new building lots for residential purposes from an existing residential lot containing a single family dwelling (to be demolished) were considered before the Committee of Adjustment (Urban) on April 4, 2007. Comments to the Committee from staff supported the severance as the proposal was consistent with the Provincial Policy Statement, and was in conformity
with the policies of the Hamilton–Wentworth Official Plan and the Stoney Creek Official Plan. Staff also supported the reduced lot frontages, as shown on Appendix “B”, on the basis that the proposed lots were compatible with existing residential lots on Margaret Avenue, and that the variances were considered to be minor in nature, desirable for the appropriate use of the lands, and in keeping with the general intent and purpose of the Official Plan and Zoning By-law.

The applications were tabled until April 18, 2007, to allow the Committee to conduct a site visit. The Committee subsequently denied the applications for, among other reasons, being out of character with existing neighbourhood development (see Appendices “C” and “D”).

The Committee’s decision to deny the applications was appealed to the Ontario Municipal Board by the owners 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 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

Application SC/B-07:21 and application SC/A-07:59 were submitted to create two residential building lots with reduced lot frontages. The proposed lots are shown on Appendix “B”.

ANALYSIS/RATIONALE:

Consent/land severance application SC/B-07:21 was supported by staff based on its compliance with the Provincial Policy Statement (PPS), Hamilton-Wentworth Official Plan and the Stoney Creek Official Plan severance and infill polices. The Single
Residential “R2” Zone of Stoney Creek Zoning By-law No. 3692-92 requires lots to have a minimum frontage of 15.0m and a minimum area of 460m². Minor variance application SC/A-07:59, to reduce the minimum lot frontage requirement from 15.0m to 13.1m, was supported by staff given that the proposed lots exceeded the minimum lot area requirement of 460m² (+/-698m²), as shown on Appendix “B”. As a result, the proposed lots provide suitable building envelopes that are considered to be compatible with existing residential development in the surrounding area.

**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 refuse, 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 applications. 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. These costs are covered by the respective Departmental Work Programs/Budgets. Therefore, no additional funds would be required.

**Staffing:** One representative from Legal Services would be required for preparation and attendance at the Ontario Municipal Board Hearing.

**Legal:** No legal implications are expected.
POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement (PPS)

The application has been reviewed with respect to the Provincial Policy Statement, 2005 (PPS). As the nature of the application is for the creation of two new building lots, where full municipal services are available, the proposal is consistent with the policies of the PPS.

Hamilton-Wentworth Official Plan

The subject property is designated “Urban Area”. 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. Urban Areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020. The proposal conforms to the Hamilton-Wentworth Official Plan.

Stoney Creek Official Plan

The subject 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.

Subsection A.1.2.1 states: “The primary uses permitted in areas designated on Schedule "A" as RESIDENTIAL shall be for dwellings. The location and type of residential densities within these areas, however, shall conform to the relevant Secondary Plan provisions, as specified under this Subsection, Subsection A.13, F.3 and other relevant policies of this Plan.”

Subsection A.1.2.20 states: “In the development of new residential areas, and as far as practical in the infilling or redevelopment of established areas, Council may undertake or require the following in order to achieve high standards of residential amenity:

a) Provision and maintenance of adequate off-street parking.

b) Provision, improvement and/or maintenance of on-site landscaping.

c) The provision and maintenance of adequate separation distances and the placement of buffering features between residential uses of differing densities, as well as other land uses.

In addition, residential development and/or infilling within developed neighbourhoods shall not be on a scale so as to create a land use conflict with surrounding uses.”
Subsection C.1.1 states: "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:

a) Consents shall only be permitted where the application complies with the policies of this Plan, the Regional Official Plan, the Niagara Escarpment Plan, where the lands are located within the Escarpment Natural, Escarpment Protection or Escarpment Rural Area, as shown on Schedule "B", and the requirements of the Planning Act. Prior to the issuance of the Land Division Committee's certificate, the consent must conform with the appropriate Zoning By-law, where applicable.

b) Access to Provincial Highways and Regional Roads must conform with access requirements of the Provincial Ministry of Transportation and Communications and the Regional Access By-law.

c) Any lot created shall have direct frontage on a public road of an acceptable standard of construction.

d) Consent for a severance shall not create a traffic hazard.

e) The applicant must prove to the appropriate authority that a sufficient potable ground water supply is available for the intended use of the land prior to the endorsement of the deed by the Secretary-Treasurer of the Land Division Committee.

f) Consent for severances shall be discouraged in woodlots.

g) Extensions to linear or ribbon development along roadways are to be discouraged."

The application conforms to the Stoney Creek Official Plan.

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

The subject property is zoned Single Residential “R2” Zone in Stoney Creek Zoning By-law No. 3692-92, which requires a minimum lot frontage of 15 metres and a minimum lot area of 460m$^2$. The proposed lots provide lot areas in excess of the required minimum 460m$^2$ (+/-698m$^2$); however, a variance was required to reduce the minimum lot frontage from 15.0m to 13.1m.

**RELEVANT CONSULTATION:**

- Legal Services Division.
SUBJECT: Committee of Adjustment (Urban) Consent/Land Severance Application SC/B-07:21 and Minor Variance Application SC/A-07:59, for the Property Located at 101 Margaret Avenue, Stoney Creek - Supported by the Planning and Economic Development Department (PED07188) (Ward 10) - Page 6 of 6

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 is 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. (4)
Appendix "B" to Report PED07188 (Page 1 of 1)
COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENT LAND SEVERANCE

APPLICATION NO. SC/B-07:21
SUBMISSION NO. B-21/07

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 101 Margaret Avenue, formerly in the City of Stoney Creek, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent Roman Lewczuk on behalf of the owner James Frantisak, 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 measuring 13m x (42.65') x 53.3m x (174.9') containing an existing garage (to be removed) for single family residential purposes, and to retain a parcel of land measuring 13m x (42.65') x 53.3m x (174.9') containing an existing dwelling (to be removed) for single family residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The Committee, having site inspected the property, is of the opinion that the proposal is out of character with existing neighbourhood development.

2. The proposal does not appear to be in the interest of proper planning and development for the area.

3. The proposal does not comply with the requirements of the Zoning By-law.

4. The proposal does not comply with Section 51(24) of The Planning Act.

DATED AT HAMILTON this 18th day of April, 2007.

M. Dudzic, Chairman

C. Lewis

D. Drury


NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.
Appendix "D" to Report PED07188 (Page 1 of 1)

Committee of Adjustment
City Hall
7th floor, 71 Main Street West
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. SC/A-07:59
SUBMISSION NO. A-59/07

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), Section 6.3.

AND IN THE MATTER OF the Premises known as Municipal number 101 Margaret Avenue, formerly in the City of Stoney Creek, now in the City of Hamilton and in an "R2" (Single Residential) district;

AND IN THE MATTER OF AN APPLICATION by the agent Roman Lewczuk on behalf of the owner James Frantisak, 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 creation of two (2) new lots notwithstanding that a frontage of 13m shall be provided for each lot instead of the minimum required 15.0m.

Note: This application is necessary to facilitate Consent Application SC/B-07:21.

THE DECISION OF THE COMMITTEE IS:

That the said application 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.

DATED AT HAMILTON this 18th day of April, 2007.

M. Dedzic (Chairman)

C. Lewis

D. Drury

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS May 8th, 2007.

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