




Hamilton

**CITY OF HAMILTON**
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
*Planning Division*

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> WARD 2
<b>COMMITTEE DATE:</b> August 14, 2012	
<b>SUBJECT/REPORT NO:</b> Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Daniel Barnett (905) 546-2424 Ext. 4445
<b>SIGNATURE:</b>  FOR T. McCABE	

**RECOMMENDATION:**

That Report PED12138, respecting Committee of Adjustment Minor Variance Application HM/A-12:43, to permit the conversion of the ground floor retail store into 3 residential dwelling units and establish an 8 unit multiple dwelling, at the property known as 222 Wentworth Street South (Hamilton), as shown on Appendix "A" to Report PED12138, supported by the Planning and Economic Development Department, but Denied by the Committee of Adjustment, be received for information.

**EXECUTIVE SUMMARY**

The applicant submitted Minor Variance Application HM/A-12:43 to convert the existing legal non-conforming ground floor variety store into 3 ground floor apartment units, thereby establishing an 8 unit multiple dwelling, on the lands located at 222 Wentworth Street South (Hamilton) (see Appendix "A").

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2) - Page 2 of 14**

---

Application HM/A-12:43 was considered before the Committee of Adjustment on March 22, 2012. Comments from Planning staff to the Committee of Adjustment supported the application, as it was considered to be consistent with the Provincial Policy Statement, in conformity to the Hamilton-Wentworth Official Plan and City of Hamilton Official Plan, and satisfied the criteria of Section 45.2 of the Planning Act with respect to the conversion and expansion of a legal non-conforming use.

The Committee of Adjustment denied the application for the reasons provided in the attached Appendix "B". The decision has been appealed to the Ontario Municipal Board (OMB) by the applicant. To date, an OMB hearing has not been scheduled.

*Alternatives for Consideration - See Page 13.*

<b>FINANCIAL / STAFFING / LEGAL IMPLICATIONS</b> (for Recommendation(s) only)
---

**Financial:** Planning and Economic Development Department staff supported the subject application. However, if Council wishes to support the Committee of Adjustment's decision to deny the application, the City must retain an outside planning consultant and any other experts who can professionally support the denial. In addition, because of staffing constraints in the Legal Department and a high volume of appeals, outside legal counsel may also have to be retained. The hearing would likely take between one to three days. If an outside planning consultant is retained, the costs would be approximately \$3,000.00 to \$5,000.00 for each day of a hearing. Cost for external legal counsel would be several thousand dollars per day, or greater. In keeping with the funding source for other appeals where Council authorizes the retainer of outside consultants, the amount required to retain such experts to support the City's position before the OMB would be funded first, through the 2012 Budget; second, through year-end Corporate Surpluses; and lastly, through the Tax Stabilization Reserve.

**Staffing:** One representative from Legal Services would be required for preparation and attendance at the OMB Hearing. However, as indicated above, Legal Services is currently experiencing staffing constraints and a high volume of hearings. It is highly likely external legal counsel may need to be retained with respect to this appeal. One member of Planning staff would attend as an expert witness at the hearing should Council support Option 2.

**Legal:** No legal implications are expected.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton)  
- Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)  
- Page 3 of 14**

---

## **HISTORICAL BACKGROUND** (Chronology of events)

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 Economic 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.”

### **Proposal:**

The subject property is located at 222 Wentworth Street South (Hamilton) (see Appendices “A” and “C”). Minor Variance Application HM/A-12:43 was to permit the conversion of a legal non-conforming ground floor variety store into a similar or more compatible use under Section 45.2 ii) of the Planning Act (3 apartment units), and to permit the expansion of a legal non-conforming use under Section 45.2 i) of the Planning Act by filling in the concave store front and by recognizing a previously established pitched roof. The proposed variances were denied by the Committee of Adjustment on March 22, 2012 (see Appendix “B”) and was appealed to the OMB on April 11, 2012.

The application was reviewed against all applicable provincial and local planning policy documents. Planning staff recommended approval of the application, as the proposal conforms to the Places to Grow Plan, is consistent with the Provincial Policy Statement, and conforms to the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan.

## **POLICY IMPLICATIONS**

### **Places to Grow:**

The application has been reviewed with respect to the Places to Grow - Growth Plan for the Greater Golden Horseshoe (P2G).

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2) - Page 4 of 14**

---

- “2.2.2.1 Population and Employment growth will be accommodated by:
- a) Directing a significant portion of new growth to the built-up areas of the community through intensification.
  - d) Reduce dependence on the automobile through the development of mixed-use, transit supportive, pedestrian friendly urban environments.
- 2.2.3 6) All municipalities will develop and implement through their Official Plans and other supporting documents, a strategy and policies to phase in and achieve intensification and the intensification target. This strategy and policies will:
- h) Include density targets for urban growth centres, where applicable, and minimum density targets for other intensification areas consistent with the planned transit service levels, and any transit supportive land use guidelines established by the Government of Ontario.
  - i) Plan for a range and mix of housing, taking into account affordable housing needs.
- 2.2.3 7) All intensification areas will be planned and designed to:
- d) Support transit, walking, and cycling for everyday activities.
- 2.2.4 4) Urban growth centres will be planned:
- b) To accommodate and support major transit infrastructure.”

As the proposal is to convert the existing ground floor variety store to 3 residential apartment units and, thereby, establish an 8 unit apartment building, staff considers the proposal will support affordable housing and reduce dependency on the automobile by promoting a use that will encourage the use of alternative forms of transportation including walking, cycling, and public transportation. Consequently, the proposal conforms to the policies of the Places to Grow Plan.

Provincial Policy Statement:

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

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2) - Page 5 of 14**

---

- “1.1.3.1 Settlement Areas shall be the focus of growth and their vitality and regeneration shall be promoted.
- 1.1.3.2 Land use patterns within Settlement Areas shall be based on:
- a. Densities and a mix of land uses, which:
    - 1. Efficiently use land and resources;
    - 2. Are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion; and,
    - 3. Minimize negative impacts to air quality and climate change, and promote energy efficiency in accordance with Policy 1.8.
- 1.4.3 Planning authorities shall provide for an appropriate range of housing types and densities to meet projected requirements of current and future residents of the regional market area by:
- a) Establishing and implementing minimum targets for the provision of housing which is affordable to low and moderate income households. However, where planning is conducted by an upper-tier municipality, the upper-tier municipality, in consultation with the lower-tier municipalities, may identify a higher target(s), which shall represent the minimum target(s) for these lower-tier municipalities;
  - d) Promoting densities for new housing which efficiently use land, resources, infrastructure, and public service facilities, and support the use of alternative transportation modes and public transit in areas where it exists or is to be developed.”

As the proposal is to convert an existing ground floor variety store into 3 ground floor residential apartment units and, thereby, establish an 8 unit apartment building within a “Settlement Area”, and as the proposal will support affordable housing and the use of alternative transportation modes and public transit, the proposal is consistent with the policies of the Provincial Policy Statement.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton)  
- Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)  
- Page 6 of 14**

---

Hamilton-Wentworth Official Plan:

The subject property is designated "Urban Area" in the Hamilton-Wentworth Official Plan.

"C.3.1 A wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020. Accordingly, the Plan establishes a land use strategy for the Urban Area that consists of:

- Compact urban form, including mixed-use areas;

C.3.1.1 A compact higher density urban form, with mixed-use development in identified regional and municipal centres and along corridors, best meets the environmental, social, and economic principles of sustainable development.

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

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

As the proposal is to convert an existing variety store into 3 residential apartment units and, thereby, establish an 8 unit apartment building within the "Urban Area", and as the proposal will promote a compact urban form that improves the affordability of housing and promotes an urban environment that encourages the use of public transit and walking, the proposal conforms to the policies of the Hamilton-Wentworth Official Plan.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2) - Page 7 of 14**

---

City of Hamilton Official Plan:

The subject property is designated "Residential" in the City of Hamilton Official Plan.

- "A.2.1.1 The primary uses permitted in the areas designated on Schedule "A" as "Residential" will be for dwellings. Various types of dwellings are included within this designation, while preference will be given to the locating of similar densities of development together.
- C.7.3 Council will encourage a Residential Environment of an adequate physical condition that contains a variety of housing forms that will meet the needs of present and future residents. Accordingly, Council will:
- iv) Support "Residential" conversion of underutilized commercial space to "Residential", which does not undermine the primary commercial use/function of the neighbourhood, subject to the provision of Sub-section A.2.2;
  - v) Support new "Residential" development that provides tenure options and a range of prices/rents for new dwellings that will be affordable to Hamilton residents;
- C.7.6 Council will encourage at least 25 percent of new residential development in the City to be 'affordable', consistent with Provincial Government definitions of housing affordability. This is to be achieved on a municipally-wide basis and reflect in the Neighbourhood Planning process. Accordingly, the range and type of new "Residential" development will be evaluated annually to determine consistency with Provincial Government criteria for "affordable" housing.
- A.3.3.1 It is the intent of Council that any existing land use which does not comply with the land use designations shown on Schedule "A" or their related policies should cease to exist over time. Accordingly, such uses will be deemed to be non-complying and will be, or remain, zoned for the intended use so that the affected lands may convert to the use intended by this Plan.
- A.3.3.2 In certain instances, Council may deem it to be desirable to permit the extension beyond the boundaries of the site, or redevelopment, of a non-complying use to avoid unnecessary hardship. Such proposed extensions or enlargements will be dealt with in the following manner:

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2) - Page 8 of 14**

---

- ii) Where no municipal acquisition is possible and/or the special merits of the individual case make it desirable to grant permission for the extension or redevelopment of the non-complying use, Council may consider the passing of an enabling Zoning By-law pursuant to the Planning Act; and,
- iii) Council, before passing such a By-law, will be satisfied that the following requirements are, or will be fulfilled to ensure the protection of the wider interests of the general public:
  - a) That the proposed extension or enlargement of the established non-complying use will not unduly aggravate the situation created by the existence of the use, especially in regard to the land use designation of this Plan and the requirements of the Zoning By-law applying to the area.”

Staff considers that with the removal of the commercial use and expansion of the residential use, within lands designated “Residential”, the proposed use would mitigate as opposed to aggravate the existing situation.

- “A.3.3.2 iii)            b) That the proposed extension or enlargement will be in an appropriate proportion to the size of the non-complying use established prior to the passing of the original Zoning By-law.”

The proposed extension to the building (7.03 sq. m.) is minor and in proportion to the size of the existing building.

- “A.3.3.2 iii)            d) The characteristics of the existing non-complying use and the proposed extension or enlargement will be examined with regard to noise, vibration, fumes, smoke, dust, odours, lighting, and traffic generation. No amendment to the By-law will be made if one or more of such nuisance factors will be created or increased so as to add essentially to the incompatibility of the use with the surrounding area.”

The proposal would create residential units of a size and scale similar to that existing, and would displace a commercial use that possibly has greater impact with regard to noise and traffic generation.



**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton)  
- Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)  
- Page 9 of 14**

---

- "A.3.3.2 iii)
- e) That the neighbouring complying uses will be protected, where necessary, by the provision of areas for landscaping, buffering, or screening; and where necessary, by regulations for alleviating adverse effects caused by outside storage, lighting, advertising, signs, etc;
  - g) That traffic and parking conditions in the vicinity will not be adversely affected by the application, and traffic hazards will be kept to a minimum by appropriate design of access and egress points to and from the site, and improvement of conditions, especially in proximity to intersections."

As the proposal is to discontinue the existing legal non-conforming commercial retail use, and to establish the building strictly as a legal non-conforming 8 unit multiple dwelling, the proposed use conforms to the policies of the City of Hamilton Official Plan.

City of Hamilton Urban Official Plan:

The subject property is designated "Neighbourhoods" in the Urban Hamilton Official Plan, which is Council-approved and was approved by the Minister of Municipal Affairs and Housing, but is currently under appeal. The following Sub-sections are relevant to the subject application:

- "E.3.1.5 Promote and support residential intensification of appropriate scale and in appropriate locations throughout the neighbourhoods.
- E.3.2.3 The following uses shall be permitted on lands designated "Neighbourhoods" on Schedule E-1 - Urban Land Use Designations:
- a) Residential dwellings, including second dwelling units and housing with supports."

As the proposal is to convert a variety store to establish 3 residential apartment units within a building with 5 existing residential apartment units, and as the units will be located within an existing building on a minor arterial road, the proposal conforms to Policies E.3.1.5 and E.3.2.3 of the new Urban Hamilton Official Plan.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton) - Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2) - Page 10 of 14**

---

**"E.3.3 Residential Uses - General Policies**

Three categories of residential land use are described in this section, but are not designated on Schedule E-1 - Urban Land Use Designations. These residential categories provide general location, scale, and design directions for the purposes of secondary planning and zoning. These categories may also be applied in the redevelopment of larger sites.

**E.3.3.1 Lower density residential uses and building forms shall generally be located in the interiors of neighbourhood areas with higher density dwelling forms and supporting uses located on the periphery of neighbourhoods on or in close proximity to major or minor arterial roads."**

As the proposal is to convert commercial variety store to 3 residential apartment units and thereby establish an 8 unit apartment building that is located on the periphery of a neighbourhood on a minor arterial road, the proposal conforms to Policies E.3.3 and E.3.3.1 of the new Urban Hamilton Official Plan.

**"F.1.12 It is recognized there are some previously existing land uses that do not presently comply with the goals and objectives set out in this Plan. This Plan, while endeavouring to achieve a high degree of land use compatibility for new development, recognizes there is a degree of diversity in land use for existing areas where time and custom have achieved an acceptable level of tolerance. Many of these uses have been established for a considerable number of years. In some cases, it is recognized such situations exist and they can be continued in the interim. In other cases, there are some existing uses that do not comply with the Official Plan or conform to the Zoning By-law, and are incompatible with surrounding land uses.**

**F.1.12.7 Legally existing land uses which do not comply with the land use designations shown on Schedule E-1 - Urban land Use Designations or their related policies should cease to exist over time. Accordingly, such uses shall be deemed as legal non-complying.**

**F.1.12.9 The expansion or enlargement or change in legal non-complying uses shall be permitted provided they maintain the intent and purpose of this Plan and the Zoning By-law."**

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton)  
- Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)  
- Page 11 of 14**

---

As the proposal is to convert and enlarge the ground floor portion of the existing building occupied by a legal non-complying variety store to establish 3 additional residential apartment units, the proposal will conform to the policies of the "Neighbourhoods" land use designation. Therefore, the proposal would conform to Policies F.1.12, F.1.12.7, and F.1.12.9 of the new Urban Hamilton Official Plan.

City of Hamilton Zoning By-law No. 6593:

The subject property is zoned "D" (Urban Protected Residential - 1 and 2 Family Dwellings) District in the City of Hamilton Zoning By-law, to which the proposed use does not comply but has legal non-conforming status.

**RELEVANT CONSULTATION**

- Legal Services Division.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The application is to permit the conversion of an existing ground floor variety store to 3 residential apartment units in a building with 5 existing residential apartment units on the 2<sup>nd</sup> floor. The application is also to permit the expansion of the legal non-conforming use through a small addition (approximately 7.03 sq. m.) at the front of the building to enclose an existing concave store front. Finally, the application is to recognize a previous expansion of the building from a flat roof to a peaked roof (see Appendix "C").

**Minor Variance Application HM/A-12:43:**

Variance 1 (Permit a 0m Front Yard Setback Instead of 6m):

The intent and purpose of requiring a minimum front yard setback of 6m is to maintain the streetscape character of the area.

Staff notes that while reference in the Report and Committee of Adjustment Decision discussed the merits of this request under Section 45.1 of the Planning Act, it is the opinion of staff that the review of the variance should have been undertaken under Section 45.2 i) of the Planning Act for the expansion to a legal non-conforming use, and on this basis, staff considers it to satisfy the requirements of having minimal impact as it recognizes the as-built setback.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton)  
- Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)  
- Page 12 of 14**

---

Variance 2 and 3 (Permit Expansion of a Legal Non-Conforming Use):

Section 45(2)(a)(i) of the Planning Act permits the expansion of a legal non-conforming use. In order to expand a legal non-conforming use, the proposed expansion must not cause unacceptable noxious impacts on neighbouring uses. In order for an expansion of a legal non-conforming use to occur under Section 45(2)(a)(i), the expansion cannot expand beyond the property that existed at the time the use became legal non-conforming, and that the proposed expansion will not negatively impact on surrounding uses.

As the proposed expansion is to add a small addition (approximately 7.03 sq. m.) to fill-in the existing concaved store front, and as the existing building currently has no on-site parking, has no potential to provide parking on-site, and as the property is located in proximity to transit routes, the proposed addition is not considered to cause unacceptable noxious impacts on the neighbouring uses.

A variance under Section 45(2) of the Planning Act is also required to recognize a previously established change to the roof of the building from a flat roof to a peaked roof. The change in the pitch of the roof creates a more compatible building design and, therefore, the modification does not cause any unacceptable noxious impacts on neighbouring uses.

Variance 4 (Conversion from a Legal Non-Conforming Ground Floor Variety Store with 5 2<sup>nd</sup> Storey Apartment Units to a Legal Non-Conforming 8 Apartment Unit Building with 3 Ground Floor Apartment Units and 5 2<sup>nd</sup> Storey Apartment Units):

Section 45(2)(a)(ii) of the Planning Act permits the conversion of a legal non-conforming use to a use that is similar to the legal non-conforming use or a use that is more compatible than the existing legal non-conforming use. In order for a conversion under Section 45(2)(a)(ii) to occur, the overall impacts of the proposed use cannot be increased, and must either remain the same or have less of an impact on surrounding uses.

The subject property is located in a "Residential" zone that permits only 1 or 2 dwelling units, and does not permit commercial uses. The proposal is to discontinue the ground floor commercial use and replace it with residential use (3 apartment units) which, while not permitted in the "D" District, is more compatible to the surrounding residential area and the residential nature of the Zoning By-law. Therefore, staff is of the opinion that the proposed conversion from a variety store to 3 apartment units constitutes a conversion to a more compatible use. Consequently, staff supports variance approval under Section 45(2)(a)(ii) of the Planning Act.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton)**  
**- Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)**  
**- Page 13 of 14**

---

With respect to the proposed application, staff is of the opinion that the proposal is consistent with all applicable Provincial policies, conforms to the policies of the Hamilton-Wentworth Official Plan, conforms to the policies of the City of Hamilton Official Plan, and satisfies Section 45(2) of the Planning Act. As the proposed expansion and conversion of a legal non-conforming use will not increase any negative impacts on neighbouring uses, the proposed variance approval to convert a legal non-conforming use and expand a legal non-conforming use can be supported.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

**Option 1:**

Council may instruct Legal Services to attend the OMB Hearing in support of the Committee of Adjustment decision, and to retain an outside professional(s).

**Option 2:**

Council may decide to support the appeal against the Committee of Adjustment's decision to deny, and direct Legal Services to attend the OMB Hearing in support of the appeal to the applications, and to use City Planning staff as its professional witness.

**Option 3:**

Council may decide to not send Legal Services to the OMB, either in support of the Committee's decision, or against the decision.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

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

**Social Development**

- ◆ Everyone has a home they can afford that is well maintained and safe.

**Environmental Stewardship**

- ◆ Reduced impact of City activities on the environment.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-12:43 for the Property Known as 222 Wentworth Street South (Hamilton)**  
**- Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12138) (Ward 2)**  
**- Page 14 of 14**

---

**Healthy Community**

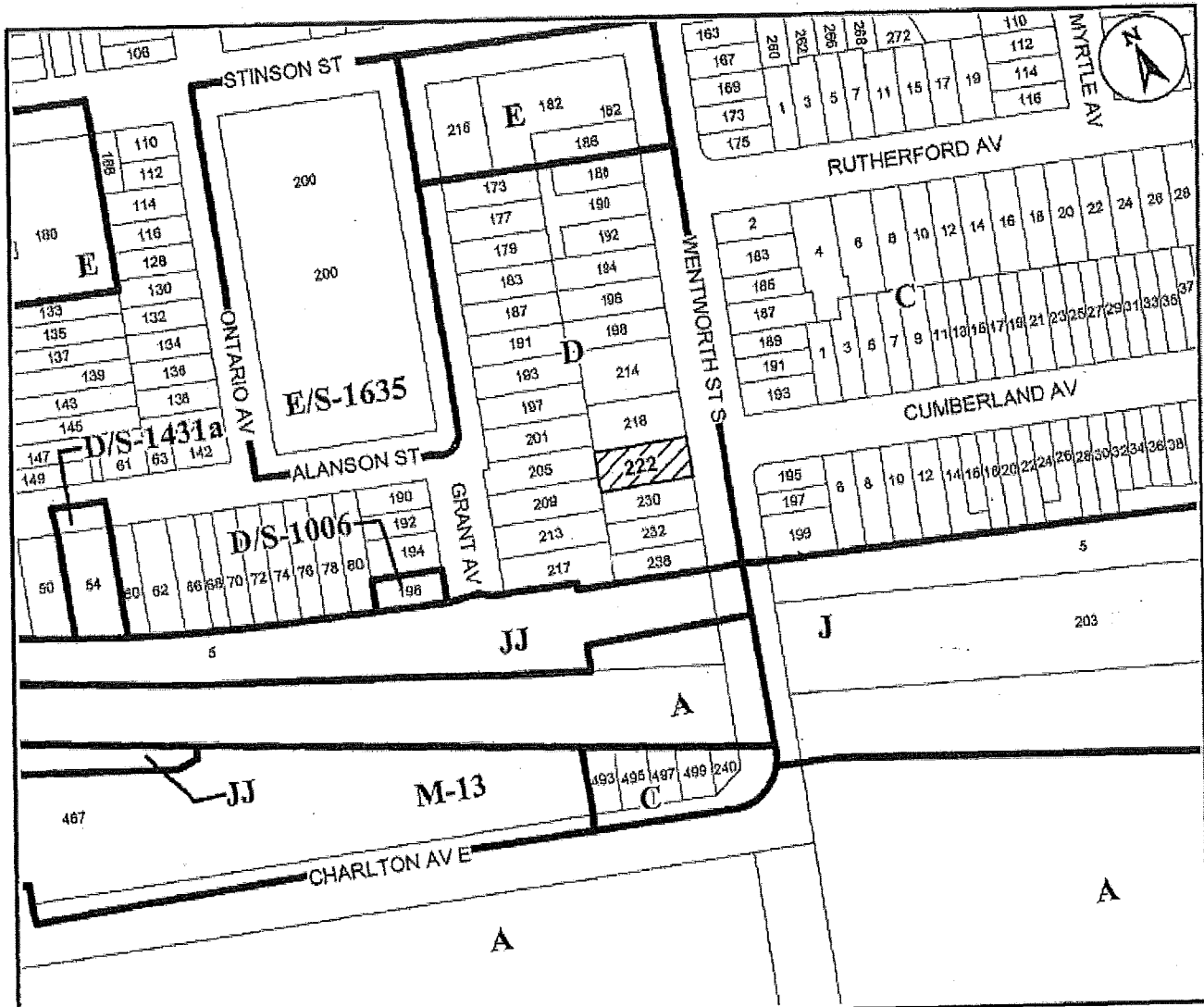
- ◆ Plan and manage the built environment.

**APPENDICES / SCHEDULES**

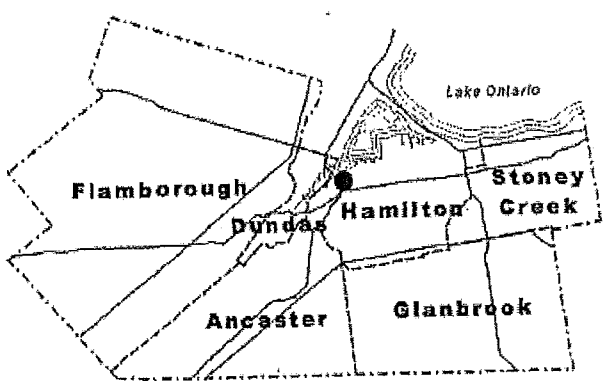
- Appendix "A": Location Map
- Appendix "B": HM/A-12:43 Committee of Adjustment Decision
- Appendix "C": Sketch of the Applicant
- Appendix "D": Minutes of the Committee of Adjustment Meeting
- Appendix "E": Staff Report for Minor Variance Application HM/A-12:43
- Appendix "F": Letter Prepared by Applicant
- Appendix "G": Letter of Objection

:DB

Attachs. (7)

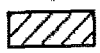


● Site of the Application



**City of Hamilton**

## Committee of Adjustment

**Subject Property**  
 222 Wentworth Street South

File Name/Number: HM/A-12:43
Date: March 9, 2012
Technician: AL
Map Not to Scale
Appendix "A"



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT



Committee of Adjustment  
Hamilton City Hall  
71 Main Street West, 5<sup>th</sup> floor  
Hamilton, ON L8P 4Y6  
Telephone (905) 546-2424, ext. 4221  
Fax (905) 546-4262

**COMMITTEE OF ADJUSTMENT**  
**DECISION OF THE COMMITTEE**

**APPLICATION NO. HM/A-12:43**  
**SUBMISSION NO. A-43/12**

**IN THE MATTER OF** The Planning Act, R.S.O., 1990, c.P. 13 as amended and of the Zoning By-Law No. 6593, of the City of Hamilton, Sections 10, 18A.

**AND IN THE MATTER OF** the Premises known as Municipal number 222 Wentworth Street South, in the City of Hamilton and in a "D" (Urban Protected Residential - 1 & 2 Family Dwellings) district;

**AND IN THE MATTER OF AN APPLICATION** by the agent Christian Chukwuall on behalf of the owner Joseferesa Canada Inc., for relief from the provisions of the Zoning By-Law No. 6593, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the conversion of a portion of the legally established non-conforming building, containing a ground floor retail (variety) store, together with five (5) legally established non-conforming residential dwellings through the conversion of the retail (variety) store into three (3) residential dwelling units together with a small addition at the front of the existing building of approximate 7.03 m<sup>2</sup>. The purpose of this application is to create an eight (8) unit multiple dwelling with no commercial uses; in addition to permit the existing pitch roof to remain notwithstanding that;

1. 0.0m front yard depth shall be provided for the proposed addition instead of the minimum required of 6.0m;
2. The expansion of the legal non-conforming use is not permitted; and,
3. The change from a flat roof to a pitched roof shall increase the height of the building.

**Note:**

The submitted sketch is rudimentary and poorly drawn. The variances were written based on the information submitted and information provided by the applicant and further variances may be required.

Please be advised that no parking shall be provided on site, as this is a legal non-conforming situation.

An Encroachment Agreement with the Roads Department may be required for the addition shown to encroach on the Road Allowance.

Subject to the issuance of a building permit in the normal manner.

**THE DECISION OF THE COMMITTEE IS:**

That the variances, as set out in paragraph three above, are **DENIED** for the following reasons:

1. The Committee having regard to the evidence is of the opinion that the relief requested is beyond that of a minor nature.
2. The relief requested is undesirable for the appropriate development of the land and building and is inconsistent with the general intent and purpose of the By-law and of the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee having regard to the intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.

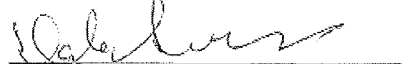


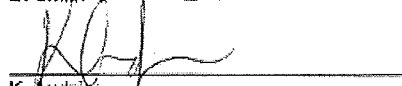
Appendix "B" to Report PED12138 (Page 2 of 2)


HMA-12:43  
Decision  
Page 2

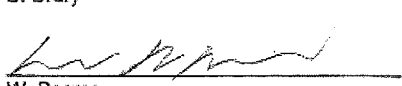
DATED AT HAMILTON this 22nd day of March, 2012

  
M. Dudzic (Chairman)

  
D. Smith

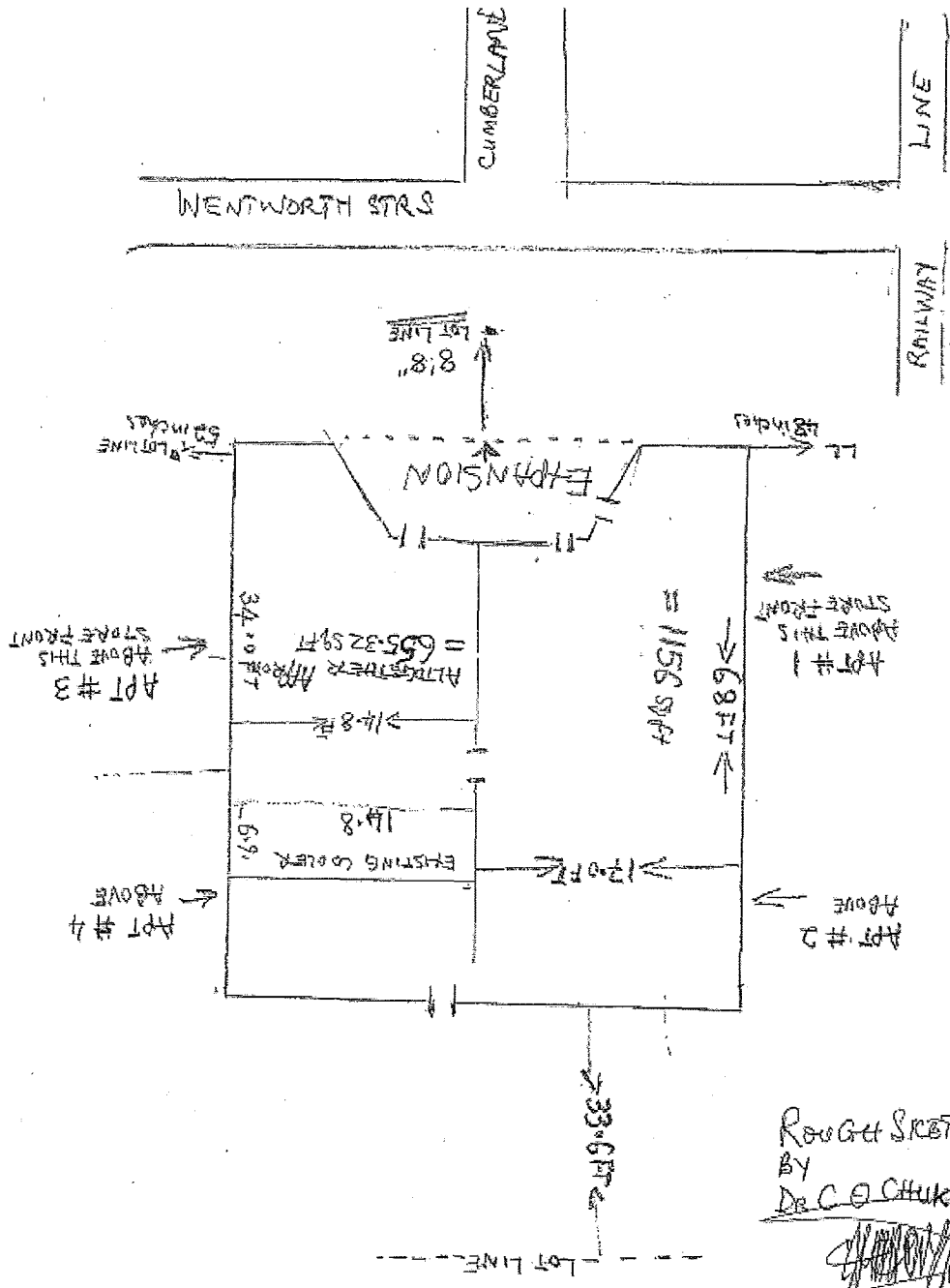
  
K. Audziss

  
D. Drury

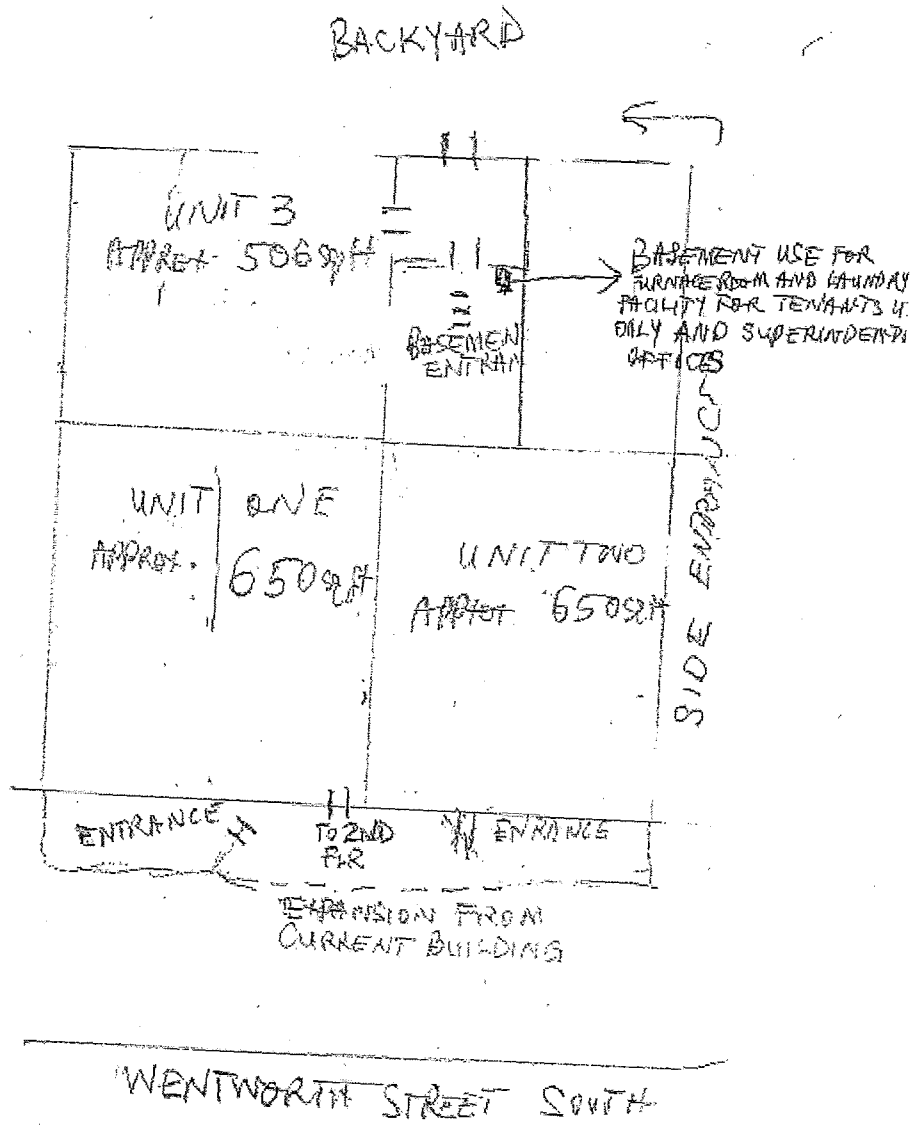
  
W. Pearce

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD  
MAY BE FILED IS April 11th, 2012.

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



HM/A-12:43  
SKETCH (1)



HM/A-12:43  
SKETCH (2)

March 22<sup>nd</sup>, 2012

HM/A-12:43

Joseferesa Canada Inc.  
222 Wentworth Street South, Hamilton

Appearances were:

Jason Winegard, Superintendent of the building on behalf of the owner. Interested parties were: Joan Prowse, 238 Wentworth Street South, Hamilton, ON L8N 2Z4.

Those members present for the hearing of this application were: M. Dudzic (Chairman), V. Abraham, W. Pearce, D. Drury, D. Serwatuk, L. Gaddy, D. Smith, I. Dunlop, K. Audziss.

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

A letter and petition were entered into the record from: Paul Travers, 8 Cumberland Avenue, Hamilton, ON L8M 1Y7

J. Prowse

- she has been here since 1974
- 99% of her concerns deal with parking
- most people don't even have room for one car in their driveway
- she is really upset about being called a low income neighbourhood

J. Winegard

- his son lives in the building
- most of the tenants don't have cars
- the proposal is what we are thinking of doing but it hasn't been approved by the City yet
- he understands the concerns with parking but the City needs more low income housing

D. Drury  
(Committee Member)

- the plans show an expansion of the building

J. Winegard

- we want to block off the overhang and make a proper entrance
- the plans weren't drawn correctly
- it will be no more than a porch

D. Drury  
(Committee Member)

- questioned what is existing on the ground floor

D. Barnett  
(staff)

- the ground floor is a legal non-conforming variety store

HMA-12:43

Page 2

- J. Winegard - it is only open 3-4 times a week
- D. Drury  
(Committee Member) - questioned why staff would be supporting the expansion of a legal non-conforming variety store and legal non-conforming 5 units
- J. Winegard - all the other commercial uses they have attempted have failed  
- nothing commercial has lasted more than two months
- D. Barnett  
(staff) - this is a "D" zone  
- a variety store or multi-use are not permitted  
- with the variety store disappearing it would make it a more compatible use in the district
- D. Drury  
(Committee Member) - questioned why an increase from 5 to 8 units isn't going before City Council
- D. Barnett  
(staff) - based on Section 45.2 an additional three units will be more compatible than a legal non-conforming variety store  
- the applicant originally wanted a laundromat but staff wouldn't support a change of use thru this process
- V. Abraham  
(Committee Member) - under the Planning Act this application is proper  
- his question is how they got the 5 units in the first place
- D. Barnett  
(staff) - the applicant explored that and found out that the 5 units and the variety store are legal non-conforming

In answer to questions from the Committee Mr. Winegard stated as follows:

- J. Winegard - the units are one bedroom units
- W. Pearce  
(Committee Member) - he sympathizes with the neighbour  
- this is a very stable neighbourhood
- V. Abraham  
(Committee Member) - he feels that there would be a lot less traffic with this than with a variety store  
- this would be a lot less intensive

HM/A-12:43  
Page 3

Following discussion it was moved by Mr. Pearce and seconded by Mr. Drury that the relief requested be **DENIED** for the following reasons:

1. The Committee having regard to the evidence is of the opinion that the relief requested is beyond that of a minor nature.
2. The relief requested is undesirable for the appropriate development of the land and building and is inconsistent with the general intent and purpose of the By-law and of the Official Plan as referred to in Section 45 of The Planning Act, 1990.
3. The Committee having regard to the intensity of use of the subject parcel of land is of the opinion that such development would not be appropriate for the lands.

Mr. Dudzic, Mr. Audziss and Mr. Smith voted in support of the motion to deny the application.

Mr. Serwatak, Mr. Dunlop, Mr. Gaddy and Mr. Abraham voted in objection to the motion to deny the application.

**MOTION CARRIED.**

March 22<sup>nd</sup>, 2012

**CONSOLIDATION REPORT  
VARIANCES**

The attached comments have been reviewed with regard to Committee of Adjustment Variance Application HM/A-12:43 (222 Wentworth Street South, Hamilton) and the following comments are submitted:

**Should the Committee approve the application, an approval should be subject to the following:**

NOTE (TO BE INCLUDED IN DECISION IF APPROVED):

1. Staff advise that the following noise warning clause should be included in any future purchase and sale and/or lease/rental agreements for the subject lands:

"Purchasers/tenants are advised that sound levels due to increasing road and rail traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria."

March 22<sup>nd</sup>, 2012

HM/A-12:43 (222 Wentworth Street South, Hamilton)

PLANNING and ECONOMIC DEVELOPMENT DEPARTMENT

Development Planning – West:

The applicant requires variance approval under section 45.2 of the Planning Act to convert the existing variety store to three dwelling units within an existing mixed used building that contains a variety store on the ground floor and 5 apartment units on the 2<sup>nd</sup> floor. The applicant also requires approval under section 45.2 of the Planning Act to permit a small addition to fill in an existing concave store front and to recognize a previously established change from a flat roof to a peaked roof.

Niagara Escarpment Plan

The subject lands are located within the Niagara Escarpment Plan Area are designated as "Urban Area". Staff note that the subject lands are located outside of the Niagara Escarpment Commission's Development Control Area.

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that focus growth in settlement areas 1.1.3.1.

Policy 1.7.1 (e) outlines that long term economic prosperity will be supported by planning so that major facilities (such as airports, transportation corridors, sewage treatment facilities, waste management systems, industries and aggregate activities) and sensitive land uses are appropriately designed, buffered and separated from each other to prevent adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety. Staff note that the subject lands are to contain additional dwelling units and are located adjacent to **Wentworth Street South** and are located within approximately 32 metres from a **Canadian Pacific Railway Corridor**. As such, should the Committee approve the subject application, staff require the inclusion of note No. 1 stated below.

Hamilton-Wentworth Official Plan

The subject property is designated as "Urban Area" within the Hamilton-Wentworth Official Plan. Staff note that Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas.

City of Hamilton Official Plan



HM/A-12:43  
Page 2

The subject property is designated "Residential" in the City of Hamilton Official Plan. Policy A.2.1.1 states "The primary uses permitted in the areas designated on Schedule "A" as Residential will be for dwellings. Various types of dwellings are included within this designation while preference will be given to the locating of similar densities of development together."

Policy A.3.3.1 states "It is the intent of Council that any existing land use which does not comply with the land use designations shown on Schedule "A" or their related policies should cease to exist over time. Accordingly, such uses will be deemed to be Non-complying and will be, or remain, zoned for the intended use so that the affected lands may convert to the use intended by this Plan."

Policy A.3.3.2 states "In certain instances, Council may deem it to be desirable to permit the extension beyond the boundaries of the site, or redevelopment, of a non-complying use to avoid unnecessary hardship. Such proposed extensions or enlargements will be dealt with in the following manner:

- ii) Where no municipal acquisition is possible and/or the special merits of the individual case make it desirable to grant permission for the extension or redevelopment of the Non-Complying use, Council may consider the passing of an enabling Zoning By-law pursuant to The Planning Act; and,
- iii) Council, before passing such a By-law, will be satisfied that the following requirements are, or will be fulfilled to ensure the protection of the wider interests of the general public:
  - a) that the proposed extension or enlargement of the established non-complying use will not unduly aggravate the situation created by the existence of the use, especially in regard to the land use designation of this Plan and the requirements of the Zoning By-law applying to the area;
  - b) that the proposed extension or enlargement will be in an appropriate proportion to the size of the non-complying use established prior to the passing of the original Zoning By-law;
  - d) the characteristics of the existing Non-Complying Use and the proposed extension or enlargement will be examined with regard to noise, vibration, fumes, smoke, dust, odours, lighting, and traffic generation. No amendment to the By-law will be made if one or more of such nuisance factors will be created or increased so as to add essentially to the incompatibility of the use with the surrounding area;

HM/A-12:43  
Page 3

- e) that the neighbouring complying uses will be protected, where necessary, by the provision of areas for landscaping, buffering or screening; and where necessary, by regulations for alleviating adverse effects caused by outside storage, lighting, advertising, signs, etc;
- g) that traffic and parking conditions in the vicinity will not be adversely affected by the application and traffic hazards will be kept to a minimum by appropriate design of access and egress points to and from the site, and improvement of conditions, especially in proximity to intersections."

As the proposal is to discontinue the existing legal non-conforming commercial retail use which is not permitted in the Residential designation and to establish the building strictly as a legal non-conforming 8 unit multiple dwelling which is permitted in the Residential designation, the proposed use conforms to the policies of the City of Hamilton Official Plan. Furthermore, as the proposed addition is to convert the existing concaved store front into a squared off building, and as the minor expansion of a legal non-conforming use will not unduly aggravate the existing legal non-conforming situation and will not cause noxious impacts on the surrounding uses, the proposed expansion will conform to the policies of the City of Hamilton Official Plan.

City of Hamilton Zoning By-law

The subject property is zoned Urban Protected Residential – 1 & 2 Family Dwelling "D" District in the City of Hamilton Zoning By-law, to which the proposed use does not comply but has legal non-conforming status.

The applicant requires variance approval under section 45.2 of the Planning Act in convert the existing variety store into three apartment units. Section 45.2 of the Planning Act allows for the conversion of a legal non-conforming use to a similar or more compatible use.

The subject property is residentially zoned and is located in a residential neighbourhood, the proposal to discontinue a commercial use and establish a residential use which is a more compatible with respect to the established zoning and the residential neighbourhood. Therefore, variance approval under section 45.2 of the Planning Act is appropriate and can be supported.

Variance 1:

The intent and purpose of requiring a minimum front yard setback of 6m is to maintain the streetscape character of the area.

HM/A-12:43  
Page 4

The proposed variance meets the intent and purpose of the Zoning By-law. The existing building has a front yard setback of 0m and the proposed expansion of the building is simply to fill an existing concaved store front. The buildings along the westerly side of Wentworth Street South have shallow front yard setbacks, and, therefore, the proposed front yard setback of 0m for the proposed expansion will maintain the streetscape character of the area.

Variances 2 & 3:

Section 45.2 of the Planning Act permits the expansion of a legal non-conforming use. In order to expand a legal non-conforming use, the proposed expansion must not cause unacceptable noxious impacts on neighbouring uses.

As the proposal is to add a small addition to fill in an existing concaved store front and as existing building has no on-site parking and has no potential to provide parking on site therefore the proposed addition would not cause unacceptable noxious impacts on neighbouring uses.

A variance under section 45.2 of the Planning Act is also required to recognize a previously established change to the roof of the building from a flat roof to a peaked roof. The change in the pitch of the roof creates a more compatible building design and therefore does not cause any unacceptable noxious impacts on neighbouring uses.

Recommendation:

The proposed conversion, from a legal non-conforming variety store to establish 3 additional apartment units along with the 5 existing apartment units will create an 8 unit multiple dwelling, which is more compatible. The proposed small addition and existing peaked roof will not create any unacceptable noxious impacts. Therefore, the proposed variances meet the requirements of section 45.2 of the Planning Act, and, as such, staff recommends that the proposed variances be **Approved**.

It is the opinion of staff that variance 1 is minor in nature, is desirable and appropriate for the use of the lands, and meets the intent purpose of the Official Plan and Zoning By-law. Therefore staff recommends that variance 1 be **Approved**.

NOTE (TO BE INCLUDED IN DECISION IF APPROVED):

1. Staff advise that the following noise warning clause should be included in any future purchase and sale and/or lease/rental agreements for the subject lands:

"Purchasers/tenants are advised that sound levels due to increasing road and rail traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria."

...../5

HM/A-12:43

Page 5

**Building Services Division:**

Subject to the issuance of a building permit in the normal manner.

**Development Engineering – West:**

No comment.

**Hamilton Municipal Parking System (Parking Services):**

For the information of the Committee, the applicant has not stated the parking requirements for this property. Full time parking is not permitted on Wentworth Street because of its "Through Street" designation. On-street parking is of significant concern to area residents as it is very limited.

**PUBLIC WORKS DEPARTMENT**

**Traffic, Engineering and Operations Division:**

It is not clear from the plans provided if the proposed expansion will encroach into the road allowance. If it does encroach we will require a detailed plan of the addition to determine if it will have an impact on pedestrian traffic etc...

**See attached for additional comments.**

*AM/PA - 12-4/3*

January 31, 2012

The City of Hamilton  
Zoning Department  
Committee of Adjustment

Re: 222-224 Wentworth street south (Change of Use).

Dear Sir/Madam,

I would like to request the City to allow for a minor variance with regard to the above mentioned address so that I could add additional three (3) residential units on the main floor to comprise of two – one bedroom apartments and one bachelor apartment.. Currently it is a legal non-conforming with main floor commercial registered as a variety store and five residential units comprising of four residential units of one-bedroom on the second floor approximately 650 sq. ft each and one bachelor apartment situated on the North side of the ground floor. The main floor unit is approximately 1850 sq. ft.

Dear Sir/Madam, this request to allow for the ground floor conversion to more residential units is borne out of the fact that the variety store business is becoming increasingly obsolete as citizens tighten their belts ever more and move to more discounted bargaining corporate stores. The overhead costs of running variety store in this location by far exceed the income meaning that for many years, it has been running at a loss when you factor in the employee wages and utility bills just to mention a few.

I believe that converting to residential units is a perfect fit as the building is already used for residential purposes. In this case we are simply creating few extra units in place of the variety store. This will be viewed as a necessary fit as Hamilton needs more residential units in our beautiful city to offset the strain the baby boomers are now bringing upon the city. By allowing for a minor variance to accommodate this request, you will greatly alleviate the problem as three units residential have a potential of allowing three families to have a place of residence.

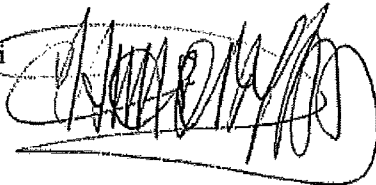
Moreover, this area is a low income neighborhood with many people on welfare, as these apartment are cheaper to rent, it will be affordable to these people.

I believe that this request will not be complete if I don't address the issue of parking. I know that the city has strict requirements with regard to parking but because this is a low income neighborhood with many renters on welfare there will not be issue with parking as these type of renters prefer trekking down to catch their buses.

Dear Sir/Madam, thank you for considering my request and for ease of understanding this request, the sketch of the building and the proposed units are attached to this letter.

Sincerely,

Dr. Christian Chukwuali  
*Msc. (Hons), PhD.*



March 14<sup>th</sup>, 2012

Attention: Committee of Adjustments

City Hall

5<sup>th</sup> Floor 71 Main Street West

Hamilton, Ontario L8P 4Y5

*Re: Application for Minor Variance, Application Number HM/A-12:43*

We would like to object to application number HM/A-12:43, as it applies to 222 Wentworth Ave South for the following reasons:

It is not an appropriate use of the land as it is overdeveloped of the site, it would have a negative impact on the neighborhood, and does not maintain the general intent of the Zoning Bylaw which zones the land.

More Specifically,

Parking:

**There is only sufficient parking available for the current homeowners on Cumberland and Rutherford Avenue as there are currently 7 Homeowners on Cumberland who do not have a parking pad nor a driveway and due to the green space regulations do not have the option of putting one in. Those 7 homeowners currently own 11 cars and there are only 12 spaces of street**

parking. There are currently 7 homeowners on Rutherford Avenue as well who do not have parking pads or driveways. The number of cars is not known.

The apartment building at 214 Wentworth Street South also results in cars being parked on Cumberland Avenue and Rutherford Avenue as some of the tenants in that building do not want to pay for parking. We know for a fact, that there is definitely currently 2 renters from 222 Wentworth Street South that are parking on Cumberland and or Rutherford Avenue. We have had to either leave notes and/or call the parking authority due to their poor parking practices. They have actually blocked off driveways.

**Police Presence:**

There is an ongoing police presence at the building currently with only 4 apartments being rented, we do not want to see any further increase in Police presence. We actually would like to presence stop.

**Regular Hang Out:**

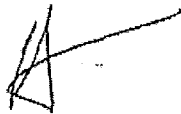
As there are no balconies at this building, the sidewalk out the front of the building becomes a place of lawn chairs and beer drinking in the nice weather, this activity encroaches on the sidewalk and definitely takes away from our neighborhood. This activity becomes extremely loud and outright annoying. It does not help with anyone trying to sell their home with this type of situation

**Building Appearance:**

As you note along Barton Street, when this type of conversion takes place it has a negative effect on the overall neighborhood appearance and property values, boarding up and closing off a building that was designed to be a store is just not attractive in any way.

*In Summary, We respectfully request that the Committee of Adjustment deny this application as it is not minor in nature, is overdevelopment of the site, and does not maintain the intent of the Zoning Bylaw. We also request that, we receive notice in writing of the Committee's decision and We reserve the right to appeal such decision.*

**Paul Travers**

A handwritten signature in black ink, appearing to be 'Paul Travers', with a long horizontal stroke extending to the right.

On Behalf of the residents of Cumberland Ave/Wentworth Ave.

8 Cumberland Ave.,

Hamilton, Ontario, L8M 1Y7



Printed Name	Signature	Address	Comment	Date
DOROTHY BEVINGTON	D Bevington	14 Cumberland Avenue		10/15/12
JENNIFER CARMORE	JCM	16 CUMBERLAND AVE		03/15/12
Steve Nevisin	Steve N	6 Cumberland ave	no parking available	03/15/12
Doug Pawlik	Doug Pawlik	11 Cumberland Ave		03/16/12
Peter Aileen Fowdell	A. Fowdell	15 Cumberland Ave	no parking as is!	03/16/12
Peggy Krumer	Peggy Krumer	2-195 Westworth St S	no parking Available	03/16/12
Dan Roer	Dan Roer	197 Westworth St S	NO PARKING	03/16/12
DEBORA BUCH	Debra Buch	195 WENTWORTH ST	NO PARKING	03/16/12
Stephen MacIntyre	Stephen MacIntyre	232 Westworth St	NO PARKING	03/16/12
Mukai Mubumbira	Mukai Mubumbira	289 Westworth St		03/16/12
Jennifer Ripley	Jennifer Ripley	54 Cumberland Ave	I HAVE NO DRIVEWAY AND REFUSE TO SHARE THE LITTLE PARKING THAT CURRENTLY IS OUT.	03/17/12
Wainey Simmons	Wainey Simmons	46 Cumberland Ave	Also no driveway - parking	03/17/12
Sara Collyer	S. Collyer	42 Cumberland Ave	no parking	03/17/12
RAYMOND MACNEIL	Raymond MacNeil	40 CUMBERLAND AVE	NOT ENOUGH PARKING IN AREA	
RALPH TAYLOR	Ralph Taylor	44 Cumberland	no parking now	03/17/12
Kym Forrester	Kym Forrester	50 CUMBERLAND	Parking Avenue Sides	

**Petition to STOP MINOR VARIANCE APPROVAL**

<p><b>Opposition to Minor Variance Application HM/A-12:43</b></p> <p>We, the undersigned, are concerned citizens who urge The Committee of Adjustments to stop this variance application</p>				
Printed Name	Signature	Address	Comment	Date
PAUL TRAYERS		8 CUMBERLAND AVE	STOP IT!	3/14/12
ANGELA CAMPBELL		7 CUMBERLAND AVE	" "	3/15/12
Jared Chavering		5 Cumberland Ave	" "	3/15/12
Michele Curt		9 Cumberland Ave.	" "	3/15/12
JASON McNUG		17 Cumberland Ave	" "	3/15/12
DEVONLEACH		28 Cumberland	NO	3/14/12
T STEAKS		3 Cumberland Ave	Neighborhood is overpopulated, not enough parking etc. Sign to remove this installation	3/15/12
MIKE WANKER		35 CUMBERLAND	GET LOST "PAY UP"	3/15/12
ADAM BLACK		30 CUMBERLAND	" "	3/15/12
SHIRLEY MASH		27 CUMBERLAND AVE	" "	3/15/12
Sen Baker		50 Cumberland Ave	" "	3/15/12
Roberta milkHe		20 CUMBERLAND AVE	" "	3/15/12

