

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 15
COMMITTEE DATE: June 5, 2012	
SUBJECT/REPORT NO: Appeal of the City of Hamilton Committee of Adjustment Decision to Approve Minor Variance Application FL/A-12:64, 2062017 Ontario Inc. c/o The Krpan Group Inc. (Owner), 94 Dundas Street East (Town of Flamborough) (PED12102) (Ward 15)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Kate Mihaljevic (905) 546-2424, Ext. 4424
SIGNATURE:	

RECOMMENDATION

That Council agrees to the following actions, as detailed in Report PED12102, respecting the appeal of the City of Hamilton Committee of Adjustment Minor Variance Application FL/A-12:64 by 2062017 Ontario Inc. c/o The Krpan Group Inc., 94 Dundas Street East, former Town of Flamborough, as shown on Appendix "A" to Report PED12102, approved 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 Ontario Municipal Board (OMB) against the decision of the Committee of Adjustment to approve Application FL/A-12:64.
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future OMB Hearing to support the appeal.

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EXECUTIVE SUMMARY

Application FL/A-12:64 to permit a minimum retail unit size of 130 square metres was considered by the City of Hamilton Committee of Adjustment on April 5, 2012. Comments to the Committee of Adjustment from the Planning and Economic Development Department did not support the application, as it was the opinion of staff that the proposal did not conform to the development policies as set out in the Town of Flamborough Official Plan and did not meet the intent of the Town of Flamborough Zoning By-law. The Committee of Adjustment approved the application on April 5, 2012, (see Appendix "C"). Due to the appeal period, Planning and Economic Development Department staff submitted an appeal letter and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council's approval/ratification.

Alternatives for Consideration - See Page 9.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: Planning and Economic Development Department staff has submitted the required fee of \$125.00 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. Therefore, no additional funds would be required.

Staffing: One representative from each of Development Planning and Legal Services would be required for preparation and attendance at an OMB Hearing.

Legal: No legal implications are expected.

HISTORICAL BACKGROUND

Chronology:

March 8, 2012: Submission of Minor Variance Application FL/A-12:64 by Fothergill Planning & Development Inc, on behalf of 2062017 Ontario Inc. c/o The Krpan Group Inc.

April 5, 2012: Notice of Decision issued approving application.

April 20, 2012: Appeal filed by City of Hamilton.

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April 20, 2012: Appeal filed by Waterdown BIA – (Business Improvement Area).

Proposal

The subject property is located at 94 Dundas Street East in the Town of Flamborough. The application proposes to permit a retail establishment having a minimum size of 130.0 square metres, whereas a minimum unit size of 465.0 square metres is required. The minimum size of a retail unit was established through a number of comprehensive Official Plan and Zoning By-law amendment processes that converted employment lands to commercial uses for lands located in the Industrial Business Park (I.B.P) at the northeast and southeast corners of Highway 5 and Highway 6 in Waterdown. The approvals process required the review of various market studies to evaluate the effects of the conversion. It was identified in the market studies that a minimum retail unit size of 465 square metres be established through the implementing zoning by-law to preserve the economic integrity of the Downtown Waterdown Business District.

The application was reviewed against all applicable planning policy documents which included the Provincial Greenbelt Plan, the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the Town of Flamborough Official Plan, and the Town of Flamborough Zoning By-law 90-145-Z. Planning and Economic Development Department staff recommended denial of the application on the basis of non-conformity with the local Official Plan and Zoning By-law.

Details of Submitted Application:

Location: 94 Dundas Street East (Flamborough)

Owner/Applicant: 2062017 Ontario Inc., c/o The Krpan Group Inc.

Property Description: Frontage: Approximately 112.8 metres
Depth: Approximately 403.5 metres (irregular)
Area: Approximately 3.03 hectares

Existing Land Use And Zoning:

	Existing Land Uses	Existing Zoning
Subject Lands:	Commercial	Prestige Industrial “M1-13” Zone (Zoning By-law 90-145-Z); Park Open Space “02” Zone (Zoning By-law 90-145-Z); Prestige Industrial “M3” Zone (Zoning By-law 05-200); and

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Conservation/Hazard Land "P5"
Zone (Zoning By-law 05-200)

Surrounding Lands:

North	Commercial	Prestige Industrial "M1-12-1" Zone (Zoning By-law 90-145-Z)
South	Vacant	Parkway Belt Open Space "O1" Zone (Zoning By-law 90-145-Z)
East	Open Space/Pipe Line Easement	Park Open Space "O2" Zone (Zoning By-law 90-145-Z)
West	Commercial	Prestige Industrial "M1-11-1" Zone (Zoning By-law 90-145-Z)

POLICY IMPLICATIONS

Provincial Greenbelt Plan

The application has been reviewed with respect to the Greenbelt Plan. Staff notes that the subject lands are designated as "Settlement Area" within the Greenbelt Plan. The proposal conforms to the Greenbelt Plan.

Provincial Policy Statement (PPS)

The application has been reviewed with respect to the Provincial Policy Statement (PPS). The proposal is consistent with the PPS.

Hamilton-Wentworth Official Plan

The subject lands are designated "Business Parks" in the Hamilton-Wentworth Official Plan. The proposal for a retail use within the Business Parks designation conforms to the Official Plan.

Town of Flamborough Official Plan

The subject property forms part of the Flamborough Business Park Secondary Plan.

Flamborough Business Park Secondary Plan

The subject property is designated Prestige Industrial - Commercial and is designated as Site-Specific Area No. 114.

Policy A.6.6.2.6 states “Prestige Industrial-Commercial – Site-Specific Area No. 114

On lands shown as Site-Specific Area No. 59 on schedule “A-1” limited retail establishments shall be permitted in addition to the uses permitted in A.6.6.2.1 above.”

The implementation section of the Official Plan Amendment stated that a Zoning By-law Amendment and Site Plan will give effect to the intended use on the subject lands.

Policy A.6.2.2.1 states “Lands designated Prestige Industrial Commercial, in the northeast and southeast quadrants of the Business Park, shall be used for the permitted uses on landscaped lots on a park-like surrounding. This land use designation shall be the highest order use in the I.B.P. (Industrial Business Park). A high standard of building design and appearance is required and undeveloped parts of lots shall be landscaped in order to achieve the intended prestige image. The location of the following permitted uses will be more specifically determined in the implementing Zoning By-law:

- i) manufacturing, processing, assembling, packaging, fabricating, warehousing and storage within wholly enclosed buildings;
- ii) office space directly associated with an industrial-business activities, within the same structure;
- iii) a Business, professional, administrative office building;
- iv) research and development facilities;
- v) hotel/motel;
- vi) government service buildings such as firehalls and ambulance stations;
- vii) exhibition and conference halls;
- viii) public and private sports facilities;
- ix) wholesale and/or retail warehouse in accordance with Sections A.6.2.2.2 and A.6.2.2.3;
- x) home improvement, household furniture and/or appliance outlet and/or lawn and garden centre;
- xi) financial institution, personal service shop, convenience store and restaurant, provided that such uses generally serve the business and employees of the Business Park and also the needs of the resident and travelling public; and,
- xii) automobile service station and gas bar.

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In those areas on the periphery of the I.B.P., particularly adjacent to existing and/or possible future residential development, only those uses that do not emit odour, dust or noise will be permitted. In addition, any lighting requirements shall be located and directed so that there is no negative visual impact on adjacent existing or future residential areas.”

As part of the initial Official Plan Amendment process for the northeast and southeast portions of the I.B.P area (east of Highway 6, north and south of Highway 5) in 2003, a Market Analysis was undertaken to support the conversion of employment lands to commercial. Similarly, a Market Study was undertaken to support the 2007 applications for the subject lands. All Market Analysis documents for the northeast and southeast portions of the I.B.P area included an evaluation of the appropriateness of the proposed commercial uses and its potential impacts on the Downtown Waterdown Business District. Based on the Market Study it was concluded that the majority of retail uses outside of the Business Park in Waterdown are less than 465 sq. m. in size. Therefore, in order to sustain the economic integrity of the Downtown Waterdown Business District, a minimum retail store size of 465 square metres was implemented through the corresponding Zoning By-law Amendment which facilitated the conversion to commercial uses.

Notwithstanding that the proposed retail use conforms to the policies of the Official Plan, the proposal would establish a retail use substantially smaller than what was supported by the Market Study conducted in 2007, and therefore does not meet the intent of Official Plan.

New Urban Hamilton Official Plan

The Urban Hamilton Official Plan received Ministerial Approval from the Ministry of Municipal Affairs and Housing on March 16, 2011, and is currently under appeal. The subject lands are designated “District Commercial” on Volume 1 Schedule E-1 – Urban Land Use Designations. It is also designated as Special Policy Area UF-1 sub-area A on Volume 3 Map F-1. Volume 1 Section E.4.7 and Volume 3 Sections UF-1 1.0 and 1.1 permit retail uses however, these policies have been adopted to reflect OPA 114 to the Town of Flamborough Official Plan. Notwithstanding that the proposed use conforms to the policies of the new Urban Hamilton Official Plan, the reduced retail unit size does not meet the intent of the Market Study submitted to support the previously approved Official Plan Amendments to the Town of Flamborough Official Plan.

Town of Flamborough Zoning By-law No. 90-145-Z

The subject lands are zoned Prestige Industrial “M1-13” Zone (Zoning By-law 90-145-Z); Park Open Space “02” Zone (Zoning By-law 90-145-Z); Prestige Industrial “M3” Zone (Zoning By-law 05-200); and Conservation/Hazard Land “P5” Zone (Zoning By-

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law 05-200) in both the Town of Flamborough Zoning By-law and the new City of Hamilton Zoning By-law. The proposal is within lands currently zoned Prestige Industrial “M1-13” Zone as shown on Appendix “B”.

The Zoning By-law Amendment passed on March 24, 2009, (By-law No. 09-054) reinforced the accompanying Official Plan Amendment No. 114 (By-law No. 09-053) to implement commercial performance standards consistent with the findings of the Market Study, submitted to facilitate the conversion of employment lands to commercial uses. It was determined through this Market Study (consistent with the findings of the previous studies completed for the I.B.P area), that the economic integrity of the Downtown Waterdown Business District would be adequately protected from negative impacts of the power centre area by ensuring that the minimum size of retail units was 465 square metres in gross floor area.

As the proposal requests relief from Section 23.3.13 (b) to permit a retail unit size of 130 square metres, whereas 465 square metres is required, it is not considered minor or consistent with the intent of the Zoning By-law and cannot be supported.

RELEVANT CONSULTATION

- N/A.

ANALYSIS / 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 the Planning and Development Department be authorized and directed to prepare an Information Report to the Committee of the Whole when an appeal is made to the Ontario Municipal Board, of a decision made by the Committee of Adjustment to deny an application(s) that was supported by staff. In response to such a report, Council may determine its position on the Committee of Adjustment decision and may instruct Legal Services to attend the Ontario Municipal Board Hearing, in support of the Committee’s decision, and to retain outside professional(s) accordingly.”

This situation for the 94 Dundas Street East application is one in which the Committee of Adjustment “approved” an application that was “not” supported by staff. What is consistent between the above resolution and the subject application is that the Committee of Adjustment decided against the staff recommendation. As a result, the

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above application is being brought to the attention of Council for their consideration and direction.

Due to the short appeal time frame regulated through the Planning Act, the prescribed fee and appeal letter were submitted to begin the appeal process, subject to confirmation of this action from Council.

The proposal does not meet the intent of the Town of Flamborough Official Plan and Zoning By-law. Further, the proposal does not represent the findings of the Market Study prepared to facilitate the commercial development, which would alleviate any negative impacts to the existing Downtown Waterdown Business District. Accordingly, it is recommended that the appeal of the application proceed.

Precedents

On June 5th, 2008, approval was granted by the Committee of Adjustment for a Minor Variance application to permit a retail store having a minimum gross floor area of 370 square metres whereas 465 square metres is required. This approval applied to lands known as 50 Horseshoe Crescent located northwest of the subject lands but within the I.B.P. area and subject to a Market Analysis similar to that which permitted the subject lands to develop commercially. The merits of each application received by staff are evaluated on their own merits to assess conformity with the applicable policy documents. The application was presented to the Committee of Adjustment on May 15th, 2008 where staff recommended tabling of the application pending conditional approval of the site plan application that was being processed concurrent to the Minor Variance application. On May 28th, 2008, conditional approval was granted for a multi-unit commercial building. On June 5th, 2008, when the Minor Variance item returned to the Committee of Adjustment for approval, staff did not object to the approval of the application on the basis that the reduction of only 95 square metres was minor in nature and did not create a negative impact to the viability of the Downtown Waterdown Business District, consistent with the Town of Flamborough Official Plan and the Zoning By-law. No appeals were filed against the Committee of Adjustments decision.

The proposal for the subject lands is requesting a reduction of 335 square metres to facilitate a proposed piano store. This reduction is nearly the same size as the mattress store to the northwest and does not represent the intent of the Official Plan and Zoning By-law to preserve and protect the economic integrity of the Downtown Waterdown Business District. The previously approved Minor Variance for 50 Horseshoe Crescent is not considered to set a precedent for future reductions in gross floor area below the minimum 465 square metre requirement in the I.B.P. area, and has no impact on the position taken by staff for the subject application. Therefore, the appeal should proceed on the basis of this application does not meet the intent of the Official Plan and Zoning

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By-law. This proposal has also been appealed by the Waterdown Business Improvement Area.

ALTERNATIVES FOR CONSIDERATION

Option 1

Council could proceed with the appeal and direct appropriate Legal Services and Planning staff to attend the OMB Hearing in opposition to the approved minor variance application, as recommended in this Report.

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 OMB. However, it should be noted that a third party appeal has also been submitted and received by the Committee of Adjustment. Planning staff could potentially be subpoenaed to support the appeal.

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Growing Our Economy

- ◆ Competitive business environment

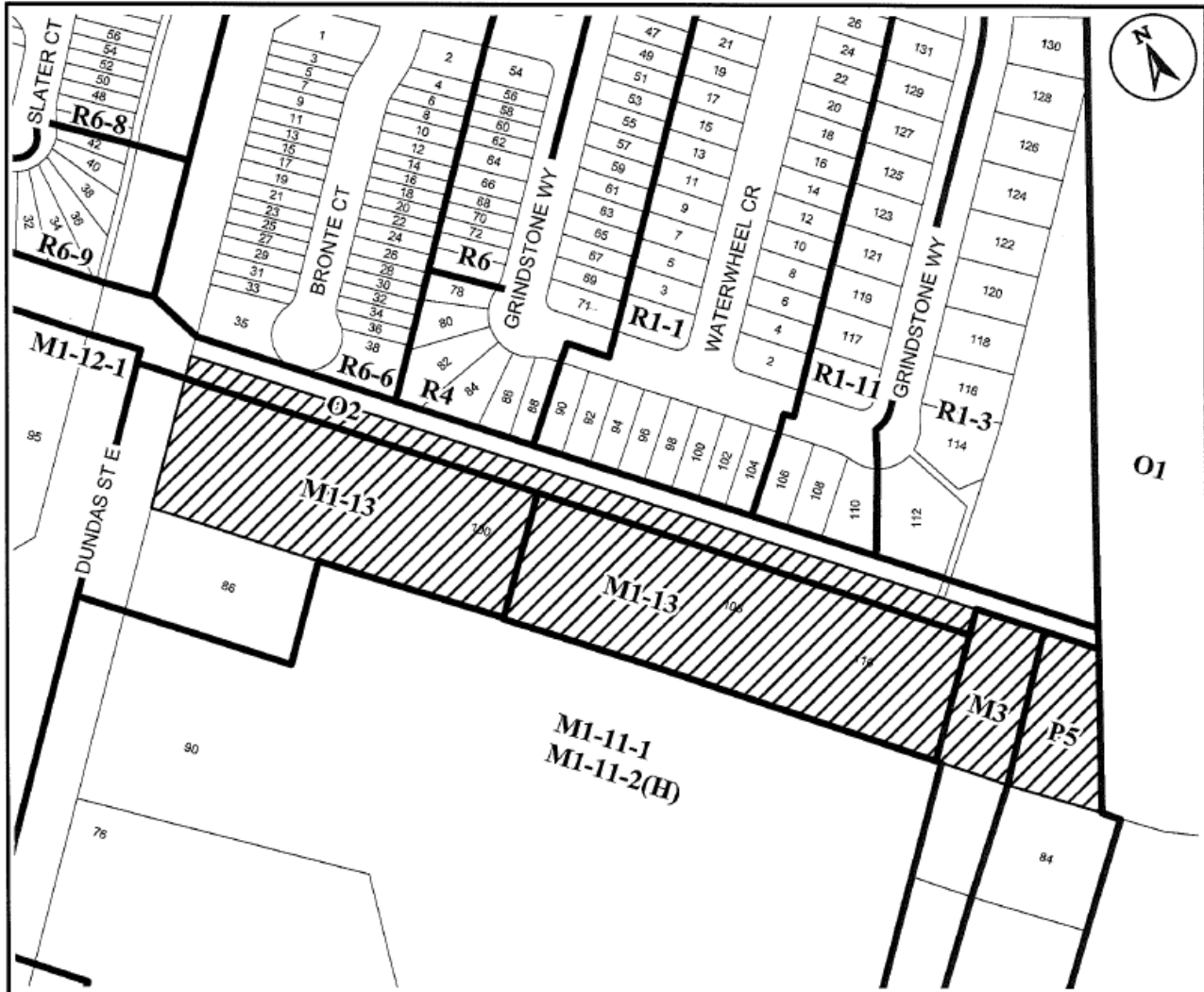
Healthy Community

- ◆ Plan and manage the built environment.

APPENDICES / SCHEDULES

- Appendix "A": Location Map
- Appendix "B": FL/A-12:64 Concept
- Appendix "C": FL/A-12:64 Decision

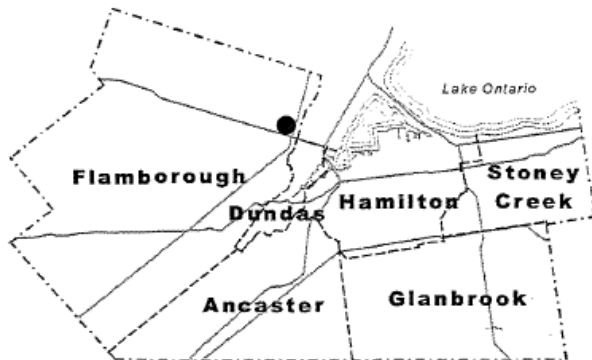
:KM/ra
Attachs. (3)



● Site of the Application



Committee of Adjustment



City of Hamilton

Subject Property



94 Dundas Street East

File Name/Number:
FL/A-12:64

Date:
March 28, 2012

Technician:
KA

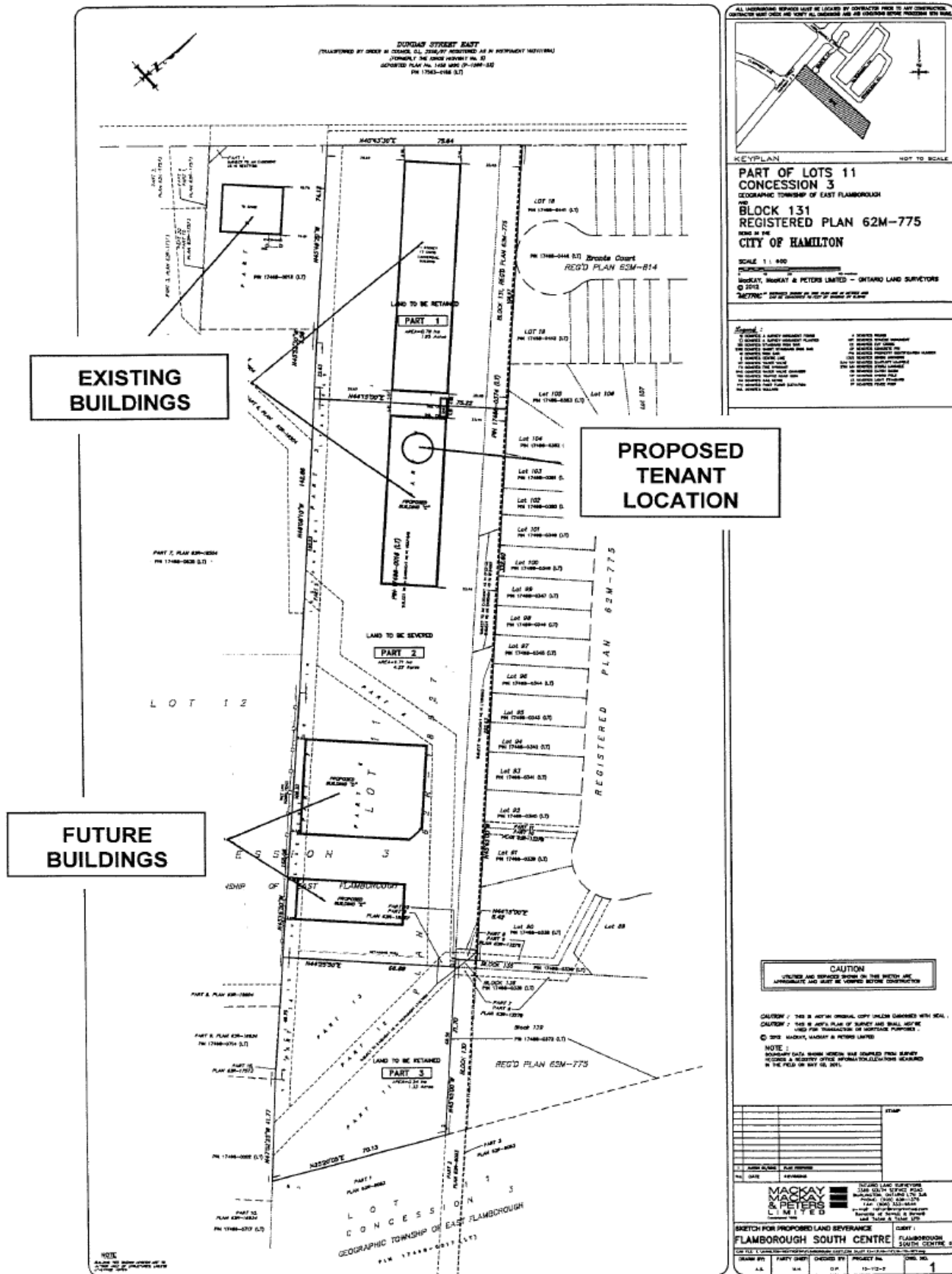
Map Not to Scale

Appendix "A"



Hamilton

Appendix "B" to Report PED12102
(Page 1 of 1)





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

COMMITTEE OF ADJUSTMENT
DECISION OF THE COMMITTEE

APPLICATION NO. FL/A-12:64
SUBMISSION NO. A-64/12

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 90-145-Z and 05-200, as amended, of the City of Hamilton (formerly Flamborough), Sections 29, 25 (90-145-Z0) and 9.3 (05-200).

AND IN THE MATTER OF the Premises known as Municipal number 94 Dundas Street East, formerly in the Town of Flamborough, now in the City of Hamilton and in an "**M1-13, 02- and M3**" (**Prestige Industrial, Park Open Space and Prestige Business Park**) district;

AND IN THE MATTER OF AN APPLICATION by the agent Ed Fothergill on behalf of the owner 2062017 Ontario Inc. (c/o The Krpan Group Inc.), for relief from the provisions of the Zoning By-Law No. 90-145-Z and 05-200, as amended, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit a retail establishment having a minimum unit size of 130.0m² notwithstanding that a minimum size of 465.0m² is required.

THE DECISION OF THE COMMITTEE IS:

That the variance, as set out in paragraph three above, is **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.
3. The Committee having regard to the evidence is satisfied that there will be no adverse impact on any of the neighbouring lands.

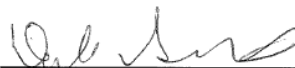
DATED AT HAMILTON this 5th day of April, 2012



I. Dunlop (Acting Chairman)



L. Gaddy



D. Smith



D. Drury



D. Serwatak

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS **April 25th, 2012**.

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