



City of Hamilton PLANNING COMMITTEE ADDENDUM

Meeting #: 21-006
Date: April 20, 2021
Time: 9:30 a.m.
Location: Council Chambers, Hamilton City Hall
71 Main Street West

Lisa Kelsey, Legislative Coordinator (905) 546-2424 ext. 4605

	Pages
5. COMMUNICATIONS	
*5.1. Lakewood Beach Community Council respecting Loophole in Urban Hamilton Official Plan re: Noise Mitigation Recommendation: Be received.	3
6. DELEGATION REQUESTS	
*6.4. John Ariens, IBI Group, respecting 125-129 Robert Street (UHOP-17-033 and ZAC-17-073) (For today's meeting)	4
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- 9.1. Application for a Zoning By-law Amendment for Lands Located at 18 Miles Road (Hamilton) (PED21072) (Ward 7)
 - *9.1.a. Written Submissions: 73
 - (i) Edward L. VanBeek
- 9.2. Application for Approval of a Draft Plan of Subdivision and Draft Plan of Condominium (Common Element) for Lands Located at 1288 Baseline Road, Stoney Creek (PED21073) (Ward 10)
 - *9.2.a. Written Submissions: 74
 - (i) Aldo Castelli
 - (ii) Heung Seog Kang

10. DISCUSSION ITEMS

- 10.1. Secondary Dwelling Units in the Urban and Rural Areas - Zoning By-law and associated implementation amendments to the Parkland Dedication By-law and Tariff of Fees By-law
 - 10.1.a. Written Submissions:
 - *10.1.a.v. Chris Harrison 77
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 - *10.1.b. Registered Delegations:
 - (i) Jeff Medeiros
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 - *10.4.a. Written Comments: 105
 - (i) David Horwood, Effort Trust

From: Lakewood Beach Community Council

Sent: April 13, 2021 8:57 AM

To: clerk@hamilton.ca; Pearson, Maria <Maria.Pearson@hamilton.ca>; Wilson, Maureen <Maureen.Wilson@hamilton.ca>; Farr, Jason <Jason.Farr@hamilton.ca>; Collins, Chad <Chad.Collins@hamilton.ca>; Danko, John-Paul <John-Paul.Danko@hamilton.ca>; Johnson, Brenda <Brenda.Johnson@hamilton.ca>; Partridge, Judi <Judi.Partridge@hamilton.ca>; Ferguson, Lloyd <Lloyd.Ferguson@hamilton.ca>

Subject: Loophole in Urban Hamilton Official Plan re: Noise Mitigation

Dear Planning Committee Members,

With an increase in the number of local residents suffering with Tinnitus (ear buzzing likely from highway traffic noise), we wanted to bring to your attention that our Urban Hamilton Official Plan appears to allow developments along our highways that might not be in the public's best interest in regards to health issues.

Presently, our Urban Hamilton Official Plan is silent on a definition of OLAs (outdoor living areas) in the Glossary, Chapter G section.

Hence, the default definition appears to be governed by the MOECP's definition of OLAs which is: Balconies etc that have a minimum depth of 4ms, provided they are the only OLA for the occupants, are to be evaluated for dBA noise levels.

In our respectful submission, we contend this isn't good enough.

A balcony facing the highway that is 3.9ms deep (no matter the width) should not be allowed to skirt a Detailed Noise Study & any potential noise mitigation measures required to protect the health of the occupants.

A balcony greater than 4 ms deep - in a complex that also has an alternate OLA such as a ground level common area - should also not be allowed to skirt a Noise Study & any potential noise mitigation measures for the occupants of that unit.

Outdoor Living Areas are suppose to meet the provincial target of 55 dBAs or less. We know that our community OLAs noise levels have been *estimated** closer to 80 dBAs; and some days like Sunday evenings, depending on the wind direction, it is significantly higher. The Ministry of Labour occupational safety threshold is 85 dBAs. For ease of reference, see chart below.

We ask for your consideration on amending our UHOP via a housekeeping Motion in order to close up what appears to be a way around the provincial guidelines that were put in place to protect the long term health of the public.

Respectfully,

Viv / Anna / Nancy

Lakewood Beach Community Council

125-129 Robert Street Official Plan / Zoning By-law Amendment

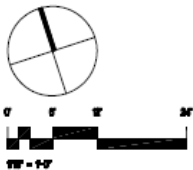
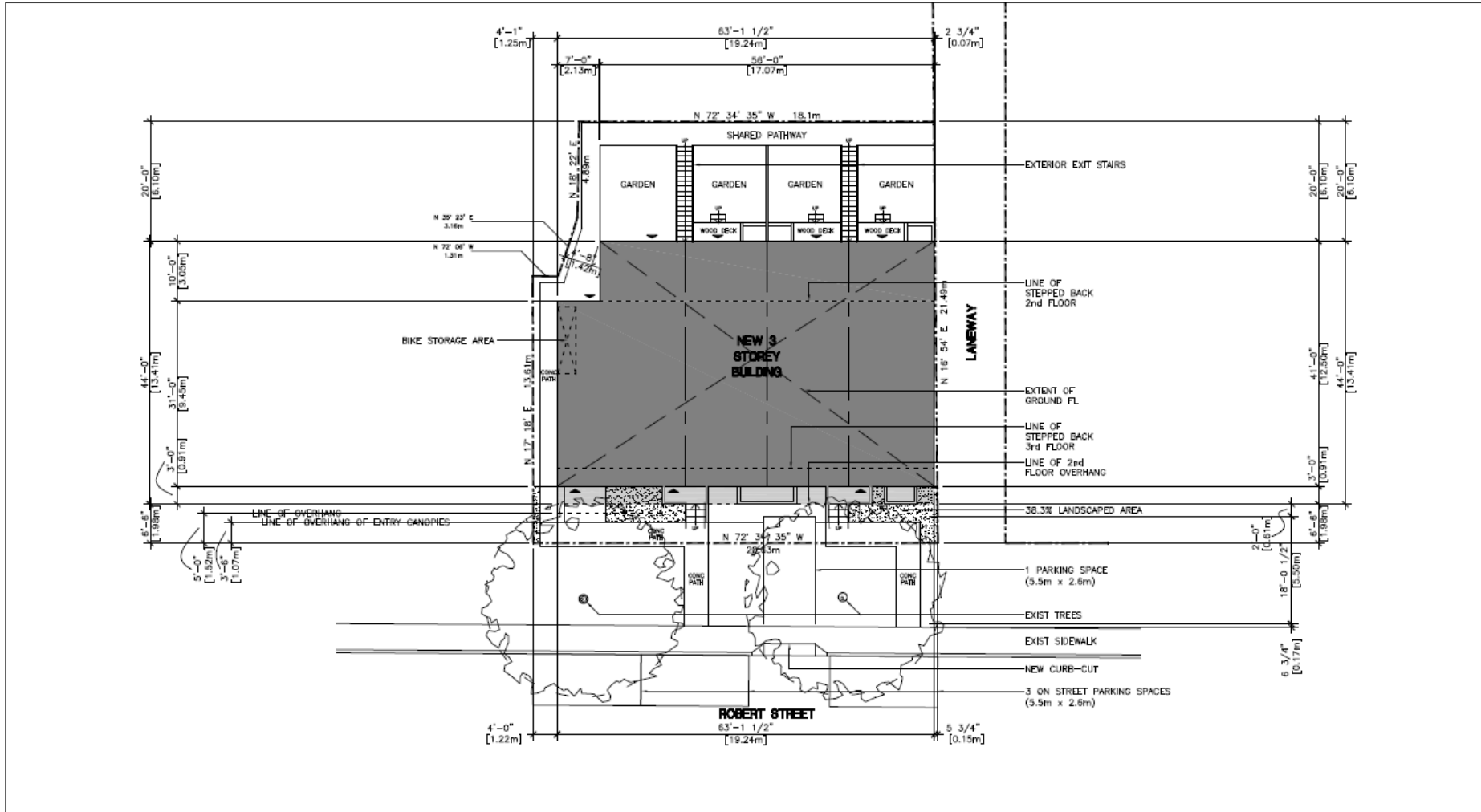


IBI Group
April 20, 2021

Existing Conditions



Original Site Plan



SITE PLAN
18/07/13

A00

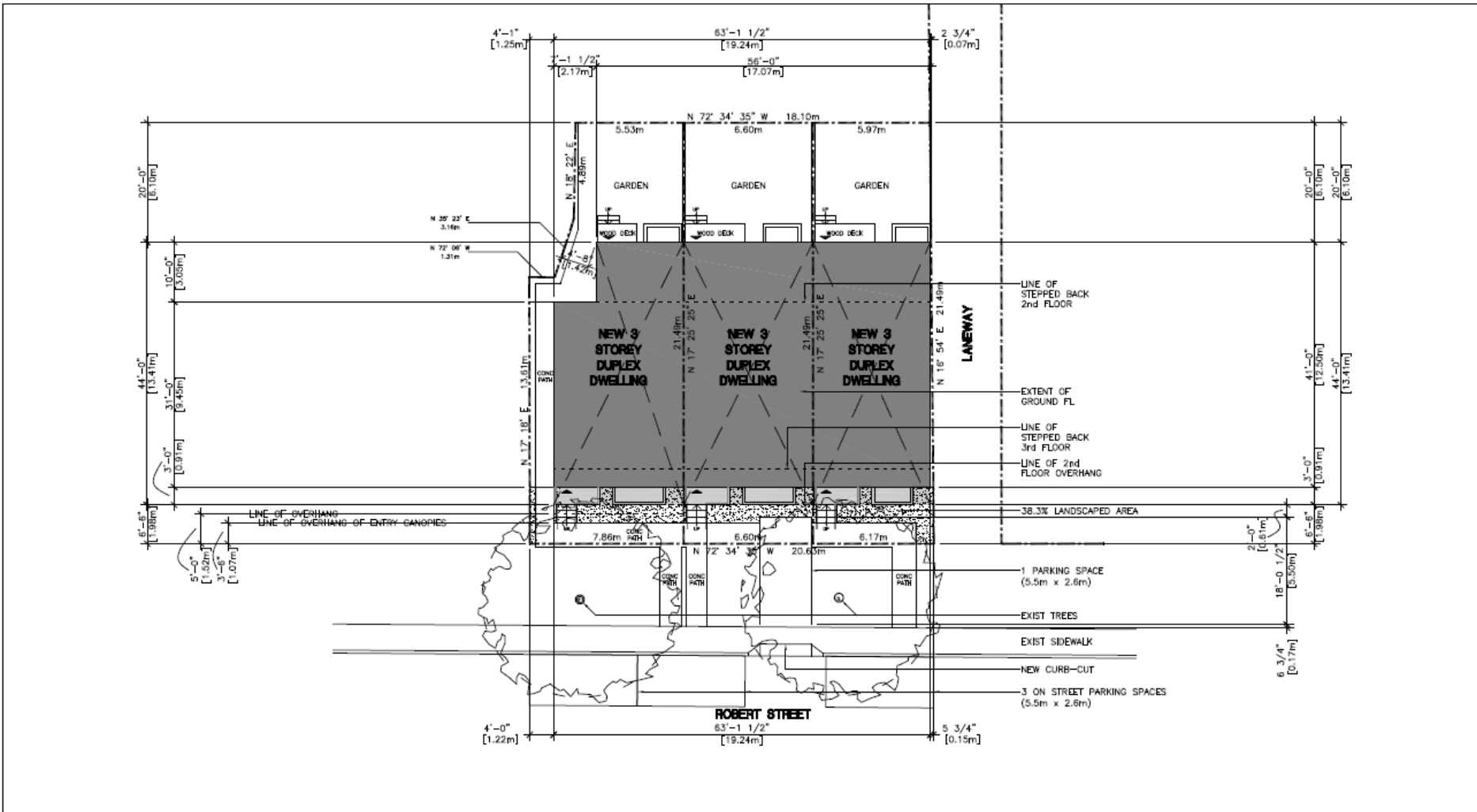
Robert Street Development
100-100 Robert Street, Hamilton, ON, L8R 3P7

TOMS + MCNALLY
DESIGN | ARCHITECTURE | LANDSCAPE | CONSTRUCTION
100-100 Robert Street, Hamilton, ON, L8R 3P7

Original Elevation



Revised Site Plan



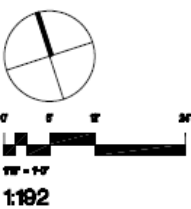
SITE PLAN
20/0/28

A00

Robert Street Development
50-50 Robert Street, Hamilton, ON, L8E 2P7

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ARCHITECTURAL | ENGINEERING | CONSTRUCTION

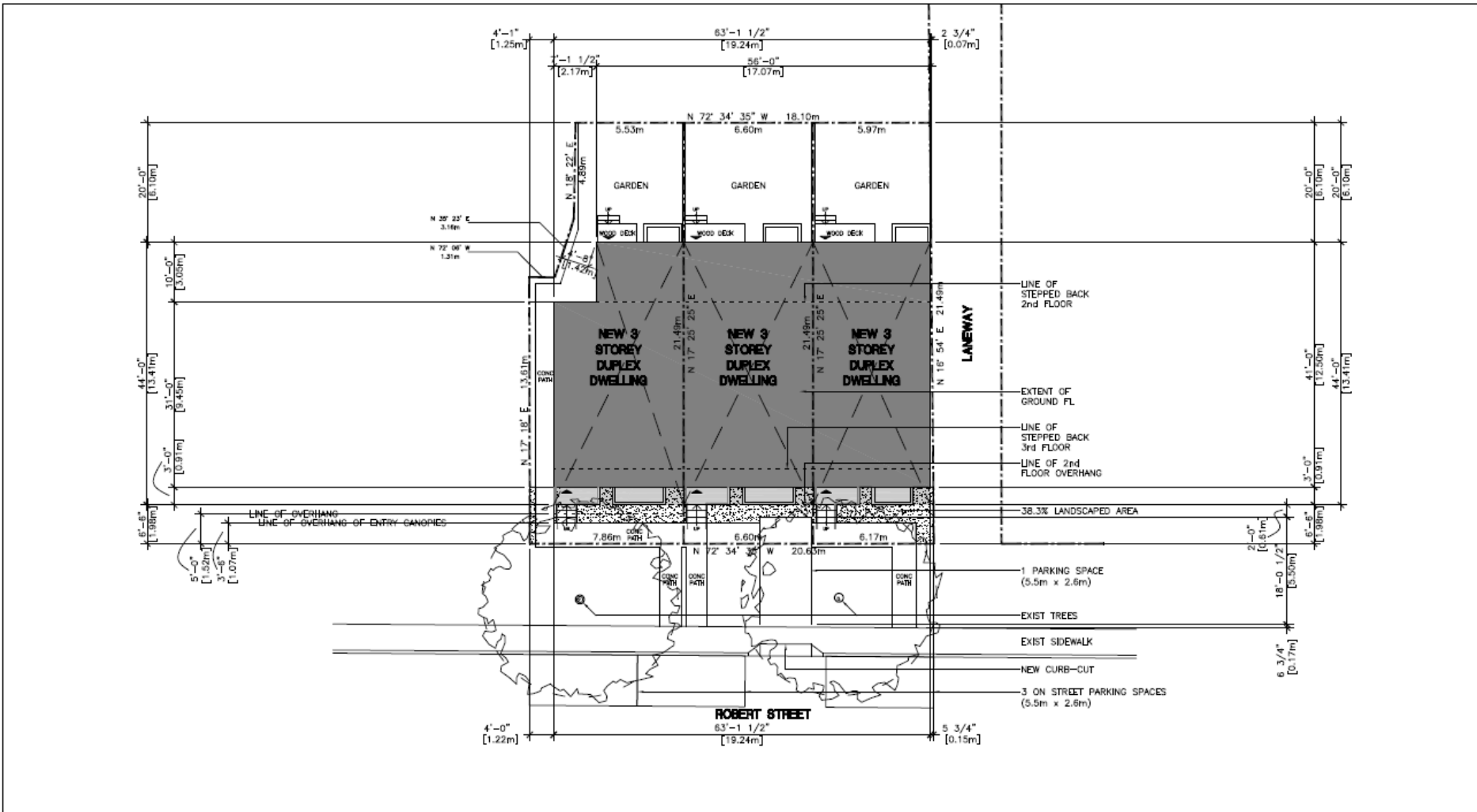
SCALE: 1/8" = 1'-0" (1:48) DATE: 2020-08-20



Changes Requested

- Same mass / streetscape
- Same height
- Accommodates freehold ownership
- Same rental potential
- Same parking situation
- One less unit overall

Revised Site Plan

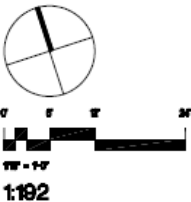


SITE PLAN
20/0/28

A00

Robert Street Development
50-50 Robert Street, Hamilton, ON, L8E 2P7

TOMS + MCNALLY
ARCHITECTURAL CONSULTANTS





CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 14, 2020
SUBJECT/REPORT NO:	Applications for Official Plan Amendment and Zoning By-law Amendment for lands located at 125 and 129 Robert Street, Hamilton (PED20015) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Andrea Dear (905) 546-2424 Ext. 7856
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That **Official Plan Amendment Application UHOPA-17-033 by Vision Hamilton Inc., Owner**, for a change in designation on Schedule “M-2” of the West Harbour (Setting Sail) Secondary Plan in the former City of Hamilton Official Plan to add a Site Specific Policy Area to permit the development of a six unit, three storey multiple dwelling with a maximum residential density of 143.0 units per gross hectare, for lands located at 125 and 129 Robert Street, as shown on Appendix “A” to Report PED20015, be **DENIED** on the following basis:
- (i) That the proposed amendment does not meet the general intent of the City of Hamilton Official Plan and the West Harbour (Setting Sail) Secondary Plan with respect to lot area, coverage, mass, and compatibility with the character of the existing neighbourhood, and is not considered to be good planning.
- (b) That **Zoning By-law Amendment Application ZAC-17-073 by Vision Hamilton Inc., Owner**, for a change in zoning from the “D/S-378” (Urban Protected Residential – One and Two Family Dwellings) District, Modified to a site specific “DE-2” (Low Density Multiple Dwellings) District, Modified to permit a six unit, three storey multiple dwelling with no on-site parking on lands located

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SUBJECT: Applications for an Official Plan Amendment and a Zoning By-law Amendment for lands located at 125 and 129 Robert Street, Hamilton (PED20015) (Ward 2) - Page 2 of 20

at 125 and 129 Robert Street, Hamilton, as shown on Appendix “A” to Report PED20015, be **DENIED** on the following basis:

- (i) That the proposed change in zoning does not meet the general intent of the City of Hamilton Official Plan and the West Harbour (Setting Sail) Secondary Plan with respect to setbacks, privacy, overview and parking, and is not considered to be good planning.

EXECUTIVE SUMMARY

The subject property is municipally known as 125 and 129 Robert Street. The owner has applied for amendments to the West Harbour (Setting Sail) Secondary Plan and the City of Hamilton Zoning By-law No. 6593 to permit the development of a six unit, three storey multiple dwelling with no on-site parking. To facilitate the application the following amendments have been requested by the applicant:

- An Official Plan Amendment to create a Site Specific Policy Area to permit a six unit multiple dwelling with a maximum residential density of 143.0 units per gross hectare in the Low Density Residential designation; and,
- A Zoning By-law Amendment to rezone the lands from the “D/S-378” (Urban Protected Residential – One and Two Family Dwellings, Etc.) District, Modified to a site specific “DE-2” (Low Density Multiple Dwellings) District, to permit a multiple dwelling with no on-site parking, a reduced lot area, reduced yard requirements, increased encroachment and reduced parking space size requirements, for the lands located at 125 and 129 Robert Street, Hamilton.

The applications are consistent with the Provincial Policy Statement (2014)(PPS) and conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) (Growth Plan).

The proposal cannot be supported as the proposed amendments do not comply with the policies and intent of the City of Hamilton Official Plan and West Harbour (Setting Sail) Secondary Plan with respect to lot area, coverage, mass, setbacks, privacy, overview, and compatibility with the character of the surrounding low density neighbourhood and do not represent good planning.

Alternatives for Consideration – See Page 19

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider an application for an amendment to the Official Plan and Zoning By-law.

HISTORICAL BACKGROUND

Report Fact Sheet

Application Details	Applicant/Owner:	Vision Hamilton Inc.
	Agent:	IBI Group (c/o John Ariens)
	File Number:	UHOPA-17-033 and ZAC-17-073
	Type of Application:	Urban Hamilton Official Plan Amendment and a Zoning By-law Amendment
	Proposal:	To permit the development of a six unit, three storey, multiple dwelling with no on-site parking spaces.
Property Details	Municipal Address:	125 and 129 Robert Street
	Lot Area:	0.042 hectares (420 square metres)
	Servicing:	Existing full municipal services.
	Existing Use	Two single detached dwellings.
Documents	Provincial Policy Statement (PPS)	The proposal is consistent with the PPS.
	A Place to Grow:	The proposal conforms to the Growth Plan.
	Official Plan Existing:	Urban Area (Hamilton Wentworth Official Plan) and Low Density Residential in the West Harbour (Setting Sail) Secondary Plan.

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	Official Plan Proposed:	Low Density Residential with a Site Specific Policy Area to permit: <ul style="list-style-type: none"> • Multiple dwelling; and, • Density – maximum 143.0 units per gross hectare.
	Zoning Existing:	“D/S-378” (Urban Protected Residential – One and Two Family Dwellings) District, Modified.
	Zoning Proposed:	A site specific “DE-2” (Low Density Multiple Dwellings) District.
	Modifications Proposed:	<ul style="list-style-type: none"> • Decreased front yard depth from 3.0 m to 1.0 m; • Decreased easterly side yard depth from 1.5 m to 0.0 m; • Decreased westerly side yard depth from 1.5 m to 1.22 m; • Reduce the minimum lot width from 21.0 m to 20.0 m and the minimum area from 630 m² to 415 m²; • Increase the gross floor area ratio from 0.9 to 2.0; • Reduce the required landscaped area from 25% to 20%; • Increase the permitted encroachment of open stairs into a rear yard from 1.0 m to 5.0 m; • Reduce the number of required parking spaces from a ratio of 1.0 spaces per dwelling unit which includes 0.20 spaces per unit for visitor, to 0; and, • Reduce the size of a required parking space from 2.7 m by 6.0 m to 2.6 m by 5.5 m.
Processing Details	Received:	October 6, 2017
	Deemed Incomplete:	October 30, 2017
	Deemed Complete:	November 14, 2017

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	Notice of Complete Application:	Notice sent to 368 property owners within 120 m of the subject property on November 22, 2017.
	Public Notice Sign:	Sign Posted: December 22, 2017 Sign Updated: November 15, 2019
	Notice of Public Meeting:	Notice sent to 116 property owners within 120 m of the subject property on December 13, 2019.
	Public Consultation:	Neighbourhood meeting on February 14, 2018. Approximately 40 people were in attendance.
	Public Comments:	Three letters of concern were received from the public.
	Processing Time:	788 days

Existing Land Use and Zoning:

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Property:</u>	Single detached dwellings	"D/S-378" (Urban Protected Residential – One and Two Family Dwellings) District, Modified.
<u>Surrounding Lands:</u>		
North	Single detached dwellings	"D/S-378" (Urban Protected Residential – One and Two Family Dwellings) District, Modified.
East	Publicly owned / unassumed laneway and a semi-detached dwelling	"D/S-378" (Urban Protected Residential – One and Two Family Dwellings) District, Modified.
South	Single and semi-detached dwellings	"D/S-378" (Urban Protected Residential - One and Two Family Dwellings) District, Modified.

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West	Single detached dwellings	“D/S-378” (Urban Protected Residential – One and Two Family Dwellings) District, Modified.
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POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Provincial Policy Statement (2014)

The Provincial Planning Policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (PPS). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the PPS. The following policies, amongst others, apply to the applications.

Settlement Areas

“1.1.3.1 *Settlement areas* shall be the focus of growth and development, and their vitality and regeneration shall be promoted.

1.1.3.2 Land use patterns within *settlement areas* shall be based on:

- a) densities and a mix of land uses which:
 1. efficiently use land and resources;
 2. are appropriate for, and efficiently use, the *infrastructure* and *public service facilities* which are planned or available, and avoid the need for their unjustified and / or uneconomical expansion;
 4. *support active transportation*;
 5. are *transit-supportive*, where transit is planned, exists or may be developed;
- b) a range of uses and opportunities for *intensification* and *redevelopment* in accordance with the criteria in policy 1.1.3.3, where this can be accommodated.”

The subject property is located within a settlement area as defined by the PPS. The proposed three storey multiple dwelling would contribute to the mix of land uses in the area, would efficiently use land and existing infrastructure, and represents a form of intensification.

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Therefore, the proposal is consistent with the policies of the PPS.

A Place to Grow Plan (2019)

As of May 16, 2019, the provisions of the A Place to Grow: Growth Plan for the Greater Golden Horseshoe apply to any planning decision. The following policies, amongst others, apply to the proposal.

“1.6.6.1 Planning for sewage and water services shall: a) direct and accommodate expected growth or development in a manner that promotes the efficient use and optimization of existing:

1. Municipal sewage services and municipal water services”

This policy is intended to direct the majority of growth to settlement areas that have access to municipal water and wastewater systems. The subject lands are serviced by municipal water and wastewater and as such the proposed development in this location conforms to this policy in the Plan.

“2.2.1.2. Forecasted growth to the horizon of this Plan will be allocated based on the following:

- a. the vast majority of growth will be directed to *settlement areas* that:
 - i. have a *delineated built boundary*;
 - ii. have existing or planned *municipal water and wastewater systems*; and,
 - iii. can support the achievement of *complete communities*;
- c. within *settlement areas*, growth will be focused in:
 - iv. *delineated built-up areas*;
 - v. *strategic growth areas*;
 - vi. locations with existing or planned transit, with a priority on *higher order transit* where it exists or is planned; and
 - vii. areas with existing or planned *public service facilities*;
- d. development will be directed to *settlement areas*, except where the policies of this Plan permit otherwise;

2.2.1.4 Applying the policies of this Plan will support the achievement of *complete communities* that:

- a. feature a diverse mix of land uses, including residential and employment uses, and convenient access to local stores, services, and *public service facilities*;

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- c. provide a diverse range and mix of housing options, including second units and *affordable* housing, to accommodate people at all stages of life, and to accommodate the needs of all household sizes and incomes;
- e. provide for a more *compact built form* and a vibrant *public realm*, including public open spaces;
- f. mitigate and adapt to climate change impacts, improve resilience and reduce greenhouse gas emissions, and contribute to environmental sustainability;”

The subject property is located within the Built Boundary and is fully serviced by municipal water and wastewater infrastructure. The proposal will contribute to achieving a complete community by expanding housing options within the West Harbour (Setting Sail) Secondary Plan area and adding to a diverse mix of local land uses that includes low rise and high rise residential, local commercial uses, employment uses and public institutions. The proposed multiple dwelling has access to a range of transportation options.

This proposal represents intensification within the built up area, consistent with the growth management policies of the Growth Plan.

Based on the foregoing, the proposal conforms to the Growth Plan.

Urban Hamilton Official Plan

The Urban Hamilton Official Plan (UHOP) was approved by Council on July 9, 2009 and the Ministry of Municipal Affairs on March 16, 2011.

There was no decision (Non-decision No. 113) made by the Ministry regarding the adoption of Setting Sail into the UHOP because at the time the Ministry was reviewing the UHOP, the Secondary Plan was still under appeal. The lands are currently identified as “Lands Subject to Non Decision 113 West Harbour Setting Sail” on Schedule E-1 of the UHOP, therefore the UHOP policies do not apply. As a result, when the UHOP came into effect on August 16, 2013, it did not affect Setting Sail. Should the applications be approved, staff would request that the proposed Official Plan Amendment be included in the Secondary Plan at the time when the Ministry deals with the non-decision.

Hamilton-Wentworth Official Plan

The subject lands are not included within the UHOP as they are part of Non-Decision No. 113. As a result, the policies of the Hamilton-Wentworth Official Plan that are applicable to the subject lands remain in effect. In this regard, the subject lands are

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within the Urban Area of the Hamilton-Wentworth Official Plan and the following policies, amongst others, apply to the proposal.

Urban Area

“C.3.1 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. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020. Accordingly, the Plan establishes a land use strategy for the Urban Area that consists of:

- Compact urban form, including mixed use areas.

C.3.1.1 A compact higher density form, with mixed use development in identified Regional and Municipal centres and along corridors, best meets the environmental, economic principles of sustainable development.

Mixed forms of development within an Urban Area is preferable to widespread, low density residential development and scattered rural development, because:

- Growth can be accommodated by building on vacant or redeveloped land, without taking up agricultural lands or natural areas;
- Higher density development can reduce per capita servicing costs and makes more efficient use of existing services;
- Efficient and affordable public transit systems can be established;
- Effective community design can ensure people are close to recreation, natural areas, shopping and their workplace; and,
- A compact community makes walking and bicycling viable options for movement.”

Redevelopment of the subject lands for a multiple dwelling would comply with the above policy direction to encourage redevelopment of the subject lands for compact development within the Urban Area. The proposed multiple dwelling would provide for efficient use of services. As such, the proposal complies with the applicable policies of the Hamilton-Wentworth Official Plan.

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City of Hamilton Official Plan

The subject lands are not included within the UHOP as they are part of Non-Decision No. 113. As a result, the policies of the City of Hamilton Official Plan remain in effect. Schedule A of the City of Hamilton Official Plan designates the subject lands “West Harbour.” The policies of the West Harbour (Setting Sail) Secondary Plan provide more detailed designations and policy framework for this area. The following City of Hamilton Official Plan policies, amongst others, apply to the proposal.

“Subsection B.2.1 – Water Distribution

B.2.1.1 In accordance with the Regional Official Plan, Council will encourage the Region to maintain and, where necessary, improve water supply in the City. New development and / or redevelopment will only be permitted where the water supply is deemed to be adequate by the Region.

Subsection B.2.2 – Sewage Disposal

B.2.2.1 Council will encourage the Region to ensure that all new development in the City be effectively serviced by the SEWAGE DISPOSAL System. In this regard, Council will encourage the appropriate agencies to ensure that necessary improvements to, or extension of, the SEWAGE DISPOSAL System, expansions to the capacity of the Woodward Avenue Sewage Treatment Plant, and the monitoring of effluents discharged are undertaken.

Subsection B.2.3 – Storm Drainage

B.2.3.1 Council will require that all new development and / or redevelopment be connected to, and serviced by, a STORM DRAINAGE System or other appropriate system such as ditches, ‘zero run-off’, and any other technique acceptable to Council and the Conservation Authorities. Council will ensure that the extension of the STORM sewer System is at sufficient capacity to support future anticipated growth in the City. In this regard, Council will co-operate with the appropriate Conservation Authorities in any flood management studies or engineering works that may be undertaken from time to time to improve or maintain the DRAINAGE capacity of natural watercourses flowing through the City.”

There are existing services adjacent to the subject property including sanitary, storm and watermain sewers. Should the applications be approved, stormwater management, geotechnical and hydrogeological studies would be required at the Site Plan Control stage.

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“Subsection 2.4.5- Solid Waste Disposal

B.2.4.5 All uses in the City will be served by a regularly-scheduled SOLID WASTE collection through the municipal DISPOSAL service, or in the case of certain uses, through individually-contracted collection service.”

The proposed mixed use development is eligible for curbside waste collection by City Services subject to the requirements of the City’s Solid Waste Management By-law. Should the applications be approved, waste collection would be examined in greater detail at the Site Plan Control stage.

“Subsection C.7 – Residential Environmental and Housing Policy

C.7.2 Varieties of RESIDENTIAL types will not be mixed indiscriminately, but will be arranged in a gradation so that higher-density developments will complement those of a lower density, with sufficient spacing to maintain privacy, amenity and value.

C.7.3 Council will encourage a RESIDENTIAL ENVIRONMENT of an adequate physical condition that contains a variety of housing forms that will meet the needs of present and future residents. Accordingly, Council will:

- iii) Support RESIDENTIAL development such as infilling, redevelopment and the conversion of non-residential structures that makes more efficient use of the existing building stock and / or physical infrastructure that recognize and enhance the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview;
- v) Encourage new RESIDENTIAL development that provides a range of dwelling types at densities and scales that recognize and enhance the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview;
- ix) Support the concept of a RESIDENTIAL community that provides a diversity of dwelling forms and housing options accessible to all Hamilton residents;
- xii) Encourage development at densities conducive to efficient operation of Public Transit and which utilizes design or construction techniques that are energy efficient;”

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Although the proposed multiple dwelling complies with Policies C.7.3 ix) and xii) by increasing the availability of multiple dwelling units in the neighbourhood, staff are concerned that the proposed six unit, three storey multiple dwelling fails to address the intent of Policies C.7.2 and C.7.3 iii) and v) as it does not enhance the scale and character of the existing residential area in terms of coverage, massing, setbacks, privacy and overlook (see Appendix “B” of Report PED20015). These policies reinforce the need for new development to recognize and enhance the scale and character of the existing residential area. In this instance the existing residential area is comprised predominantly of single detached and semi detached dwellings on lots with landscaped areas and yard space. This proposed building requires reductions to the front, sides and rear yards, which creates a lot coverage that is greater than that of the surrounding neighbourhood. The increased building coverage results in a built form that will reduce privacy and allow overlook onto the adjacent properties.

For reasons to be discussed later in the Secondary Plan and Analysis and Rationale for Recommendation sections of this Report, it is the opinion of staff that the proposed massing of this building on the site is not appropriate given the low density character of the existing residential area. The proposed development represents an overbuild of undersized lots and the proposed scale, landscaping, lot area, coverage and massing does not enhance the low density residential character of the surrounding neighbourhood. Based on the foregoing, the proposed development does not comply with the policies of the City of Hamilton Official Plan.

West Harbour (Setting Sail) Secondary Plan (OPA No. 198)

The West Harbour (Setting Sail) Secondary Plan was approved by Council in 2005. Due to appeals to the LPAT, the Secondary Plan was not deemed to be in effect until the LPAT issued its final decision in 2012. This decision added the Secondary Plan to the former City of Hamilton Official Plan as that was the Official Plan in effect for the former City of Hamilton at that time.

When the UHOP was brought into effect by the LPAT in 2013, all of the lands within the Setting Sail area were noted as being subject to Non-Decision No. 113. Therefore, the operable Secondary Plan policies in effect to review against the proposed development are those policies in Setting Sail OPA No. 198 instead of the UHOP (Volume 2).

The lands are identified as “Stable Area” on Schedule M-1: Planning Areas and Sub-Areas and designated “Low Density Residential” on Schedule M-2: General Land Use within the West Harbour (Setting Sail) Secondary Plan. The following policies, amongst others apply to the applications.

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“A.6.3.7 Stable Areas

The Stable Areas are identified on Schedule “M-1”. They comprise the generally low density neighbourhoods that define the residential character of West Harbour. Significant physical change is not anticipated in Stable Areas. The intent of the policies in this section is to maintain and reinforce the character of existing neighbourhoods and to encourage the replacement of inappropriate industrial and commercial uses with sensitively-designed residential development.

A.6.3.7.1.1 The predominant land use in Stable Areas shall be Low Density Residential, with detached, semi-detached and street townhouses being the predominant types of housing.”

The proposed development is seeking permission for a reduced lot area, decreased front and side yards, reduced landscaped area, and a density that is in keeping with the Medium Density Residential designation and as such is not in keeping with the intent of the Stable Area policies (A.6.3.7.1.1). The predominant land use in the area is single and semi detached dwelling units, and the policy also allows street townhouses. The proposed multiple dwelling is not contemplated in Policy A.6.3.7.1.1.

Low Density Residential

“A.6.3.3.1.2 The City will ensure development and redevelopment in neighbourhoods and lands surrounding West Harbour respect the type, scale and character of development identified in this plan.

A.6.3.3.1.4 All new development in West Harbour shall be subject to the height limits shown on Schedule “M-4”, Building Heights, and prescribed in the specific policies of this plan.

A.6.3.3.1.9 To encourage a broad mix of household types at varying income levels, West Harbour shall accommodate a diversity of housing types, including detached and semi-detached dwellings, and multiple dwellings.

A.6.3.3.1.12 In Low Density Residential areas:

- i) the scale, type and character of new development shall generally reflect existing low density development in the neighbourhood;
- ii) single detached, semi-detached and street townhouses are permitted;

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- iii) the density of development shall range from 25 to 60 units per gross hectare;
- iv) existing grid patterns of streets, blocks, and open space, and/or those proposed by this plan, shall be respected;
- v) lot dimensions and building setbacks shall be generally consistent with other Low Density Residential properties in the neighbourhood;
- vi) for streets where a road allowance widening is required, the setback under the zoning by-law must be taken from the widened road allowance; and
- vii) garages shall be located generally at the rear of properties and accessed from rear laneways where feasible.”

The proposed six unit, three storey multiple building is not contemplated in the “Low Density Residential” designation as only single detached, semi detached and street townhouses are permitted (Policy A.6.3.3.1.12 ii)). The proposed density of 142.8 units per gross hectare exceeds the permitted range of 25 - 60 units per gross residential hectare (Policy A.6.3.3.1.12 iii)). The proposed development will require a number of modifications to the proposed zone category with regard to yards, setbacks and parking and is not in keeping with Policy 6.3.3.1.12 v).

This type of residential intensification is to be directed to areas designated “Medium Density Residential” in the West Harbour (Setting Sail) Secondary Plan where both the use and the proposed density is contemplated. The areas surrounding the subject lands are designated “Low Density Residential” whereas the “Medium Density Residential” designation is applied in areas with direct access to arterial roads (e.g. Barton Street and James Street North). The subject lands are located in the middle of a stable low density residential neighbourhood. The subject lands lack the necessary lot area required to accommodate the size of the building and number of units, required yards, and parking requirements, which represents an overdevelopment of this site.

Based on the foregoing, the proposed six unit, three storey multiple dwelling does not comply with the intent of the “Low Density Residential” policies.

The intent of the “Stable Area” and “Low Density Residential” policies are to maintain and reinforce the character of existing neighbourhoods. It is the opinion of staff that the proposed massing and built form do not comply with the policies and intent of the West Harbour (Setting Sail) Secondary Plan.

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City of Hamilton Zoning By-law No. 6593

The subject property is currently zoned “D/S-378” (Urban Protected Residential – One and Two Family Dwellings) District, Modified which permits single family and two family dwellings. To permit the proposed six unit multiple dwelling a change in zoning from the “D/S-378” (Urban Protected Residential – One and Two Family Dwellings) District, Modified to a site specific “DE-2” (Multiple Dwelling) District is required. The modifications are identified in the Report Fact Sheet found on page 4 of Report PED20015.

The proposed “DE-2” District is intended to allow more intense forms of development than the “D/S-378” District that the lands, and surrounding neighbourhood, are currently zoned for. The applicant is proposing to go from a low density residential built form to a higher density development. The proposed development requires further relief from the requirements of this District and as such, the application is proposing a number of modifications as listed in the Report Fact Sheet on page 4 of Report PED20015, as they are not able to comply with requirements such as minimum lot area, minimum yards widths (setbacks), required number of parking spaces and stall sizes.

The proposed Zoning By-law Amendment does not meet the intent of the City of Hamilton Official Plan and the West Harbour (Setting Sail) Secondary Plan, is not considered good planning and cannot be supported by staff.

RELEVANT CONSULTATION

Departments and Agencies		
	Comment	Staff Response
<ul style="list-style-type: none"> • Office of the LRT • Recreation Division, Healthy and Safe Communities Department • Landscape Architectural Services, Public Works Department • Asset Management, Public Works Department • Construction (Capitol Budgets), Public Works 	No Comment	

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<ul style="list-style-type: none"> Recycling & Waste Disposal, Environmental Services Division, Public Works Department Alectra Utilities 		
Engineering Approvals	Servicing Plan and Erosion and Sediment Control and Grading Plan required at Site Plan.	Should the applications be approved, a Servicing Plan and Erosion and Sediment Control and Grading Plan will be required at the Site Plan Control stage.
Transportation Planning	Comments regarding AODA sidewalks and other standards to be addresses at Site Plan Control stage.	Should the applications be approved, these comments will be addressed at the Site Plan Control stage.
Urban Forestry	Some amendments required to the Tree Management Plan to be addressed at the Site Plan Control stage. If trees are to be removed, a Landscape Plan will be required.	Should the applications be approved, these comments will be addressed at the Site Plan Control stage.
Growth Planning	Clarification sought on parking, vehicular access, snow storage and side yard requirements for maintenance.	Should the applications be approved, these concerns will be addressed at the Site Plan Control stage.
Public Consultation		
Concern	Comment	Staff Response
Parking	Residents are concerned about the lack of parking being proposed on the site which will increase	Staff do not support the proposal for no on-site parking.

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	demand for street parking which is already in short supply.	
Privacy	Concerns that the proposed building mass and resulting setbacks will lead to a reduction in privacy for the surrounding residential properties.	Appropriate setbacks are required in order to protect privacy and reduce overlook. Staff are not supportive of the proposal as it will result in privacy and overlook impacts.
Shadow	One resident raised concerns that the proposed development would block the sun.	Staff do not support the proposed massing and setbacks.

PUBLIC CONSULTATION

In accordance with the provisions of the *Planning Act* and the Council Approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation was sent to 368 property owners within 120 m of the subject property on November 22, 2017. A Public Notice sign was posted on the property on December 22, 2017 and updated on November 15, 2019, in accordance with the requirements of the *Planning Act*.

Public Consultation Strategy

In accordance with their submitted Public Consultation Strategy, the applicant provided mail correspondence to all 368 property owners within 120 m of the subject lands on January 31, 2018.

To date, three public submissions expressing concerns have been received (see Appendix "C" to Report PED20015) and a summary of the comments received are on page 16 and 17 of this report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1. The proposal does not have merit and cannot be supported for the following reasons:

- (i) The proposal does not comply with the general intent and purpose of the City of Hamilton Official Plan and West Harbour (Setting Sail) Secondary Plan, with

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regards to matters including but not limited to, lot area, coverage, density, privacy, overlook, and compatibility with the existing character of the surrounding neighbourhood.

2. Staff are not in support of the proposal for the following reasons:

Building Mass, Lot Coverage, Privacy and Overlook

The City of Hamilton Official Plan recognizes the benefits of permitting a variety of residential dwelling units in all residential land use categories but it also encourages development to recognize and enhance the existing residential area by having regard for natural vegetation, lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview. The West Harbour (Setting Sail) Secondary Plan reinforces this with a number of policies intended to prevent the overdevelopment of infill and other underutilized sites within existing, stable neighbourhoods. The applicant is proposing to redevelop two single detached lots with a six unit, three storey multiple dwelling that requires permission for a number of modifications. The requested modifications include a reduction in the required lot area from 630 m² to 415 m², a reduction in the required side yards from 1.5 m to 0.0 m for the easterly side yard. In addition to the reduced lot area and yard depths, permission to allow the stairs to encroach into the required rear yard up to 5.0 m whereas the by-law currently allows only 1.0 m. These modifications, in addition to the proposed 0.0 parking spaces on-site, results in an overdevelopment of the site.

Compatibility with the Character of the Surrounding Neighbourhood

The West Harbour (Setting Sail) Secondary Plan envisions that development and redevelopment in the Secondary Plan area respects and enhances the character of neighbourhoods (Policy A.6.3.2.2). The subject lands are located in a predominantly low density area with single detached and semi detached dwellings with yards and setbacks sufficient to accommodate parking, rear yard grade level amenity space, and to reduce privacy and overlook issues. The proposed form of development is more appropriately suited for a medium density residential area. This site lacks sufficient lot size to accommodate the proposal while maintaining appropriate setbacks and landscaped area and providing sufficient parking.

Parking

The By-law currently requires 1.0 parking space per unit (which includes 0.2 for visitors) therefore six parking spaces would be required. This development proposes to locate only a portion of one parking space on the site. To accommodate this, a modification to the by-law is required to allow 0.0 spaces per unit, with 0.0 spaces per unit for visitor parking. In order for the one parking space to be created, a

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boulevard parking permit would be required. To qualify for boulevard parking, the parking space dimensions must conform to the applicable Zoning By-law which in this instance is 2.7 metres by 6.0 metres. The applicant is proposing a reduction in the required parking space dimensions to allow the space to be 2.6 metres by 5.5 metres. On street parking is available, but if the street parking were to change to a permit only system, the residents in the multiple dwelling would not qualify for a permit. New development should not negatively impact existing uses and as such, any new development should be able to provide the required parking on-site.

Based on the rationale above, staff recommend that the applications be denied.

ALTERNATIVES FOR CONSIDERATION

- 1) Should the proposed applications be approved, staff be directed to prepare the Official Plan Amendment and Zoning By-law Amendment consistent with the concept plans proposed, and any other necessary agreements to implement Council's Direction.
- 2) Council could direct staff to negotiate revisions to the proposal with the applicant in response to the issues and concerns identifies in the Report and report back to Council with the results of the discussion.
- 3) Should the applications be denied, the lands could develop in accordance with the Low Density Residential designation and the "D/S-378" (Urban Protected Residential – One and Two Family Dwellings) District, Modified which permits single detached, semi-detached and street townhouse dwellings.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

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**SUBJECT: Applications for an Official Plan Amendment and a Zoning By-law
Amendment for lands located at 125 and 129 Robert Street, Hamilton
(PED20015) (Ward 2) - Page 20 of 20**

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Location Map

Appendix "B" – Concept Plan and Elevations

Appendix "C" – Public Correspondence

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● Site Location



Key Map - Ward 2

N.T.S.

Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
ZAC-17-073 & UHOPA-17-033

Date:
Nov. 15, 2017

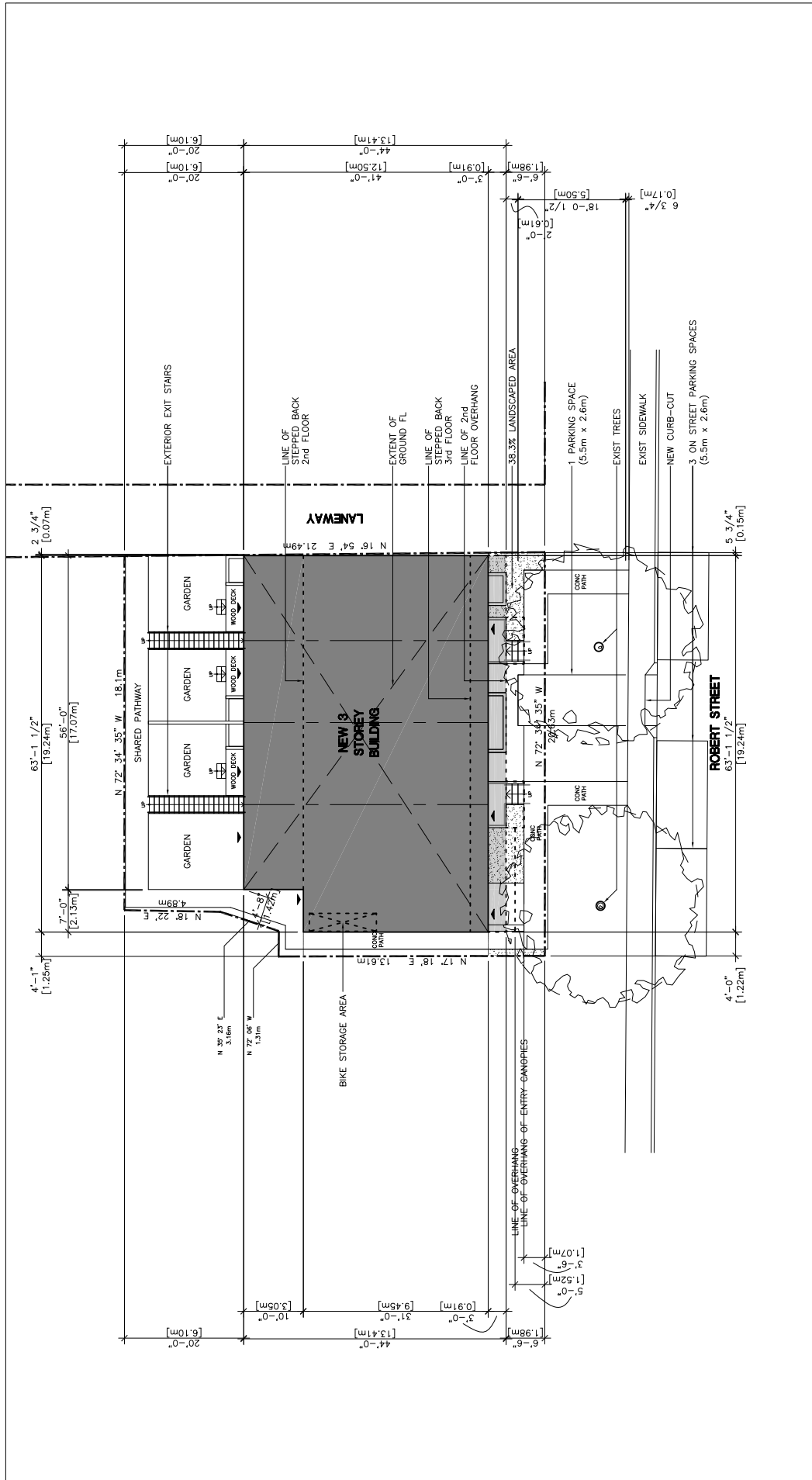
Appendix "A"

Scale:
N.T.S.

Planner/Technician:
AL/AL

Subject Property

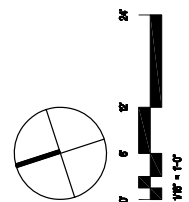
125-129 Robert Street

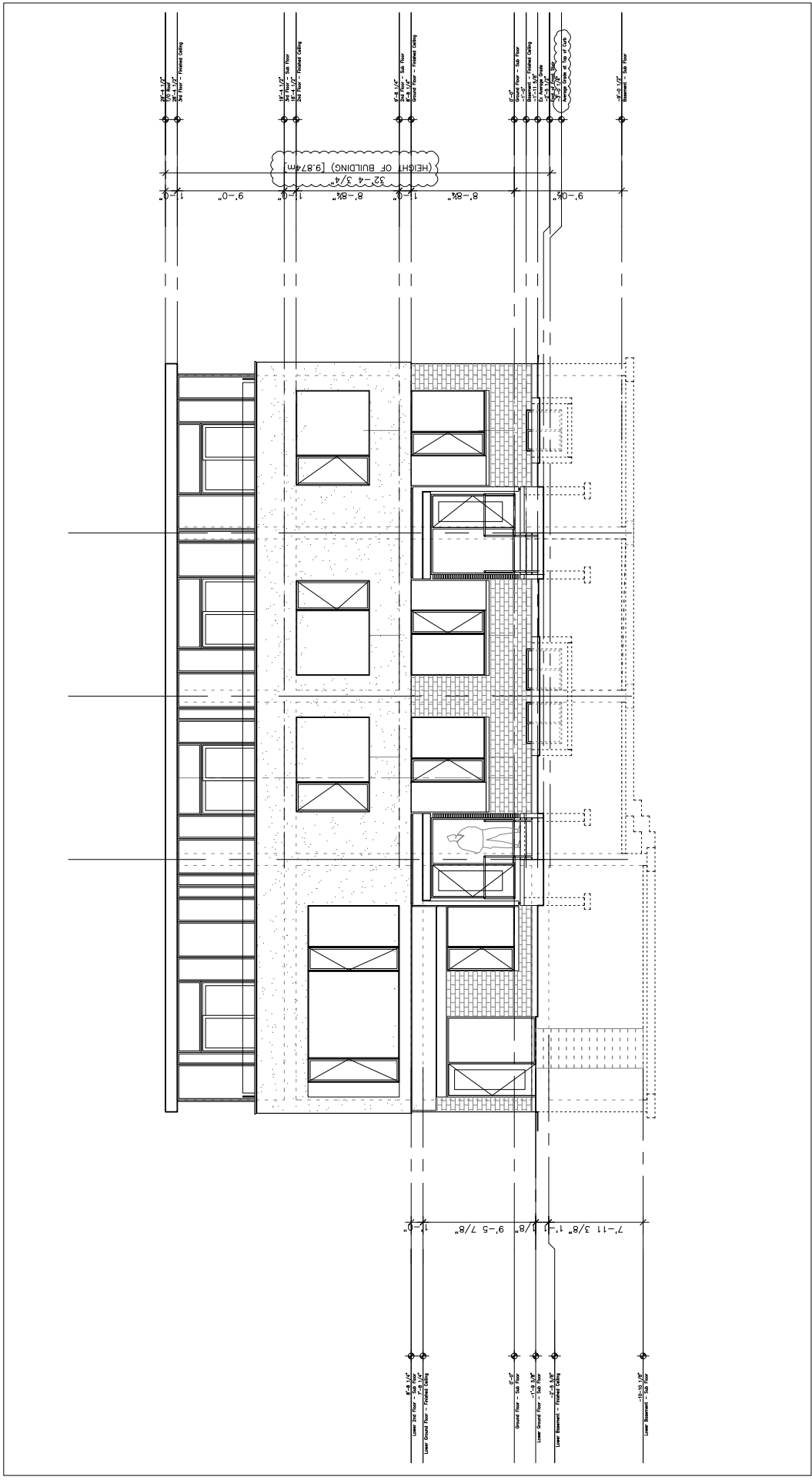


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SITE PLAN
18/07/13

Robert Street Development
 18/07/13
 TOMS + MCNALLY
 18/07/13
 18/07/13





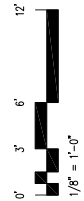
FRONT ELEVATION
 18/03/27

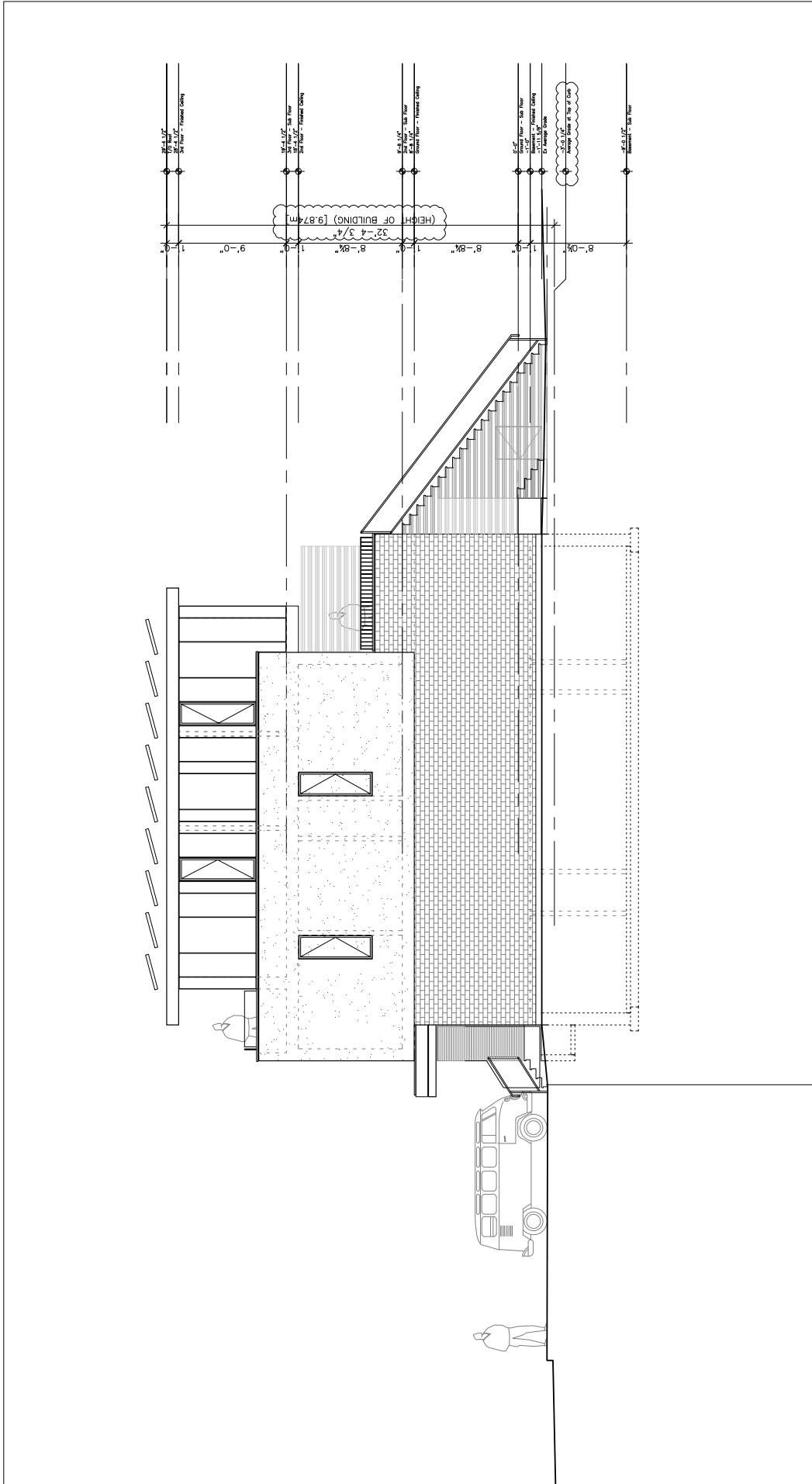
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Robert Street Development
 125-129 Robert Street, Hamilton, ON, L8L 2P7

TOMS + MCNALLY
 Planning, Architectural, Engineering, Construction

18/03/27 08:28 AM Version: 01/11/18 18/03/27
 tmc@toms-mcnally.com



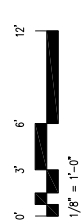


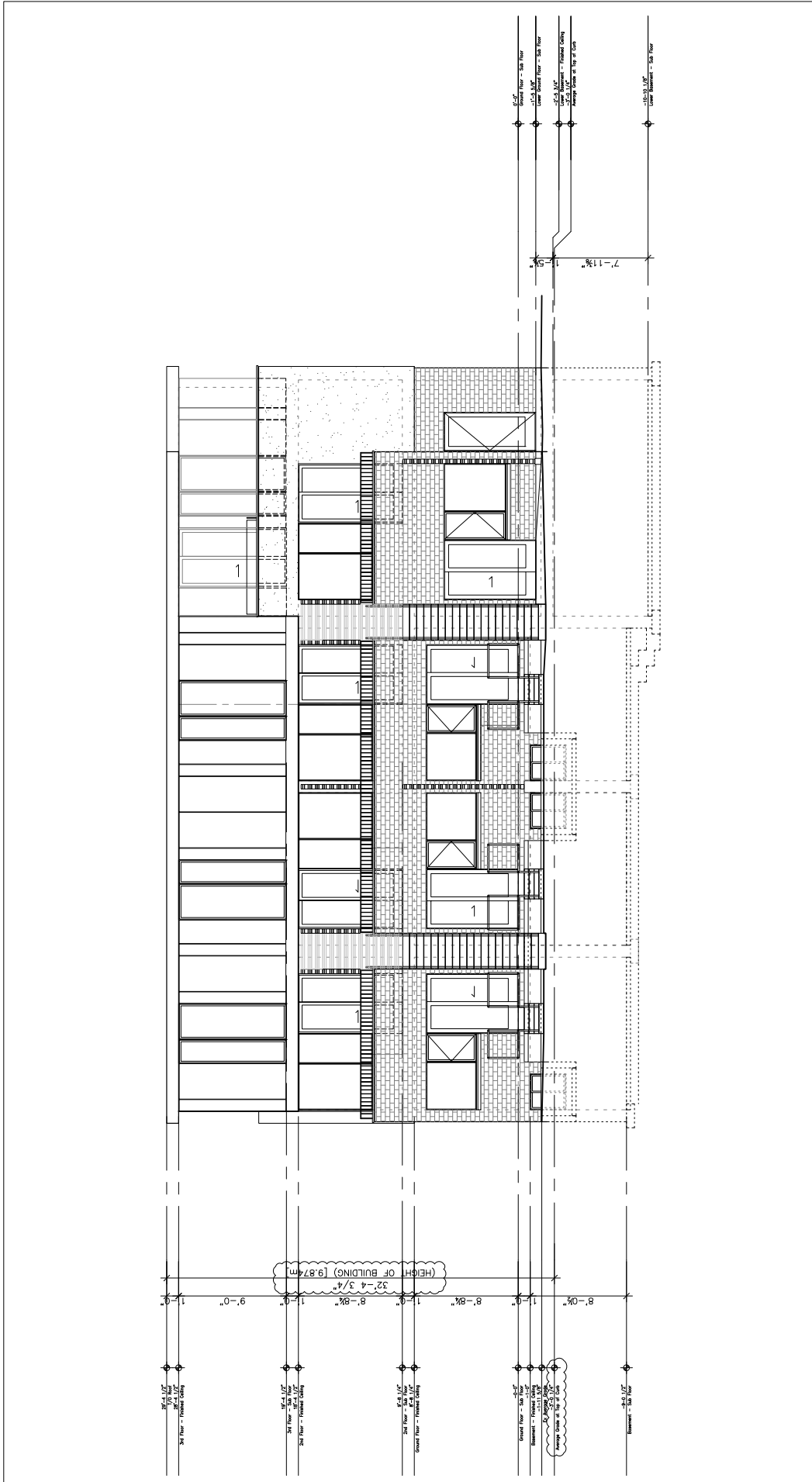
EAST (LANEWAY) ELEVATION

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TOMS + MCNALLY
 PLANNING ARCHITECTURE INTERIOR CONSTRUCTION

Robert Street Development
 123-129 Robert Street, Hamilton, ON, L8L 2P7



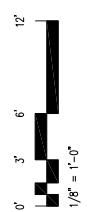


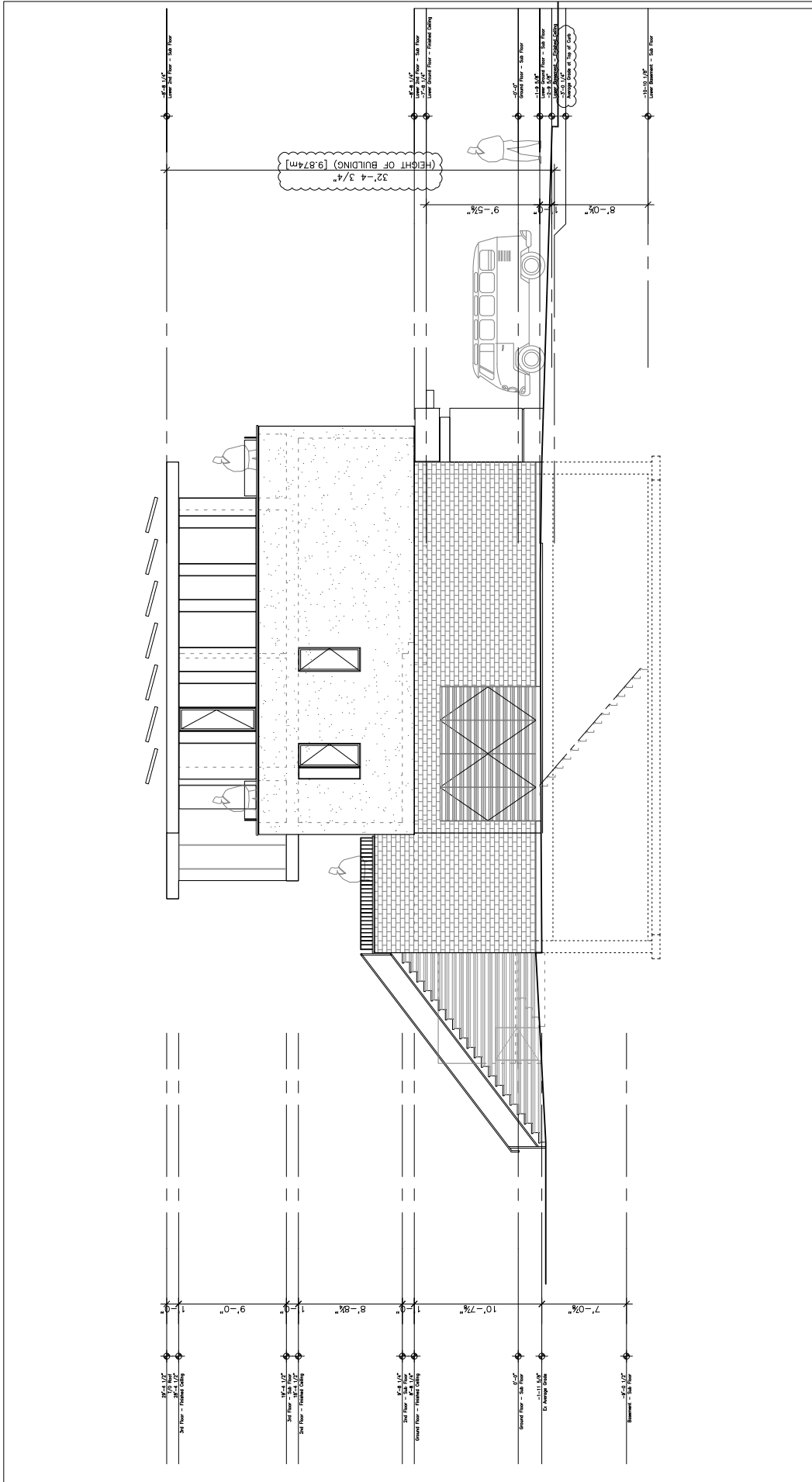
A6

REAR ELEVATION
 1800027

TOMS + MCNALLY
 ARCHITECTS
 125-129 Robert Street, Hamilton, ON, L8R 2P7
 TEL: (905) 571-2222
 WWW.TOMSMCNALLY.COM

Robert Street Development
 125-129 Robert Street, Hamilton, ON, L8R 2P7



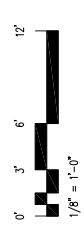


A7

WEST ELEVATION
18/03/27

Robert Street Development
125-129 Robert Street, Hamilton, ON, L8L 2P7

TOMS + MCNALLY
Professional Architectural Corporation
140 Dundas Street West, Suite 200
Hamilton, Ontario L8M 3K2
416-521-2822
toms+mcnally.com



Dear, Andrea

From: Lucas, Adam
Sent: Monday, December 4, 2017 1:08 PM
To: 'Lori Lychy'
Subject: RE: Zoning 125-129 Robert St

Hi Lori,

Thank you for your e-mail. Your comments will form part of the public record and will be forwarded to the applicant for further consideration. City staff will be asking the applicant to provide a response to all comments/concerns received in relation to the application.

If you have any further questions, please let me know.

Regards,

Adam Lucas, MCIP, RPP
Senior Planner

Development Planning, Heritage and Design, Urban Team
Planning Division
Planning and Economic Development Department
City of Hamilton
71 Main Street West, 5th floor
Hamilton, ON
L8P 4Y5
t. 905.546.2424 ext. 7856
f. 905.546.4202
e. adam.lucas@hamilton.ca

From: Lori Lychy
Sent: December-04-17 10:58 AM
To: Lucas, Adam
Subject: Zoning 125-129 Robert St

Good morning,

I own the residence directly across the street from 125-129 Robert Street. I live at 130 Robert Street.

I do have an issue regarding the changing of the Low Density Residential standing to Medium Density Residential. The issue is with **Parking**. Robert street is already saturated with cars looking for parking. On the south side of the street we already have 9 cars who need parking. These cars are from people like myself who own or rent the properties on the south side of the street. These cars already take up all the street parking on the south side.

As well as the owners/renters on Robert Street, we have the issue of the hospital workers who park on our street Monday to Friday and walk to hospital. They are waiting for us to leave in the morning so they can park on our street. These hospital workers work 12 to 14 hour shifts, meaning we have no place to park when we return from our 8 hour work days.

Earlier this year a permit was submitted for the large house on the corner of Elgin and Robert to change from a single family dwelling to a multi family dwelling. I believe 3 to 4 apartments. The builders are only supplying

one driveway parking spot. The other residence will be looking for street parking where their is none.

Now we have another request for a 7 residential dwelling unit with **only 4 parking spaces supplied.** Why do they not supply enough parking for the building? Where are these people going to park? In front of my house I would guess. What is someone on the street wishes to have company? **The point I'm trying to make is that Robert Street cannot support anymore cars.** If the builders wish to build an apartment they **NEED** to supply enough parking for their building.

--

Lori Plecity
130 Robert Street
Hamilton, ON L8L 2P6

Dear, Andrea

From:
Sent: Wednesday, December 6, 2017 6:24 PM
To: Lucas, Adam
Cc:
Subject: Files:UHOPA-17-033 / ZAC-17-073

Dear Lucas,

My name is [redacted] and I spoke with you on the phone today regarding some concerns my father [redacted] had about a 3 storey apartment being built around the corner from his house, he lives at 222 Mary st. some of the issues hes concerned about are...

- Privacy
- Parking
- Blocking of the sun

My father [redacted] : would like his name to be kept confidential.

thanks,

Dear, Andrea

From:
Sent: Tuesday, January 30, 2018 12:41 PM
To: Lucas, Adam
Subject: Concerns About Development Application UHOPA-17-033 (125-129 Robert St, Hamilton)

Hello,

*****IMPORTANT: PLEASE STRIKE MY NAME AND CREDENTIALS IN THE EVENT THAT MY COMMENTS ARE MADE PUBLIC OR VIEWABLE TO THE APPLICANT.**

This is regarding the **Development Application: UHOPA-17-033 for 125-129 ROBERT ST.** I am a concerned neighbor that did receive a notice in the mail from the city about this application.

My apprehension is due to the proposal to build **7 residential dwellings, but only 4 parking spaces.** This could potentially add 3 or more vehicles parking on the street in the area. Many of the dwellings on that section of Robert street (between Mary St. and Elgin St.) are single occupancy homes with no driveways. As it is right now, there appears to be just enough parking to accommodate everyone that lives in this section of Robert St. It is a similar situation with the intersecting streets, Mary and Elgin, which also appear to have just enough street parking to accommodate the needs of those areas. In summary, **if the Application is approved, it would create an increased parking space deficit, lowering the value of homes with no driveway that are in proximity to 125-129 Robert St. and forcing residents to park at an unreasonable distance from their homes.**

I propose the following considerations:

1) Reject the Development Application

OR

2) Counter the Development Application that it be re-planned to have a 1:1 ratio of dwellings to parking spaces, perhaps by reducing the number of units and using the added space for more parking. (5 units to 5 parking spaces perhaps, for example)

OR

3) If the Application is approved as is, as a last resort, remove the parking restriction on the SW side of Robert St., between Mary St. and Catharine St. N, which currently posts "No Parking from 7am to 6PM Monday to Saturday". This would add enough parking for 3 or 4 vehicles in the area, although at the

expense of reduced traffic flow due to narrowing the roadway with parked cars. With this scenario, also add exempt parking for the residents of Robert St to ensure we all have a spot. Again...a last resort.

*****IMPORTANT: PLEASE STRIKE MY NAME AND CREDENTIALS IN THE EVENT THAT MY COMMENTS ARE MADE PUBLIC OR VIEWABLE TO THE APPLICANT.**

If the above could be taken into consideration, it would be greatly appreciated.

With Regards,

From: prem tewari

Sent: April 13, 2021 12:42 PM

To: Kelsey, Lisa <Lisa.Kelsey@hamilton.ca>

Cc: Mr. Hardeep Singh

Subject: Delegation status at the next Planning and Development committee

Hi Lisa,

I am a consultant. My client, Mr. Hardeep Singh and I would like to be a delegate at the next P and D Committee meeting.

The issue about a Farm Labour House policy that is preventing us to construct a new residence. Listed below is the relevant policy for members' benefit.

"A farm labour residence may be permitted on the same lot as the primary farm use provided all the following conditions are met:

a) The size and nature of the farm operation requires additional on-site employment for regular and extended periods of time in the annual production process such that additional accommodation is required for the viability and effective operation of the farm, as shown in a justification report deemed acceptable by the City; (OPA 5)

b) A maximum of one farm labour residence may be permitted without an amendment to the Zoning By-Law, in the form of an accessory apartment attached to and forming part of the principal farm residence, or an

D.2 Rural Hamilton Official Plan

2 of 8 June 2020

Chapter D – Rural Systems, Designations and Resources

accessory detached temporary dwelling, such as a mobile home or bunk house provided: (OPA 9)

i) These units shall be serviced by the same private sewer and water systems used by the principal farm residence and be in accordance with Section C.5.1, Sustainable Private Water and Wastewater Services policies of this Plan.

ii) Where a temporary dwelling is used as a farm labour residence, the owner shall remove the temporary dwelling from the subject farm if, in the opinion of the City, it is no longer required or used as a farm labour residence.

2.1.1.7 The severance of a lot for a farm labour residence shall not be permitted."


Please advise when is the earliest date of the P and D committee meeting?

Thanks

Prem Tewari, P.Eng.



INFORMATION REPORT

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 20, 2021
SUBJECT/REPORT NO:	Update re: Local Planning Appeal Tribunal Case No. LC200004 (271 Bay St. N, 107 Stuart St. & 34-36 Tiffany St.) (LS21017) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Patrick MacDonald (905) 546-2424 Ext. 4708
SUBMITTED BY:	Michael Kyne Acting City Solicitor Legal and Risk Management Services
SIGNATURE:	

COUNCIL DIRECTION

Not applicable.

INFORMATION

On April 14, 2021, the Local Planning Appeal Tribunal (the “Tribunal”) issued an order granting the City’s motion to dismiss, without a full hearing, an application for compensation in Case LC200004 (the “Order”).

The claim was started with the Tribunal in January 2020 by the White Star Group of Companies (“White Star”) related to the lands known municipally as 271 Bay Street North, 107 Stuart Street, and 34-36 Tiffany Street (the “Subject Lands”). White Star’s claim was filed pursuant to the *Expropriations Act* (the “Act”), seeking compensation in the amount of \$32,893,970.

On June 18, 2020, the City filed a notice of motion to dismiss White Star’s claim without a full hearing on the basis that it did not meet the statutory requirements of the Act. The Tribunal eventually converted the matter into a motion in writing, for which both the City and White Star filed written submissions in October and November 2020.

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SUBJECT: Update re: Local Planning Appeal Tribunal Case No. LC200004 (271 Bay St. N, 107 Stuart St. & 34-36 Tiffany St.) (LS21017) (Ward 2) - Page 2 of 2

The Tribunal's Order accepts the City's arguments in granting the motion to dismiss, which were primarily based on the uncontested facts that none of the Subject Lands have been expropriated and that the City has undertaken no construction that could have impacted the Subject Lands.

The Order references and relies upon a 2013 decision of the former Ontario Municipal Board dealing with a similar set of historical facts and the same geographic area, regarding the property known municipally as 12 Tiffany Street.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Decision of the Local Planning Appeal Tribunal dated April 14, 2021

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: April 14, 2021

CASE NO(S): LC200004

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 26(b) of the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended

Claimant:	White Star Group of Companies
Respondent:	City of Hamilton
Subject:	Land Compensation
Property Address/Description:	271 Bay St. N, 107 Stuart St. & 34-36 Tiffany St.
Municipality:	City of Hamilton
LPAT Case No.:	LC200004
LPAT File No.:	LC200004
LPAT Case Name:	White Star Group of Companies v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 12(1) of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, and the Tribunal's Rules of Practice and Procedure

Request by:	City of Hamilton
Request for:	Motion for Directions

Heard: In writing

APPEARANCES:

Parties

Counsel*/Representative

City of Hamilton

Patrick MacDonald*

White Star Group of Companies

A. Winkleman

DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] The White Star Group of Companies ("Claimant") is the owner of the lands known municipally as 271 Bay Street North, 107 Stuart Street, and 34-36 Tiffany Street ("Subject Lands"), located within the West Harbour Precinct of the City of Hamilton ("City").

[2] It appears that in the late 1990's, attempts were made by the Claimant to re-develop the Subject Lands, which had previously been used as an auto salvage yard.

[3] In 2000, the City conducted a planning review of the West Harbour Precinct in order to develop a new secondary plan for the area surrounding the site. Part of that process involved determining which uses would be permitted on the Subject Lands as well as for other properties. A proposal for a new stadium to be used for the 2015 Pan Am Games emerged from these discussions, which included some of the Claimant's lands, among others.

[4] In February 2010, City Council directed staff to acquire all lands necessary in the City's West Harbour precinct for construction of the proposed stadium described above, including authorization to expropriate where negotiated purchases of property were not successful.

[5] Council also directed City staff to retain legal counsel to commence expropriation proceedings in the event a purchase could not be achieved. The City Solicitor was also empowered to carry out the process of expropriation, including the service of any documents required and to settle compensation before the former Ontario Municipal Board, if necessary. The evidence shows that the City acquired in excess of 60 properties through negotiation and that Council did not take any steps under the

Expropriations Act ("EA") to acquire lands in this area and that no Notices of Intent to Expropriate under section 6 of the EA were served on any landowner.

[6] In October 2011, the expropriation process was halted by City Council, when it directed staff to cease all previously authorized expropriations in the West Harbour area for the proposed stadium. Staff never got to the step of filing a Notice of Intention to Expropriate under section 6 of the EA prior to Council's directive to cease any expropriations.

[7] Furthermore, none of the steps by which a statutory authority expropriates land and where title vests with the statutory authority were ever taken by the City including:

- expropriation of the Subject Lands, either in whole or in part, was approved under section 8 of the EA;
- registration of an Expropriation Plan under section 9 of the EA; and
- service of a Notice of Expropriation under section 10 of the EA.

[8] The direction from Council also rescinded the direction to staff to actively acquire any other properties and directed staff to cease all active expropriations. No construction of works related to the stadium were ever commenced in the area of the Subject Lands or that impacted the Subject Lands, as the proposed stadium was not pursued after October 2011.

[9] Proceedings under the EA were initiated by the Claimant on January 20, 2020 against the City for interference and pre-expropriation disturbance and related business losses owed to the Claimant by the City resulting from the City's actions in relation to the Claimant's lands.

CITY MOTION

[10] The City brings this Motion for an order of the Tribunal dismissing the Claimant's Notice of Arbitration and Statement of Claim pursuant to s. 4.6 of the *Statutory Powers Procedure Act*, ("SPPA") on the grounds that in order for the Tribunal to be able to hear a claim under the SPPA, there must be either a taking of land or an interest in land, or at least the construction of works to support a claim for injurious affection. The City alleges that it has not expropriated any of the Claimant's lands and that there has been no construction of any works and therefore, the claim lacks the necessary statutory grounds to be within the Tribunal's jurisdiction under the SPPA and should be dismissed. The City also alleges that the claim for injurious affection was made several years after the expiration of the applicable limitation period under the EA. The City argues that the Claimant has not produced any evidence that would contradict these core, relevant facts.

[11] The Tribunal on October 1, 2020 directed that the City's Motion dated June 18, 2020 would be heard in writing and ordered the parties to file their submissions accordingly.

[12] The materials before the Tribunal on this Motion are the following:

1. City's Motion Record dated June 18, 2020, including the Affidavit of Darlene Cole, sworn, June 18, 2020;
2. City's Written Submissions dated October 2020;
3. Claimant's Motion Record (Response to Motion) dated June 30, 2020, including the Affidavit of Marino Rakovac, sworn, June 29, 2020;
4. Claimant's Written Submissions dated October 28, 2020; and
5. Claimant's Book of Authorities;

6. City's Book of Authorities;
7. City's Reply dated November 4, 2020.

City's Argument

[13] The City maintains that under subsection 4.6(1) of the SPPA, the Tribunal may dismiss a proceeding without holding a hearing where:

- a. The proceeding is frivolous, vexatious, or is commenced in bad faith;
- b. The proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- c. Some aspect of the statutory requirements for bringing the proceeding has not been met.

[14] The City submits that there is no conflict between section 4.6 of the SPPA and any provisions of the EA, the *Local Planning Appeal Tribunal Act, 2017*, ("LPATA") or the Tribunal's Rules of Practice and Procedure. The City also argues that while this section only requires one of the grounds to be met for dismissal of a matter, the present circumstances meet not just one, but all three of these grounds.

[15] The City also maintains that there is no common law right to compensation for expropriation and that all of a landowner's rights in such a process are governed by the EA and that it is only those rights that the Tribunal is empowered to hear.

[16] The EA provides for compensation in two different scenarios:

- a. Where land is expropriated, the owner is entitled to compensation for the market value of land, damages for disturbance, injurious affection, and any special difficulties for relocation under Section 13; and

- b. Where no land is expropriated, the owner can still bring a claim for injurious affection under section 22.

[17] Subsection 1(1) of the EA defines what constitutes injurious affection. Subsection (a) of the definition provides for how injurious affection is calculated where land has been expropriated and subsection (b) under this same definition provides that compensation for injurious affection is payable where the statutory authority does not acquire part of the land of an owner, and in such case shall pay for a reduction in the market value of the owner's land and personal and business damages. But both must result from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under authority of a statute.

[18] The City maintains that in order for the Claimant to successfully oppose this motion to dismiss, it must successfully demonstrate one of three things:

- a. that there was a taking of land;
- b. that there was construction of works; or
- c. that statute or case law supports an interpretation of these items such that the facts in Mr. Rakovac's Affidavit sworn June 29, 2020 may be relevant.

[19] No land has been expropriated in this case, either in part or in whole. None of the Subject Lands were acquired by the City under an agreement under the EA or otherwise and none were amicably acquired. In short, the City has not acquired any interest in any part of the Subject Lands.

[20] The City argues that since there has been no taking of land, there can be no compensation under section 13 of the EA. Also, as there has been no construction of any works, there is no possibility for a claim for injurious affection alone under section 22 of the EA.

[21] The Claimant in its materials refers to contemplated expropriations or “constructive expropriation” or “temporary expropriation”, or expropriation of their development rights. The City maintains that the EA does not provide for the award of damages for contemplated expropriations, as described by the Claimant in its Notice of Arbitration and Statement of Claim. Furthermore, the City also argues that there is no authority to award compensation for constructive or contemplated expropriation. The concept of “constructive expropriation” was argued before this Tribunal in a similar motion in *Morin v. Ottawa* (Decision dated April 2, 2020 in LPAT Case LC190016). The Tribunal was clear in that decision that its authority under the EA is limited to what is provided by statute and there is no authority to look at “constructive expropriations”.

[22] The City also relies on the OMB’s decision in *Marsdin v Hamilton (City)*, 2013 CarswellOnt 10709, 110 LCR 142 (“Marsdin”), which involved a similar motion for dismissal respecting a property situated very close to the Subject Lands. The OMB in that case dismissed the claim on the grounds that there had been no taking of lands and that no construction had taken place affecting the claimant’s lands.

[23] The City’s position is that it has not acquired any interest in any of the Subject Lands so that even if “constructive expropriation” is a concept that can be entertained by the Tribunal, the Claimant cannot assert which part of its lands that were taken would trigger rights to compensation under section 13 of the EA.

[24] The City argues that the Claimant’s assertion that its development rights and other items were effectively expropriated is not supportable in law and that there is no jurisprudence to support such a broad interpretation. The Claim is based on events that never occurred as there was no taking or acquisition of any of the Subject Lands and no works were ever constructed affecting the Subject Lands, according to the City.

[25] The City also takes the position that under section 22 of the EA, a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim, within one year after the damage was sustained or after it became known to the person, and, if not so made, the right to

compensation is forever barred.

[26] The City argues that in accordance with subsection 4.6(1) of the SPPA, the Tribunal must dismiss the Claimant's claim without holding a hearing.

Claimant Response to City Motion

[27] The Claimant admits in its Response to Motion and Written Submissions that the City did not expropriate or take any of the Subject Lands from it and that no works were constructed but nevertheless relies on a very questionable principle of "constructive expropriation" to justify its claim. It raises a number of issues in opposition to the City's Motion, none of which are of any assistance to the Tribunal's consideration of the motion. Much of the Claimant's Response to Motion as well as its written arguments refer to the history of its redevelopment proposals filed with the City and that somehow, the City's actions related to the development applications constituted a "constructive expropriation" of the Subject Lands.

[28] The Claimant argues that the City's exercise of dual roles as both the planning authority and the expropriating authority put it in a conflict, with the development proposal being put on hold for 10 years to facilitate the City's conflicting stadium option without transparency to the Claimant as a developer with an active development application, and without compensation for delay.

[29] The Claimant further maintains the application of the rules of fairness, the consideration of abuse of process by the City, and the intended remedial nature and broad interpretation of the EA as well as the complexity and multiplicity of issues, call for a full hearing of this matter.

[30] The Claimant appears to argue that section 30 of the EA provides for authority for the Tribunal to make an award of compensation where there has been no expropriation in a situation where an owner of lands consents to the acquisition of the land by a statutory authority. Section 30 provides as follows:

30. Where the owner of land consents to the acquisition of the land by a statutory authority, the statutory authority or the owner, with the consent of the other, may apply to the Tribunal for the determination of the compensation to which the owner would be entitled by this Act if the land were expropriated, and the Tribunal may determine the compensation and the provisions of this Act and the regulations respecting the determination of compensation, hearings and procedures, including costs and appeals, apply thereto in the same manner as if the land had been expropriated and for the purpose, subject to any agreement of the parties, the compensation shall be assessed as of the date on which the consent to the acquisition is given. R.S.O. 1990, c. E.26, s. 30; 2017, c. 23, Sched. 5, s. 29.

ANALYSIS AND FINDINGS

[31] The Tribunal has carefully considered the affidavit evidence before it as well as the submissions of counsel for the City and those of the representatives for the Claimant and finds that the Motion should succeed for the reasons that follow.

[32] It is clear from the materials before the Tribunal that there has not been a taking of any of the Subject Lands from the Claimant and that there has not been any construction within the meaning of the EA, that would give rise to a claim for injurious affection in this case. The Claimant has admitted this in its response and written submissions. Furthermore, the jurisprudence does not support the interpretation of the EA promoted by the Claimant.

[33] The facts of this case are quite similar to the circumstances in the Marsdin case, relied on by the City. In that case, the owner of 12 Tiffany Street (a few doors down from one of the Claimant's properties at 34-36 Tiffany Street) brought a claim for compensation for damages incurred as a result of the alleged expropriation commenced by the City under section 41(1)(a) related to the abandonment of expropriated lands. Section 41 of the EA, provides that where at any time before the compensation upon an expropriation is paid in full, the land or any part thereof is found to be unnecessary for the purposes of the expropriating authority or if it is found that a more limited estate or interest therein only is required, the expropriating authority shall so notify each owner of the abandoned land, or estate or interest, who is served or entitled to be served with a notice of expropriation, who may, by election in writing, take the land, estate or interest back, in which the case the owner has the right to compensation for consequential

damages; or require the expropriating authority to retain the land, estate or interest, in which case the owner has the right to full compensation therefore. This Member is quite familiar with Marsdin; there was no abandonment in that case within the meaning of section 41, since there was no expropriation, there was no vesting of lands in the municipality and lastly there was no construction affecting the lands owned by the claimant. The Board allowed the City's motion to dismiss the Notice of Arbitration and Statement of Claim on the basis that the Tribunal lacked jurisdiction to hear it as there had been no expropriation and no construction, which would have affected the claimant's lands.

[34] The Tribunal notes that the Marsdin case was not an "abandonment" under section 41 of the EA, which deals with an expropriation authority voluntarily abandoning land that it had already expropriated but that it deems no longer necessary. Abandonment under section 41 the EA does not mean abandonment of the expropriation process as is the case here.

[35] The Board in Marsdin noted that it was quite clear from the jurisprudence cited, that pre-expropriation costs are compensable when there is an expropriation. The process of expropriation in Marsdin, was not completed to a point where the lands were vested in the municipality either by agreement or following the registration of a plan of expropriation so that there was no basis for any claim for damages under section 41 of the EA for abandonment with the Board noting that a statutory authority is not bound to follow through an expropriation to its conclusion if it elects to no longer acquire the lands.

[36] The decision relied on the Court's reasoning in *Dell Holdings Ltd. v Toronto Area Transit Operating Authority*, 1997CarswellOnt 78, 1 S.C.R. 32, which reinforced that the EA is a statutory regime for compensation, and that there must be an actual taking of land to trigger compensation, or in the case of injurious affection the construction of works:

compensation to the person whose land is expropriated. It is the taking of the land which triggers and gives rise to the right to compensation. An owner whose land is caught up in a zoning or planning process but not expropriated must simply accept in the public interest any loss that accrues from delay. There is neither a statutory requirement nor a policy reason for employing a similar approach to compensation for losses accruing from delay when land is expropriated and for losses accruing from delay in the planning approval process when land is not taken. Both statutory and judicial approaches to compensation are, as might be expected, very different in these two situations.

...

36 There is no provision for recovery for disturbance damages where no land is taken. Injurious affection damages can be recovered both where the land is taken and where land is not taken but the tests to be met are very different. Where land is taken, the damages may relate to construction and the use of the works but where no land is taken the damages are limited to those flowing from the construction of the works even if the use also causes damages. There is therefore a clear foundation for concluding that there is a very real and significant difference between awarding compensation in those situations where land is expropriated from those where it is not. It follows that damages for disturbance can appropriately be awarded in situations where there has been an expropriation even though no damages for disturbance will be awarded in situations where there has not been an expropriation.

[37] Applying this reasoning to the facts of the case at hand, as there has been no taking of land nor any construction of works (which the Claimant has admitted), there is no basis for the Tribunal to make an award for damages under the EA.

[38] It is also important to note that the Supreme Court clarified in *Dell Holdings* that where an owner's property is caught up in a zoning or planning process but not expropriated, then the owner must simply accept in the public interest any loss that accrues from delay. The Claimant's Response to Motion, Written Submissions and Affidavit of Marino Rakovac, sworn June 29, 2020 appear to suggest that the claim is for damages incurred by the Claimant as a result of a history of delays incurred during the planning approval process respecting the development of the Subject Lands, which the Claimant attributes solely to the City. The claim as such is not within the Tribunal's jurisdiction to consider as there is no compensation for delays or complications caused by planning or zoning processes under the EA. The Supreme Court in this case very clearly states that the EA does not give rise to a right for compensation unless land is taken and that a landowner simply caught up in delays attributable to the planning process as the Claimant has in this case must accept those delays and is not entitled to

compensation under the EA. In the present matter, as expropriation was not even authorized by the City prior to February 2010, and any delay prior to that time that was allegedly caused by planning processes affecting the Subject Lands is not compensable per the reasoning in Dell Holdings, and as there was no completed expropriation and any alleged delays after that time are not compensable either.

[39] It is noted that during the period from 2000 to the present, expropriation was only being considered by the City from 2010 to 2011. Outside of this time frame, there was no active expropriation process that might involve the Subject Lands. This means that for 18 of the last 20 years, there was no completed or contemplated expropriation which would have prevented the claimant from proceeding with the development of its lands. The proposed expropriation contemplated from 2010 to 2011 was never completed and was explicitly abandoned by City Council in October 2011. No lands were expropriated by the City, including any adjacent properties. It is noted that all lands acquired by the City within the area surrounding the Claimant's lands were acquired amicably before Council directed staff to cease all acquisitions and expropriations in 2011.

[40] The Tribunal notes an inconsistency in the Claimant's position here with the Claimant simultaneously arguing that the City hampered its plans to develop its property while also claiming that the City should have completed its expropriation of the Subject Lands, giving rise to an interesting question: How can the Claimant claim that it could not carry through on its proposed development while also demanding that the City complete an expropriation of its lands which would render development at this location by the claimant impossible? The fact that an owner may have been served with a Notice of Intention to Expropriate does not trigger a right to compensation under the EA. It is the registration of an Expropriation Plan and service of a Notice of Expropriation that trigger those rights, neither of which took place here for the Subject Lands or any adjacent lands.

[41] The EA does not bind an expropriating authority to carry out an expropriation to completion, it only lays out the requirements that must be followed if the authority

wishes to take ownership of the lands. It can stop the process at anytime even after lands have vested in it subject to the provisions of section 41.

[42] The Claimant also relied on the Supreme Court's decision in *Antrim Truck Centre Ltd. v Ontario (Ministry of Transportation)*, 2013 CarswellOnt 2354, 2013 SCC 13 ("Antrim Truck") in support of its claim and argues that this decision stands for the proposition that an owner is entitled to compensation under the EA where no land is taken. The case dealt with an owner of a truck stop, who brought a claim for injurious affection as a result of access to its property being disrupted by construction of a new portion of Highway 417. The Tribunal agrees with counsel for the City who maintains that this decision is clearly distinguishable from the case at hand. In Antrim Truck there were both expropriations for a public objective (a 400 series highway and interchange) and construction of that objective that impacted the owner's property. In the case at hand there was no expropriation nor related construction of works that impacted the Subject Lands. In upholding the owner's claim for damages for injurious affection, the Supreme Court in Antrim Truck clarified that three criteria must be met to advance a claim for injurious affection under the EA:

- a) The damages must result from action taken under statutory authority;
- b) The action would give rise to liability but for that statutory authority; and
- c) The damages must result from the construction, and not the use of the works.

[43] Applying this reasoning to the current case: On criteria (a) and (b), there was no "action taken under statutory authority" by the City in this case as there was no expropriation or related construction of works. In fact, the Claimant's claim appears to be based on a request for compensation for a failure to take action by the City by not completing contemplated expropriations. There is no authority in statute or case law to award damages for a failure to undertake or complete an expropriation under the EA. The Claimant fails on criteria (c) as well, as there was no construction of any works

commenced which relates to the Claimant's claims or the Subject Lands.

[44] With respect to the Claimant's argument that section 30 of the EA allows compensation where no land is taken, that is technically true, but only because section 30 deals with compensation where the owner consents to an acquisition. While no land is "taken" by expropriation in such a circumstance, there is still a conveyance of lands to the expropriating authority for which the owner must be compensated. In this case, the Claimant admits that there was no taking of any of its lands by the City or acquisition by amicable negotiation and it is therefore not possible to assert a right to compensation under section 30 of the Act in these circumstances.

[45] With respect to the argument advanced by the City that the one year limitation period imposed by section 22 of the EA bars the claim, the Tribunal notes that the Claimant makes it clear in its Response to Motion and Written Submissions that the claim is not based on injurious affection and that therefore section 22 does not apply here, therefore the Tribunal will not make a finding on that issue.

COSTS

[46] The City did not initially seek an award of costs when this motion was originally filed, however, it is now seeking costs based on the Claimant's conduct since the July 6 CMC in this matter. Any claim for costs shall be made in accordance with the Tribunal's Rules.

ORDER

[47] Accordingly, the Tribunal hereby dismisses the claim pursuant to section 4.6 (1) of the SPPA without holding a full hearing.

"R.G.M. Makuch"

R.G.M. MAKUCH
VICE-CHAIR

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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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INFORMATION REPORT

TO:	Mayor and Members Planning Committee
COMMITTEE DATE:	April 20, 2021
SUBJECT/REPORT NO:	LCBO Holiday Hours (PED21102/LS21015) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Monica Ciriello (905) 546-2424 Ext. 5809 Leanne Fioravanti (905) 546-2424 Ext. 4223
SUBMITTED BY:	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department
SIGNATURE:	
SUBMITTED BY:	Michael Kyne Acting City Solicitor, Legal & Risk Management Corporate Services
SIGNATURE:	

COUNCIL DIRECTION

At its meeting on March 31, 2021, Council directed that “That the motions to Permit Copetown General Store (Item 6.1), Lynden General Store (Item 6.2) and Carlisle Cleaners & LCBO/Beer Store (Item 6.3) to Operate the LCBO Convenience Outlet Component of Their Business on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day, be referred to Legal staff to report back to Planning Committee.”

INFORMATION

Background

Recently the City of Hamilton (City) was approached by a number of LCBO Convenience Outlet Stores that were seeking approval from the City to operate their stores during the following holidays:

- Victoria Day;
- Canada Day;
- Labour Day;

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OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: LCBO Holiday Hours (PED21102/LS21015) (City Wide) - Page 2 of 4

- Thanksgiving Day; and,
- Family Day.

This Report responds to the above-noted Council direction and raises the following questions:

- 1) Does the City have the authority to grant these permissions?
- 2) Is a Council Resolution appropriate “approval” or is a By-law required?

Legal Analysis

The *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 (the “RBHA”) generally states that no retail business may operate on a holiday, unless otherwise exempt by the Act. Under the RBHA, “holiday” means:

- (a) New Year’s Day;
- (b) Good Friday;
- (c) Victoria Day;
- (d) Canada Day;
- (e) Labour Day;
- (f) Thanksgiving Day;
- (g) Christmas Day;
- (h) Easter Sunday; and,
- (i) any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act.

There are exemptions to this rule, most notably, section 1.2 (1) states that:

1.2 (1) This Act does not apply to a municipality and does not apply in respect of any By-law of the municipality or any retail business establishment located in the municipality if there is in effect a By-law passed by the municipality providing that this Act does not apply to it.

Hamilton does not have a By-law pursuant to section 1.2 above.

The LCBO and the LCBO Convenience Outlet Stores (previously known as “Government Stores”) are governed by the *Liquor Control Act*, R.S.O. 1990, c. L.18 (the “*Liquor Control Act*”) and section 4.0.3 (2) of that Act states that “The Board is for all purposes an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty.”

Under section 71 of the *Legislation Act*, 2006, S.O. 2006, c. 21, Sched. F (the “*Legislation Act*”) it states that “No Act or regulation binds Her Majesty or affects Her Majesty’s rights or prerogatives unless it expressly states an intention to do so.” The RBHA does not stipulate that it binds the Crown/Her Majesty. It follows, therefore, that the LCBO is not

SUBJECT: LCBO Holiday Hours (PED21102/LS21015) (City Wide) - Page 3 of 4

bound by the RBHA and that the City does not need to pass a By-law to exempt the LCBO Convenience Outlet Stores from operating during certain holidays.

Furthermore, under the *Liquor Control Act*, there is a regulation that deals with the sale of liquor in Government Stores (now called LCBO Convenience Outlet Stores) (*O. Reg. 232/16: Sale of Liquor in Government Stores*). Section 5 of that regulation gives the LCBO the authority to regulate operating hours:

5. A government store shall be kept open for the sale of liquor during such hours as the Board from time to time directs.

It is staff's understanding that as per the LCBO's "authorization" or "agreement" with the LCBO Convenience Outlet Stores, the stores may sell beverage alcohol products on the following holidays, *provided the operator obtains approval from the local Municipal Authority*:

- Victoria Day;
- Canada Day;
- Labour Day;
- Thanksgiving Day; and,
- Family Day.

Note: If the LCBO Convenience Outlet is located within an unorganized township, local approval is not required, and the Operator may be open for business on the above holidays.

The Operator is not permitted to sell beverage alcohol products on the following holidays:

- Good Friday;
- Easter Sunday;
- Christmas Day; and,
- New Year's Day.

The above information may be found in the LCBO Convenience Outlet Manual (https://www.lcbo.com/content/dbwl/en/basepage/home/Wholesale/lcbo-convenience-outlet/FormasAndManuals/_jcr_content/content2/attachments_75703994_2134983858/file.res/LCBO%20Convenience%20Outlets%20Manual%20v1.0.pdf)

SUBJECT: LCBO Holiday Hours (PED21102/LS21015) (City Wide) - Page 4 of 4

Conclusion

As the LCBO is an agent of the Crown, and the RBHA does not bind the Crown, and the LCBO has the legislated authority to dictate the hours of operation for all government/LCBO Convenience Outlet stores, it is staff's conclusion that a municipal by-law is not required to permit these outlet stores from operating on certain holidays outlined in the RBHA. That said, in so much as the LCBO's agreement with these operators requires the operator to obtain local municipal approval to open on these holidays, staff believe that a Council Resolution to that effect is sufficient to meet this purpose.

Accordingly, on a go forward basis, City Clerks will advise the appropriate Ward Councillor if a request has been received from a LCBO Convenience Outlet Store to operate its business on any of Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day. The Ward Councillor can use the motion template, attached as Appendix "A" to Report PED21102/LS21015, to bring the request to Council for consideration.

Clerks, Legal and Licensing and By-law Services were consulted in the preparation of this Information Report.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – LCBO Convenience Outlet Stores Motion Template

MC:LF:eo

CITY OF HAMILTON

MOTION

Committee Date: XXX

MOVED BY COUNCILLOR

SECONDED BY COUNCILLOR


WHEREAS a request has been made to permit (the name of the LCBO Convenience Outlet) to operate their business for regular hours on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day.

THEREFORE, BE IT RESOLVED:

That the (name of the LCBO Convenience Outlet) be permitted to operate their business during regular hours on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day.



INFORMATION REPORT

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 20, 2021
SUBJECT/REPORT NO:	Update re: Local Planning Appeal Tribunal Case No. PL170858 (34 11th Concession Road East and 1800 Highway 6) (LS20032(a)) (Ward 15)
WARD(S) AFFECTED:	Ward 15
PREPARED BY:	Stephen Chisholm (905) 546-2424 Ext. 3663
SUBMITTED BY:	Michael Kyne Acting City Solicitor Legal and Risk Management Services
SIGNATURE:	

COUNCIL DIRECTION

Not applicable

INFORMATION

This Report is an update to Report LS20032 wherein staff were directed to take the necessary steps to continue the appeal of the Local Planning Appeal Tribunal (LPAT) decision in Case No. PL170858 to a hearing and decision before the Divisional Court. Staff also received direction to report back to this Committee not later than June 2021 on proposals, if any, for the regulation, monitoring and enforcement of residential-use tertiary septic systems, with correspondence advocating for their legislative regulation being directed to multiple Provincial ministries.

The purpose of this information report is to update Council on the outcome of the appeal before the Divisional Court of the LPAT decision.

The applicant proposes a 20-lot residential subdivision development at 34 11th Concession Rd. E. and 1800 Highway 6, Freelton. The City's objection to the

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OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Update re: Local Planning Appeal Tribunal Case No. PL170858 (34 11th Concession Road East and 1800 Highway 6) (LS20032(a)) (Ward 15)-
Page 2 of 2**

development was based primarily on the use of nitrate-reducing tertiary septic systems, which the City believes are not sufficiently regulated under the *Building Code* so as to provide adequate enforcement powers to the City in the event of a system failure.

The City's non-decision on the application was appealed to the Local Planning Appeal Tribunal (LPAT) and in August 2019 that appeal was allowed. A Request for Review of the LPAT decision was unsuccessful and, on Council's direction, a Motion for Leave to Appeal the decision to the Divisional Court was brought.

Argument on the motion was heard on February 23, 2021 by Justice Skarica sitting as a member of the Divisional Court. **The City's motion was dismissed**, meaning that the LPAT decision stands. Additionally, costs of the appeal in the amount of \$23,000 were awarded to the applicant.

To summarize the brief written endorsement—the Court did not find an error in law in either the LPAT decision or the Review Decision. While the City argued that specific determinations made by the Court – including that nitrate-reducing septic systems “will be enforceable” under the *Building Code* – constituted an erroneous legal conclusion, the Divisional Court determined that this was a factual determination based on the Tribunal's interpretation of the evidence and did not, therefore, constitute an error in law.

The Divisional Court also determined that this was not a case where there existed “convincing and compelling justification” to grant leave to appeal, citing the acceptance of nitrate-reducing technologies in other jurisdictions as some presumptive evidence of their reliability or functional enforceability.

The Divisional Court's conclusions, while disappointing, are not altogether surprising. Significant deference is given to Tribunals in the factual conclusions they reach, and Courts are generally reluctant to interfere with these administrative bodies' decisions except in the clearest of cases. There is no further appeal available from this Divisional Court decision.

It is understood that the applicant is now moving forward with the submission of materials to the relevant City departments to begin the development process. Through the planning and permit processes, including subdivision conditions, City staff will make every effort to ensure to the greatest degree possible that adequate provision for the monitoring and maintenance of the septic systems is preserved.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report LS20032(a) – Endorsement of Justice Skarica, dated February 23, 2021 (with typewritten copy)

CITY OF HAMILTON
Proposed Appellant
(Moving Party)

and

2417985 ONTARIO INC. & 2417972 ONTARIO INC.
Proposed Respondents
(Responding Parties)

Page 1

Feb 23 / 2021

Court File No. DC 366-20

*For City of Hamilton : S. Chisholm
For Respondent : S. Snider*

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at HAMILTON

The test for leave to be granted is for the City to establish

MOTION RECORD OF THE MOVING PARTY,
CITY OF HAMILTON

(1) the issue of the City's ability to monitor, inspect and enforce substandard performance of on-site sewage systems is of sufficient importance to warrant attention of Divisional Court and

CITY OF HAMILTON
Legal Services Division
Mailing Address:
71 Main Street West
Hamilton ON L8P 4Y5

Office Address (Courier/Personal Service):
50 Main Street East, 5th Floor
Hamilton ON L8N 1E9

(2) do there some reason to doubt the correctness of the decision of the LPAT in determining ~~the correctness~~ that the performance of tertiary septic systems are enforceable under the Ontario Building Code - See Vaughan (City) v. Rizmi

Stephen Chisholm (LSO #46571V)
Stephen.Chisholm@hamilton.ca

Tel: (905) 546-2424, ext. 3663
Fax: (905) 546-4370

Lawyer for the Moving Party, City of Hamilton

Holdings Ltd. 2003 Carswell

P. 2

Regarding correctness, in my opinion, the City is simply making the ^{same} submission that was dealt with by evidence outlined in the decision of member B. Taylor, May 29, 2019, under LPA129170858 (Decision) and affirmed by Local Planning Appeal Tribunal (LPAT) - April 9, 2020 (Review Decision). ^{B. Taylor} ~~which~~ concluded, after considering evidence of Mr. Egan (expert for the respondents) - see ~~Decision~~ decision at paras 86-88 - and concluded ~~that~~ at para 120 of the Decision.

[120] Thus, the Tribunal clearly prefers the evidence of the Applicants' experts and finds that the proposed on-site sewage system will achieve the appropriate nitrate levels

at the property boundaries, will enable a more compact and efficient development proposal and with the proposed conditions of approval as set out in Exhibit 6B will require mandatory testing at the expense of the owner and will be enforceable.

I am not convinced that there were any errors in law made in either the Decision or the Review Decision. There is no "convincing or compelling" justifications to grant leave to appeal. - see Citizens Coalition of Greater Sud. Erie v Niagara RM [2017] ...

Regarding sufficient importance to warrant
the attention of the Divisional County
as pointed out by B Taylor in
the original decision at paras
109, 110.

[109] The consideration of advanced treatment systems or tertiary treatment systems
is not unique to this appeal.

[110] In fact, they have been considered in a number of cases dating back about 20
years and have been used in subdivisions with conditions of approval. Below are a
number of cases that have been reported.

A number of cases have been referred to by B. Taylor.

Accordingly (There is not sufficient
importance) to grant leave to appeal to the
In the ~~result~~ Divisional Court.

In the result, the City's application
for leave to appeal is dismissed.
Costs are awarded to the respondents.

Costs are awarded to the respondents
to be paid by the City forthwith
~~for~~ on a partial indemnity
basis fixed at \$23,000.



JUSTICE
SKARICA

Feb 23 / 2021

For City of Hamilton: S. Chisholm

For Respondent: S. Snider

The test for leave to be granted is for the City to establish:

- (1) The issue of the City's ability to monitor, inspect and enforce substandard performance of on-site sewage systems is of sufficient importance to warrant attention of Divisional Court, and
- (2) Is there some reason to doubt the correctness of the decision of the LPAT in determining that the performance of tertiary septic systems are enforceable under the Ontario Building Code – see *Vaughan (City) v. Rizmii Holdings Ltd.*

Regarding correctness, in my opinion, the City is simply making the same submission that was dealt with by evidence outlined in the decision of member B. Taylor, May 29, 2019, under LPAT PL9170858 ("Decision") and affirmed by Local Planning Appeal Tribunal (LPAT) – April 9, 2020 ("Review Decision"). B. Taylor concluded, after considering evidence of Ms. Egan (expert for the respondents), see Decision at paras 86-88 – and concluded at para 120 of the Decision:

[120] Thus, the Tribunal clearly prefers the evidence of the Applicant's experts and finds that the proposed on-site sewage system will achieve the appropriate nitrate levels at the property boundaries, will enable a more compact and efficient development proposal and with the proposed conditions of approval as set out in Exhibit 6B will require mandatory testing at the expense of the owner and will be enforceable.

I am not convinced that there were any errors in law made in either the Decision or the Review Decision. There is no "clear and convincing or compelling" justification to grant leave for appeal – see *Citizens Coalition of Greater Fort Erie v. Niagara RM [2013]*

Regarding sufficient importance to warrant the attention of the Divisional Court, as pointed out by B. Taylor in the original decision at paras 109, 110:

[109] The consideration of advanced treatment systems or tertiary treatment systems is not unique to this appeal.

[110] In fact, they have been considered in a number of cases dating back about 20 years and have been used in subdivisions with conditions of approval. Below are a number of cases that have been reported.

A number of cases are then referred to by B. Taylor.

Accordingly, there is not sufficient importance to grant leave to appeal to the Divisional Court.

In the result, the City's application for leave to appeal is dismissed. Costs are awarded to the respondents to be paid by the City forthwith on a partial indemnity basis fixed at \$23,000.

"Skarica J."

From: Ed VanBeek
Sent: April 18, 2021 3:05 PM
To: clerk@hamilton.ca
Subject: 18 Miles Road,Dave Daniels

Hello my name is Edward VanBeek on Miles Road! Directly across from said property of Dave Daniels 18 Miles Road. I would like to bring up the fact that I purchased my home almost twenty years ago. The said property at 18 Miles Road was told to us that it would not be developed and was a big part of our decision making back when I purchased! We've spent a lot of time here cultivating our home. The Miles roads traffic situation is all ready in dire straits and by adding four more driveways along this stretch so close to the lights at Rymal would be a recipe for disaster!! My wife and I can barely make it out of our driveway now at the best of times...! There are other issues to look at as well! On this property 18 Miles Road stands a Heritage building! It is one of a long past farmers buildings along Miles Road owned by "Mr Miles" the name the road was coined after him! This building was one of many stone an wood buildings that were owned an used by Mr Miles during his time farming in this area years ago! This building still stands straight an square and the property houses much flora an fauna that adds to the beauty of this neighborhood. It would be a travesty to divide this property into four skinny lots simply for a monetary gain. Four more single dwellings this close to the light will cause traffic chaos for everyone!! It will destroy a century old Heritage site and cause property values to fall! I would ask that you leave the property as it is! Please keep me informed as the neighborhood and I are very concerned about this situation. Regards Edward L. VanBeek

From: JC JC

Sent: April 10, 2021 12:41 PM

To: Van Rooi, James <James.VanRooi@hamilton.ca>

Subject: 1288 Baseline Rd. Development

I recently received the notice of public meeting for 1288 baseline Rd., and on the second page was a heading for Public Input. Let me put it this way , this is a slap in the face to me and my neighbours. It states that the planning committee will consider the application for the subdivision. What the hell are you going to consider when the roads and the sewers are already in place , this development has already been rubber stamped. It's a insult to our intelligence to let us believe that we have a say in the pre- ordained process. My neighbours and I would also like to know why so many developments are being pushed through under the guise of the Pandemic. (There are currently 6 developments being considered between Winona Rd. and Fifty Rd). I guess it's so you don't have to hear the criticism face to face . It's much easier to approve unwanted developments to a faceless public. Since this (application) is a done deal I want to know how this is going to affect flooding in the area, there's not a stitch of grass to absorb rainwater or snowmelt runoff. This question was never answered by the IBI pitchman Mr. Ariens at the initial meeting. Also looking at the site plan I am opposed to the townhouses fronting baseline Rd. that will have people backing out of their driveways right onto baseline Rd. which if you don't know, has become an extremely busy street, and that is without the future traffic that's going to be created by the Liuna Development. These units facing baseline are extremely close to the corner of Winona rd., and people who currently take this corner do so at a high rate of speed, which in my opinion it will be a matter time before there will be a serious accident. THESE BACK TO BACK TOWNHOMES SHOULD BE TRANSFORMED INTO REGULAR TOWNHOUSES WITH THE DRIVEWAYS FACING INTO THE SURVEY AND NOT ONTO BASELINE RD. IT'S FAR TOO DANGEROUS A ROAD AND WILL ONLY GET WORSE WITH THE INCREASE IN TRAFFIC FROM THE AFORE MENTIONED DEVELOPMENTS (LIUNA). But you wouldn't know that because It's much easier to look at a site map and rubber stamp it than to go out and actually see where and what your approving!! PUBLIC INPUT IS WHAT DEMOCRACY IS ALL ABOUT , BUT THIS PROCESS ISN'T THAT!!!!

Aldo Castelli

Winona

From: 푸른하늘

Sent: April 18, 2021 7:45 PM

To: clerk@hamilton.ca

Subject: Complaint for damage to housing and city hall assets related to construction

Complaint for damage to housing and city hall assets related to construction

(File 25T-201904, 25 CDM-201904)

-Public meeting (April 20,2021 Am 09:30)

April,19, 2021

A. Owners and builders

-Trillium Housing Highbury Non-Profit Corporation (Applicant : IBI Group)

-1288 Baseline Road, Stoney Creek,ON

B. Summary of Report Contents

1. Damage to private homes due to New residential complex construction.

Cracks in houses due to long-term construction buildings and weakening of the ground

(Underground construction of 5 large pipes, my house front garden and side land).

2. Damage to city-owned assets

1)Power pole collapse and new replacement due to long-term construction building and ground softening

(This is not a natural disaster, but is caused by the company's power line underground burial work)

2)Collapse of street trees and deaths(Same as above).

C. Reasons for reporting and Current Status : An unethical company that ignores requests for restoration to our home damage

D.Requirements : No more permitting to go to the construction site, until damage compensation is promised

Report and Victim

-Heung seog Kang

harrisonarchitecture inc

6 Ancaster St East , Dundas , Ontario Canada L9H 4K3

14 April 2021

Re: Laneway Housing+SDUs

Dear City Councillors;

Thank you for considering the proposed changes and next steps for the zoning by-law regarding Secondary Dwelling Units for Residential Zones. By now you will have heard many passionate arguments for, among other things relaxing some of the restrictions, expanding the geography and in general continuing with the Laneway Housing movement as the city continues to find ways to grow and densify. I won't reiterate these here except to add my voice of support for the promotion of SDUs.

As someone who frequently deals with zoning in my work as an architect, I appreciate the effort it takes to understand the zoning by law and debate its inner workings. Cities are infinitely complex organisms, and it may seem appropriate zoning by laws have traditionally come across as equally complicated and daunting works to understand. But they needn't be.

Cities may be complex, but they are also organic in the way they grow and evolve, reflecting the collective will and desires of their inhabitants. Zoning rules and regulations are of course necessary to guide and direct that growth in desirable ways-no glue factories beside nursing homes, thanks-, but zoning by laws should never be mistaken for urban design. They may be the necessary 'rules of the game', but they are not 'the game'. Zoning by laws need to be both proactive-anticipating and preparing for change-but also reactive, since organic growth in all its messy and imperfect intricacies can never be perfectly for seen. SDU rules are a good example of 'reactive' zoning.

Laneway housing is a perfect example of a movement, of a desire by the citizens to intensify neighbourhoods without macro, 'whole block at a time' redevelopment or wholesale change of character. Laneway dwellings were not likely even contemplated when the zoning by laws were written in the last half of the 20thC, and were hardly on the radar even in the first decade of the 21st. But they re here now as, when done carefully and thoughtfully a sensible way to bring vitality and viability back to older neighbourhoods; neighbourhoods whose once large families have moved on, and whose new occupants and (typically) smaller families are looking for affordable homes.

There is a tendency for urban planners, when faced with changes they may not have seen coming, to quell the movement with a lot of restrictions and regulations, perhaps to buy time in order to set out a more comprehensive and all encompassing approach, or 'vision'. They might even go so far as to call it Urban Design. In effect, slowing down what wants-and needs- to happen sooner than will otherwise be much, much later. But if Hamilton is to seize the spirit and energy in the enthusiasm for secondary dwellings in established neighbourhoods, a better approach is to step back-a bit- from the urge to control, and see what creativity comes from this organic movement. Yes, ensure everyone stays safe, plays fair and the dwellings recognize the balance of rights between newcomers and those already there. Community, privacy and amenity in the right measures, please. But the real potential will never be prescribed by simply enacting onerous rules, without encouraging vision.

Sincerely,



OAA

LEED©AP

From: Diana Meskauskas

Sent: April 18, 2021 12:24 PM

To: Office of the Mayor <mayor@hamilton.ca>; clerk@hamilton.ca; Ward 1 Office <ward1@hamilton.ca>; Farr, Jason <Jason.Farr@hamilton.ca>; Nann, Nrinder <Nrinder.Nann@hamilton.ca>; Merulla, Sam <Sam.Merulla@hamilton.ca>; Collins, Chad <Chad.Collins@hamilton.ca>; Jackson, Tom <Tom.Jackson@hamilton.ca>; Pauls, Esther <Esther.Pauls@hamilton.ca>; Ward 8 Office <ward8@hamilton.ca>; Clark, Brad <Brad.Clark@hamilton.ca>; Pearson, Maria <Maria.Pearson@hamilton.ca>; Johnson, Brenda <Brenda.Johnson@hamilton.ca>; Ferguson, Lloyd <Lloyd.Ferguson@hamilton.ca>; VanderBeek, Arlene <Arlene.VanderBeek@hamilton.ca>; Whitehead, Terry <Terry.Whitehead@hamilton.ca>; Partridge, Judi <Judi.Partridge@hamilton.ca>

Subject: Second dwelling units

As a concerned citizen and ward 7 constituent, I am strongly encouraging council to heavily incentivize SDUs (second dwelling units) and set active targets to really promote them, increase the max size to 100m², and allow tandem parking.

In addition, laneway houses are separate stand-alone structures, and it would be beneficial for them to be categorized as what they are: "Single Family Homes". (Single family homes). They should not be considered apartments. SFH designation would get us closer to the Ford Government's increased SFH requirements.

Thank you,

Diana Meskauskas

April 19, 2021
Delivered via email

City of Hamilton
Planning Committee Members
Council Chambers, 71 Main Street West, Hamilton, ON L8P 4Y5

West End Home Builder's Association | Submission on Secondary Dwelling Units in the Urban and Rural Areas - Zoning By-law and associated implementation amendments to the Parkland Dedication By-law and Tariff of Fees By-law

The West End Home Builders' Association (WE HBA) is the voice of the land development, new housing and professional renovation industries in Hamilton and Halton Region. The WE HBA represents nearly 300 member companies made up of all disciplines involved in land development and residential construction, including: builders, developers, professional renovators, trade contractors, consultants, and suppliers. The residential construction industry employed over 27,300 people, paying \$1.7 billion in wages, and contributed over \$3.0 billion in investment value within the Hamilton Census Metropolitan Area in 2019.

The WE HBA is very pleased to see the City progressing on the implementation of Secondary Dwelling Unit (SDU) Policies on a City-wide basis. In recent weeks, the City has heard strong community support for gentle density through the adoption of these policies, and WE HBA would like to reiterate our strong support.

There are several benefits to permitting Secondary Units throughout the City of Hamilton. The first is that permitting SDU's will assist the City of Hamilton in achieving the provincial growth targets. Secondly, encouraging SDU's in existing neighbourhoods is one way to address the trend of declining neighbourhood populations and represents part of a solution to Hamilton's housing affordability issues. As members of Hamilton's Housing & Homelessness Planning Group WE HBA is pleased to see the City of Hamilton moving towards allowing gentle small scale intensification opportunities that can contribute to housing affordability and add much needed missing middle housing to our communities. Secondary Dwelling Units represent small-scale opportunities for individual property owners to address housing affordability for both themselves and their tenants. Further to this, adopting broad SDU policies will also add to the safety and quality of the residential housing stock in Hamilton through the legalization of units.

The City of Hamilton already has Secondary Dwelling Units throughout the City, that were sometimes constructed and implemented as hidden or illegal apartments. Adopting a more permissive approach to these units as the City is proposing will enable more homeowners to legally add them. This enhances the quality and safety of units, especially as it relates to fire safety and meeting the Ontario Building Code. WE HBA's membership includes many small-scale builders and renovators who will be key partners to the City of Hamilton in implementing Secondary Dwelling Unit Policies. Our members strongly support the



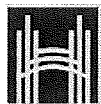
reduction of fees for homeowners to implement Secondary Dwelling Units, including the reduced parkland dedication rate and reduced costs for minor variance applications. These reduced costs will promote greater adoption and implementation of small-scale gentle intensification opportunities for Hamilton to provide a broader range of housing choices and options in communities throughout the city.

Sincerely,



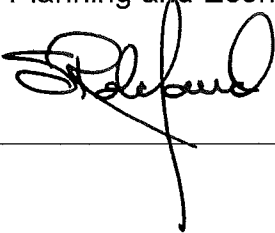
Michelle Diplock, MPI
Manager of Planning & Government Relations
West End Home Builders' Association





Hamilton

CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 20, 2021
SUBJECT/REPORT NO:	Request for Direction to proceed with Appeal of Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2)
WARD AFFECTED:	Ward 2
PREPARED BY:	Jennifer Allen (905) 546-2424 Ext. 4672
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Council gives approval to the following actions, as detailed in Report PED21084, respecting Committee of Adjustment Minor Variance application HM/A-20:271 by Their & Curran Architects Inc, (c/o Bill Curran) on behalf of 121 King (Hamilton) GP Inc. (Owner), for the lands located at 121 and 125 King Street East (Hamilton), as shown on Appendix "A" to Report PED21084, granted by the Committee of Adjustment but recommended for denial by the Planning and Economic Development Department:

- (a) That Council of the City of Hamilton proceed with the appeal to the Local Planning Appeal Tribunal (LPAT) against the decision of the Committee of Adjustment to approve Application HM/A-20:271;
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Local Planning Appeal Tribunal hearing in opposition to the decision of the Committee of Adjustment to approve application HM/A-20:271.

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OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 2 of 9

EXECUTIVE SUMMARY

The applicant submitted Minor Variance Application HM/A-20:271 to permit the establishment of a multiple dwelling containing six dwelling units on the ground floor of the existing building.

Minor Variance Application HM/A-20:271 was considered by the Committee of Adjustment on January 21, 2021. Planning staff recommended the variance to permit a multiple dwelling on the ground floor of the existing building be denied, as the proposal did not meet the four tests of a Minor Variance under Section 45(1) of the *Planning Act* (see Appendix “B” to Report PED21084). The Committee of Adjustment granted the application (see Appendices “C” and “E” to Report PED21084).

Under the *Planning Act*, appeals must be filed within 20 days of the decision. As such, Planning staff submitted an appeal letter, and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process on February 5, 2021, subject to Council’s approval/ratification. Staff recommend proceeding with the appeal. A hearing date has been not yet been set.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Planning has submitted the required fee of \$400.00 to the Minister of Finance to begin the appeal process. Other than this one-time fee, the costs for the Hearing are covered by the respective Departmental Work Programs/Budgets.

Staffing: One representative from Legal Services and one representative from the Planning Division would be required for preparation and attendance at the LPAT hearing.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND

In December, 2002, City Council endorsed a report related to the Roles and Responsibilities of the Committee of Adjustment. The recommendations included the following:

“That where the *Planning Act* appeal periods can be met, the Planning and Development Department be directed to report to the Committee of the Whole

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SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 3 of 9

whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law. In response to such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

The subject property is located at 121 and 125 King Street East in Hamilton, at the north west corner of King Street East and Catharine Street North (see Appendix “A” to PED21084).

Site Plan Control Application

In 2017, Site Plan Amendment application SPA-17-086 was submitted to permit the construction of a two and three storey addition to the existing building to establish a six storey building containing 40 residential dwelling units and three ground floor commercial units on the subject property.

Site Plan Amendment application SPA-17-086 received final approval on March 21, 2019. The building is currently under construction to implement the approved site plan.

Minor Variance Application

In December, 2020, the applicant submitted a Minor Variance application to permit the establishment of a multiple dwelling containing six dwelling units on the ground floor of the existing building. The concept plan submitted in support of Minor Variance application HM/A-20:271 identified the proposed dwelling units located along the Catharine Street North frontage and included commercial units with frontage on King Street East. No elevation drawings were submitted with HM/A-20:271 to demonstrate how the proposal would impact the approved east elevation in accordance with SPA-17-086.

Staff comments recommended the variance be denied as the proposal did not meet the four tests of a Minor Variance under Section 45(1) of the *Planning Act* (see Appendix “B” to Report PED21084). While the concept plan identified commercial units on the ground floor, approval of the variance does not require that the commercial units remain as proposed. As a result, approval of the variance has the effect of allowing residential uses on the ground floor, which strictly prohibited by the Pedestrian Focus Streets policies in the Urban Hamilton Official Plan (UHOP), the Downtown Secondary Plan and the Downtown Mixed Use – Pedestrian Focus (D2) Zone.

During the hearing on January 21, 2021, staff recommended that the Committee of Adjustment include a condition on the decision, if approved, to ensure the King Street East frontage remains as commercial (see “Appendix E” to Report PED21084). The

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SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 4 of 9

Committee of Adjustment granted Minor Variance application HM/A-20:271 on January 21, 2021 with no conditions.

Staff are of the opinion the Committee of Adjustment's decision should be appealed because:

- an Official Plan Amendment application and Zoning By-law Amendment application is the appropriate mechanism to review the impacts of adding a use; and,
- a condition was not added to ensure the continuation of the commercial uses along King Street East.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENT

Planning Act

The application has been reviewed with respect to the criteria of the *Planning Act*.

Powers of Committee

“44(1) If a municipality has passed a by-law under section 34 or a predecessor of such section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, as the council considers advisable. R.S.O. 1990, c. P.13, s. 44 (1).

45(1) The Committee of Adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other *Act*, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

45(3) A council that has constituted committee of adjustment may by by-law empower the committee of adjustment to grant minor variances from the provisions of any by-law of the municipality that implements an official plan, or from such by-laws of the municipality as are specified and that implement an official plan, and when a committee of adjustment is so empowered subsection (1) applies with necessary modifications. R.S.O. 1990, c. P.13, s. 45 (3).”

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OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application HM/A-20:271, for lands located at 121 and 125 King Street East, Hamilton (PED21084) (Ward 2) – Page 5 of 9

Staff are of the opinion the effect of the variance is to permit a multiple dwelling on the ground floor of the existing building which does not maintain the general intent of the Urban Hamilton Official Plan, the Downtown Hamilton Secondary Plan or Zoning By-law No. 05-200; is not desirable and appropriate for the use of the land; and is not considered minor in nature. Therefore, the Minor Variance application does not meet the four tests of a Minor Variance under the *Planning Act*, and the variance should be denied.

Provincial Policy Framework:

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (2020) (PPS). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the PPS.

The mechanism for the implementation of the Provincial plans and policies is through the Official Plan. Through the preparation, adoption and subsequent Local Planning Appeal Tribunal approval of the City of Hamilton Official Plans, the City of Hamilton has established the local policy framework for the implementation of the Provincial planning policy framework. As such, matters of provincial interest (e.g. efficiency of land use and balanced growth) are reviewed and discussed in the Official Plan analysis below.

Urban Hamilton Official Plan (UHOP)

The property is identified as “Downtown Urban Growth Centre” in Schedule “E” – Urban Structure and is designated “Downtown Mixed Use Area – Pedestrian Focus Streets” in Schedule “E-1” – Urban Land Use Designations. The following policies, amongst others, apply to the proposal.

“E.4.3.4 In addition to the policies of the specific Commercial and Mixed Use designations, the following policies shall apply to pedestrian focus streets:

- d) Notwithstanding Policy E.4.6.9 Mixed Use – Medium Density Designation, commercial uses shall only be permitted on the ground floor, and a place of worship and day nursery shall only be permitted above the ground floor of a building facing a Pedestrian Focus Street. (OPA 69)

E.4.4.5 Notwithstanding Policy E.4.4.4, the full range of uses shall not be permitted throughout the lands designated Downtown Mixed Use. The Downtown Secondary Plan and zoning by-law establish more detailed land

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use designations and permitted uses which apply to specific areas of the Downtown.”

Volume 2 - Downtown Hamilton Secondary Plan

The subject lands are designated “Downtown Mixed Use – Pedestrian Focus” within the Downtown Hamilton Secondary Plan in Volume 2 of the UHOP. The following policies, amongst others, apply to the proposal.

“B.6.1.6.2 A portion of the lands designated Downtown Mixed Use are also identified as Pedestrian Focus Streets on Map B.6.1.1 – Downtown Hamilton Secondary Plan - Land Use Plan. In addition to Section E.4.3 – Pedestrian Focus Streets of Volume 1, the following policies shall apply to areas identified as Pedestrian Focus Streets:

- a) the vision for Pedestrian Focus Streets is to complete the streetwall and provide an uninterrupted building line at the street level through compatible development and infill development along the corridor;
- e) the articulation of façades shall retain a similar rhythm and scale to the street front shops in its surroundings;
- f) the articulation of the façade of new buildings shall reflect or complement the traditional patterns of fenestration in adjacent buildings;
- g) limited articulation of the front façades may be permitted in order to create sheltered areas at ground level or to allow for the incorporation of architectural design elements and access to significant views, provided that the sense of enclosure is maintained and that the articulation does not detract from the retention of the traditional building line;
- h) the ground floor frontage shall be clearly articulated in the massing of the façade, substantially glazed, with generous floor-to-floor heights and designed to accommodate signage.”

The intent of the UHOP is to increase the proportion of multiple storey, mixed use buildings that have retail and service commercial stores at grade and to create a pedestrian oriented environment in Downtown Hamilton. Volume 1, Policy E.4.4.5 states that the Downtown Hamilton Secondary Plan and the Zoning By-law establish more detailed land use designations and permitted uses which apply to specific areas of the

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Downtown. Additionally, the Downtown Mixed Use policies found within the Downtown Hamilton Secondary Plan refer back to the policies of Volume 1 and specifically Policy E.4.3 as it relates to permitted uses, in particular Policy E.4.3.4 d) which provides direction that commercial uses should only be located on the ground floor. Per Policy E.4.4.5 the implementing zoning establishes more detailed regulations to implement the intent of the Pedestrian Focus designation which only permits commercial on the ground floor except for access, accessory office and utility areas related to a multiple dwelling.

The proposal to allow a multiple dwelling on the ground floor of the existing building does not meet the general intent and purpose of the UHOP as the use is not permitted by the existing policy framework.

City of Hamilton Zoning By-law No. 05-200

The subject lands are zoned Downtown Mixed Use – Pedestrian Focus (D2, H21) Zone. The applicant requested a variance to allow a multiple dwelling to be permitted on the ground floor whereas multiple dwellings are not permitted within the ground floor, except for accesses, accessory office and utility areas.

The variance does not meet the general intent and purpose of the Zoning By-law as the effect of the decision is to allow residential uses on the ground floor whereas only commercial uses shall be permitted on the ground floor except for access, accessory office and utility areas within the D2 Zone. The appropriate mechanism to review the proposal is a Zoning By-law Amendment.

RELEVANT CONSULTATION

- Legal Services Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

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 where the *Planning Act* appeal periods can be met, the Planning and Development Department be directed to report to the Committee of the Whole whenever, in the opinion of staff, a Committee of Adjustment decision has the effect of adding to the uses permitted under the Zoning By-law. In response to

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such a report, the City may determine its position on the Committee of Adjustment decision and instruct staff accordingly.”

The proposed variance to permit a multiple dwelling on the ground floor of the existing building does not meet the four tests of a Minor Variance as stipulated by the *Planning Act* on the basis that the use is not a permitted use in the UHOP and Zoning By-law No. 05-200. Therefore, it is appropriate for the City to appeal the Minor Variance to the Local Planning Appeal Tribunal.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council may proceed with the appeal and direct Legal Services and Planning staff to attend the Local Planning Appeal Tribunal Hearing, in opposition of the Committee of Adjustment decision, as recommended in this Report. Where an appeal has been filed, staff are available to meet on a without prejudice basis with the applicant in the event the applicant proposes potential settlement options.

Option 2

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the Local Planning Appeal Tribunal. Provided that no further appeals are filed; this option would allow the Committee of Adjustment’s decision to permit multiple dwelling on the ground floor of the subject property.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

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Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Location Map

Appendix "B" – Staff Comments for HM/A-20:271

Appendix "C" – HM/A-20:271 Committee of Adjustment Decision

Appendix "D" – HM/A-20:271 Committee of Adjustment Application

Appendix "E" – Minutes of Public Meeting

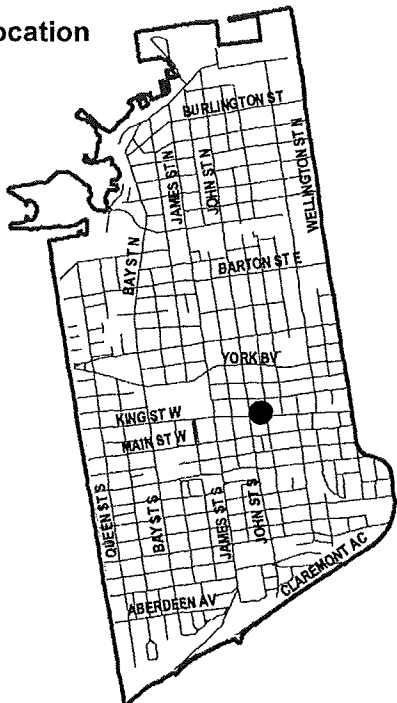
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● Site Location



Key Map - Ward 2



Location Map



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
121 & 125 King St E


Date:
February 23, 2021

Appendix "A"

Scale:
N.T.S

Planner/Technician:
JA/NB

Subject Property

 121 and 125 King Street East, Hamilton
(Ward 2)



Hamilton

Planning and Economic
Development Department

Memorandum

To: Jamila Sheffield, Secretary-Treasurer, Committee of Adjustment

From: Jennifer Allen, Planning Technician I

Phone: 905-546-2424 Ext. 4672

Date: January 15, 2021

Subject: Committee of Adjustment Meeting – January 21, 2021

The following comments are submitted with respect to the matters before the Committee of Adjustment at its meeting to be held on January 21, 2021.

HM/A-20:271

121 & 125 King St E., Hamilton

The purpose of this application is to permit the establishment of a multiple dwelling containing six dwelling units on the ground floor of the existing building, notwithstanding the following variances.

Site Plan Amendment application SPA-17-086 received final approval on March 21, 2019 to establish a six storey building containing 40 residential dwelling units and three ground floor commercial units which is currently under construction. No elevation drawings have been submitted to demonstrate how the proposed conversion will impact the approved East Elevation. An amendment to SPA-17-086 will be required to implement the proposal.

Urban Hamilton Official Plan

The property is identified as "Downtown Urban Growth Centre" in Schedule E– Urban Structure and is designated "Downtown Mixed Use Area – Pedestrian Focus Streets" in Schedule E-1 – Urban Land Use Designations. Policies E.4.3.1, E.4.3.2, E.4.3.4, E.4.4.2, E.4.4.4 a) and e), and E.4.4.5, amongst others, are applicable and permit multiple dwellings.

Downtown Hamilton Secondary Plan

The subject lands are designated "Downtown Mixed Use – Pedestrian Focus" within the Downtown Hamilton Secondary Plan. Policy B.6.1.6.1 amongst others, is applicable and permits multiple dwellings.

City of Hamilton Zoning By-law No. 05-200

The subject lands are zoned Downtown Mixed Use – Pedestrian Focus (D2, H21) Zone, which permits a multiple dwelling above the ground floor.

Variance 1

The applicant is requesting a variance to allow a multiple dwelling to be permitted within the ground floor, notwithstanding that a multiple dwelling is not permitted within the ground floor, except for access, accessory office and utility areas. The intent of the Zoning By-law is to create an environment that is oriented and accessible to pedestrians, particularly along pedestrian oriented streets.

The applicant is proposing to convert the three commercial units with frontage onto Catharine Street North into residential six dwelling units on the ground floor. A Zoning By-law Amendment application is the appropriate mechanism to review the proposed conversion given the use is not permitted on ground floor of the subject lands.

No elevation drawings have been submitted to demonstrate how the proposed conversion will impact the approved East Elevation in accordance with SPA-17-086.

Based on the foregoing, while the general intent of the Urban Hamilton Official Plan is being maintained, the general intent of the Zoning By-law is not being maintained. The variance is desirable for the development nor minor in nature; therefore, staff do not support the variance.

Recommendation:

Based on the preceding information, the requested variance does not maintain the general intent and purpose of the Urban Hamilton Official Plan, the Downtown Hamilton Secondary Plan or City of Hamilton Zoning By-law No. 05-200. The requested variance is considered to be minor in nature and desirable for the appropriate use of the property. In conclusion, Staff recommends the application be denied.

CONDITIONS: (If Approved)

NOTE:



Committee of Adjustment
Hamilton City Hall
71 Main Street West, 5th floor
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424
ext. 4221, 3935
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. HM/A-20:271
SUBMISSION NO. A-271/20

APPLICATION NO.: HM/A-20:271

APPLICANTS: Owner: 121 King (Hamilton) GP Inc.
Agent: Their & Curran Architects Inc.

SUBJECT PROPERTY: Municipal address **121 & 125 King St. E., Hamilton**

ZONING BY-LAW: Hamilton Zoning By-law 05-200, as Amended

ZONING: D2 and H21 district (Downtown Mixed use - Pedestrian Focus)

PROPOSAL: To permit the establishment of a multiple dwelling containing six (6) dwelling units on the ground floor of the existing building notwithstanding that;

1. A multiple dwelling is not permitted within the ground floor, except for access, accessory office and utility areas.

Notes: No parking spaces are required for any use, except a medical clinic, located in an existing building within the Downtown Mixed Use zone, provided that the existing number of parking spaces which existed on the effective date of the By-law shall continue to be maintained.

The applicant has described the proposed use as live/work units where each unit will consist of both the residence and the business as the principle use. Please note that live/work units are not permitted in this zone. However, a home business may be conducted in a dwelling unit which is secondary to the use of a dwelling unit as a private residence.

A home business is subject to compliance with the requirements Section 4.21 c) and d) "Home Business" of the Hamilton Zoning By-law 05-200, (i.e. type of home business, maximum gross floor areas, outdoor storage, etc.). However, insufficient information was provided from which to confirm compliance; as such, further variances may be required.

This property is included in the City of Hamilton's Register of Property of Cultural Heritage Value or Interest as a non-designated property.

The lands are subject to "H21" holding provision.

That the variances, as set out above, are **GRANTED** for the following reasons:

1. The Committee, having regard to the evidence, is of the opinion that the relief granted is of a minor nature.
2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.

HM/A-20:271
PAGE 2

3. The Committee, having regard to the evidence, is satisfied that there will be no adverse impact on any of the neighbouring lands.
4. The submissions made regarding this matter did not affect the decision.

DATED AT HAMILTON this 21st day of January, 2021.

M. Dudzic (Chairman)

D. Smith

L. Gaddy

N. Mieczko

B. Charters

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE LOCAL PLANNING APPEAL TRIBUNAL (LPAT) MAY BE FILED IS **February 10th, 2021.**

NOTE: This decision is not final and binding unless otherwise noted.

COMMITTEE OF ADJUSTMENTCity Hall, 5th floor, 71 Main Street West, Hamilton, ON L8P 4Y5

Telephone (905) 546-2424, ext. 4221, 3935 Fax (905) 546-4202

E-mail: cofa@hamilton.ca

Hamilton

NOTICE OF PUBLIC HEARING Minor Variance

You are receiving this notice because you are either:

- Assessed owner of a property located within 60 metres of the subject property
 - Applicant/agent on file, or
 - Person likely to be interested in this application
-

APPLICATION NO.: HM/A-20:271

APPLICANTS: Owner: 121 King (Hamilton) GP Inc.
Agent: Their & Curran Architects Inc.

SUBJECT PROPERTY: Municipal address **121 & 125 King St. E., Hamilton**

ZONING BY-LAW: Hamilton Zoning By-law 05-200, as Amended

ZONING: D2 and H21 district (Downtown Mixed use - Pedestrian Focus)

PROPOSAL: To permit the establishment of a multiple dwelling containing six (6) dwelling units on the ground floor of the existing building notwithstanding that;

1. A multiple dwelling is not permitted within the ground floor, except for access, accessory office and utility areas.

Notes: No parking spaces are required for any use, except a medical clinic, located in an existing building within the Downtown Mixed Use zone, provided that the existing number of parking spaces which existed on the effective date of the By-law shall continue to be maintained.

The applicant has described the proposed use as live/work units where each unit will consist of both the residence and the business as the principle use. Please note that live/work units are not permitted in this zone. However, a home business may be conducted in a dwelling unit which is secondary to the use of a dwelling unit as a private residence.

A home business is subject to compliance with the requirements Section 4.21 c) and d) "Home Business" of the Hamilton Zoning By-law 05-200, (i.e. type of home business, maximum gross floor areas, outdoor storage, etc.). However, insufficient information was provided from which to confirm compliance; as such, further variances may be required.

This property is included in the City of Hamilton's Register of Property of Cultural Heritage Value or Interest as a non-designated property.

The lands are subject to "H21" holding provision.

This application will be heard by the Committee as shown below:

HM/A-20:271
PAGE 2

DATE: Thursday, January 21st, 2021
TIME: 3:35 p.m.
PLACE: Via video link or call in (see attached sheet for details)
To be streamed at www.hamilton.ca/committeeofadjustment for viewing purposes only

PUBLIC INPUT

Written: If you would like to submit written comments to the Committee of Adjustment you may do so via email or hardcopy. Please see attached page for complete instructions, including deadlines for submitting to be seen by the Committee.

Orally: If you would like to speak to this item at the hearing you may do so via video link or by calling in. Please see attached page for complete instructions, including deadlines for registering to participate.

Important note: *If a person or public body that files an appeal of a decision of the Committee of Adjustment in respect of the proposed consent does not make written submission to the Committee of Adjustment before it gives or refuses to give a provisional consent, the Local Planning Appeal Tribunal (LPAT) may dismiss the appeal.*

MORE INFORMATION

For more information on this matter, including access to drawings illustrating this request:

- Visit www.hamilton.ca/committeeofadjustment
- Call 905-546-CITY (2489) or 905-546-2424 extension 4221, 4130, or 3935
- Email Committee of Adjustment staff at cofa@hamilton.ca

DATED: January 5th, 2021.

Jamila Sheffield,
Secretary-Treasurer
Committee of Adjustment

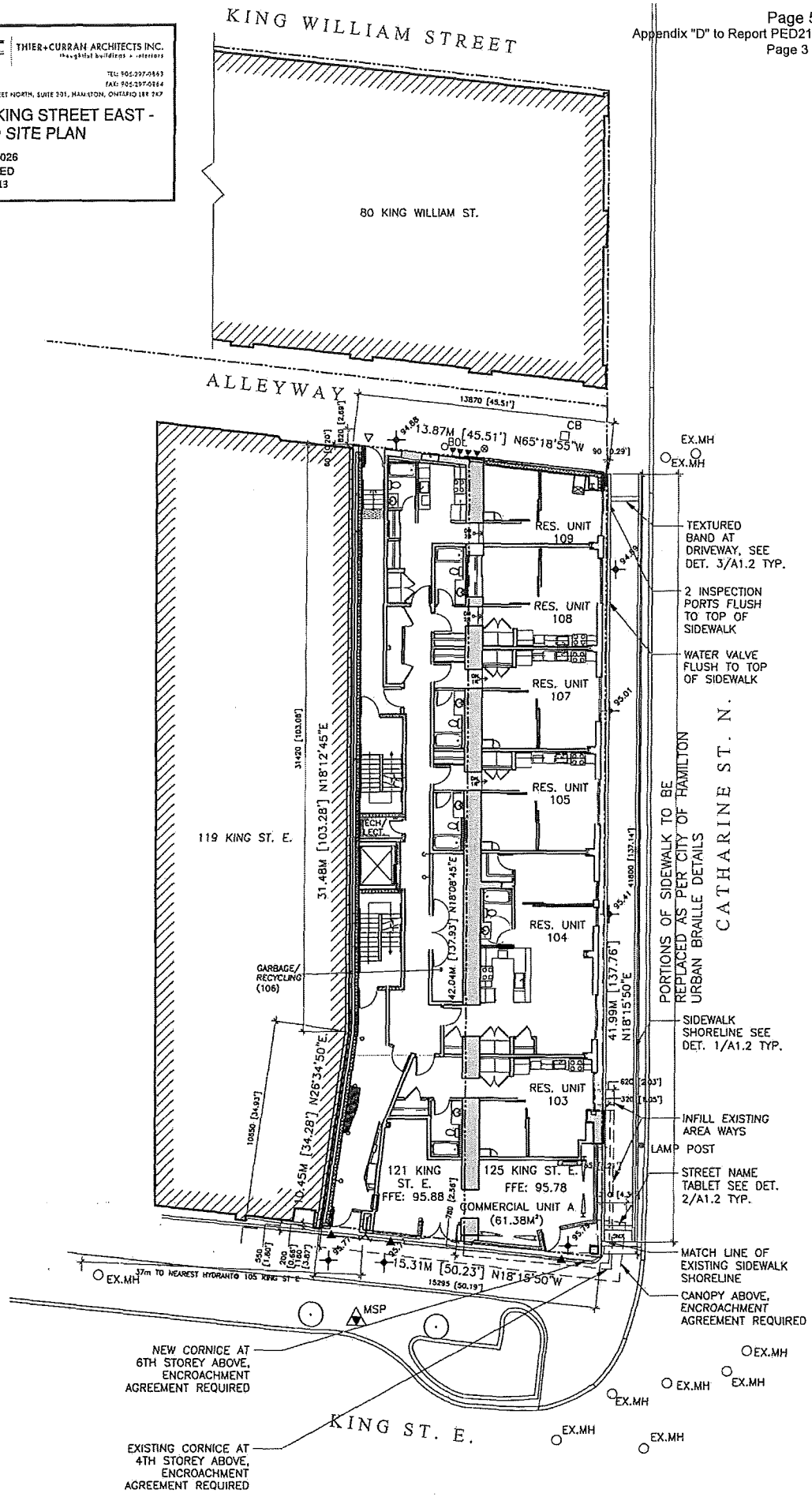
Information respecting this application is being collected under the authority of the Planning Act, R.S.O., 1990, c. P. 13. All comments and opinions submitted to the City of Hamilton on this matter, including the name, address, and contact information of persons submitting comments and/or opinions, will become part of the public record and will be made available to the Applicant and the general public.

TCA **THIER+CURRAM ARCHITECTS INC.**
thoughtful buildings • interiors

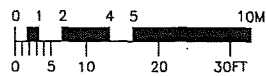
TEL: 905-297-0863
 FAX: 905-297-0164
 116 JAMES STREET NORTH, SUITE 201, HAMILTON, ONTARIO L8R 2K7

**121-125 KING STREET EAST -
 REVISED SITE PLAN**

Project No.: 16026
 Scale: AS NOTED
 Date: 2020-11-13



1 SITE PLAN
 A1.1 1:200





Hamilton

Planning and Economic Development Department
Planning Division

Committee of Adjustment
City Hall
5th floor 71 Main Street West
Hamilton, Ontario L8P 4Y5

Phone (905) 546-2424 ext.4221
Fax (905) 546-4202

PLEASE FILL OUT THE FOLLOWING PAGES AND
RETURN TO THE CITY OF HAMILTON PLANNING
DEPARTMENT.

FOR OFFICE USE ONLY.	
APPLICATION NO. _____	DATE APPLICATION RECEIVED _____
PAID _____	DATE APPLICATION DEEMED COMPLETE _____
SECRETARY'S SIGNATURE _____	

CITY OF HAMILTON
COMMITTEE OF ADJUSTMENT
HAMILTON, ONTARIO

The Planning Act

Application for Minor Variance or for Permission

The undersigned hereby applies to the Committee of Adjustment for the City of Hamilton under Section 45 of the *Planning Act*, R.S.O. 1990, Chapter P.13 for relief, as described in this application, from the Zoning By-law.

- Name of Owner 121 King (Hamilton) GP Inc. Telephone No. [REDACTED]
FAX NO. _____ E-mail address. [REDACTED]
- Address [REDACTED]
Postal Code [REDACTED]
- Name of Agent TCA/Thiel+Curran Architects Inc. Telephone No. [REDACTED]
FAX NO. _____ E-mail address. [REDACTED]
- Address [REDACTED]
Postal Code [REDACTED]

Note: Unless otherwise requested all communications will be sent to the agent, if any.

- Names and addresses of any mortgagees, holders of charges or other encumbrances:
TD Bank, 100 King St W., 1st Fl., Hamilton, ON L8P1A2
Postal Code _____
Postal Code _____

6. Nature and extent of relief applied for:
Permit multiple dwelling use and live/work units at portions of ground floor facing
Catharine St N only
Note that retail will still provided along King St. E including at the Catharine St.
N corner.

7. Why it is not possible to comply with the provisions of the By-law?
The commercial market in downtown Hamilton remains very soft, has been significantly worsened by Covid and
no tenants have been engaged in the last 24 months since marketing began.
The owners remain committed to commercial space along King Street.
Allowing residential or live/work uses along Catharine Street will make them viable and will avoid
more empty storefronts downtown. Should market conditions change, the commercial uses could resume.
There remains a significant demand for housing and these small units will serve an affordable market segment.

8. Legal description of subject lands (registered plan number and lot number or other legal description and where applicable, street and street number):
121 & 125 King street East, 7 & 11 Catharine Street North, Hamilton,
Part of Lot 12, Nathaniel Hughson Survey (Unregistered) City of Hamilton, 2017.

9. PREVIOUS USE OF PROPERTY

Residential Industrial Commercial
 Agricultural Vacant
 Other _____

9.1 If Industrial or Commercial, specify use
Retail

9.2 Has the grading of the subject land been changed by adding earth or other material, i.e. has filling occurred?

Yes No Unknown

9.3 Has a gas station been located on the subject land or adjacent lands at any time?

Yes No Unknown

9.4 Has there been petroleum or other fuel stored on the subject land or adjacent lands?

Yes No Unknown

9.5 Are there or have there ever been underground storage tanks or buried waste on the subject land or adjacent lands?

Yes No Unknown

9.6 Have the lands or adjacent lands ever been used as an agricultural operation where cyanide products may have been used as pesticides and/or sewage sludge was applied to the lands?

Yes No Unknown

9.7 Have the lands or adjacent lands ever been used as a weapon firing range?

Yes No Unknown

9.8 Is the nearest boundary line of the application within 500 metres (1,640 feet) of the fill area of an operational/non-operational landfill or dump?

Yes No Unknown

9.9 If there are existing or previously existing buildings, are there any building materials remaining on site which are potentially hazardous to public health (eg. asbestos, PCB's)?

Yes ___ No no Unknown ✓

9.10 Is there any reason to believe the subject land may have been contaminated by former uses on the site or adjacent sites?

Yes ___ No no Unknown ✓

9.11 What information did you use to determine the answers to 9.1 to 9.10 above?

ESA Ph I & ESA Ph II

9.12 If previous use of property is industrial or commercial or if YES to any of 9.2 to 9.10, a previous use inventory showing all former uses of the subject land, or if appropriate, the land adjacent to the subject land, is needed.

Is the previous use inventory attached? Yes ___ No ✓

ACKNOWLEDGEMENT CLAUSE

I acknowledge that the City of Hamilton is not responsible for the identification and remediation of contamination on the property which is the subject of this Application – by reason of its approval to this Application.

Nov 16 2020

Date

Signature Property Owner

Tyler Ross

Print Name of Owner

10. Dimensions of lands affected:

Frontage 15.29 m
Depth 41.99 m
Area 582.86 m²
Width of street ±14.8 m

11. Particulars of all buildings and structures on or proposed for the subject lands; (Specify ground floor area, gross floor area, number of stories, width, length, height, etc.)

Existing: 570 m² ground floor area
2855 m² gross floor area
5 storeys
15.3 m W x 42 m L (irregular) x 19.15m H
Proposed: 570 m² ground floor area
4043 m² gross floor area
6 storeys
15.3m W x 42 m L (irregular) x 22.8m H

12. Location of all buildings and structures on or proposed for the subject lands; (Specify distance from side, rear and front lot lines)

Existing: Front: 121 King: -0.2m (façade encroachment), 125 King: 0.08m
Side: 0m (west, centreline of party-wall), -0.05m (east, Catharine st cladding encroachment)

Rear: 121 King: -0.82m (stair encroachment), 125 King: 0.03m
 Proposed: Front: 121 King: -0.2m (façade encroachment), 125 King: 0.08m
 Side: 0m (west, centreline of party-wall), -0.05m (east, Catharine st
 cladding encroachment)
 Rear: 121 King: -0.82m (stair encroachment), 125 King: 0.03m

13. Date of acquisition of subject lands:
 2018
14. Date of construction of all buildings and structures on subject lands:
 1850 (estimated)
15. Existing uses of the subject property:
 Commercial Retail at ground floor and second floor of 121 King St E,
 Residential above
16. Existing uses of abutting properties: East/West: Commercial Retail with residential / office above, North: Residential Condominium incl. ground floor (Film Lofts), South: Residential Condominium (The Royal Connaught)
17. Length of time the existing uses of the subject property have continued:
 50+ years
18. Municipal services available: (check the appropriate space or spaces)
 Water Connected
 Sanitary Sewer Connected
 Storm Sewers
19. Present Official Plan/Secondary Plan provisions applying to the land:
 "D2" Downtown Prime Retail Streets Zone; "Heritage Character Zone"
20. Present Restricted Area By-law (Zoning By-law) provisions applying to the land:
 17-082
21. Has the owner previously applied for relief in respect of the subject property?
 Yes No
 If the answer is yes, describe briefly.
 1. Allow for the proposed increased building height of 23.8m (78.05ft)
 2. Allow for no additional parking spaces to be required for the addition.
 3. Allow for three (3) materials on the elevations.
22. Is the subject property the subject of a current application for consent under Section 53 of the *Planning Act*?
 Yes No
23. The applicant shall attach to each copy of this application a plan showing the dimensions of the subject lands and of all abutting lands and showing the location, size and type of all buildings and structures on the subject and abutting lands, and where required by the Committee of Adjustment such plan shall be signed by an Ontario Land Surveyor.

NOTE: It is required that two copies of this application be filed with the secretary-treasurer of the Committee of Adjustment together with the maps

January 21, 2021
HM/A-20:271

121 King (Hamilton) GP Inc., Owner
121 & 125 King St. E., Hamilton

Appearances were: TCA Architects W. Curran on behalf of the owner; T. Ross, owner

Interested parties were: None.

Those members present for the hearing of the application were M. Dudzic (Chairman), D. Smith, B. Charters, M. Smith, T. Lofchik, N. Mleczko, M. Switzer, L. Gaddy, D. Serwatak.

A summary comment from the Planning and Economic Development Division together with comments from other departments and agencies were entered into the record.

Letters were entered into the record from: Councillor J. Farr (e-mail of support)

W. Curran

Redeveloping a pair of building into condos

6 storey building

Cannot secure any commercial tenants and highly unlikely for commercial

Would like to make the ground floor units into residential

Explained everything they will be doing to the condos

Should the market shift could become back to commercial

Ask that the commercial zoning to remain, some commercial unit will stay, maybe some residential units might become home occupation units or live-work space.

Mark Dudzic

Agrees with concept

D.Serwatak

Agrees with concept but should have some kind of control.

N. Mleczko

Will these be sold units?

W. Curran

Condos and there will be condo rules

Rebuilt the building (high quality residential development)

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Owner T.Ross

Uniformity will be inducted with the condo board

B. Charters

Good concept, live space work is excellent idea

Could ground floor units be designated as live-work space?

D. Smith

Can a condition be added as a condition that a zoning by-law amendment be added?

T. Lofchik

Concerned about street frontage for small business – will the demand be there.

What is the size of the units? Seems like a Toronto standard instead of Hamilton standard?

B. Charters

What is the size of the units 550 and 900 sq. ft.?

Small business that could work out of a small space

They all have direct access to Catharine and explained what small businesses would be

D. Serwatak

There will be no room for commercial space

T. Ross

Incredibly high 14 ft ceilings and put in a half loft for bedroom and create more space for their business on the ground floor

Street frontage is on Catherine St. with windows and French balcony and can have stairs and doors installed easily for direct access.

M. Smith

Not in support

Trying to rezone by minor variance

J. Allen

If approved would like a condition approved with commercial fronting onto King but feels appropriate to go through proper process

D. Serwatak – Motion for approval

B. Charters – Seconded

M. Smith, D. Smith, M. Switzer, T. Lofchik was opposed to the motion for approval

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Following discussion, it was moved by D. Serwatak and seconded by B. Charters that the relief requested be **GRANTED** per the applicants request for the following reasons:

1. The Committee, having regard to the evidence, is of the opinion that the relief granted is of a minor nature.
2. The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent and purpose of the By-law and the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee, having regard to the evidence, is satisfied that there will be no adverse impact on any of the neighbouring lands.
4. The submissions made regarding this matter did not affect the decision.

CARRIED.

From: David Horwood <
Sent: April 19, 2021 9:28 AM
To: Thorne, Jason <Jason.Thorne@hamilton.ca>; Committee of Adjustment <CofA@hamilton.ca>
Cc: 'Jessica Caplan' ; 'Tyler Ross' ; David Horwood >; Farr, Jason <Jason.Farr@hamilton.ca>
Subject: 121 King Street East, Hamilton

City of Hamilton

Planning Committee

71 Main Street West, 5th Floor

Hamilton, Ontario, L8P 4Y5

Phone: 905-546-2424 Ext. 4221

April 16, 2021

Attention: Jason Thorne, General Manager, Planning and Economic Development

By Email: Jason.Thorne@hamilton.ca

RE: City of Hamilton Appeal of Committee of Adjustment Decision HM/A-20:271

Minor Variance to allow Ground Floor Residential and Live/Work Uses at 121-125 King Street East, Hamilton

Dear Mr. Thorne,

Further to the City's Appeal of this I am writing to you in order to provide clarification.

1. We wish to maintain commercial uses along the King Street East frontage
2. We wish to add residential uses only along the Catharine Street South frontage

We request that the language of the decision be varied to remove any ambiguity as to the two points above.

As discussed, the intent is to expedite this process for inclusion at the next Committee of Adjustment meeting.

As such we would ask the Planning Committee to direct Planning staff to withdraw this Appeal now to fully resolve this matter.

Please don't hesitate to contact me should you need anything further.

Sincerely,

121 King (Hamilton) GP Inc.

o/a Gore Park Lofts Developments

By: David Horwood