

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT  
Planning Division**

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> WARD 11
<b>COMMITTEE DATE:</b> December 4, 2012	
<b>SUBJECT/REPORT NO:</b> Committee of Adjustment Minor Variance Application GL/A-12:163 for the Property Located at 8226 White Church Road (Glanbrook), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12232) (Ward 11)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Danielle Stevens (905) 546-2424 Ext.1285
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That Council direct appropriate Legal Services and Planning staff to attend the Ontario Municipal Board (OMB) hearing to support the Committee of Adjustment’s decision to deny Committee of Adjustment Minor Variance Application GL/A-12:163, to permit the construction of a 9.8m wide x 14.7m deep x 4.8m high accessory structure in the rear yard of the property located at 8226 White Church Road (Glanbrook), as shown on Appendix “A” to Report PED12232, supported by the Planning and Economic Development Department, but denied by the Committee of Adjustment.

**EXECUTIVE SUMMARY**

The applicant submitted Minor Variance Application GL/A-12:163 to permit the construction of a 9.8m by 14.7m accessory structure in the rear yard of an existing single detached dwelling (see Appendix “B”).

**SUBJECT: Committee of Adjustment Minor Variance Application GL/A-12:163 for the Property Located at 8226 White Church Road (Glanbrook), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12232) (Ward 11) - Page 2 of 7**

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The applicant requested variances to increase the maximum lot coverage to 7% for all accessory structures, whereas the By-law permits a maximum 5%; increase the maximum height permitted for the proposed accessory structure to 4.8m, whereas the By-law permits a maximum height of 4.5m; and to permit the eaves and gutters of the accessory structure to encroach 0.5m into a minimum required setback, whereas the By-law permits a maximum encroachment of 0.3m.

The Minor Variance Application was considered before the Committee of Adjustment on July 26, 2012. Staff originally supported the application on the basis of the information provided in the application, as it was considered to be consistent with the Provincial Policy Statement, and satisfied the four (4) tests set out in Sub-section 45(1) of the Planning Act, in that the variances were determined to be minor in nature, desirable for the appropriate development of the land, and maintained the general intent and purpose of the Official Plan and Zoning By-law No.464. However, further information was provided prior to the Committee of Adjustment hearing, and based upon further review of the application, staff is no longer able to support the requested increase in lot coverage for accessory structures and increase in height for the proposed accessory structure.

The Committee of Adjustment denied the application for the reasons provided in Appendix "C". 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 7.*

<b>FINANCIAL / STAFFING / LEGAL IMPLICATIONS</b> (for Recommendation(s) only)
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**Financial:** Planning and Economic Development Department staff do not support the subject application. If Council wishes to support the Committee of Adjustment's decision to deny the application, as per Option 1, the City can send a member from each of Planning and Legal staff to the hearing to professionally support the denial. The hearing would likely take one day.

**Staffing:** One representative from Legal Services would be required for preparation and attendance at the OMB Hearing. One member of Planning staff would attend as an expert witness at the Hearing should Council support Option 1.

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

**SUBJECT: Committee of Adjustment Minor Variance Application GL/A-12:163 for the Property Located at 8226 White Church Road (Glanbrook), Supported by the Planning and Economic Development Department but Denied by the Committee of Adjustment (PED12232) (Ward 11) - Page 3 of 7**

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**HISTORICAL BACKGROUND** (Chronology of events)

**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.”

**Proposal**

The subject property is located at 8226 White Church Road (Glanbrook) (see Appendix “A”). The minor variance application proposes the construction of a 9.8m by 14.7m accessory structure in the rear yard of the existing single detached dwelling. The applicant requested variances to increase the maximum lot coverage to 7% for all accessory structures, whereas the By-law permits a maximum of 5%; increase the maximum height permitted for the proposed accessory structure to 4.8m, whereas the By-law permits a maximum height of 4.5m; and to permit the eaves and gutters of the accessory structure to encroach 0.5m into a minimum required setback, whereas the By-law permits a maximum encroachment of 0.3m.

The application has been reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Rural Hamilton Official Plan, and former Township of Glanbrook Zoning By-law No. 464. Planning staff is of the opinion that the application does not maintain the general intent of the above noted policy documents.

The Committee of Adjustment, at its meeting of July 26, 2012, denied the application for the reasons set out in Appendix “C”.

## **POLICY IMPLICATIONS**

### **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 in Section 1.1.4 - Rural Areas in Municipalities, in that the proposed variances for the accessory structure do not conflict with the goals set out limiting infrastructure expansion, promoting development that is compatible with the rural landscape, and to promote recreational, tourism, and other economic opportunities.

### **Rural Hamilton Official Plan**

The subject lands are designated “Agriculture” on Schedule “D” - Rural Land Use Plan in the Rural Hamilton Official Plan.

Additional information regarding a contractor's business operating on the subject property was provided prior to the Committee of Adjustment hearing. Upon further research, and evidence given by adjacent neighbours, a company called “Fine Line Waterproofing” was identified as being located at the subject address.

Policies 2.1.1 and 2.1.2 outline the agricultural permitted uses and agricultural-related permitted uses that include, but are not limited to, all types of farming, greenhouses, farm labour residence, farm-related commercial, and farm-related industrial, subject to the provisions in the policy. A contractor's business is not a permitted use in the “Agriculture” designation in the Rural Hamilton Official Plan.

Furthermore, Policy 2.1.2.1 states:

“2.1.2.1 Appropriate development standards shall be established in the Zoning By-law regarding the maximum floor area for such uses, access, parking, outside storage, and any other appropriate requirements.”

Based on the foregoing, the proposed variances do not meet the intent of the Rural Hamilton Official Plan.

### **Township of Glanbrook Zoning By-law No. 464**

The lands are zoned General Agricultural “A1” Zone in the Township of Glanbrook Zoning By-law No. 464.

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Policy 8.1 states:

“8.1 Permitted Uses

- (a) Agricultural uses, and buildings, structures and uses accessory thereto, including one (1) single detached dwelling for the farm owner or operator.
- (b) One (1) single detached dwelling on one (1) lot, and buildings, structures, and uses accessory thereto.
- (c) Commercial Greenhouse Operations for horticultural purposes only (meaning only for the growing of flowers, plants, shrubs, trees and garden vegetables), and uses, buildings and structures accessory thereto, including one (1) single detached dwelling for the greenhouse owner or operator.
- (d) Kennels.
- (e) Farm Help Houses.
- (f) Seasonal Farm Produce Stands.
- (g) Home Occupations and Home Professions.
- (h) Home Industries.
- (i) Bed and Breakfast Establishments.
- (j) Outside Parking and Storage of Larger Vehicles.
- (k) Fish, Wildlife and/or Forest Management.”

Additional information regarding a contractors business operating on the subject property was provided prior to the Committee of Adjustment hearing. Upon further research, and evidence given by adjacent neighbours, a company called “Fine Line Waterproofing” was identified as being located at the subject address.

A contractors business is not a permitted use in the General Agricultural “A1” Zone, and is not included in the definitions of a “Home Occupation”, “Home Profession”, or “Home Industry”.

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The proposed variances do not meet the intent of the Zoning By-law since they facilitate a use not permitted. Staff is of the opinion that the variance is not minor since the proposed use of the accessory structure will negatively impact the adjacent properties and, therefore, is deemed to be an inappropriate use of the lands. Accordingly, staff does not support the variances.

**RELEVANT CONSULTATION**

- Legal Services Division in respect to staffing and costs.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The applicant requested variances to increase the maximum lot coverage to 7% for all accessory structures, whereas the By-law permits a maximum 5%; increase the maximum height permitted for the proposed accessory structure to 4.8m, whereas the By-law permits a maximum height of 4.5m; and to permit the eaves and gutters of the accessory structure to encroach 0.5m into a minimum required setback, whereas the By-law permits a maximum encroachment of 0.3m.

The requested variances are not considered to be minor in nature, nor desirable for the appropriate development of the land, and do not maintain the general intent and purpose of the Rural Hamilton Official Plan and Glanbrook Zoning By-law No. 464.

Staff's original position of support was formed based on the information submitted with the application. However, subsequent additional information was provided approximately one day prior to the Committee of Adjustment hearing by adjacent landowners. Staff's written recommendation to approve the application regarding the specific nature of the use occurring on the subject lands was based on the applicant having applied for the accessory structure to be for personal use. Area residents raised concern that the applicant operated a contractor's establishment out of the residence, and the accessory structure will be used to house equipment. At the hearing, staff noted that if the applicant is operating a contractor's establishment relative to the excavation business operating from the subject lands out of the residence, it is not a permitted use, and the application would have to be re-evaluated, based on the new information. The Committee of Adjustment denied the application based on the updated information provided at the hearing. If the opportunity to re-evaluate the application had been provided, staff would not have been in support of the variances and would have recommended denial, as the variances were to facilitate a use not permitted on the subject lands.

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### **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 use City Planning staff as its professional witness.

#### **Option 2**

Council may decide to support the appeal against the Committee of Adjustment's decision to deny the application, and direct Legal Services to attend and retain outside Planning professional(s).

#### **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

#### **Healthy Community**

- ◆ Plan and manage the built environment.
- ◆ Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services).

### **APPENDICES / SCHEDULES**

- Appendix "A": Location Map
- Appendix "B": Application Sketch
- Appendix "C": GL/A-12:163 Committee of Adjustment Decision
- Appendix "D": Minutes from Committee of Adjustment Hearing

:DS - Attachs. (4)



Site of the Application



## Committee of Adjustment



**City of Hamilton**

### Subject Property



8226 Whitechurch Road

File Name/Number:

GLA-12163

Date:

July 16, 2012

Technician:

KA

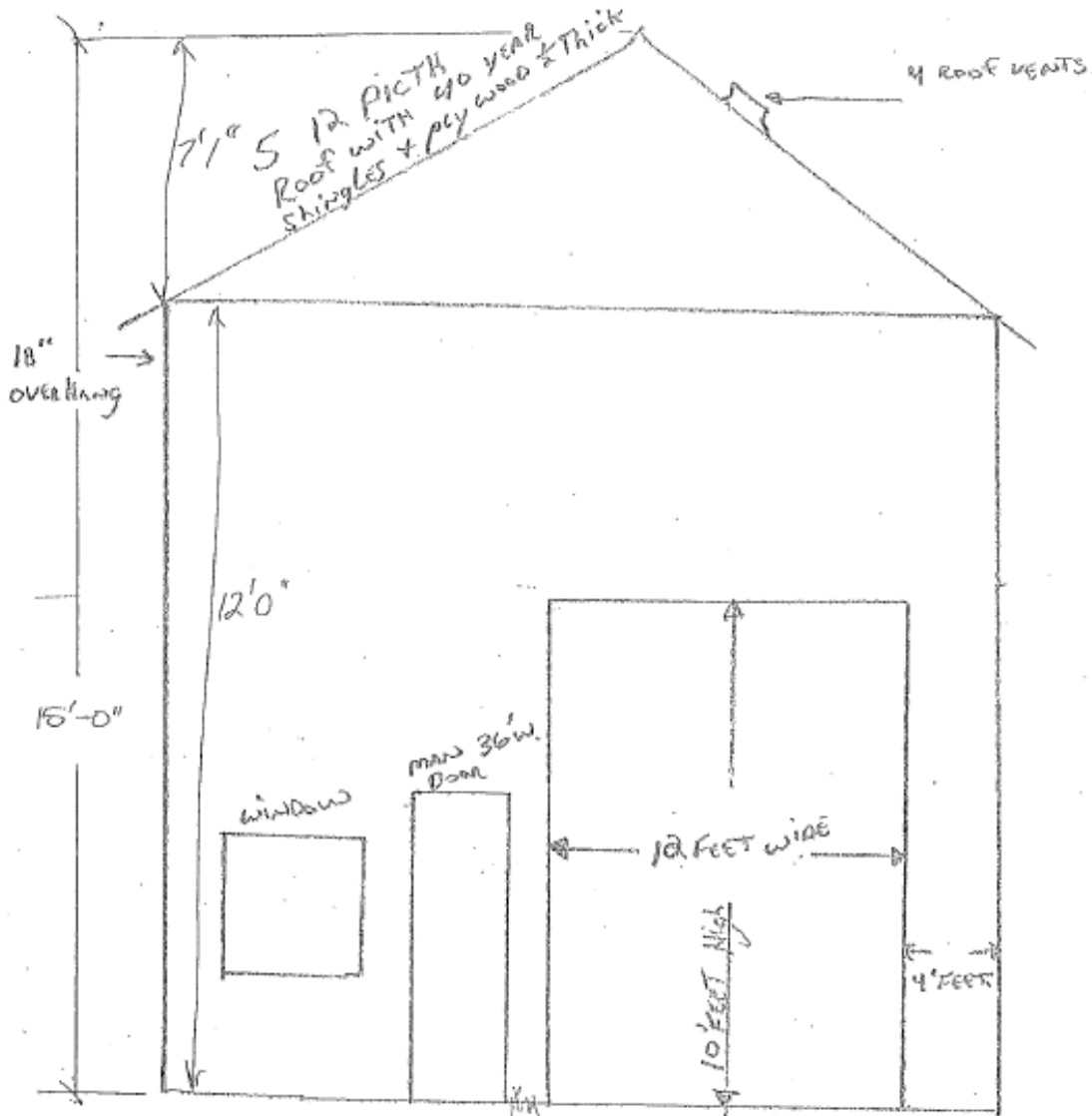
Map Not to Scale

Appendix "A"



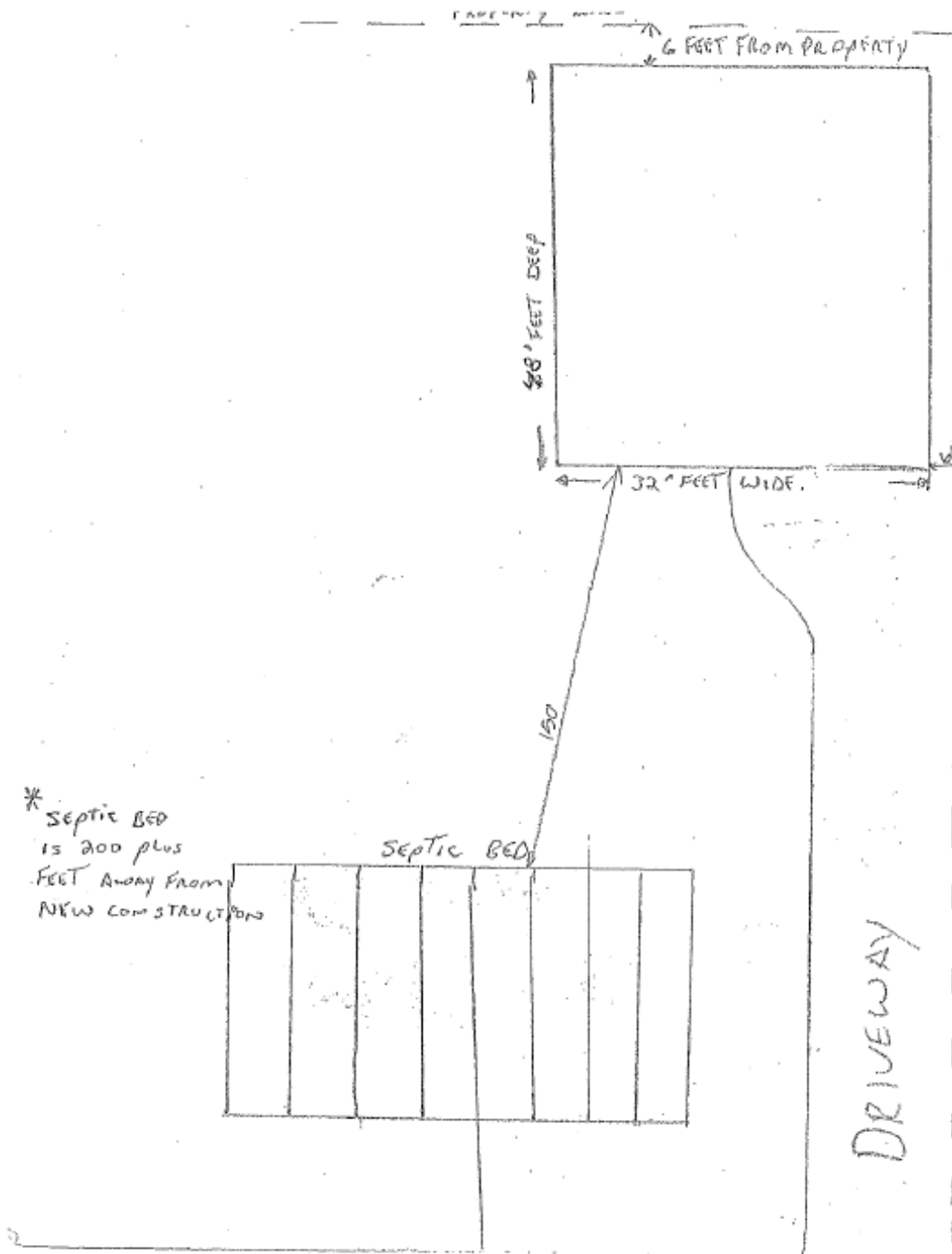
Hamilton



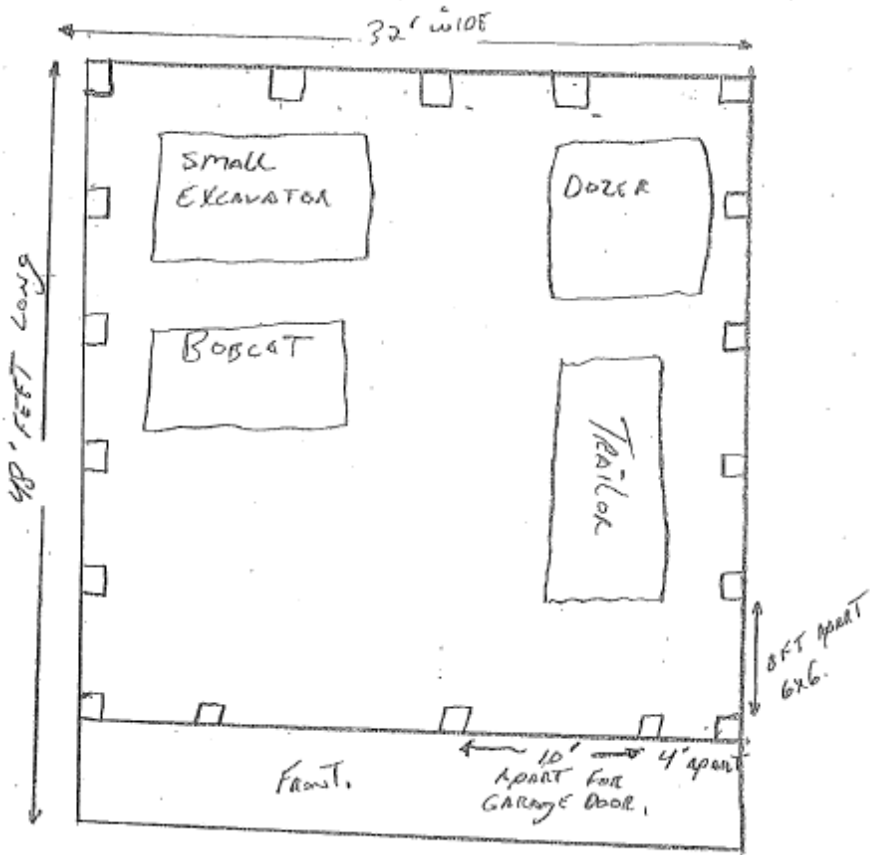


GLA-12:163.  
sketch (1)

CERTIFIED TRUE COPY  
*[Signature]*  
SECRETARY - TREASURER



6/17/12: 163  
sketch (3)



Storage for winter time.

TO BE USED AS ACCESSORY  
TO SFD ONLY  
PERSONAL USE

601A-12:163  
Sketch(4)



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

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

**APPLICATION NO. GL/A-12:163**  
**SUBMISSION NO. A-163/12**

IN THE MATTER OF The Planning Act, R.S.O., 1990, c.P. 13, as amended and of the Zoning By-Law No. 464, of the City of Hamilton (formerly Glanbrook), Section 8.3.

AND IN THE MATTER OF the Premises known as Municipal number 8226 White Church Road, formerly in the Township of Glanbrook, now in the City of Hamilton and in an "A1" (General Agricultural) district;

AND IN THE MATTER OF AN APPLICATION by the owner Frank Deriet, for relief from the provisions of the Zoning By-Law No. 464, under Section 45 of The Planning Act, R.S.O. 1990, c. P. 13, so as to permit the construction of a 9.8m x 14.7m accessory structure in the rear yard of the existing single detached dwelling, notwithstanding that:

1. A maximum lot coverage of 7% (226m<sup>2</sup>) for all accessory structures shall be permitted instead of the maximum permitted lot coverage of 5% (161.8m<sup>2</sup>) for all accessory structures;
2. A maximum building height of 4.8m shall be permitted instead of the maximum permitted building height of 4.5m; and,
3. Eaves and gutters shall be permitted to encroach a maximum of 0.5m (18 inches) into a required minimum setback area instead of the maximum permitted encroachment of 30cm (12 inches) into a required minimum setback area.

**NOTES:**

- The submitted plans are rudimentary in nature as they are not scaled and dimensioned.
- The submitted elevation drawing does not accurately indicate the building height. A dimension line indicates that the distance from grade to the peak of the roof is 4.5m (15'); however, the height of the wall is indicated as 3.7m (12') and the height of the roof is indicated as 2.2m (7'-1"). Height is defined as the distance from grade to the mid-point between the ridge and the peak. As such, height has been calculated as 4.8m (15'-8 1/2").
- The proposed accessory structure has an area of 142.7m<sup>2</sup> and there are two existing accessory structures on-site which have a combined area of 53.6m<sup>2</sup>. As such, the total proposed lot coverage for accessory structures is 196.3m<sup>2</sup>. The subject property has a lot area of 3,237.4m<sup>2</sup> (0.8 acres).

**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 and would be more appropriately addressed thru the rezoning process.
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.

CERTIFIED TRUE COPY

  
SECRETARY - TREASURER

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GL/A-12:163  
Decision  
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DATED AT HAMILTON this 26th day of July, 2012

  
\_\_\_\_\_  
I. Dunlop (Acting Chairman)


  
\_\_\_\_\_  
W. Pearce

  
\_\_\_\_\_  
D. Smith

  
\_\_\_\_\_  
L. Gaddy

  
\_\_\_\_\_  
D. Serwatak

  
\_\_\_\_\_  
D. Drury

  
\_\_\_\_\_  
K. Audziss

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD  
MAY BE FILED IS August 15th, 2012.

This decision is not final and binding unless otherwise noted.

July 26<sup>th</sup>, 2012

GL/A-12:163

Frank Deriet  
8226 White Church Road, Glanbrook

Appearances were:

Frank Deriet, Applicant. Interested parties were: Harvey Carver, 8211 White Church Road, RR2, Mount Hope, ON L0R 1W0; Jeannie Davenport, 8204 White Church Road, RR2, Mount Hope, ON L0R 1W0.

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

Letters were entered into the record from: Councillor Brenda Johnson, Councillor's Office, 2<sup>nd</sup> Floor, City Hall; James Buffett, Municipal Law Enforcement Officer, Parking and By-law Services Division, Planning and Economic Development Department, City of Hamilton.

F. Deriet

- he just wants a storage shed
- he ordered the materials and then went on vacation for two weeks
- his builder doesn't speak English and started framing while he was away
- everything is built over specs
- it's just going to be for storage; he has a 30' camper trailer, float, truck and construction equipment

H. Carver

- he's putting up a commercial building next to a natural waterway
- he already has two buildings on his property
- he has a landscaping business on the side

J. Davenport

- she shouldn't have been surprised to hear that he didn't follow due process and did this without taking out a permit
- it's a very constructive lie that he just told
- he has a large sense of entitlement
- he is encroaching on her property which upsets her
- he tried to change a natural runoff; she kept quiet for four years until she got flooding and then finally called the City

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- the NPCA did come out and take a look
  - we have a flood issue as do the people on the other side
  - this huge building is right next to the natural watercourse
  - he placed a large landscape rock in front of her house on City property which could create safety problems which again just shows his sense of entitlement
  - the building he is proposing is obscenely huge
  - he has a diesel engine which starts up before 7:00 a.m. and also has a huge trailer and all kinds of landscaping vehicles
  - this is a huge disturbance to a quiet residential neighbourhood
  - the building will be for the storage of commercial implements
- K. Audziss  
(Committee Member)
- a Google search showed a company called Fine Line Excavating at this address
  - this building was built without a building permit
  - there is a letter from the Ward Councillor and an affidavit from a Municipal Law Enforcement Officer
- F. Deriet
- he is not denying that he has a business
  - after work he brings his equipment home to park it here
  - the NPCA says everything is okay
- W. Pearce  
(Committee Member)
- questioned if the storage of commercial equipment is allowed
- D. Stevens  
(staff)
- it's probably not permitted
  - staff comments and recommendations were based on this being for a personal use
  - she was informed after that that there may be an illegal commercial use
  - if this is being used for commercial stuff then she would have to re-evaluate the application
- V. Abraham  
(Committee Member)
- he would recommend that the application be tabled to allow staff time to re-evaluate the application
  - the applicant may wish to change his mind and use this just for personal use
- K. Audziss  
(Committee Member)
- you can tell that this is being used for commercial purposes



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F. Deriet - he can definitely guarantee that this is not for a commercial use

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

F. Deriet - he has a 32' trailer/camper, a truck, a float and a lawnmower

Following discussion it was moved by Mr. Audziss and seconded by Mr. Gaddye 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 and would be more appropriately addressed thru the rezoning process.
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.

**CARRIED.**

Mr. Abraham voted in opposition to the motion to deny the application because he would have preferred that the application be tabled for further evaluation.



**Glazebrook, Christina**

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**From:** Baldry, Scott  
**Sent:** Monday, July 23, 2012 9:15 AM  
**To:** Glazebrook, Christina  
**Subject:** FW: Committee of Adjustment Hearing GL/A-12:163

Please add to the comments

Scott Baldry,  
Secretary-Treasurer,  
Committee of Adjustment,  
Planning & Economic Development Department  
71 Main Street West, 5th Floor  
City of Hamilton  
Phone: 905-546-2424 extension 4144  
Fax: 905-546-4202

-----Original Message-----

**From:** Johnson, Brenda  
**Sent:** Saturday, July 14, 2012 9:32 AM  
**To:** Baldry, Scott; Wide, Glyn; Young, Bill  
**Cc:** Dinney, Kathy  
**Subject:** Committee of Adjustment Hearing GL/A-12:163

Hello Scott

Please review this letter regarding Committee of Adjustment Hearing GL/A-12:163 as my objection to the application.

I believe that this building is to allow the applicant to operate a business on this site which is not allowed on this property.

Ward 11 has a chronic problem with businesses operating illegally on land that is zoned otherwise to escape paying the appropriate taxes.

The City of Hamilton is losing millions of dollars to these illegal operations.

I trust the Committee of Adjustment will use their powers of good judgment and deny this application.

Thank you  
Respectfully

Brenda Johnson  
Councillor Ward 11  
Serving  
the Communities of:  
Glanbrook, Rural Upper Stoney Creek and Winona  
Phone 905-546-4513  
Fax 905-546-2535  
71 Main St W  
Hamilton, L8P 4L5

**AFFIDAVIT**

I, James BUFFETT, of the City of Hamilton, in the Province of Ontario,  
MAKE OATH AND SAY AS FOLLOWS:

1. I am employed as a Municipal Law Enforcement officer, Parking and By-law Services Division, Planning and Economic Development Department, City of Hamilton (hereinafter the "City"). I have been the lead City staff member within its Municipal Law Enforcement Section for an investigation concerning 8226 White Church Road, Formerly in the Town of Glanbrook, now in the City of Hamilton. As such, I have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge, I have set out the source of my information, and believe it to be true.

2. On September 23<sup>rd</sup> 2011, City of Hamilton Building Inspector Rick Kuipers attended 8226 White Church Road, Hamilton. He observed an accessory structure that was being built without a Building Permit. As a result, a court brief has now been prepared and forwarded to the municipal prosecutor's office for consideration of a charge of Construction Without a Permit.

3. On July 16<sup>th</sup> 2012, I reviewed COMMITTEE OF ADJUSTMENT Variance and Consent Adjustment GL/A-12:163 for 8226 White Church Road, Hamilton (Ward 11).

4. On July 16<sup>th</sup> and 17<sup>th</sup> 2012, I attended 8226 White Church Road Hamilton. I was unable to gain access to the rear of the property. I took digital images of a partially built accessory structure. I also observed a bulldozer and an excavator contained within the unfinished accessory structure. I also observed a bobcat on a commercial trailer parked in the rear yard.

5. On July 17<sup>th</sup> 2012, I attended 8226 White Church Road, Hamilton were I received information from Ms. Jeannie Davenport who has witnessed multiple people, who appear be employees arriving and leaving the property. She believes that they appear to be arriving for a shift and leaving at the end of the day. She observed trucks and trailers going in and out of 8226 White Church Road.

5. On July 18<sup>th</sup> 2012, information was received from City of Hamilton employee Robin Reid (Licensing Facilitator) that the property, 8226 White Church Road, Hamilton is within the 'A1' (General Agricultural) Zone; Section 8 of Glanbrook Zoning By-law No.464.

6. I conducted a Google search of the property known as 8226 White Church Road, Hamilton and the search identified a business known as Fine Line Waterproofing, located at 8226 White Church Road, Hamilton.

6. I make this affidavit as the use of the accessory structure, if granted, would establish an illegal use that entrenches a business in an A1 General Agricultural district.

**SWORN BEFORE ME**  
In the City of Hamilton,  
in the Province of Ontario  
this 18<sup>th</sup> day of July  
2012

*JAMES BUFFETT A300*  


*Sheela Rotondi*

**SHEELA ELIZABETH ROTONDI, a Commissioner, etc.,**  
Province of Ontario, for the City of Hamilton,  
Expires December 11, 2014.