



Hamilton

## COMMITTEE OF ADJUSTMENT

City Hall, 5<sup>th</sup> 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](mailto:cofa@hamilton.ca)

# NOTICE OF PUBLIC HEARING Minor Variance

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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
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**APPLICATION NO.:** HM/A-21:301

**APPLICANTS:** Owner Leo Samarelli & Sheri Barth

**SUBJECT PROPERTY:** Municipal address **37 East 35<sup>th</sup> St., Hamilton**

**ZONING BY-LAW:** Zoning By-law 6593, as Amended

**ZONING:** C district (Urban Protected Residential)

**PROPOSAL:** To permit the construction of a new 51.1m<sup>2</sup> accessory building in the rear yard of the existing Single Family Dwelling notwithstanding that:

1. A building height of 4.9m shall be provided instead of the maximum building height of 4.0m permitted for an accessory building.
2. Eaves and gutters associated with the accessory building shall be permitted to project a maximum of 0.3m into the required side yard instead of the maximum permitted projection of 0.225m.

**NOTES:**

- i. Hamilton Zoning By-law 6593 permits eaves and gutters to project into a required side yard not more than one-half its required width or 1.0m, whichever is the lesser.

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

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**DATE:** Thursday, September 23<sup>rd</sup>, 2021  
**TIME:** 2:50 p.m.  
**PLACE:** Via video link or call in (see attached sheet for details)  
To be streamed at  
[www.hamilton.ca/committeeofadjustment](http://www.hamilton.ca/committeeofadjustment)  
for viewing purposes only

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### 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:

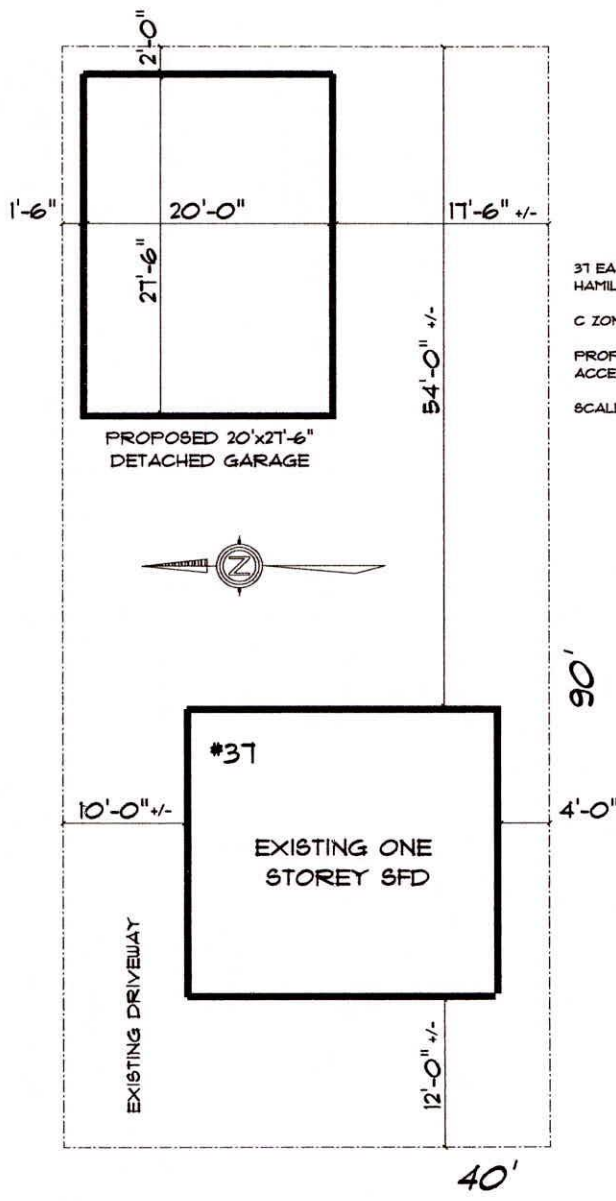
- Visit [www.hamilton.ca/committeeofadjustment](http://www.hamilton.ca/committeeofadjustment)
- Call 905-546-CITY (2489) or 905-546-2424 extension 4221, 4130, or 3935
- Email Committee of Adjustment staff at [cofa@hamilton.ca](mailto:cofa@hamilton.ca)

DATED: September 7<sup>th</sup>, 2021.

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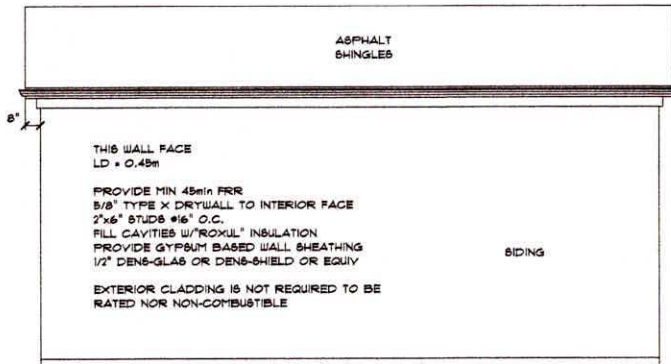
Jamila Sheffield,  
Secretary-Treasurer  
Committee of Adjustment

***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.***

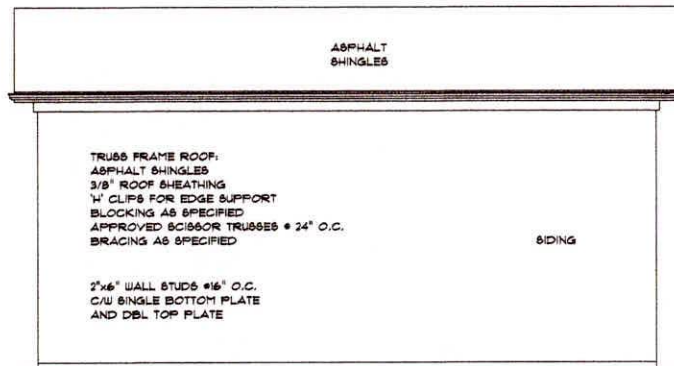


31 EAST 35TH STREET  
 HAMILTON, ONTARIO  
 C ZONE  
 PROPOSED DETACHED GARAGE  
 ACCESSORY TO AN EXISTING SFD  
 SCALE 1" = 10'

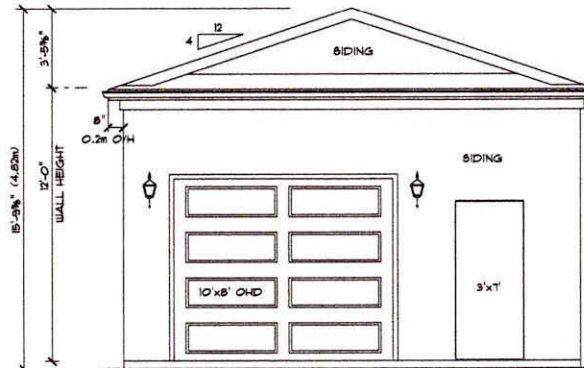
EAST 35TH STREET



LEFT ELEVATION

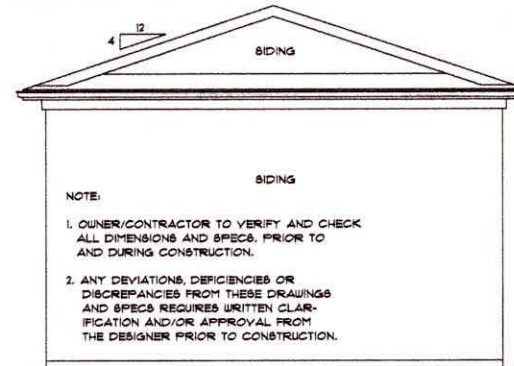


RIGHT ELEVATION



FRONT ELEVATION

37 EAST 35TH STREET  
HAMILTON, ONTARIO  
PROPOSED DETACHED GARAGE



REAR ELEVATION

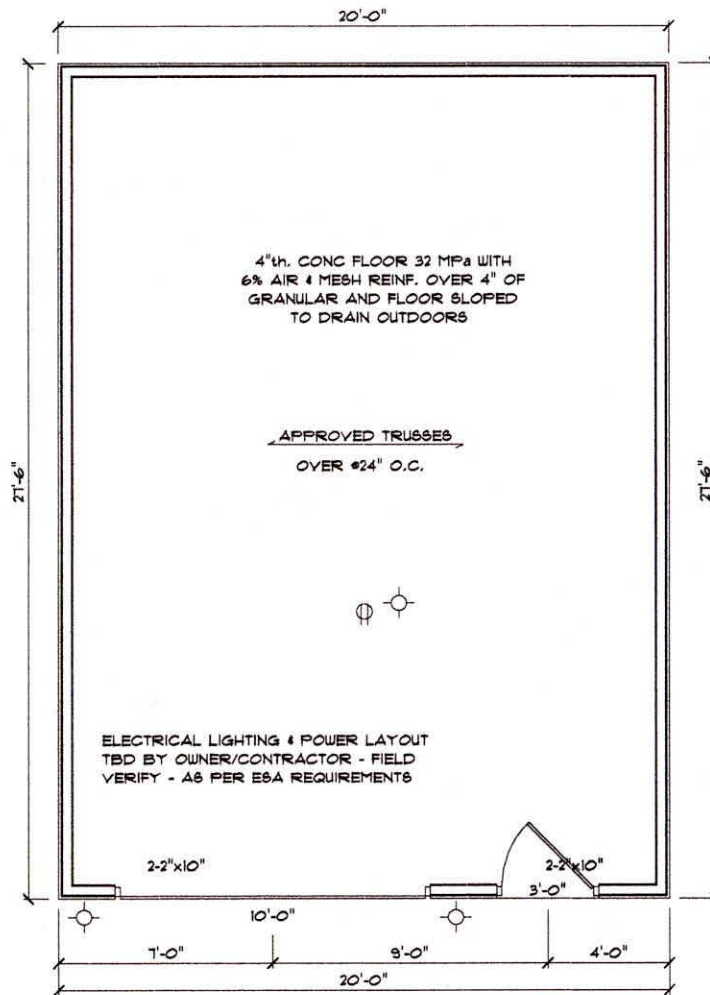
NOTE:

1. OWNER/CONTRACTOR TO VERIFY AND CHECK ALL DIMENSIONS AND SPECS. PRIOR TO AND DURING CONSTRUCTION.
2. ANY DEVIATIONS, DEFICIENCIES OR DISCREPANCIES FROM THESE DRAWINGS AND SPECS REQUIRES WRITTEN CLARIFICATION AND/OR APPROVAL FROM THE DESIGNER PRIOR TO CONSTRUCTION.

THE UNDERSIGNED HAS REVIEWED AND TAKES RESPONSIBILITY FOR THIS DESIGN AND HAS THE QUALIFICATIONS AND MEETS THE REQUIREMENTS SET OUT IN THE ONTARIO BUILDING CODE AS PRESCRIBED

DATE: JUNE 2021  
FILE: GAR - 37 EAST 35TH  
DRAWN BY:  
FABIO DI VINCENZO  
BCIN: 43681  
QUALIFICATIONS:  
HOUSE, STRUCTURAL  
*Fabio Di Vincenzo*

SCALE 3/16" = 1'-0"



**NOTE:**

1. OWNER/CONTRACTOR TO VERIFY ALL DIMENSIONS AND SPACING AND DURING CONSTRUCTION
2. ANY DEVIATIONS, DEFICIENCIES OR DISCREPANCIES FROM THE DRAWINGS AND SPECS REQUIRES IDENTIFICATION AND/OR APPROVAL BY THE DESIGNER PRIOR TO CONSTRUCTION

SEE DETAIL ATTACHED FOR RELEVANT CONSTRUCTION & COMPOSITION DETAILS

THE UNDERSIGNED HAS REVIEWED AND TAKES RESPONSIBILITY FOR THE DESIGN AND HAS THE QUALIFICATIONS AND EXPERIENCE TO MEET THE REQUIREMENTS SET OUT IN THE BUILDING CODE AS PRESCRIBED

DATE: MAY 2021
FILE: GAR - 31 EAST 3E
DRAWN BY: FABIO DI VINCENZO BCIN: 43661
QUALIFICATIONS: HOUSE, STRUCTURAL
<i>Fabio Di Vincenzo</i>

SCALE 1/4" = 1'-0"



**Committee of Adjustment**  
 City Hall, 5<sup>th</sup> Floor,  
 71 Main St. W.,  
 Hamilton, ON L8P4Y5

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

**APPLICATION FOR A MINOR VARIANCE**

**FOR OFFICE USE ONLY.**

APPLICATION NO. \_\_\_\_\_ DATE APPLICATION RECEIVED July 29/21

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	MAILING ADDRESS
<b>Registered Owners(s)</b>	Leo Samarelli Sheri Barth	
<b>Applicant(s)*</b>	same as owner	
<b>Agent or Solicitor</b>	N/A	

**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:  
 Leo Samarelli  
 Sheri Barth

**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:  
hight variance 4.9m

Secondary Dwelling Unit       Reconstruction of Existing Dwelling

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

-hight is for extra storage to hang bicycles aluminum boat and still have room for vehicles

-high is also for privacy into back yard and home so the neighbors can stop watching us eat supper at our dinning room table from there semi detached home that is hight

- detached garaae

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**):

37 East 35th

7. PREVIOUS USE OF PROPERTY

Residential       Industrial       Commercial

Agricultural       Vacant       Other

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

- 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 8.1 to 8.10 above?

being in this house for 22yrs

8.12 If previous use of property is industrial or commercial or if YES to any of 8.2 to 8.10, 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.

June 29th 2021  
Date

  
Signature Property Owner(s)

Ilarione Samarelli / Sheri Barth  
Print Name of Owner(s)

10. Dimensions of lands affected:

Frontage	40'	_____
Depth	92'	_____
Area	108 a	_____
Width of street	20.4m	_____

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: \_

- I have a 10' x 10' shed that will be removed after garage is built
- I have 1/1/2 story house on the lot

Proposed

building garage 20' x 27'x 16'

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

Existing:

shed its 2' x 34' from property line

Proposed:

- shed is removed
- garage will be 18" and 24' from property line



13. Date of acquisition of subject lands:  
April 1999
14. Date of construction of all buildings and structures on subject lands:  
Shed was built in 2000 house was built in 1954 or 45
15. Existing uses of the subject property (single family, duplex, retail, factory etc.):  
 single family
16. Existing uses of abutting properties (single family, duplex, retail, factory etc.):  
 North side 4 condos, South side single family, East side semi detached
17. Length of time the existing uses of the subject property have continued:
18. Municipal services available: (check the appropriate space or spaces)
- |                |                                     |           |                                     |
|----------------|-------------------------------------|-----------|-------------------------------------|
| Water          | <input checked="" type="checkbox"/> | Connected | <input checked="" type="checkbox"/> |
| Sanitary Sewer | <input checked="" type="checkbox"/> | Connected | <input checked="" type="checkbox"/> |
| Storm Sewers   | <input type="checkbox"/>            |           |                                     |
19. Present Official Plan/Secondary Plan provisions applying to the land:  
 neighborhood
20. Present Restricted Area By-law (Zoning By-law) provisions applying to the land:  
 C
21. Has the owner previously applied for relief in respect of the subject property?  
 Yes  No   
 If the answer is yes, describe briefly.
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
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.

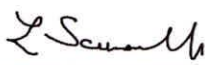


**Hamilton**

Planning and Economic  
Development Department  
Building Division  
71 Main Street West, 3<sup>rd</sup> Floor  
Hamilton, ON L8P 4Y5  
P: 905.546.2720  
F: 905.546.2764

# ZONING COMPLIANCE REVIEW AND ADMINISTRATION

**NOTE: FEES ARE NON-REFUNDABLE**

APPLICATION TYPE			
<input checked="" type="checkbox"/> Applicable Law Review <input type="checkbox"/> Committee of Adjustment – Clearance of Conditions (List the condition numbers you wish to clear: _____) <input type="checkbox"/> Determination of a Legally Established Non-Conforming Use <input type="checkbox"/> Feed-In Tarrif (FIT) Application <input type="checkbox"/> Validation of Title			
Project Location			
Municipal Number: <b>37</b>	Street Name: <b>East 35</b>	Street Type: <b>ST</b> <small>(Rd, St, Ave)</small>	Street Direction: <small>(N, S, E, W)</small>
Unit #:	Lot #: <b>LT-23,PL785</b>	Community: <input type="checkbox"/> Ancaster <input type="checkbox"/> Dundas <input type="checkbox"/> Flamborough <input type="checkbox"/> Glanbrook <input type="checkbox"/> Hamilton-Prope <input checked="" type="checkbox"/> Stoney Creek <input type="checkbox"/>	
Legal Description (optional):			
Applicant Information			
Applicant Name: <b>Leo Samarelli</b>			
Mailing Address: <b>37 East 35</b>		City: <b>Hamilton</b>	Postal Code: <b>L8V 3X7</b>
Phone Number: <b>289-442-1737</b>	Fax Number:	Email Address: <b>leo_s@rogers.com</b>	
Applicant Signature: 		Date: <b>May 26 2021</b>	
<b>PLEASE NOTE: ALLOW FOR A MAX. 15 BUSINESS DAY REVIEW PERIOD</b>			
Description of Development/ Construction/ Use			
Proposed Use: <b>Garage</b>			
Project Description/ Scope of Work: <b>Detached Garage</b>			
For Feed-In Tariff (FIT) Application Only			
<input type="checkbox"/> MicroFIT (up to 10 kW)			
<input type="checkbox"/> Small FIT (> 10 kW up to 500 kW)			
<input type="checkbox"/> Large FIT (> 500 kW)			

FOR OFFICE USE ONLY				
Receipt Number:	Payment Type:	Staff Initials:	Folder Number:	Date Received:
Zoning Bylaw:	Current Zoning:	Committee of Adjustment:	Site Plan Control/Subdivision:	Rezoning/ Zoning Amendment:

The personal information collected on this form will be used to contact you for the administration of performing record searches as authorized under the *Municipal Act, 2001, section 227*. If you have any questions regarding the collection of the information please contact the Supervisor of Zoning at 71 Main Street West, 3<sup>rd</sup> Floor or at 905.546.2720.

# ZONING COMPLIANCE REVIEW AND ADMINISTRATION

## **APPLICABLE LAW REVIEW/VALIDATION OF TITLE:**

An application for Applicable Law Review or Validation of Title shall contain two (2) copies of a scaled and properly dimensioned site plan and two (2) copies of elevation drawings; the site plan shall indicate the parking layout, landscape areas, fencing, buildings and other structures.

The proposed or existing development or construction project made under this application will be limited to the review for Zoning By-law compliance only. The review will be based entirely on the information, details and plans provided by the applicant. This application does not substitute the requirement of obtaining a building permit in the normal manner for the proposed development or construction project.

A Zoning Examiner will review the application to determine compliance or conformity with the applicable Zoning By-law. Please note, Zoning By-law compliance is required to be achieved prior to a building permit application being accepted by the Building Division.

## **COMMITTEE OF ADJUSTMENT – CLEARANCE OF CONDITIONS:**

An application for Committee of Adjustment – Clearance of Conditions shall contain the following information:

- A survey prepared by an Ontario Land Surveyor (O.L.S.) showing the following information, where applicable: lot area and lot frontage of both the lands to be conveyed and the lands to be retained; location of all buildings and structures in relation to the newly created lot lines on both the lands to be conveyed and the lands to be retained; the total lot coverage on both the lands to be conveyed and the lands to be retained; and the location of all parking spaces on both the lands to be conveyed and the lands to be retained
- A copy of the Notice of Decision for the subject property, including the conditions. On the front of this application form, please ensure that you have indicated which condition number(s) you wish to clear.

## **DETERMINATION OF A LEGALLY ESTABLISHED NON-CONFORMING USE:**

Establishing entitlement to a legal non-conforming use protection is afforded under Section 34(9)(a) of the Planning Act. The establishment of legal non-conforming use requires that the use *existed*, was *lawfully* used and *continues* to be used for that purpose. The legal non-conforming use protection remains an exemption to the application of the law and must be established by the party asserting it, that being you the landowner.

The first requirement is that a real, bona fide use is made of the land by the owner seeking the non-conforming use exemption. The use must be evident at the outset when the use is established. There is no specific rule regarding the type of evidence required. However, a landowner contending an entitlement to the statutory legal non-conforming use protection is expected to provide independent cogent evidence of the existence of the non-conforming use.

The second requirement in establishing a valid non-conformity for purposes of the statutory exemption requires evidence that the land, building or structure was lawfully used for such prohibited purpose on the day of the passing of the by-law. More specifically, at the time the non-conforming use was originally established, the non-conforming use complied with all of the zoning by-law provisions or applicable legislation in effect on that date. The issuance of a building permit typically satisfies this requirement.

Accordingly, in addition to other supporting documents you deem appropriate, to support your assertion and enjoy the statutory rights to a legal non-conforming use the following documents and evidence are acceptable:

### **Primary Documents**

- Building permit
- Local tax records - (*residential (and # of units) vs non-residential tax rates*)
- Assessment records - (*MPAC property code class*)
- Third-party affidavits
- Site specific Council decision
- Site specific legal ruling
- Municipal Licences (*where required*)
- Corporate Search/Documents - (*date of business formation, address reference*)
- Business tax records (*for continuance*)
- Business transaction receipts/records - (*for continuance*)
- Other Applicable legislative approvals (NEC, MTO, MOE, MNR, etc.) - (*where applicable*)

### **Secondary Documents**

- Vernon Directory listings
- Dated photographs,
- Advertisements
- Newspaper articles
- Leases/Rental agreements
- MLS listings
- Construction receipts where a building permit was not required



# Hamilton

June 22, 2021

FILE: ALR  
 FOLDER: 21-129075-00 ALR  
 ATTENTION OF: Cam Thomas  
 TELEPHONE NO: (905) 546-2424  
 EXTENSION: 4229

Leo Samarelli  
 37 EAST 35TH STREET  
 HAMILTON, ON L8V 3X7

**Attention:**

**Re: APPLICABLE LAW REVIEW – ZONING BYLAW**  
**Present Zoning:**  
**Address: 37 EAST 35TH ST HAMILTON, ON**

An Applicable Law Review respecting zoning bylaw compliance has been completed and the following comments are provided.

**COMMENTS:**

1. The applicant is proposing to construct a detached garage in the C District comprising 51 square metres of gross floor area. The proposed accessory building is permitted.
2. The proposed development has been reviewed and compared to the standards of the C District for accessory buildings / structures as indicated in the following chart:

<b>Section 18 – Accessory Bldgs</b>			
<b>Regulation</b>	<b>Required By By-Law</b>	<b>Provided</b>	<b>Conforming/ Non-Conforming (*DNC – Does Not Conform)</b>
<b>Max. Height for Accessory Bldgs</b> <i>[Section 18(4)(ie)(iii)]</i>	Max. 4.0m	4.88m	<b>DNC</b>
<b>Location</b> <i>[Section 18(4)(ie)(iv)]</i>	Not in a required front or side yard	In rear yard	<b>Conforms</b>
	Min. 0.45m from a rear or side lot line And min. setback to be not less than the front yard of the adjoining lot	0.45m from S. side lot line and	<b>Conforms</b>

		0.6m from rear lot line	<b>Conforms</b>
	Max 30% of rear yard	25%	<b>Conforms</b>
<b>Elevation of Floor</b> [Section 18(4)(ie)(iv)(a)]	And provided further that wherever the mean elevation of the ground along the rear boundary of a required front yard is more than 2.5 metres (8.20 feet) higher than the mean elevation along 18-12 the front boundary, a private garage may be erected in any yard, subject to the following conditions, namely;  The Elevation of the surface floor shall not be more than 0.5m higher than the mean elevation of the road opposite	Info was not provided  Would only apply if the elevations were different between the front and rear yards	<b>Unable to Determine Compliance</b>
<b>Eaves / Gutter</b> [per Section 18 (3)(vi)(b)]	Side Yard - into a required side yard not more than one-half of its width, or 1.0 metre (3.28 feet), whichever is the lesser; S.side yard is 0.45m $0.45m / 2 = 0.225m$	$0.3 / 0.45 = 0.66$ 0.66 exceeds the allowance of one-half of its width (0.225m)	<b>DNC</b>
	Rear Yard - into a required rear yard not more than 1.5 metre	0.3m	<b>Conforms</b>

3. The areas of non-compliance for the proposed garage have been identified as building height and eave encroachments into the southerlyside yard. The applicant may wish to adjust the proposed garage design to comply or alternatively may elect to apply for a minor variance application.
4. Construction of the proposed accessory building is subject to the issuance of a building permit in the normal manner. Be advised that Ontario Building Code regulations may require specific setback and construction types.
5. This review is based on the plans submitted with the application.

Yours truly

*Pan Thor*

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for the Manager of Building Engineering and Zoning