SUBJECT: Committee of Adjustment Severance Application FL/B-08:105 for the Property Known as 236 Parkside Drive, Flamborough - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED08308) (Ward15)

RECOMMENDATION:

That Report PED08308, respecting Committee of Adjustment Severance Application FL/B-08:105, for the property known as 236 Parkside Drive, Flamborough, as shown on Appendix “A” to Report PED08308, supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment, be received for information.

EXECUTIVE SUMMARY:

The applicant proposed through Severance Application FL/B-08:105 to divide the property at 236 Parkside Drive into two residential lots.

The lands to be severed are for a new single detached residential building lot with a lot frontage of 12 metres and a lot area of 548.8 square metres, and the lands to be retained contain an existing single detached residential building with a lot frontage of 18.4 metres and a lot area of 841.9 square metres (see Appendix “B”).
The severance was considered before the Committee of Adjustment on October 2, 2008. Comments to the Committee of Adjustment from staff supported the proposed severance as it was consistent with the Provincial Policy Statement, and conformed to the Hamilton-Wentworth Official Plan and Town of Flamborough Official Plan.

The Committee of Adjustment denied the severance 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 Ontario Municipal Board hearing has not been scheduled.

**BACKGROUND:**

In December 2002, 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 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.”

**ANALYSIS/RATIONALE:**

The subject lands are designated “Urban” within the Hamilton-Wentworth Official Plan. As the nature of the application is for the creation of one additional residential building lot within the Urban Area, the proposal is consistent with the policies of the Provincial Policy Statement, and conforms to the policies of the Hamilton-Wentworth Official Plan.

The subject lands are designated “Residential” in the Town of Flamborough Official Plan, which permits single detached dwellings, and permits infill development that is compatible to the surrounding neighbourhood.

The proposed severance creates an opportunity to provide new infill housing for a single detached dwelling that is compatible to the surrounding neighbourhood.

The applicant is proposing to create one new residential building lot on the subject property. The lands are zoned Urban Residential (Single Detached) “R1-6” Zone, which requires a minimum lot frontage of 30 metres, a minimum lot area of 1,390 square metres, and a minimum side yard setback of 3 metres. The proposed lands to be retained would have a minimum lot frontage of 18.4 metres, a minimum lot area of 841.9 square metres, and a minimum side yard setback of 1.6 metres; while the proposed lands to be severed would have a minimum lot frontage of 12 metres and a minimum lot area of 548.8 square metres. As such, both the lands to be severed and
lands to be retained will not meet the minimum requirements of Zoning By-law No. 90-145-Z. Accordingly, staff recommended that approval of the severance be subject to a condition of rezoning approval (Condition 2 - Appendix “D”). As of the date of the drafting of this report, the required rezoning has not been submitted.

Furthermore, staff noted that the requested severance conforms to the relevant Official Plan Policies subject to the Rezoning Approval, and conforms to the criteria set out in Section 51.24 of the Planning Act. In this regard, it meets provincial interest in terms of infill development, there are adequate utilities and municipal services, the proposal conforms to the Official Plan, and the land is suitable for single detached residential dwellings.

**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 of Adjustment’s decision to deny the application, 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. These costs are covered by the respective Departmental Work Program/Budget. 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. One member of planning staff would attend as an expert witness at the hearing should Council support Option 2 above.

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 (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. 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 proposed severance complies with the Plan.

Town of Flamborough Official Plan

The subject property is designated as “Residential” in the Town of Dundas Official Plan and the following policies, among others, apply:

“A.2.1” The uses permitted in areas designated Urban Residential on Schedule “A” shall be detached and semi-detached single dwellings; low to medium density linked multiple unit dwellings, apartment units;

A.2.3(i) Low Density - up to 26 units per net Residential Hectare. This density range permits single detached, semi-detached, duplex dwellings, converted dwellings, shared accommodation, roaming, and boarding houses, and other similar forms of housing. Development at this density shall be by plan of subdivision, except when consent to sever is granted by the Land Division Committee;

E.3.1.1(v) Council supports the creation of new housing units through intensification and innovative design in appropriate areas;

E.3.2.4 Infilling as defined in Section E.3.2 may be permitted on lands designated Settlement Residential and in the Urban Area, subject to consideration of the following, where applicable:
i) As a concept and guideline for the consideration of infilling applications in the urban area, compatibility means mutually tolerant and capable of existing together in harmony in the same area. Compatibility should not be narrowly interpreted to mean the ‘same as’ or even as ‘being similar to.’ In the final analysis, the goal of this policy is to allow for intensification which does not cause an unacceptable impact upon the existing neighbourhood;

ii) When considering infilling development, regard will be had to the following criteria to determine the compatibility of the proposal:

   a) Lot size, building setback, density and the height and mass of buildings in the surrounding area;

   b) Impact on the existing streetscape and landscape and opportunities to maintain and/or enhance the existing streetscape;

   c) Provision for adequate off-street parking;

   d) Proposed building separation and possible buffering provisions and impacts on existing and proposed privacy areas;

   e) Impacts on historical and heritage features and amenities;

   f) The contribution of the proposed use to the provisions of affordable housing;

   g) The proposal can be adequately serviced with water, sewage disposal, roads, garbage collection and utilities so as not to compromise the Town’s financial ability to provide such services; and,

   h) Other actions which may be deemed necessary through the Zoning By-law or Site Plan approval process.”

The proposed lot size will conform to the maximum 26 units per net hectare policy, and will be a compatible infill development. Therefore, the proposed severance to create one new single detached residential lot conforms to the policies of the Town of Flamborough Official Plan.

**Town of Flamborough Zoning By-law No. 90-145-Z**

The subject property is zoned Urban Residential (Single Detached) “R1-6” Zone in the Town of Flamborough Zoning By-law, which permits single detached dwelling units.
SUBJECT: Committee of Adjustment Severance Application FL/B-08:105 for the Property Known as 236 Parkside Drive, Flamborough - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED08308) (Ward 15) - Page 6 of 6

The “R1-6” Zoning requires a minimum lot frontage of 30 metres, a minimum lot area of 1,390 square metres, and a minimum side yard setback of 3 metres. The proposed lands to be retained and lands to be severed both do not meet the minimum lot area and lot frontage requirement, and the lands to be retained does not meet the minimum side yard setback of 3 metres. Therefore, as a condition of approval, staff recommended that the applicant apply for and receive rezoning approval (Condition 2 - Appendix “D”).

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

:DB
Attaches. (4)
Committee of Adjustment
Hamilton City Centre
4th floor, Suite 400, 77 James St. N.
Hamilton, ON L8R 2N3
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION

APPLICATION FOR CONSENT/LAND SEVERANCE

APPLICATION NO. FL/B-08:105
SUBMISSION NO. B-105/08

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 236 Parkside Drive,
formerly in the Town of Flamborough, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent Millington and Associates on behalf
of the owner Michael Murray, 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 12m (39.37') x
45.72m (150') containing a portion of an existing greenhouse (to be removed) for single family
residential purposes, and to retain a parcel of land measuring 18.43m (60.46') x 45.72m (150')
containing an existing single family dwelling (to remain) and a portion of an existing
greenhouse (to be removed) for residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. Having regard to the evidence, the Committee is of the opinion that the creation of a 12m
wide lot is out of character with the surrounding properties which front onto Parkside Drive
and does not appear to be in the interest of proper planning and development for the area.

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

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

DATED AT HAMILTON this 2nd day of October, 2008.

M. Dudziak, Chairman

L. Gaddye

C. Lewis

D. Siewituk

D. Smith

M. Switzer

L. Tew

V. Asiam

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS October 9th, 2008.

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL
BOARD MAY BE FILED IS October 29th, 2008.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.
CONSOLIDATION REPORT
SEVERANCES

The attached comments have been reviewed with regard to Committee of Adjustment Severance File FL/B-08:105 (236 Parkside Dr., Flamborough) and the following is submitted:

Should the Committee grant the severance, an approval should be subject to the following conditions:

1. The owner shall submit a deposited Ontario Land Surveyor’s Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.

2. That the applicant apply for and receive approval of a zoning By-law amendment application to the satisfaction of the Manager of Planning.

3. That the existing portion of the building straddling the proposed property line be removed, to the satisfaction of the Planning and Economic Development Department (Building Services Division). The removal of this portion of the building will be subject to the issuance of a building permit in the normal manner.

4. The owner/applicant shall ensure compliance with the Ontario Building Code requirements (re: separation distance) to the satisfaction of the Planning and Economic Development Department (Building Services Division).

5. That the Owner be required to make a road allowance widening dedicate of approximately 9½ feet (2.9m) on the west and 11½ feet (3.5m) on the east side of the front property line on Parkside Drive.

6. That the Owner be required to pay for the future urbanization of Parkside Drive based on the metres of frontage of the severed lot in accordance with the New Road Servicing Rate for the year that final approval is obtained.

7. That the Owner be required to enter into and register on title of the lands, a consent agreement with the City, to deal with the grading and drainage on the severed lot and the agreement will also include the Owner’s share of the cost of the storm sewer on Parkside Drive.

8. The owner/applicant shall satisfy the requirements of the Public Works Department, Operations and Maintenance Division, Forestry & Horticulture Section.

9. That the owner submit to the Committee of Adjustment office an administration fee of $15.00 payable to the City of Hamilton to cover the costs of setting up new tax account for the newly created lot.

NOTE (TO BE INCLUDED IN DECISION):

1. Based on this application being approved and all conditions being met, the owner/applicant should be made aware that the lands to be conveyed (Part 1) will be assigned the municipal address of 234 Parkside Drive, and that the lands to be retained (Part 2) will remain as 236 Parkside Drive.

2. Should deeply buried archaeological remains be found on the property during construction activities, the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the applicant/landowner should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Governmental Services (416.326.8392). (MFL/FT 2008 09 24)