TO:  Chair and Members
     Planning Committee

WARD(S) AFFECTED:  WARD 3

COMMITTEE DATE:  September 7, 2011

SUBJECT/REPORT NO:
Committee of Adjustment Minor Variance Application HM/A-11:58, for the Property
Located at 53 Gibson Avenue (Hamilton), Supported by the Planning and Economic
Development Department but Denied by the Committee of Adjustment (PED11148)
(Ward 3)

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 PED11148, respecting Committee of Adjustment Minor Variance
Application HM/A-11:58, for the property located at 53 Gibson Avenue (Hamilton), as
shown on Appendix “A” to Report PED11148, supported by the Planning and Economic
Development Department, but denied by the Committee of Adjustment, be received for
information, and no action be taken.

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application HM/A-11:58 to permit the
construction of a second-storey addition to the existing building, which is proposed to be
used as a Place of Worship, and to facilitate Site Plan Control Application SPA-11-003
(see Appendix “B”). The subject property is zoned “D/S-459” (Urban Protected
Residential - One and Two Family Dwellings, etc.) District, Modified, in Hamilton Zoning
By-law No. 6593.
The applicant requested variances for a reduction in the front yard setback to 0.0m, whereas a minimum 6.0m is required; a reduction in the rear yard setback to 0.0m, whereas a minimum 7.5m is required; and a reduction in the north-westerly side yard setback to the hypotenuse of a daylight triangle to 0.0m, whereas a minimum 1.2m is required. Building Services Division also identified the need for a reduction in the south-easterly side yard setback to 0.0m, whereas a minimum 1.2m is required.

The minor variance application was considered before the Committee of Adjustment on April 28, 2011. Staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, and satisfied the four tests set out in Sub-section 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. 6593.

The Committee of Adjustment denied the application for the reasons provided in Appendix “C”. The decision has been appealed to the Ontario Municipal Board (OMB) by the applicant. To date, an OMB hearing has not been scheduled.

Alternatives for Consideration - See Page 6.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee of Adjustment’s decision to deny the application, the City must retain an outside planning consultant, and any other experts who can professionally support the denial. 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 OMB would be funded first, through the 2011 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 OMB Hearing. One member of the planning staff would attend as an expert witness at the hearing should Council support Option 2.

**Legal:** No legal implications are expected.
HISTORICAL BACKGROUND (Chronology of events)

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 53 Gibson Avenue (Hamilton) (see Appendix “A”). The applicant is proposing to construct a second-storey addition on the existing building (see Appendix “B”). The previous use of the building was a legally established, non-conforming manufacturing business, and the applicant is proposing a second-storey addition to the building to facilitate the establishment of a Place of Worship. The variances are to recognize existing as-built site conditions, and to permit the proposed second-storey addition to extend to the property lines as well. The variances are required for final approval of Site Plan Control Application SPA-11-003 (conditionally approved on February 24, 2011) to permit the construction of the addition.

The application was reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and City of Hamilton Zoning By-law No. 6593. Planning staff is of the opinion that the application maintains the general intent of the above noted policy documents.

Accordingly, staff recommended approval of the 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. 6593.

The Committee of Adjustment, at its meeting of April 28, 2011, denied the minor variance application (see Appendix “C”).
POLICY IMPLICATIONS

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 for managing and directing land use to achieve efficient development, Policy 1.1.1(b).

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.

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 City of Hamilton Official Plan.

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

City of Hamilton Official Plan

The lands are designated “Residential” on Schedule “A” - Land Use Concept Plan, in the City of Hamilton Official Plan.

Section A.2.1 of the City of Hamilton Official Plan sets out the objectives for the “Residential” areas. The intent of the plan for “Residential” areas is to ensure that the residential uses of land is sufficient to accommodate anticipated population growth and changing demands for residential development of varied styles and densities, while ensuring the maintenance of amenities for residents. The intent is also to ensure that residential uses are not subjected to noxious impacts, and achieves the conservation and efficient use of energy. The plan allows for “schools, churches, and similar institutional uses less then 0.4 hectare in size, in accordance with the provisions for Major Institutional Uses, as set out in Sub-section A.2.6” (Policy A.2.1.3(ii)).

Section A.2.1.13 further sets out policies for re-development to ensure that the “Residential” character of the area is maintained and that the re-development will not burden existing facilities and services.
Section A.2.6.2(ii) permits Major Institutional uses to be located in Residential
neighbourhoods provided the proposal is of a scale that will be compatible to, and
integrate with, the character of established or approved development in the surrounding
area.

Staff is satisfied that the proposed use and expansion are consistent with the general
intent of the Official Plan. Accordingly, the application maintains the objectives of the
“Residential” designation of the City of Hamilton Official Plan.

The proposed addition and use is also consistent with the “Major Institutional” policies of
the Official Plan, as the addition makes more efficient use of existing building stock and
is compatible with the character of the existing residential area in terms of height, and
overview. Accordingly, this application maintains the objectives of the “Major
Institutional” policies of the City of Hamilton Official Plan.

Based on the forgoing, the application maintains the general intent and purpose of the
Official Plan. Accordingly, staff recommended approval.

City of Hamilton Zoning By-law No. 6593

The lands are zoned “D/S-459” (Urban Protected Residential - One and Two Family
Dwelling, etc.) District, Modified, in Hamilton Zoning By-law No. 6593.

The variances requested by the applicant were evaluated by staff based on the four
tests set out in Sub-section 45(1) of the Planning Act, based on the submissions that
the existing legal non-conforming manufacturing use was ceasing and a new use was
being established. The new use of a Place of Worship is considered to be a “use not
restricted” in Hamilton Zoning By-law No. 6593 and, as such, pursuant to Sub-section
3(3)(v), is only required to conform to the yard requirements of the zoning district in
which it is located. Sub-section 3(3) references parking facilities as well, but pursuant to
Section 18A, Places of Worship are not required to provide parking.

The requested relief was 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.

Accordingly, staff supported the application.

RELEVANT CONSULTATION

- Legal Services Division, in respect to staffing and costs, if Council supports the
  Committee of Adjustment’s position.

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ANALYSIS / RATIONALE FOR RECOMMENDATION

The application is to recognize existing reduced front, rear, and side yard setbacks for the ground floor of the building, as well as to seek permission to build a second-storey addition following the same footprint of the existing building. The variances requested are intended to facilitate the establishment of a Place of Worship in the existing building and to facilitate final approval of Site Plan Control Application SPA-11-003.

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 Hamilton Official Plan and Hamilton Zoning By-law No. 6593, 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 application by the Committee of Adjustment.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may instruct Legal Services to attend the OMB Hearing, in support of the Committee of Adjustment’s decision to deny this application, 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 OMB 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 OMB Hearing, either in support of the Committee’s decision, or against the decision.
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CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Social Development

- Residents in need have access to adequate support services.
- People participate in all aspects of community life without barriers or stigma.

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”: HM/A-11:058 Committee of Adjustment Decision

:JMB
Attachs. (3)
APPLICATION NO. HM/A-11:58
SUBMISSION NO. A-58/11


AND IN THE MATTER OF the Premises known as Municipal number 53 Gibson Avenue, in the City of Hamilton and in a "DNS-459" (Urban Protected Residential - One and Two Family Dwellings, etc.) district;

AND IN THE MATTER OF AN APPLICATION by the agent Henry Merling on behalf of the owner Aiba Uro, for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O., 1990, c. P. 13, so as to permit the construction of a second storey on an existing one storey building which is proposed to be used as a Place of Worship, notwithstanding that:

1) A minimum front yard depth of 0.0m shall be provided to the front (easterly) lot line instead of the minimum required front yard depth of 6.0m;

2) A minimum rear yard depth of 0.0m shall be provided to the rear (westerly) lot line instead of the minimum required rear yard of 7.5m, and;

3) A minimum side yard width of 0.0m shall be provided to the north-westerly side lot line (hypotenuse of a daylight triangle) instead of the minimum required side yard width of 1.2m.

NOTES:

i) The applicant shall enter an encroachment agreement with the Roads Department for all portions of the building, including eaves and gutters, which encroach beyond the property line onto the road allowance.

ii) The last recognized use of this property is a legally established non-conforming manufacturing business. A building permit is required for the change of use to the proposed Place of Worship.

iii) A further variance may be required if a southerly side yard width of 1.2m cannot be provided. This dimension was not provided on the submitted site plan.

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 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 28th day of April, 2011

D. Smith (Acting Chairman)

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS May 18th, 2011.

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