SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-07:56, for the Property Known as 402 Concession Street - Supported By the Planning and Economic Development Department (PED07196) (Ward 7)

RECOMMENDATION:

That Report PED07196, respecting Committee of Adjustment Minor Variance Application HM/A-07:56, 402 Concession Street, Hamilton, as shown on Appendix “A” to Report PED07196, denied by the Committee but supported by the Planning and Economic Development Department, be received for information.

EXECUTIVE SUMMARY:

A Minor Variance application (HM/A-07:56) was submitted for the property at 402 Concession Street East to seek relief from the parking requirements of the Hamilton Zoning By-law in order to facilitate an addition to a private club (see Appendix “B”). The application was considered before the Committee of Adjustment (Urban) on April 4, 2007. Comments to the Committee of Adjustment from staff supported the requested variance application, as it was considered minor in nature, desirable and appropriate for the use of the lands, and because it met the general intent and purpose of the Official Plan and Zoning By-law.
SUBJECT: Committee of Adjustment (Urban) Minor Variance Application HM/A-07:56, for the Property Known as 402 Concession Street - Supported By the Planning and Economic Development Department (PED07196) (Ward 7) - Page 2 of 5

The Committee's decision to deny the application (Appendix “C”) was appealed to the Ontario Municipal Board by the applicant. 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

Variance application HM/A-07:56 was submitted to request permission for no on-site parking spaces for a private club at 402 Concession Street (Appendix “A”), whereas the By-law requires a minimum of five (5) parking spaces. The variance application was required because of a proposed addition (Appendix “B”) to the existing club.

ANALYSIS/RATIONALE:

The owner of the existing private club would like to construct an addition to the rear of the existing building, thus eliminating any on-site parking. The enlarged building would require a minimum of five (5) parking spaces.

The proposal is consistent with the Provincial Policy Statement (PPS) and the Hamilton-Wentworth Official Plan. The subject property is designated as “Commercial” in the Hamilton Official Plan, to which the proposed use complies. The subject property is zoned “H” (Community Shopping and Commercial, etc.) District in the Hamilton Zoning By-law, which permits private clubs.

The purpose and intent of the By-law’s minimum parking requirements is to ensure adequate parking is available to accommodate the expanded use without negatively impacting local parking supply. As this use usually operates at times when area parking demand is low and short-term parking is available on both sides of Concession Street,
which is also served by public transit (Routes 23, 24, and 25), the application meets the intent and purpose of the Zoning By-law.

In staff’s opinion, the proposal satisfies Section 45(1) of the Planning Act regarding the criteria for minor variance approvals.

**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 between $2,500 and $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 as “Urban Area” within 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.

As the nature of the application would permit the expansion of a permitted commercial use, where municipal services are available, the proposal meets the general intent and purpose of the Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan

The subject lands are designated “Commercial” on Schedule “A” – Land Use Concept of the City of Hamilton Official Plan, which permits a variety of commercial uses, including private clubs. The application meets the general intent and purpose of the Official Plan.

City of Hamilton Zoning By-law

The subject property is zoned “H” (Community Shopping and Commercial) District under the City of Hamilton Zoning By-law, which permits private clubs. The proposed addition will conform to the Zoning By-law regulations, except for the provision of five (5) parking spaces. The proposed variance is to permit zero parking spaces, instead of the required five (5) parking spaces. The application meets the general intent and purpose of the Zoning By-law because of available on-street parking and public transit.

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

:KW
Attachs. (3)
Location Map

Appendix "A" to Report PED07196 – Page 1 of 1

Committee of Adjustment

Subject Property

402 Concession Street

City of Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

Hamilton
Development Concept Plan

SKETCH
XM/A-07:56
Decision of the Committee

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. HM/A-07:56
SUBMISSION NO. A-56/07

IN THE MATTER OF The Planning Act, 1990 and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 14 and 18A.

AND IN THE MATTER OF the Premises known as Municipal number 402 Concession Street, in the City of Hamilton and in an "H" (Community Shopping and Commercial, etc.) district;

AND IN THE MATTER OF AN APPLICATION by the agent A. Somo on behalf of the owner Renate Ratz, 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 establishment of a private club for not more than thirty (30) persons notwithstanding that no parking shall be provided instead of the minimum required five (5) parking spaces.

Please note that a private club is defined as: an establishment which is maintained and operated by a not-for-profit corporation or unincorporated association solely for the benefit and enjoyment of its members, and which has adopted by-laws or policies regulating the admission of persons to the corporation or association, the classes and conditions of membership, the suspension and termination of membership, the qualification and membership of directors and their manner of election, and the holding of an annual general meeting of members, and which requires the payment of fees and dues by members on an annual basis, and which issues cards or other documents to members which state the name of the member and the date on which his or her membership expires. Sufficient proof indicating that the use is a private club will have to be provided in order to establish a private club.

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.
Decision of the Committee

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. Dudzic (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.