SUBJECT: Committee of Adjustment Severance Application DN/B-08:28 and Minor Variance Application DN/A-08:157 for the Property Known as 150 York Road, Dundas - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED08191) (Ward13)

RECOMMENDATION:

That Report PED08191, respecting Committee of Adjustment Severance Application DN/B-08:28 and Minor Variance Application DN/A-08:157, for the property known as 150 York Road, Dundas, as shown on Appendix “A” to Report PED08191, 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 DN/B-08:28 to divide the property at 150 York Road into two residential lots, and submitted an associated Variance Application DN/A-08:157, to recognize a proposed reduction in lot frontage and area for the severed lot, and a reduced side yard setback for the retained lot (see Appendix “B”).
The application was for the creation of two residential lots with the lands to be severed being a new single detached residential building lot with a lot frontage of 12 metres and a lot area of 365 square metres, and the lands to be retained having an existing single detached residential building with a lot frontage of 15.24 metres and a lot area of 750 square metres.

The severance was considered before the Committee of Adjustment on May 1, 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 Dundas Official Plan.

The Minor Variance was considered before the Committee of Adjustment on July 3, 2008. Comments to the Committee of Adjustment from staff supported the proposed variances as it was consistent with the Provincial Policy Statement, and conformed to the Hamilton Wentworth Official Plan and Town of Dundas Official Plan.

The Committee of Adjustment denied both the severance and minor variance applications for the reasons provided in Appendices “C” and “D”. The decisions have 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, 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 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 Neighbourhoods” in the Town of Dundas Official Plan. The objectives of this land use designation are to create urban environments that are safe, functional, attractive, and compatible to the character of the existing residential development, as well as to optimize opportunities to provide new housing through residential infill and intensification.

The proposed severance creates an opportunity to provide new infill housing that is safe, functional, attractive, and that will be compatible to the existing neighbourhood.

The applicant is proposing to create one new residential building lot on the subject property. The lands are zoned Single Detached Residential “R2” Zone, which requires a minimum lot frontage of 15 metres, and a minimum lot area of 450 square metres. The proposed lands to be retained would have a minimum lot frontage of 15.24 metres and a minimum lot area of 750 square metres; while the proposed lands to be severed would have a minimum lot frontage of 12.19 metres and a minimum lot area of 365 square metres. As such, the lands to be retained would meet the minimum lot frontage and lot area requirements, but the lands to be severed would not meet the minimum lot frontage and lot area requirement of Zoning By-law No. 3581-86.

In addition to the variances in lot frontage and area for the lot to be severed, a variance is also required for a reduced side yard setback from 3 metres to 2.7 metres for the lot to be retained. Accordingly, staff recommended that approval of the severance be subject to a condition of minor variance approval (Condition 2 - Appendix “E”).

With respect to Application DN/B-08:28, staff noted that the requested severance conforms to the relevant Official Plan Policies subject to the Minor Variance, 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.

With respect to Application DN/A-08:157, staff determined that the proposed variances are minor in nature, 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.

Therefore, staff recommended that both the severance and minor variance applications be approved, subject to the recommended conditions for the severance (see Appendix “E”).
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 Dundas Official Plan

The subject property is designated as “Residential Neighbourhoods” in the Town of Dundas Official Plan which permits, among other uses, single detached residential dwellings. Furthermore the objectives of Policy 3.1.2 are “To create an urban environment that provides for safe, functional, and attractive residential neighbourhoods; to ensure that new residential development is compatible with the scale and character of existing residential development; to optimize opportunities to provide new housing through residential infill and intensification, in existing neighbourhoods.”

In addition, for infill development, Policy 3.1.3.3 a) states that “density shall not exceed 28 units per net hectare.” If the lot size of the proposed lands to be severed were projected over the entire area, there would be a lot density of approximately 27.4 units per net hectare. As such, the proposal conforms to Policy 3.1.3.3 a).

Based on the foregoing, it is the opinion of staff that the proposed severance is in conformity with the relevant policies of the Town of Dundas Official Plan.

Town of Dundas Zoning By-law No. 3581-86

The subject property is zoned Single Detached Residential “R2” Zone in the Town of Dundas Zoning By-law, which permits single detached dwelling units. The “R2” Zoning requires a minimum lot frontage of 15 metres and a minimum lot area of 450 square metres. The proposed lands to be retained meet both the minimum lot frontage and minimum lot area. The proposed lands to be severed would have a minimum lot frontage of 12.19 metres and a lot area of 365 square metres and would, therefore, not meet the minimum lot area and lot frontage requirements of the By-law. Therefore, as a condition of approval, staff recommended that the applicant apply for and receive minor variance approval (Condition 2 - Appendix “E”).

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
Attachs. (5)
Appendix “C” to Report PED08191 (Page 1 of 1)

Committee of Adjustment  
Hamilton City Centre  
4th flr, Suite 403, 77 James St. N.  
Hamilton, Ont. L8R 2K3  
Telephone (905) 546-2424, ext. 4221  
Fax (905) 546-4222

Hamilton

COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION

APPLICATION FOR CONSENT/LAND SEVERANCE

APPLICATION NO. DN/B-08-28
SUBMISSION NO. B-28/08

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 150 York Road, formerly in the Town of Dundas, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the owner Ernst A. Gadamer, 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 12.192m² (40’x) x 30.6m² (100.5’) containing a concrete block garage (to be demolished) for single family residential purposes, and to retain an irregular-shaped parcel of land having a frontage of 15.24m² (50’), and an area of 880m² (9,483R²) containing an existing single family dwelling for residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application IS DENIED for the following reasons:

1. The Committee, after performing a site inspection of the property and surrounding area, is of the opinion that the subject lot, being undersized in terms of lot frontage and lot area, is not in the interest of proper planning and development and is not in keeping with the existing character of this neighbourhood.

2. The proposal does not comply with the requirements of the Zoning By-law as the proposed lot is deficient in lot frontage and lot area.

3. The proposal does not comply with Section 51(24) of The Planning Act (ie. the dimensions of the proposed lot in comparison to existing lots in the surrounding area).

DATED AT HAMILTON this 1st day of May, 2008.

______________________________
M. Dudzic, Chairman

______________________________
C. Lewis

______________________________
L. Tew

______________________________
M. Switzer

______________________________
D. Drury

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS May 8th, 2008.

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS May 28th, 2008.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.
COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. DN/A-08-157
SUBMISSION NO. A-157/08

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 3581-86, as amended, of the City of Hamilton (formerly Dundas), Section 9.

AND IN THE MATTER OF the Premises known as Municipal number 150 York Road, formerly in the Town of Dundas, now in the City of Hamilton and in an "R2" (Single Detached Residential) district.

AND IN THE MATTER OF AN APPLICATION by the owner Ernst Alexander Gadamer, for relief from the provisions of the Zoning By-Law No. 3581-86, as amended, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the creation of two (2) lots through severance notwithstanding that:

1) A minimum lot area of 365m² shall be provided for the lands to be severed instead of the minimum required 450m²;

2) A minimum lot frontage of 12.2m shall be provided for the lands to be severed instead of the minimum required 15.0m, and

3) A minimum side yard of 2.7m shall be provided for the lands to be retained instead of the minimum required 3.0m.

Please Note: Severance application DN/B-08-28 to create the two lots was denied by the Committee of Adjustment and the decision of the Committee has been appealed to the Ontario Municipal Board.

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 3rd day of July, 2008.

M. Dudic (Chairman)

D. Smith

G. Lewis

D. Serwatuk

V. Abraham

L. Goddye

L. Tew

M. Switzer

NOTE: The last date on which an appeal to the Ontario Municipal Board may be filed is July 23rd, 2008.

NOTE: This decision is not final and binding unless otherwise noted.
April 17th, 2008

CONSOLIDATION REPORT
SEVERANCES

The attached comments have been reviewed with regard to Committee of Adjustment Severance File **DN/B-08:28 (150 York Road, Dundas)** 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. The applicant shall receive final approval of any variances from the requirements of the Zoning By-law as determined necessary by the Planning and Development Department (Building & Licensing Division).

3. That the applicant shall demolish the existing accessory building located on the severed parcel, to the satisfaction of the Planning and Economic Development Department (Building & Licensing Division).

4. That the applicant/owner will be required to enter into and register on title a Consent Agreement with the City of Hamilton to the satisfaction of the Manager of Engineering Design and Construction to deal with the grading, drainage and storm water management on the subject lands. The applicant shall demonstrate to the satisfaction of the Manager of Engineering Design and Construction that all drainage from the site shall be taken to a suitable outlet.

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

6. 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 a 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 shall be assigned the municipal address of 152 York Road, and the lands to be retained shall remain as 150 York Road.

2. The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any construction-related excavation and the applicant is advised to have such excavations monitored by an Ontario-licensed archaeologist. If archaeological resources are identified on-site, further Stage 3 Testing and Stage 4 Mitigation may be required as determined by the Ontario Ministry of Culture. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Culture.

Should deeply buried archaeological remains be found on the property during any of the above development activities the Ontario Ministry of Culture (MCL) should be notified immediately (519.675.7742). 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 Government Services (416.326.8392).