

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.: AN/A-21:59

APPLICANTS: MHBC Planning (G. Tchisler) on behalf of the owner LIV Developments Ltd. (A. Mulder)

SUBJECT PROPERTY: Municipal address **515 Garner Rd. W., Ancaster**

ZONING BY-LAW: Zoning By-law 87-57 & 05-200, as Amended by By-law 18-051

ZONING: "RM2-690 and P5, 670" (Residential Multiple (87-57) and Conservation/Hazard Lands (05-200) district

PROPOSAL: To permit the existing 45 unit block townhouse development to be maintained on the subject lands, notwithstanding that;

1. A minimum 2.3m front yard with no minimum setback to the centreline of the Garner Road West street shall be permitted instead of the minimum required 7.5m front yard plus a minimum setback of 18.0m from the centreline of Garner Road West.

Notes: The variance is required to facilitate Standard Condominium 25CDM-2018-15.

The lands are subject to site plan DA-18-047.

The applicant shall ensure that the maximum 13.0m height is maintained; otherwise, further variances shall be required.

The applicant shall ensure that the minimum floor elevations for each of the private garages maintains a minimum 30.0cm above the centre line of the street adjacent to the garages; otherwise, further variances shall be required.

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

DATE: Thursday, March 4th, 2021
TIME: 3:30 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.

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: February 16th, 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.

LEVEL 1
UNITS 1 TO 45, INCLUSIVE
REGISTERED IN THE LAND REGISTRY OFFICE FOR THE LAND TITLES DIVISION OF
WENTWORTH (No. 62) AT ____ O'CLOCK ON THE ____ DAY OF ____

REPRESENTATIVE FOR LAND REGISTRAR

SURVEYOR'S CERTIFICATE

- I CERTIFY THAT:
- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE CONDOMINIUM ACT 1998, THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
 - THE SURVEY WAS COMPLETED ON THE 11TH DAY OF AUGUST, 2020
 - THE DIAGRAMS OF THE UNITS SHOWN ON THIS PLAN ARE SUBSTANTIALLY ACCURATE.

AUGUST 11, 2020
DATE
S.DAN McLAREN - Ontario Land Surveyor

DECLARATION REGISTERED AS No.

APPROVAL CERTIFICATE
PARTS 1 AND 2 ARE APPROVED AND PARTS 3 AND 4 ARE EXEMPTED UNDER SECTION 9 OF THE CONDOMINIUM ACT, R.S.O. 1998, c.19, AND SECTION 51 OF THE PLANNING ACT, R.S.O., 1990, c.P.13, AS AMENDED, BY THE GENERAL MANAGER OF PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT OF THE CITY OF HAMILTON UNDER THE AUTHORITY OF BY-LAW 07-323.

THIS ____ DAY OF ____, 2020
GENERAL MANAGER, PLANNING AND ECONOMIC DEVELOPMENT
CITY OF HAMILTON

SCHEDULE OF APPURTENANT AND SERVIENT INTERESTS
(UNDER CLAUSES 8(1)(g) AND (h) OF THE CONDOMINIUM ACT 1998.)

SUBJECT TO (SERVIENT INTERESTS)	PART	PLAN	DESCRIBED IN	NOTES
	PART 1	62R-21127	WE1387552 WE1409342	N/A
TOGETHER WITH (APPURTENANT INTERESTS)	PARTS 3, 5 & 6	N/A	N/A	N/A

THIS PLAN COMPRISES ALL OF PIN 17332 - (LT)

INDEX OF PARTS

PART	SHEET(S)	DESCRIPTION
1	1	PLAN OF SURVEY OF THE CONDOMINIUM PROPERTY, THE ILLUSTRATION OF THE SERVIENT INTERESTS AND THE DESIGNATION OF UNITS ON LEVEL 1
2	NIL	PLAN OF SURVEY OF THE EXCLUSIVE USE PORTIONS OF THE COMMON ELEMENTS
3	-	ARCHITECTURAL PLANS
4	-	STRUCTURAL PLANS

METRIC
DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

PLAN OF SURVEY
PLAN OF PART OF
LOT 37 AND 38
CONCESSION 3
IN THE GEOGRAPHIC
TOWNSHIP OF ANCASTER
IN THE
CITY OF HAMILTON
SCALE 1: 300 METRIC
S.D. McLAREN, O.L.S. - 2020

UNIT BOUNDARY DEFINITIONS

THE MONUMENTS DEFINING THE EXTENT AND LOCATIONS OF THE UNITS ARE MORE PARTICULARLY DESCRIBED IN SCHEDULE "C" OF THE DECLARATION.

AREAS NOT DESIGNATED AS UNITS ARE COMMON ELEMENTS
UNITS 1 TO 45 ARE FOR RESIDENTIAL PURPOSES

BEARING NOTE:
BEARINGS ARE UTM GRID, DERIVED FROM OBSERVED REFERENCE POINTS A AND B, BY REAL TIME NETWORK OBSERVATIONS, UTM ZONE 17, NAD83 (CSRS) (2010.0)

NOTE:
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID DISTANCES BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999879943

INTEGRATION DATA			
OBSERVED REFERENCE POINTS (ORP'S), UTM ZONE 17, NAD83 (CSRS) (2010.0)			
POINT ID	EASTING	NORTHING	COORDINATES TO UTM ACCURACY PER SEC. 14(2) OF OREG. 218/10
ORP @	478339.254	580031.000	580031.000
ORP @	478334.378	580044.884	580044.884

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

LEGEND:
[Symbol] MONUMENT SET
[Symbol] MONUMENT FOUND
[Symbol] IRON BAR
[Symbol] STANDARD IRON BAR
[Symbol] SHORT STANDARD IRON BAR
[Symbol] A.T. McLAREN, O.L.S.
[Symbol] J.D. PETERS, O.L.S.
[Symbol] A.L. CLARK, O.L.S.
[Symbol] J.T. PETERS, O.L.S.
[Symbol] ORIGIN UNKNOWN
[Symbol] MEASURED
[Symbol] PLAN 62R-21127
[Symbol] PRODUCTION OF CENTRELINE OF WALL
[Symbol] PRODUCTION OF CENTRELINE OF WALL

CERTIFICATE OF DECLARANT

THIS IS TO CERTIFY THAT THE PROPERTY INCLUDED IN THIS PLAN HAS BEEN LAID OUT INTO UNITS AND COMMON ELEMENTS IN ACCORDANCE WITH MY INSTRUCTIONS.

DECLARANT: LIV DEVELOPMENTS LTD.

DATED AT HAMILTON

THIS 11th DAY OF AUGUST, 2020

I HAVE THE AUTHORITY TO BIND THE CORPORATION

A.T. McLaren Limited
LEGAL AND ENGINEERING SURVEYS
69 JOHN STREET SOUTH, SUITE 230
HAMILTON, ONTARIO, L8N 2B9
PHONE (905) 527-8558 FAX (905) 527-0032
Drawn: LC Checked: DG/SDM Scale: 1:200 Dwg No: 35431-FC

**Committee of Adjustment**

City Hall, 5th Floor,
71 Main St. W.,
Hamilton, ON L8P4Y5

Phone: (905) 546-2424 ext. 4221
Email: cofa@hamilton.ca

APPLICATION FOR A MINOR VARIANCE**FOR OFFICE USE ONLY.**

APPLICATION NO. _____ DATE APPLICATION RECEIVED _____

PAID _____ DATE APPLICATION DEEMED COMPLETE _____

SECRETARY'S
SIGNATURE _____

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.

1, 2	NAME	ADDRESS
Registered Owners(s)	LIV Developments Ltd. c/o Andrew Mulder	
Applicant(s)*	LIV Developments Ltd. c/o Andrew Mulder	
Agent or Solicitor	MHBC Planning Ltd. c/o Gerry Tchisler	

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

3. Names and addresses of any mortgagees, holders of charges or other encumbrances:

Additional sheets can be submitted if there is not sufficient room to answer the following questions. Additional sheets must be clearly labelled

4. Nature and extent of relief applied for:

To permit a minimum front yard of 2.3 m whereas the By-law requires 7.5 m plus any applicable distance as specified in Schedule "C" of the By-law.

5. Why it is not possible to comply with the provisions of the By-law?

Refer to attached cover letter.

6. Legal description and Address of subject lands (registered plan number and lot number or other legal description and where applicable, **street and street number**):

Parts of Lots 37 & 38, Concession 3, Ancaster; designated Parts 1, 3, 5 and 6 on Plan 62R-21127 and Part 1 on Plan 62R-21488; City of Hamilton.
515 Garner Road West

7. PREVIOUS USE OF PROPERTY

Residential ☒ Industrial ☐ Commercial ☐

Agricultural ☐ Vacant ☐

Other _____

- 8.1 If Industrial or Commercial, specify use _____

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

Yes ☒ No ☐ Unknown ☐

Per approved site plan application DA-18-047

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

Yes ☐ No ☒ Unknown ☐

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

Yes ☐ No ☒ Unknown ☐

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

Yes ☐ No ☒ Unknown ☐

- 8.6 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 ☐

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

Yes ☐ No ☒ Unknown ☐

- 8.8 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 ☐

- 8.9 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 ☒ Unknown ☐

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

Yes ☐ No ☒ Unknown ☐

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

Owner's knowledge of land.

8.12 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 ☒

9. 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.

FEB 2, 2021

Date

Signature Property Owner

LN DEVELOPMENTS LTD.

ANDREW MULDER

Print Name of Owner

10. Dimensions of lands affected:

Frontage	<u>+/- 137.1 m</u>
Depth	<u>+/- 137 m (varies)</u>
Area	<u>+/- 1.3 ha</u>
Width of street	<u>+/- 30-36 m (varies)</u>

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: _

Height - 2 storeys

Yards (approx - refer to condo plan): Front - 3.7 m, Westerly side (@ unit 1) - 6.68 m, Easterly side (@unit 33) - 11m, Rear (@unit 16) - 6.072 m

6,870 m² - GFA

Proposed

N/A - structures already built

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

Existing:

Height - 2 storeys

Yards (approx - refer to condo plan): Front - 3.7 m, Westerly side (@ unit 1) - 6.68 m, Easterly side (@unit 33) - 11m, Rear (@unit 16) - 6.072 m

Proposed:

N/A - structures already built

13. Date of acquisition of subject lands:
2018
-
14. Date of construction of all buildings and structures on subject lands:
2020
-
15. Existing uses of the subject property:
Residential townhouses development (under construction)
16. Existing uses of abutting properties:
Residential
17. Length of time the existing uses of the subject property have continued:
Since 2020
18. Municipal services available: (check the appropriate space or spaces)
Water Yes Connected Yes
Sanitary Sewer Yes Connected Yes
Storm Sewers No
19. Present Official Plan/Secondary Plan provisions applying to the land:
Neighbourhoods (Urban Hamilton Official Plan - Volume 1)
Low Density Residential 3a (Shaver Neighbourhood Secondary Plan)
20. Present Restricted Area By-law (Zoning By-law) provisions applying to the land:
RM2-690 (Ancaster Zoning By-law No. 87-57)
P5-670 (Hamilton Zoning By-law No. 05-200)
21. Has the owner previously applied for relief in respect of the subject property?
☒ Yes ☐ No
If the answer is yes, describe briefly.
Originally, it was interpreted that the front yard was to be measured from the condo road to the front of each townhouse unit. On this basis, a condition was imposed on the site plan application requiring a front yard setback reduction to 5.85 m which was applied for by the owner and approved by the Committee.
22. Is the subject property the subject of a current application for consent under Section 53 of the *Planning Act*?
☐ Yes ☒ No
23. Additional Information
After construction of the townhouses and upon approval of the Plan of Condominium application, staff determined that the front lot line is the Garner Road lot line based on the Standard Condominium tenure of the townhouses. A new variance is thus required to recognize the now built structures.
24. 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.

February 3, 2021

Secretary-Treasurer
Committee of Adjustment
Planning and Economic Development Department
5th floor, 71 Main Street West
Hamilton, ON L8P 4Y5

**RE: APPLICATION FOR MINOR VARIANCE
515 GARNER ROAD WEST, HAMILTON (ANCASTER)
OUR FILE: 15226L**

On behalf of our client, LIV Developments Ltd. ("LIV"), we are pleased to submit this Minor Variance application for the property municipally addressed as 515 Garner Road West (the "site"). In support of this application, please find enclosed the following:

- Minor Variance Application Form.
- Draft Wentworth Standard Condominium Plan.

The application fee is being paid via credit card.

OVERVIEW:

LIV is in the process of finishing construction of a 45 unit townhouse development with a total of 90 occupant parking spaces (2 spaces per unit) and 24 visitor parking spaces (0.53 spaces per unit). The proposed units are contained within 7 townhouse blocks with a maximum height of 13 m. The site has undergone a site specific rezoning through Zoning By-law Amendment application ZAC-16-017, which was approved by Council on February 28, 2018 and became final and binding on April 3, 2018. The Zoning By-law Amendment applied site specific zoning provisions to the site in order to implement the proposal. However, the front yard setback provision of the parent by-law was not modified through the Zoning By-law Amendment. As such, a Minor Variance application was approved later in 2018 to reduce the front yard setback from 7.5 m to 5.85 m, measured from the condominium road to the front of the townhouse units (application AN/A-18:247). Since then, the project received Site Plan Approval (DA-18-047), building permits and Draft Approval of a Plan of Condominium (25CDM-201815).

Subsequently, based on the Standard Condominium tenure of the proposed townhouses, staff have determined that the front lot line is no longer the condominium road but rather the lot line abutting Garner Road. Based on this re-definition of the lot lines and yards within the development, another Minor Variance application is required to provide relief from the front yard setback requirements of the by-law except now with the consideration of the Garner Road lot line as the front lot line. It should be noted that the site-specific zoning for the site already permits a 2.5 m setback from Garner Road, except that it is referred to as a side yard in the by-law as opposed to a front yard. Building permits were issued and the townhouses were constructed on this basis, though ultimately further from the Garner Road lot line, at 3.67 m, than the minimum 2.5 m permitted.

REQUESTED VARIANCES:

The portion of the site that contains the townhouses is zoned Residential Multiple "RM2-690" Zone, Modified in Ancaster Zoning By-law 87-57 while the associated stormwater management pond is zoned Conservation / Hazard Land (P5, 670) Zone, Modified in Hamilton Zoning By-law 05-200. The following technical variance is required to recognize the existing setback from Garner Road as a front yard setback instead of a side yard setback and recognize the location of an unenclosed porch:

To permit a front yard setback of 2.3 m for the portion of the lands zoned RM2-690 whereas the by-law requires a front yard setback of 7.5 m.

MINOR VARIANCE TESTS:

We believe that the relief requested above from the provisions of by-law 87-57 meets the four tests set out under Section 45(1) of the *Planning Act* as follows:

1. *The variance maintains the general intent and purpose of the Official Plan*

The site is designated Neighbourhoods on Schedule E-1 of the Urban Hamilton Official Plan (UHOP) and Low Density Residential 3a on Map B.2.2-1: Land Use Plan of the Shaver Neighbourhood Secondary Plan (SP). Areas designated Neighbourhoods are intended to function as complete communities and include a full range of dwelling types and densities (E.3.2.1). At a density of approximately 35 units per hectare, the proposal is considered to be Low Density Residential in the UHOP (E.3.4.4.). The UHOP contains a number of design criteria which includes discouraging direct unit access to arterial roads (E3.4.6a)) and encouraging a mix of residential development types and sizes which are to be implemented through the zoning by-law (E.3.4.6c)). The SP permits the proposed block townhouses at a maximum density of 50 dwelling units per hectare and at a maximum height of 3 storeys (B.2.2.1.2a) and B.2.2.1.3d)).

The proposed development form is consistent with the permitted uses, height and densities stipulated in the UHOP and SP as well as the City's design criteria which was reviewed in detail and approved through the previous Zoning By-law Amendment and Site Plan Control applications. The individual townhouse units will be accessed by way of an internal condominium road with no direct unit vehicular access to Garner Road West (an arterial road).

The site specific zoning by-law already permits a 2.5 m yard abutting Garner Road but refers to it as a side yard, not a front yard, based on the original interpretation that the condominium road is considered a public road for the purposes of zoning review. The reduced front yard setback is appropriate as it provides for a pedestrian friendly streetscape along Garner Road by enclosing the street and providing an attractive front porch.

Therefore, it is our opinion that the proposed variance meets the intent of the Official Plan.

2. *The variance maintains the general intent and purpose of the Zoning By-law*

The site has recently undergone a site specific rezoning and is currently zoned Residential Multiple “RM2-690” Zone, Modified in Ancaster Zoning By-law 87-57. As noted above, the site specific zoning deems the condominium road a public street for the purposes of applying zoning regulations. However, given the Standard Condominium tenure of the development, staff have determined that the Garner Road lot line is in fact a front yard, not a side yard. As such, a technical variance is required to consider the existing yard to Garner Road as a front yard rather than a side yard and recognize the location of an unenclosed porch.

The intent of the zoning by-law with respect to front yard regulations is to ensure a consistent streetscape and, where vehicular access is present, to ensure enough space for vehicle parking, maneuverability and sight lines at the front of the property. The existing 2.5 m yard abutting Garner Road was assessed and approved from a streetscape and access perspective through the Zoning By-law Amendment process. As such, the proposed variance to permit a 2.3 m front yard setback is consistent with the intent of the Zoning By-law as it permits the same nearly the same yard dimensions but under a different name (“front” yard instead of “side” yard).

Therefore, it is our opinion that the proposed variance meets the intent Zoning By-law.

3. *That the requested variance is desirable for the appropriate development or use of the land.*

The proposed variance allows for the registration of a Plan of Standard Condominium for a nearly constructed 45-unit townhouse development. Access to the development will be through a single condominium road from which each unit will gain access to Garner Road West. The proposed yard allows for the efficient use of space within the development while providing for a pedestrian friendly streetscape, including a porch condition.

Therefore, it is our opinion that the proposed variance is desirable for the appropriate development of the land.

4. *That the requested variance is minor in nature*

The proposed variance is required due to a change in the interpretation of where the front lot line is located and the as built condition of an unenclosed porch. A yard of 2.5 m along Garner Road is already permitted but referred to in the Zoning By-law as “side” yard, not a “front” yard. The variance is not the result of a change

in plans from what was reviewed through the previous Zoning By-law Amendment and Site Plan Control processes and reflects the existing as-built conditions.

Therefore, it is our opinion that the proposed variance is minor in nature.

As such, it is our opinion that the proposed variance meets the four tests set out under Section 45(1) of the *Planning Act*.

If you require further information please do not hesitate to contact us. We look forward to this matter being scheduled at your earliest convenience.

Yours truly,

MHBC

A handwritten signature in black ink, appearing to read 'Gerry Tchisler', written in a cursive style.

Gerry Tchisler, M.Pl., MCIP, RPP
Associate