



## Committee of the Whole Report For the Meeting of October 7, 2021

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**To:** Committee of the Whole **Date:** September 23, 2021

**From:** Karen Hoese, Director, Sustainable Planning and Community Development

**Subject:** Development Permit with Variances Application No. 00160 for 2727 Hamilton Road

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### RECOMMENDATION

That Council, after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following motion:

"That Council authorize the issuance of Development Permit with Variances Application No. 00160 for 2727 Hamilton Road, in accordance with:

1. Plans date stamped August 18, 2021.
2. Development meeting all *Zoning Regulation Bylaw* requirements, except the following variances to the R1-S2 Zone, Restricted Small Lot (Two Storey) District:
  - i. reduce the front yard setback from 6.00m to 3.14m
  - ii. reduce the side yard setback (north) from 1.50m to 0.50m (heat pump only).
3. The Development Permit lapsing two years from the date of this resolution."

### LEGISLATIVE AUTHORITY

In accordance with Section 489 of the *Local Government Act*, Council may issue a Development Permit in accordance with the applicable guidelines specified in the *Community Plan*. A Development Permit may vary or supplement the *Zoning Regulation Bylaw* but may not vary the use or density of the land from that specified in the Bylaw.

Pursuant to Section 491 of the *Local Government Act*, where the purpose of the designation is the establishment of objectives for the form and character of intensive residential development, a Development Permit may include requirements respecting the character of the development including landscaping, and the siting, form, exterior design and finish of buildings and other structures.

### EXECUTIVE SUMMARY

The purpose of this report is to present Council with information, analysis and recommendations for a Development Permit with Variances Application for the property located at 2727 Hamilton

Road. The proposal is to reduce the front yard setback, reduce the side yard setback for a heat pump, and to make changes to the landscaping. This property was rezoned to the R1-S2 Zone, Restricted Small Lot House District on February 8, 2018. Concurrent with the rezoning approval, Council approved a Development Permit with Variances to enable the subdivision and construction of a small lot house, which included variances to reduce the front yard setback from 6.00 to 3.14m for the proposed new house and to reduce the rear yard setback from 6.00 to 2.40m for the existing house.

A building permit was obtained, and during construction the elevation of the main floor was raised and the floor-to-ceiling height was increased on the second floor. This resulted in an increase of 0.61m (2 feet) to the height of the building. Although the height of the building is still within the maximum allowed under the R1-S2 Zone, the extra height results in additional building mass being located within the previously reduced setback, therefore a further approval is required to legitimize the additional building volume. A variance is being requested to reduce the front yard setback from 6.0m to 3.14m.

During construction, a heat pump was installed on the north side of the building within the side yard setback. Heat pumps are subject to the building setbacks; therefore, a variance is being requested to reduce the side yard setback from 1.50m to 0.50m.

Additionally, a retaining wall was added around the perimeter of the property and the yard was then filled, creating a situation where the rear yard is raised by approximately one meter when compared to neighbouring properties, creating potential privacy impacts. This is contrary to the Small Lot Policy which promotes working with established grades rather than adding or taking away volumes of soil.

The following points were considered in assessing this application:

- A variance to reduce the front yard setback was previously approved. However, due to the height of the building increasing, and the impact being somewhat magnified, the variance must be considered again. The height of the building is below the maximum height permitted in the R1-S2, Restricted Small Lot (Two Storey) District and has limited impact on the building as viewed from the front.
- A variance to reduce the side yard setback to allow a heat pump is being requested. The heat pump is placed in a location that would cause the least disturbance to neighbours as it is next to a parking lot.
- The *Small Lot Policy and Design Guidelines* encourage maintaining existing grades and being mindful of shading, privacy and visual impacts. The unauthorized change to the grade has created privacy and visual impacts for neighbours; however, the work is complete and would be costly and disruptive to reverse. The applicant has worked to address neighbour concerns and introduced additional landscaping and fencing to mitigate some impacts. Correspondence from the most impacted neighbours indicates acceptance of this approach.

The impact of the variances is nominal, and although the change of grade is at odds with the *Design Guidelines for Small Lot Houses*, and ideally would have received approval prior to the work being completed, the applicant has strived to achieve a solution that can be supported by the neighbours. Given these unique circumstances, the staff recommendation is for Council to advance the application to an opportunity for public comment.

## BACKGROUND

### Description of Proposal

The proposal pertains to a small lot single family dwelling which is under construction and is under a stop work order for exterior work. The proposal is to:

- increase the height of the building
- add a heat pump
- change the previously approved landscaping plan, including raising the grade around the property.

The proposal requires variances to reduce the front yard setback from 6.0m to 3.14m, and to reduce the side yard setback (north) from 1.50m to 0.50m for a heat pump.

### Existing Site Development and Development Potential

The site is presently a single-family dwelling. Under the current R1-S2 Zone, the property could be developed exclusively as a small lot single-family dwelling.

### Data Table

The following data table compares the proposal with the existing R1-S2 Zone, Restricted Small Lot (Two Story) District. An asterisk is used to identify where the proposal does not meet the requirements of the existing Zone.

Zoning Criteria	Proposal	R1-S2 Zone
Site area (m <sup>2</sup> ) – minimum	260.15	260.00
Density (Floor Space Ratio) – maximum	0.57	0.60
Total floor area (m <sup>2</sup> ) – maximum	148.70	190.00
Lot width (m) – minimum	14.84	10.00
Height (m) – maximum	7.32 (changed from 6.71 approved as part of the Rezoning)	7.50
Storeys – maximum	2	2
Site coverage (%) – maximum	31.87	40.00
<b>Setbacks (m) – minimum</b>		
Front	<b>3.14*</b>	6.00
Rear	6.00	6.00

Zoning Criteria	Proposal	R1-S2 Zone
Side (north)	1.50 – building <b>0.50* – heat pump</b>	1.50 (non-habitable) 2.40 (habitable)
Side (south)	3.00	1.50 (non-habitable) 2.40 (habitable)
Parking – minimum	1	1

## Relevant History

Rezoning and Development Permit with Variance Applications No. 00578 were approved by Council on February 8, 2018 to permit the subdivision and construction of a new small lot house. The variances were to reduce the front yard setback from 6.00 to 3.14m for the proposed new house.

In September 2020, at the framing survey stage when height is verified, it was discovered that the house was over the approved height by approximately 0.61m. This impacts the previously approved front yard setback variance because the mass and impact of the building within the front yard setback has increased, which requires approval of a new variance. A heat pump has also been installed within the north side yard setback, which requires approval of a variance. And finally, the survey determined that retaining walls and fill had been added to the site, triggering the need for an amended Development Permit Application.

## Community Consultation

Consistent with the *Community Association Land Use Committee (CALUC) Procedures for Processing Rezoning and Variance Applications*, on November 24, 2020 the application was referred for a 30-day comment period to the Oaklands CALUC. At the time of writing this report, a letter from the CALUC had not been received.

This application proposes variances, therefore, in accordance with the City's *Land Use Procedures Bylaw*, it requires notice, sign posting and a meeting of Council to consider the variances.

The *Small Lot House Rezoning Policy and Design Guidelines* promotes a consultative approach when changes are proposed to an approved application, including consulting neighbours on changes and petitioning if they are in support or not in support of changes. A small lot petition was completed, and 80% of immediate neighbours were in support of the changes. One of the most impacted neighbours, while apparently not in support of the changes that have occurred has indicated an acceptance of the proposed approach to mitigate the impact.

The small lot petition summary and petitions are attached to this report, as well as additional petitions of neighbours that are not classified as immediate neighbours according to the policy. Additional correspondence with neighbours is also included. Note: a shed was part of the discussion; however, the applicant has decided not to include a shed at this time.

## ANALYSIS

### Local Area Plans – Oaklands Neighbourhood Plan

The *Oaklands Neighbourhood Plan* contains objectives to make provision for a range of housing types and sizes and encourages family housing through limited infill. The *Oaklands Neighbourhood Plan* states that small lot houses will be considered on their own merits provided they meet design standards. While this application was previously considered generally consistent with the *Small Lot Rezoning and Design Guidelines*, the changes to the landscaping and changing the grade of the rear yard are not consistent with those design standards.

### Small Lot House Rezoning Policy and Design Guidelines

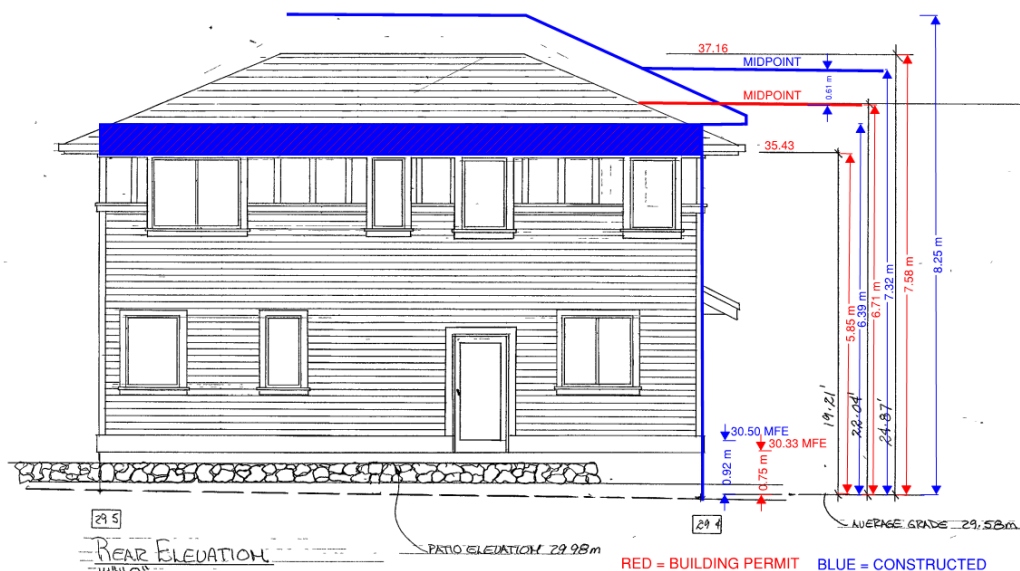
The *Official Community Plan* (OCP) Urban Place Designation for the property is Traditional Residential. In accordance with the OCP, small lots are subject to DPA 15A: Intensive Residential - Small Lot, which has the objective of accommodating housing growth in a gradual manner within neighbourhoods. The focus of the design guidelines is to achieve a good fit with the context of the neighbourhood, and to limit impacts of the development on neighbouring properties.

#### Front Yard Setback Variance

In the original application a front yard setback variance was approved which reduced the setback requirement from 6.0m to 3.14m. During construction, the height of the building was increased by 0.61m (from 6.71m to 7.32m), due to raising the elevation of the first floor, as well as, increasing the floor to ceiling height of the second storey. Although the proposed height of 7.32m is still below the maximum allowable height of the R1-S2 Zone, it “exacerbates” the reduced front yard setback relaxation by placing additional building mass within the reduced front yard setback.

While raising the building height does increase the prominence of the building as seen from the street, as well as increase potential shading impacts, the additional massing now located in the front setback area, does not have a significant impact on these considerations.

Figure 1:



### Side Yard Setback Variance

The R1-S2 Zone requires the north side yard setback to be a minimum of 1.50m; however, a heat pump was installed within this setback. Therefore, a variance is required to reduce the setback from 1.50m to 0.50m. The heat pump is located on the north side of the house, adjacent to a parking lot where it will have minimal impact on neighbours and would be screened by a 2.0m fence.

### Grade and Landscaping Changes

The small lot design guidelines encourage applicants to respect the existing topography and to avoid major changes to existing grades. During construction, a retaining wall was added around the sides and rear of the property ranging in height, from a few inches to approximately one meter near the rear of the property. This area was then filled, creating a grade change between the subject property and its neighbours. Although this change in grade does not trigger the need for a variance, it is not consistent with the design guidelines and could create potential privacy and visual impacts for the neighbouring properties. The applicant is proposing a new 2.0m cedar fence on top of the wall as well as, a row of emerald cedar hedges and a Magnolia tree to provide a landscape buffer. The addition of the fence and landscaping helps mitigate the impact of the increased grade; however, the change is inconsistent with the design guidelines.

### Potential Remedies to Unauthorized Changes

At this point, the building is constructed and near completion. Reducing the height of the building and relocating or removing the heat pump would have significant financial implications for the applicant. Regrading the site and removing the retaining wall would also have significant financial implications and may trigger other variances in order to add stairs to the back door.

### **Tree Preservation Bylaw and Urban Forest Master Plan**

This application was received prior to October 24, 2019, so it falls under Tree Preservation Bylaw No. 05-106 consolidated June 1, 2015. There are no *Tree Preservation Bylaw* impacts with this application. As a condition of the original subdivision, a new separated sidewalk and boulevard are required along Hamilton Road. Within this new boulevard, two trees are proposed to be planted.

### **CONCLUSIONS**

The building is already constructed and near completion. The proposal to reduce the front yard setback from 6.00m to 3.14m was previously approved, and the increase in height does not significantly impact the experience of the building from the street or neighboring properties. The reduction to the side yard to allow for the placement of a heat pump is also supportable as it is placed adjacent to an existing parking lot and is screened. The retaining wall and grade manipulation around the building is not consistent with policy and far from ideal; however, the work is complete and it would be very costly to remediate. As well, the applicant has consulted neighbours and proposing fencing and landscaping to help address overlook and privacy issues. Staff therefore recommend that Council consider advancing the application for consideration at an opportunity for public comment.

### **ALTERNATE MOTION**

That Council decline Development Permit with Variance Application No. 00160 for the property located at 2727 Hamilton Road.

Respectfully submitted,

Chelsea Medd  
Planner  
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Karen Hoese, Director  
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Development Department

**Report accepted and recommended by the City Manager.**

**List of Attachments**

- Attachment A: Subject Map
- Attachment B: Aerial Map
- Attachment C: Plans date stamped August 18, 2021
- Attachment D: Letter from applicant to Mayor and Council dated December 17, 2020
- Attachment E: Small Lot Petition of Immediate Neighbours
- Attachment F: Additional correspondence and petitions.