



Hamilton

COMMITTEE OF ADJUSTMENT

City Hall, 5th floor, 71 Main Street West, Hamilton, ON L8P 4Y5

E-mail: cofa@hamilton.ca

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.:	DN/A-24:43	SUBJECT PROPERTY:	26 Tally Ho Drive, Dundas
ZONE:	OS (Open Space)	ZONING BY-LAW:	Zoning By-law former Town of Dundas 3581-86, as Amended

APPLICANTS: Owner: Janet Weisz
Agent: WEBB Planning Consultant

The following variances are requested:

1. To permit a minor enlargement of the existing legal non-conforming footprint, non-conformity changed from dwelling footprint to proposed landscaping, retaining walls and stairs.

PURPOSE & EFFECT: To build a new single detached dwelling.

Notes:

Written exactly as requested by applicant.

This Notice must be posted by the owner of any land which contains seven or more residential units so that it is visible to all residents.

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

DATE:	Tuesday, April 9, 2024
TIME:	1:40 p.m.
PLACE:	City Hall Council Chambers (71 Main St. W., Hamilton)

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

- Visit www.hamilton.ca/committeeofadjustment
- Visit Committee of Adjustment staff at 5th floor City Hall, 71 Main St. W., Hamilton

PUBLIC INPUT

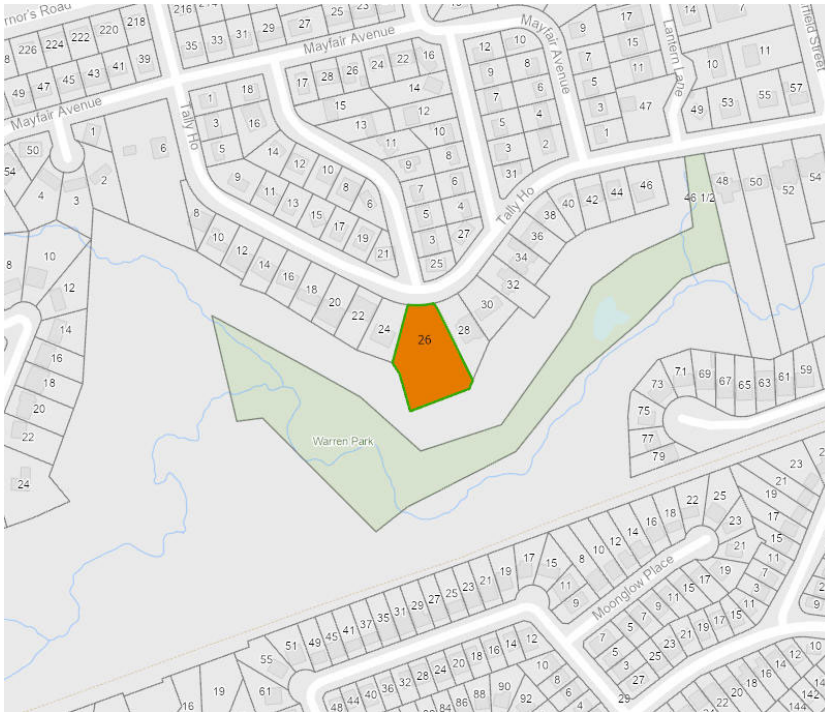
Written: If you would like to submit written comments to the Committee of Adjustment you may do so via email or hardcopy. Comments can be submitted by emailing cofa@hamilton.ca or by mailing the Committee of Adjustment, City of Hamilton, 71 Main Street West, 5th Floor, Hamilton, Ontario, L8P 4Y5. Written comments must be received no later than noon April 5, 2024

Orally: If you would like to speak to this item at the hearing you may do so by attending in person. Interested members of the public, agents, and owners who wish to participate in person may attend Council Chambers on the date and time listed on the Notice of Public Hearing. Please note, you will be required to provide your name and address for the record. It is advised that you arrive no less than 10 minutes before the time of the Public Hearing, as noted above.

FURTHER NOTIFICATION

If you wish to be notified of future Public Hearings, if applicable, regarding DN/A-24:43, you must submit a written request to cofa@hamilton.ca or by mailing the Committee of Adjustment, City of Hamilton, 71 Main Street West, 5th Floor, Hamilton, Ontario, L8P 4Y5.

If you wish to be provided a Notice of Decision, you must attend the Public Hearing and file a written request with the Secretary-Treasurer by emailing cofa@hamilton.ca or by mailing the Committee of Adjustment, City of Hamilton, 71 Main Street West, 5th Floor, Hamilton, Ontario, L8P 4Y5.

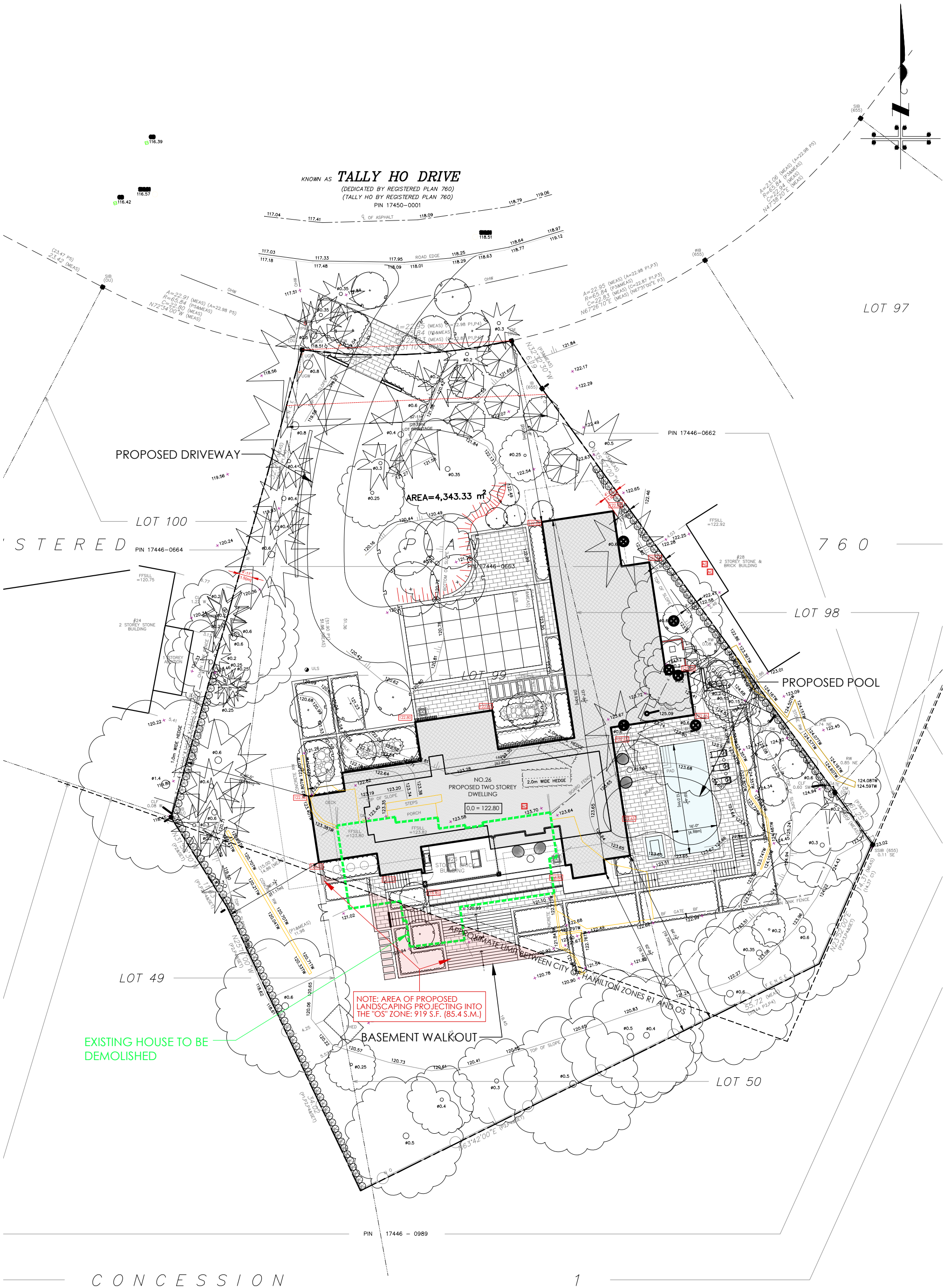


 **Subject Lands**

DATED: March 21, 2024

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, and may include posting electronic versions.



RICHARD WENGLE
ARCHITECT INC.

ASA/WEISZ RESIDENCE

26 TALLY HO
DUNDAS, ONTARIO
JANUARY 26, 2024
2244



SITE PLAN
SCALE: 1/32" = 1'-0"



February 13, 2024

City of Hamilton
Planning & Economic Development Department
Committee of Adjustment
71 Main Street West
Hamilton ON L8P 4Y5

Attention: Ms. Jamila Sheffield
Secretary Treasurer

Dear Ms. Sheffield,

Re: Application for Minor Variance – Section 45 (2) of Planning Act
26 Tally Ho Drive, Dundas, City of Hamilton

WEBB Planning Consultants are retained by the owners of the property located at 26 Tally Ho Drive, to provide land use planning services in connection with the planned redevelopment of the property. This letter and attached materials are prepared in support of an Application for Minor Variance to facilitate the construction of a new single detached dwelling.

The property is generally located in the former Town of Dundas, now City of Hamilton, more particularly within the Highland Hills East Neighbourhood. The lot is located on the east side of Tally Ho Drive, backing onto open space of the Dundas Valley Conversation Area. The property has an area of 4,300 square metres and occupied by a single detached dwelling that was constructed in 1950.

The location and configuration of the lot is unique. The lot is located at the outside bend of Tally Ho Drive and has a significantly expanded lot depth compared to the lots which are immediately abutting. This circumstance allows the siting of the dwelling towards the rear of the lot with increased setbacks from the street and lessened visual implications to the abutting properties.

The Zoning of the property remains under the authority of the former Town of Dundas Zoning By-law and predominantly zoned as R2 Zone. The rear of the property adjoining the Conservation Area is Zoned as OS – Open Space Zone. The boundary between the R2 and OS Zones would seem to follow the estimated top-of-slope demarcation. As noted below, further engineering investigations have been completed to the satisfaction of the Hamilton Conservation Authority (HCA) to establish the actual top-of-slope and associated development setbacks.

As the rear of the property is impacted by valley slopes associated with Spring Creek, the property and adjoining lands are Regulated by the HCA pursuant to the Conservation Authorities Act and Ontario Regulation 161/06. Any development within the Regulated Area

requires the issuance of a Permit by the HCA to demonstrate the limit of development does not encroach into the hazard and any associated setbacks.

As illustrated by the accompany materials, the existing dwelling currently encroaches into the portion of the lot that is Zoned as OS. Outlined in Green, the detail below illustrates the footprint of the existing dwelling and highlights the extent of the encroachment, essentially two corners of the house with associated footings and overhangs. The footprint of encroachment into the OS Zone is 26.5 square metres (285 square feet), as illustrated by the following Figure One. The adjoining driveway occupies a further encroachment of approximately 45 squares metres for a combined encroachment of 71.5 square metres.

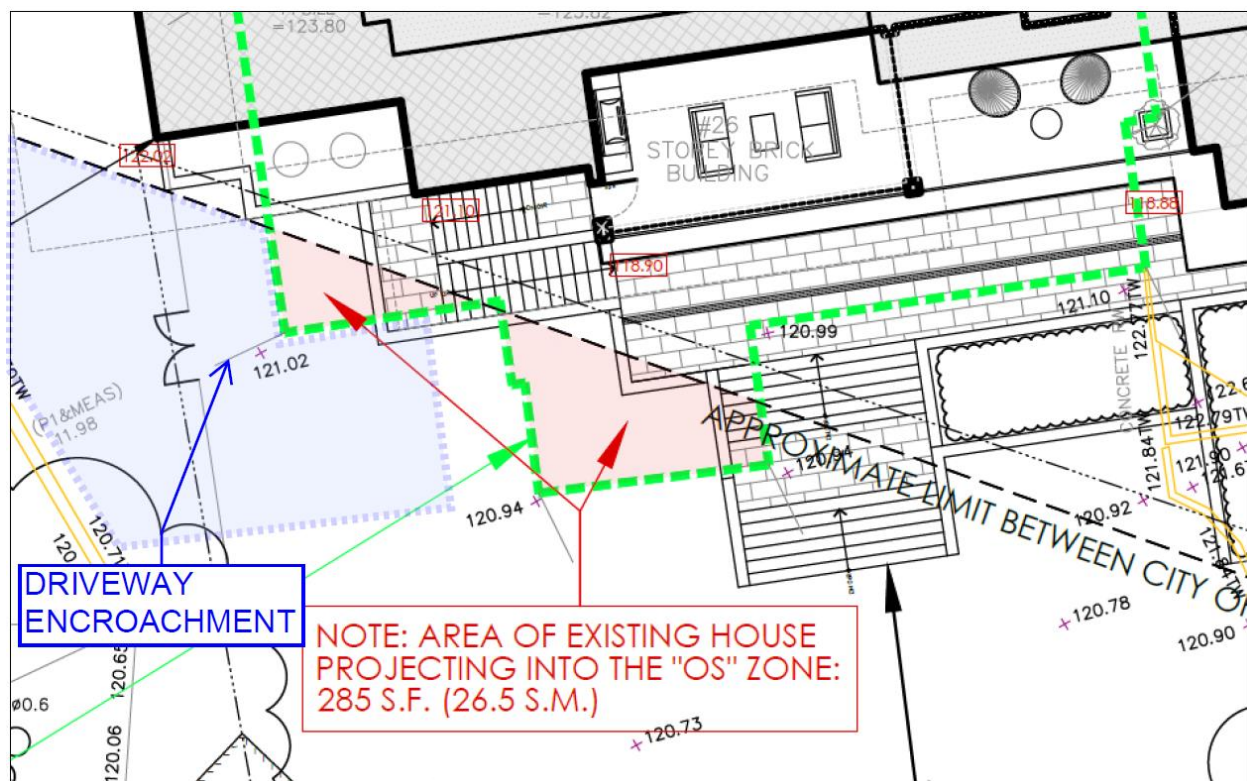


FIGURE ONE: ENCROACHMENT OF EXISTING DWELLING

Attached to this letter as **Appendix "A"** are photographs of the existing dwelling which illustrate the physical extent of the encroachments, both the dwelling and associated paved driveway.

Staff from the City's Planning Division have provided written confirmation that the extent of the encroachment is deemed to be legal non-conforming relative to the Regulations of the Zoning By-law. Based on the legal non-conforming status, Staff have confirmed the owner could demolish the existing dwelling and replace with a new building of the same size and location for the portion encroaching into the OS Zone. This position is consistent with Section 34 (9) of the Planning Act which explicitly provides that a Zoning by-law cannot

prohibit the use of land, a building, or a structure that was lawfully commenced on the date the By-law was passed.

The owners have been working with their architectural and technical design team and have completed plans for the proposed redevelopment. The existing dwelling is to be demolished and replaced with the new detached dwelling situated such that the footprint of the dwelling proper is entirely removed from the portion of the lot that is Zoned as OS. The final plans propose to retain a minor encroachment into the OS Zone, the encroachment comprising an unenclosed open exit stair from the lower level, structural walls (below grade) and hard landscaping.

As illustrated by the following Figure Two, an overlay of the proposed dwelling onto the existing footprint, the area of the encroachment into the OS Zone is 85.4 square metres (285 square feet).

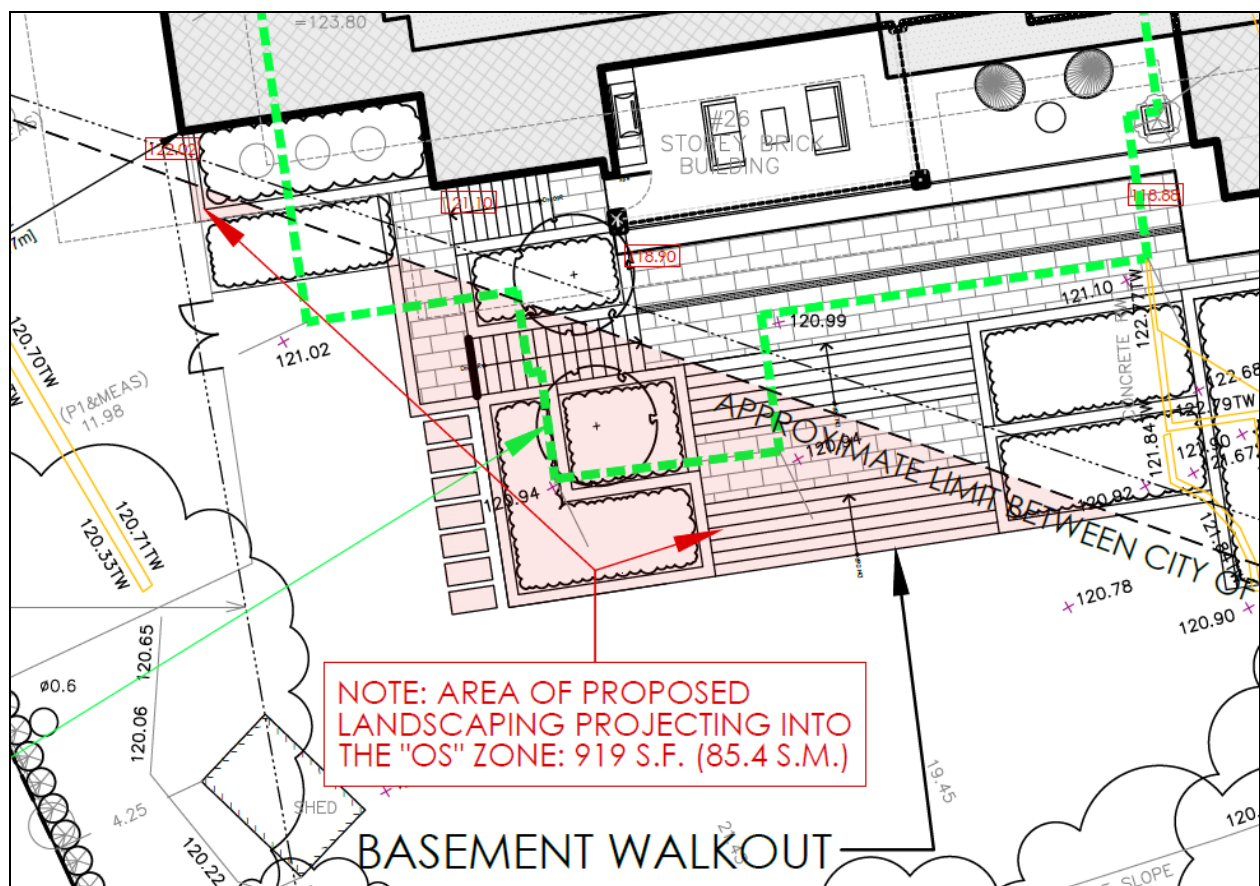


FIGURE TWO: PROPOSED ENCROACHMENT

As noted above, the property is located adjacent to the valley slopes associated with Spring Creek, features recognized as a Natural Hazard. The area is Regulated by the HCA under the Conservation Authorities Act with the requirement that any development shall be subject

to the approval of a Permit. The owner completed the submission of the necessary design and technical materials to the HCA in support of the Permit Application. Following their review, the HCA issued a Permit on February 13, 2024, a copy of Permit No. 2024-07 and approved drawings are included with this submission.

As the non-conforming encroachment is proposed to be enlarged and the location modified, an Application to the Committee of Adjustment under Section 45 (2) of the Planning is necessary. This Section of the Act specifically addresses the common law protection of a property owners right to the reasonable evolution of non-conforming rights. The directly relevant Case Law (Fraser v. Twp of Rideau Lakes, PL200039) establishes that non-conforming rights may evolve and expand without losing their protection, the evaluation to assess the extension or enlargement must balance the interest of the landowner with the public interest.

An Application for Variance under Section 45 (2) has differing tests compared to the more frequently utilized Section 45 (1) of the Planning Act. The 'Four Tests' under Section 45 (1) are limited to demonstrating the intent and purpose of the Official Plan and Zoning By-law are maintained, whether the proposal is considered minor, and whether the Variances are desirable for the appropriate development or use of the land.

By contrast, the tests under Section 45 (2) specifically address the merits of the landowners rights to a reasonable evolution of non-conforming rights. The "four tests" of Section 45 (1) do not apply, including consideration whether the intent and purpose of the Official Plan is maintained. Further, there is no basis to evaluate the impacts of those portions of the building that are constructed as-of-right, in this circumstance, the balance of the dwelling that is wholly located within the portion of the lot that is Zoned as R2.

The consideration of undue adverse impacts is to be determined only with respect to the proposed expansion of the existing non-conforming structure. In this circumstance, the application seeks approval for an expansion from the existing encroachment of 71.5 square metres to the proposed encroachment of 85.4 square metres and comprised of an exit stair from the basement level, structural walls located at or below grade, and hard landscaping. A marginal increase in area but a shift from a two storey above grade structure to new structures that are located at or below grade.

As documented by the directly relevant Case Law and consistent with principles of good planning, the expansion of a non-conforming use should be permitted if the expansion is desirable and will not result in undue adverse impacts to the surrounding neighbourhood. These two tests are articulated as below and provide the basis for the following evaluation of the Application:

1. Whether the application is desirable for the appropriate development of the subject property, and;

2. Whether the application will result in undue adverse impacts on the surrounding properties and neighbourhood.

Test 1: Is the Application desirable for the appropriate development of the property:

The following points are provided in support of my opinion that the application will provide for the appropriate development of the property:

- The new owner has the right to reconstruct the existing dwelling within the same building envelope – same footprint and two storey elevation. Where previously a two storey building and pitched roof were located within the OS Zone, the design of the new dwelling proposes encroachments that are restricted to associated structures that are located at or below grade.
- While the area of the encroachment sees a minor enlargement, the physical extent of the encroachment is largely not visible based on a design that integrates the dwelling into the existing grades. There is an absence of any aesthetic impacts.
- The minor enlargement of the encroachment is appropriate as a modest expansion considering the land use change from the dwelling & driveway footprint to predominantly landscaping.

Test 2: Will the Application result in any undue adverse impacts:

It is my opinion that the minor expansion of the non-conforming building to an alternative structure does not result in any undue adverse impact having regard for the following points:

- The intent of the OS Zone is to regulate development to ensure no development occurs on lands associated with a hazard, in this case an erosion hazard and consideration of stable slopes. This specific issue has been evaluated by a professional engineer retained by the owner and further reviewed by the HCA in the context of an Application for a Work Permit. The approval of Permit 2024-07 demonstrates the proposal will not result in any adverse physical impacts to the existing slopes and retains the requirement for 6.0 metre wide maintenance access between the top-of-slope and any buildings or structures.
- The nature of encroachment transitions from the existing above grade building (dwelling) to structures that are located at or below grade, there is no associated visual implications in terms of obstructing of views from neighbouring properties or an expanded above grade building mass that might be out of character with the adjoining open space areas.
- Given the location of the encroachment of the rear of the property, combined with the unique lot size and depth ensures that the encroachment will not be visible from adjoining properties and will have no visual impact on the surrounding properties.

- The shifting of the dwelling forward and elimination of associated massing inside the OS Zone should be viewed as a positive impact for the surrounding neighbourhood, reducing the degree of non-conformity.
- The new dwelling is designed as a single storey in height, the basement that will be open at the rear of property with the intended open lower level and expansive stair to access the rear of the lot. The design integrates the active parts of the dwelling with the existing grades, efficiently adding useable floor area while minimizing the height of the dwelling.

SUMMARY

The proposal has been considered having regard for Section 3 (5) of the Planning Act wherein all decisions shall be consistent with and conform to Provincial Policy and Plans, specifically the PPS and the Growth Plan. It is my opinion that the proposal is consistent with and conforms to applicable Policies. The supporting geotechnical studies and issuance of a Permit by the HCA demonstrate that the location of the development is appropriately located outside the adjoining Natural Hazard. The slopes and associated erosion hazard constitute Hazardous Lands, the materials submitted in support of the HCA Permit application demonstrate that the development is located outside the erosion hazard and slope stability setbacks. The location of development maintains appropriate setbacks and does not result in any adverse impacts to the designated Core Areas and associated Natural Heritage Features within the Dundas Valley Conservation Area.

It is my opinion that the Variance to permit a minor expansion of the established non-conformity is a reasonable evolution of the existing property rights and satisfies the applicable tests. Consistent with Case Law and precedent, the preceding evaluation focuses only on the proposed expansion of the existing non-conforming structure which is confirmed to have no undue adverse impacts and will provide for the appropriate development of the property. The issuance of a Works Permit by the HCA verifies the development is outside of any hazardous areas and provides the appropriate setbacks and buffers.

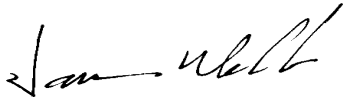
In keeping with the City's requirements for the submission of an Application for Minor Variance, the following materials are enclosed:

- Application for Minor Variance, fully executed;
- Application Fee of \$3,900.00.00 payable to the City of Hamilton;
- Site Plan drawing, prepared by Richard Wengle Architect Inc.;
- Permit No. 2024-07, issued by Hamilton Conservation Authority February 13, 2024.

We trust that you will find the enclosed materials complete and suitable for the purpose of processing this Application for Minor Variance. Please contact our office immediately should you have any questions or require additional information in support of this submission.

Yours truly,

WEBB Planning Consultants Inc.

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

James Webb, MCIP, RPP

cc: Janet Weisz
Gerald Asa

APPENDIX "A" – SITE PHOTOGRAPHS (FEB. 3, 2024)





Hamilton

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/PERMISSION
UNDER SECTION 45 OF THE *PLANNING ACT***

1. APPLICANT INFORMATION

	NAME	MAILING ADDRESS
Registered Owners(s)	Janet Weisz	
Applicant(s)	Janet Weisz	
Agent or Solicitor	WEBB Planning Consultant	

1.2 All correspondence should be sent to ☐ Purchaser ☐ Owner
☐ Applicant ☒ Agent/Solicitor

1.3 Sign should be sent to ☐ Purchaser ☐ Owner
☐ Applicant ☒ Agent/Solicitor

1.4 Request for digital copy of sign ☒ Yes* ☐ No

If YES, provide email address where sign is to be sent

1.5 All correspondence may be sent by email ☒ Yes* ☐ No

If Yes, a valid email must be included for the registered owner(s) AND the Applicant/Agent (if applicable). Only one email address submitted will result in the voiding of this service. This request does not guarantee all correspondence will be sent by email.

2. LOCATION OF SUBJECT LAND

2.1 Complete the applicable sections:

Municipal Address	26 Tally Ho Road		
Assessment Roll Number	260090538000000		
Former Municipality	Town of Dundas		
Lot	Part of Lot 49 & 50	Concession	Con 1
Registered Plan Number	Reg Plan 760	Lot(s)	99 & Part of 98 & 100
Reference Plan Number (s)		Part(s)	

2.2 Are there any easements or restrictive covenants affecting the subject land?

☐ Yes ☒ No

If YES, describe the easement or covenant and its effect:

3. PURPOSE OF THE APPLICATION

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

All dimensions in the application form are to be provided in metric units (millimetres, metres, hectares, etc.)

3.1 Nature and extent of relief applied for:

To permit permit minor enlargement of existing legal non-conforming footprint, non-conformity changed from dwelling footprint to proposed landscaping, retaining walls and stairs

☐ Second Dwelling Unit ☒ Reconstruction of Existing Dwelling

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

Existing dwelling to be demolished, footprint of new dwelling to be shifted outside of portion of site Zoned OS, minor encroachment of retaining walls and stairs due to grading

3.3 Is this an application 45(2) of the Planning Act.

☒ Yes ☐ No

If yes, please provide an explanation:

Portion of existing dwelling is located within OS zone, proposal will alter the encroachment from dwelling to minor increase of footprint for retaining walls, stairs and landscaping

4. DESCRIPTION OF SUBJECT LAND AND SERVICING INFORMATION

4.1 Dimensions of Subject Lands:

Lot Frontage	Lot Depth	Lot Area	Width of Street
22.8 m	75 m (irregular)	4,343 sq. m	20.0 metres

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

Existing:

Type of Structure	Front Yard Setback	Rear Yard Setback	Side Yard Setbacks	Date of Construction
Single detached dwelling	50.3 m	19.5 m	26.3 m (E) 11.9 m (W)	01/01/1950

Proposed:

Type of Structure	Front Yard Setback	Rear Yard Setback	Side Yard Setbacks	Date of Construction
single detached dwelling	20.2 m	19.1 m	1.5 m (E) 11.1 m (W)	

4.3. Particulars of all buildings and structures on or proposed for the subject lands (attach additional sheets if necessary):

Existing:

Type of Structure	Ground Floor Area	Gross Floor Area	Number of Storeys	Height
single detached dwelling	230.6 s.m	230.6 s. m	one	

Proposed:

Type of Structure	Ground Floor Area	Gross Floor Area	Number of Storeys	Height
single detached dwelling	467.7 s. m	667.7 s. m	two	10.5

4.4 Type of water supply: (check appropriate box)

- ☒ publicly owned and operated piped water system
☐ privately owned and operated individual well

- ☐ lake or other water body
☐ other means (specify)

4.5 Type of storm drainage: (check appropriate boxes)

- ☒ publicly owned and operated storm sewers
☐ swales

- ☐ ditches
☐ other means (specify)

4.6 Type of sewage disposal proposed: (check appropriate box)

- ☒ publicly owned and operated sanitary sewage
☐ system privately owned and operated individual
☐ septic system other means (specify) _____

4.7 Type of access: (check appropriate box)

- ☐ provincial highway
☐ municipal road, seasonally maintained
☒ municipal road, maintained all year
- ☐ right of way
☐ other public road

4.8 Proposed use(s) of the subject property (single detached dwelling duplex, retail, factory etc.):
single detached dwelling

4.9 Existing uses of abutting properties (single detached dwelling duplex, retail, factory etc.):
residential and open space

7 HISTORY OF THE SUBJECT LAND

7.1 Date of acquisition of subject lands:
May 24, 2022

7.2 Previous use(s) of the subject property: (single detached dwelling duplex, retail, factory etc)
single detached dwelling

7.3 Existing use(s) of the subject property: (single detached dwelling duplex, retail, factory etc)
single detached dwelling

7.4 Length of time the existing uses of the subject property have continued:
over 50 years

7.5 What is the existing official plan designation of the subject land?

Rural Hamilton Official Plan designation (if applicable): _____

Rural Settlement Area: _____

Urban Hamilton Official Plan designation (if applicable) Neighbourhoods

Please provide an explanation of how the application conforms with the Official Plan.

Appropriately scaled residential uses are permitted on basis of full municipal services.

7.6 What is the existing zoning of the subject land? R1&OS Zones, Dundas By-law 3581-86

7.8 Has the owner previously applied for relief in respect of the subject property?
(Zoning By-law Amendment or Minor Variance)

☐ Yes ☒ No

If yes, please provide the file number: R1&OS Zones, Dundas By-law 3581-86

7.9 Is the subject property the subject of a current application for consent under Section 53 of the *Planning Act*?

☐ Yes

☒ No

If yes, please provide the file number: _____

7.10 If a site-specific Zoning By-law Amendment has been received for the subject property, has the two-year anniversary of the by-law being passed expired? N/A

☐ Yes

☐ No

7.11 If the answer is no, the decision of Council, or Director of Planning and Chief Planner that the application for Minor Variance is allowed must be included. Failure to do so may result in an application not being "received" for processing.

8 ADDITIONAL INFORMATION

8.1 Number of Dwelling Units Existing: 1

8.2 Number of Dwelling Units Proposed: 1

8.3 Additional Information (please include separate sheet if needed):

Please refer to cover letter prepared by WEBB Planning Consultants

11 COMPLETE APPLICATION REQUIREMENTS

11.1 All Applications

- ☒ Application Fee
- ☒ Site Sketch
- ☒ Complete Application form
- ☒ Signatures Sheet

11.4 Other Information Deemed Necessary

- ☐ Cover Letter/Planning Justification Report
- ☐ Authorization from Council or Director of Planning and Chief Planner to submit application for Minor Variance
- ☐ Minimum Distance Separation Formulae (data sheet available upon request)
- ☐ Hydrogeological Assessment
- ☐ Septic Assessment
- ☐ Archeological Assessment
- ☐ Noise Study
- ☐ Parking Study
