



Town of Niagara-on-the-Lake

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REPORT #: CDS-24-156

COMMITTEE DATE: N/A
DUE IN COUNCIL: 2024-09-24

REPORT TO: Council

SUBJECT: Town Representation at the Ontario Land Tribunal
Zoning By-law Amendment ZBA-05-2024 & Consent Application B-09/24 – 187 Queen Street

1. RECOMMENDATION

It is respectfully recommended that Council choose one or more of the following options:

- 1.1 Council retain the Town's legal counsel and an external qualified land use planner to defend the decision made by Council to refuse Zoning By-law Amendment Application ZBA-05-2024 and the decision of the Committee of Adjustment to refuse Consent Application B-09/24 for 187 Queen Street at the Ontario Land Tribunal hearing; and/or
- 1.2 Council retain the Town's legal counsel and an external qualified land use planner to engage in mediation to reach a negotiated settlement with the appellant (applicant) respecting Zoning By-law Amendment Application ZBA-05-2024 and Consent Application B-09/24 for 187 Queen Street and present such settlement to the Ontario Land Tribunal; or
- 1.3 Council instruct the Town's legal counsel to reach a settlement with the appellant (applicant) accepting the recommendations contained within the Staff Reports respecting Zoning By-law Amendment Application ZBA-05-2024 and Consent Application B-09/24 for 187 Queen Street and present such settlement to the Ontario Land Tribunal.

2. EXECUTIVE SUMMARY

- The purpose of the report is to seek direction on how Council wishes to proceed to the Ontario Land Tribunal respecting the appeal of decisions related to Zoning By-law Amendment Application ZBA-05-2024 and Consent Application B-09/24 for lands municipally known 187 Queen Street.
- An application for a Zoning By-law Amendment was considered at the Committee of the Whole – Planning (COTW-P) meeting on July 16, 2024, and at the Council meeting on July 30, 2024. An associated application for Consent was considered at the Committee of Adjustment meeting on August 15, 2024. The applications were submitted to facilitate the severance of one (1) new vacant lot for future residential use, fronting Simcoe Street.

- Planning Staff recommended approval of the Zoning By-law Amendment application and conditional approval of the Consent application. Council and the Committee of Adjustment refused the applications.
- The applicant has filed appeals of the decisions of Council and the Committee of Adjustment to the Ontario Land Tribunal (OLT).
- Council must determine if it wishes to retain legal counsel and a qualified land use planner to either defend the decisions to refuse the applications or enter into mediation to reach a negotiated settlement. Otherwise, Council should instruct the Town's solicitor to accept Staff's recommendations to reach a settlement with the appellant prior to the anticipated OLT hearing.

3. PURPOSE

The purpose of this report is to obtain Council's direction with respect to the Town's legal and planning representation at a future OLT hearing for appeals of decisions made by Council and the Committee of Adjustment regarding applications for Zoning By-law Amendment (ZBA-05-2024) and Consent (B-09/24).

4. BACKGROUND

The subject lands are known municipally as 187 Queen Street, located on the northeast corner of Queen Street and Simcoe Street, within the urban area of Old Town. The subject lands are designated under Part IV of the *Ontario Heritage Act*.

The Applications submitted would facilitate the creation of one new residential lot for a total of two residential lots. The new lot would accommodate a future single-detached dwelling fronting Simcoe Street, and the retained lot would contain the existing heritage dwelling.

The Zoning By-law Amendment (ZBA) proposes that the subject lands be rezoned to "Established Residential (ER) Site-Specific" with provisions for lot frontage, lot depth, and front yard setback for both lots. The severed lot requires provisions for increased front yard setback, rear yard encroachment, and provisions for a garage for the future dwelling. The retained lot requires provisions to allow for the construction of an addition to the existing heritage dwelling. The proposed addition to the heritage dwelling would require a future heritage permit to accommodate an attached garage with an additional dwelling unit above.

The Consent proposes to sever the subject lands into two lots: one lot with the existing heritage dwelling and one lot for a new residential dwelling. Staff recommended approval of the application subject to conditions relating to parkland dedication, Urban Design Committee review, heritage matters, servicing, lot grading, the implementation of tree preservation measures, the requirement to obtain a building permit for the demolition of an existing detached building, entrance permits, an encroachment agreement, and the approval of a Zoning By-law Amendment. The heritage-related conditions include the approval of a subsequent Heritage Permit, the submission of an updated Heritage Impact Assessment for the new lot, and the modification of the designation by-law.

Through the proposed development, a modification of the designation by-law is required to remove the newly created lot. The Part IV heritage designation is intended to remain on the lot with the existing heritage dwelling. Council is the authority for decision-making for heritage

matters. The applicant has submitted their application to modify the designation by-law. This application will be presented at a future Municipal Heritage Committee meeting prior to being provided to Council for decision. Should Council refuse this application, the applicant may appeal the decision to the OLT and combine all three (3) applications before the Tribunal.

Staff Report CDS-24-104 (attached as **Appendix I** to this report) for the ZBA was considered during the July 16, 2024, Committee of the Whole-Planning meeting. Town Planning Staff recommended approval of the Zoning By-law Amendment application. The Committee approved the application in principle and motioned to forward the site-specific by-law to Council for adoption; however, the site-specific by-law was defeated at the July 30, 2024, Council meeting on a tie vote, resulting in the refusal of the Zoning By-law Amendment application.

Staff Report CDS-24-141 (attached as **Appendix II** to this report) for the Consent was considered during the August 15, 2024, Committee of Adjustment meeting. Town Planning Staff recommended approval of the Consent application, subject to a list of conditions that must be satisfied in order to finalize the severance of the lands. The Committee of Adjustment refused the Consent application at the August 15, 2024 meeting.

5. DISCUSSION / ANALYSIS

The applicant has filed appeals of the decisions of Council and Committee of Adjustment on the ZBA and Consent applications, respectively, to the OLT. Staff has submitted the required information to the OLT for both applications. A hearing date for the appeals has not yet been scheduled.

In accordance with Section 2.1 of the Canadian Institute of Planners Code of Professional Conduct, Registered Professional Planners are required to “provide independent professional opinion to clients, employers, the public and tribunals.” Town Planning Staff recommended approval of the Zoning By-law Amendment and Consent applications and the applications. Accordingly, Town Planning Staff are unable to defend Council’s decision to refuse the ZBA and Committee of Adjustment’s decision to refuse the Consent.

An external qualified land use planner would need to be retained by the Town to support the decisions of Council and Committee of Adjustment, or to provide an independent planning opinion in a potential negotiated settlement.

Town Planning Staff anticipate being summoned by the appellant to provide planning evidence in support of the applications at the OLT hearing.

6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

Pillar

1. Vibrant & Complete Community

Priority

1.1 Planning for Progress

Action

1.1 b) Planning for Progress Initiatives

7. OPTIONS

- 7.1 Option 1: Council may retain legal counsel and planning expertise to defend Council's and Committee of Adjustment's decisions and/or to reach a negotiated settlement with the appellant.
- 7.2 Option 2: Council may enter into mediation through the OLT to negotiate a settlement on these applications. Mediation is voluntary and confidential. The process provides parties an opportunity to come together to fully understand the issues in dispute and to explore options for a mutually acceptable solution to some or all of the issues.
- 7.3 Council may seek to reach a settlement with the appellant by accepting Staff's recommendations respected the proposed Zoning By-law Amendment and Consent applications.

8. FINANCIAL IMPLICATIONS

There are costs associated with retaining the services of legal counsel and a qualified land use planner to defend Council's and Committee of Adjustment's decisions, including preparation for and attendance at the OLT hearing. Staff cannot estimate costs for legal and planning services at this time. The funds for these services would result from Corporate legal and consultant accounts.

9. ENVIRONMENTAL IMPLICATIONS

Not applicable. There is no environmental impact associated with this report.

10. COMMUNICATIONS

Should Council decide to retain legal counsel and external planning expertise, Staff will provide the Town's solicitor with the file materials. The solicitor will then retain a qualified land use planner in accordance with the procedures in the Town's Procurement of Goods and Services By-law.

11. CONCLUSION

The applicant has appealed Council's decision to refuse the application for a Zoning By-law Amendment (ZBA-05-2024) and Committee of Adjustment's decision to refuse the application for Consent (B-09/24) for 187 Queen Street.

Options available to Council are outlined in this report. Council may retain legal counsel and a qualified land use planner to either defend the decisions to refuse the applications for Zoning By-law Amendment and Consent or enter into mediation to reach a negotiated settlement. Otherwise, Council should instruct the Town's legal counsel to accept Staff's recommendations for the applications to reach a settlement with the appellant prior to the anticipated OLT hearing.

12. PREVIOUS REPORTS

Not applicable.

13. APPENDICES

- **Appendix I** – Staff Report CDS-24-104 – Recommendation Report – 187 Queen Street Zoning By-law Amendment ZBA-05-2024
- **Appendix II** – Staff Report CDS-24-141 – Recommendation Report – 187 Queen Street Consent Application B-09/24

Respectfully submitted:

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