



**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT  
Planning Division**

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> WARD 3
<b>COMMITTEE DATE:</b> February 15, 2011	
<b>SUBJECT/REPORT NO:</b> Committee of Adjustment Minor Variance Application HM/A-10:249, for the Property Located at 99 Burris Street (Hamilton), Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED11016) (Ward 3)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> J. Matthew Blevins (905) 546-2424, Ext. 2634
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That Report PED11016, respecting Committee of Adjustment Minor Variance Application HM/A-10:249, for the property located at 99 Burris Street (Hamilton), as shown on Appendix “A” to Report PED11016, 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-10:249 to permit the construction of a one-storey addition to the rear of the existing single-detached dwelling. The subject property is zoned “C” (Urban Protected Residential, etc.) District in Hamilton Zoning By-law No. 6593.

**SUBJECT: Committee of Adjustment Minor Variance Application HM/A-10:249, for the Property Located at 99 Burris Street (Hamilton), Supported by the Planning and Economic Development Department But Denied by the Committee of Adjustment (PED11016) (Ward 3) - Page 2 of 7**

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The applicant requested variances for reduction in the northerly side yard setback to 0.4m, whereas a minimum 1.2m is required, and a reduction in the number of parking spaces to 2, whereas 3 on-site spaces are required.

The minor variance application was considered before the Committee of Adjustment on October 21, 2010, at which time it was tabled until November 4, 2010. Staff supported the application, as it was considered to be consistent with the Provincial Policy Statement, and satisfied the four tests set out in Subsection 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. 6593.

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 6.*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (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 to \$5,000 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 2011 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.

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

**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 99 Burris Street (Hamilton) (see Appendix “A”). The applicant is proposing to construct a one-storey, 41.41m<sup>2</sup> addition to the rear of the existing single-detached dwelling (see Appendix “B”). The variances are to allow the proposed addition to be built in line with the wall of the existing single-detached dwelling, and to recognize the existing number of on-site parking spaces.

The application was reviewed against all applicable planning policy documents, which included the Provincial Policy Statement, the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and City of Hamilton Zoning By-law No. 6593. Planning staff is of the opinion that the application maintains the general intent of the above noted policy documents.

Accordingly, staff recommended approval of the application as the variances were determined to be minor in nature, desirable for the appropriate development of the lands, and maintain the general intent and purpose of the Official Plan and Zoning By-law No. 6593.

The Committee of Adjustment, at its meeting of November 4, 2010, denied the minor variance application (see 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 that focus growth in Settlement Areas, Policy 1.1.3.1.

### **Hamilton-Wentworth Official Plan**

The subject property is designated as “Urban Area” in the Hamilton-Wentworth Official Plan. 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. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.

The Hamilton-Wentworth Official Plan defers to the former Local Official Plans to define the ranges of urban uses and development that are appropriate for the lands that they apply to. The proposed development conforms with the policies set out in the City of Hamilton Official Plan.

Based on the foregoing, staff is satisfied that the proposed variances conform to the Hamilton-Wentworth Official Plan.

### **City of Hamilton Official Plan**

The lands are designated “Residential” on Schedule “A” - Land Use Concept Plan, in the City of Hamilton Official Plan. The property is also identified as “Single and Double Residential” in the St. Clair Neighbourhood Plan, which was approved by Council on June 24, 1975.

Section A.2.1 of the City of Hamilton Official Plan sets out the objectives for the “Residential” areas. The intent of the plan for “Residential” areas is to provide a range of housing types and densities of varied styles, while ensuring the maintenance of amenities for residents, and to ensure that new residential re-development is compatible with surrounding existing and proposed development (Policy A.2.1.8).

Section D.2 further sets out policies to establish Planning Units and Neighbourhood Plans for the City. Policy D.2.8 requires that Neighbourhood Plans be adopted by a resolution of Council, and Policy D.2.9 requires staff to have regard for the Neighbourhood Plans when considering development proposals.

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Staff is satisfied that the existing dwelling is consistent with the general intent of the Official Plan and the St. Clair Neighbourhood Plan. Staff is also satisfied that the proposed expansion of the house is consistent with the general intent of the Official Plan and the St. Clair Neighbourhood Plan. Accordingly, the application maintains the objectives of the “Residential” areas of the City of Hamilton Official Plan.

The proposed addition is also consistent with the Residential Environment and Housing Policies of the Official Plan as the addition makes more efficient use of existing building stock, and is consistent with the character of the existing residential area in terms of height, coverage, mass, privacy, and overview (Policy C.7.3.iii). Accordingly, this application maintains the objectives of the “Residential Environment and Housing” policies of the City of Hamilton Official Plan.

Based on the forgoing, the application maintains the general intent and purpose of the Official Plan. Accordingly, staff recommended approval.

**City of Hamilton Zoning By-law No. 6593**

The lands are zoned “C” (Urban Protected Residential, etc.) District in Hamilton Zoning By-law No. 6593.

The relief requested for the proposed addition is considered to be minor in nature, desirable for the appropriate development of the property, and maintains the general intent and purpose of the Official Plan and Zoning By-law.

**RELEVANT CONSULTATION**

- Legal Services Division in respect to staffing and costs if Council supports the Committee of Adjustment’s position.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The application proposes to reduce the northerly side yard setback to the proposed one-storey rear addition to permit it to be built in line with the existing exterior wall. The application also seeks to recognize the existing number of on-site parking spaces.

The requested variances are considered to be minor in nature, desirable for the appropriate development of the land, and maintain the general intent and purpose of the Hamilton Official Plan and Hamilton Zoning By-law No. 6593, which satisfies the four tests of a minor variance set out in Section 45(1) of the Planning Act.

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Based on the foregoing, staff recommended approval of the application by the Committee of Adjustment.

**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 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 Hearing, 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.

**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).

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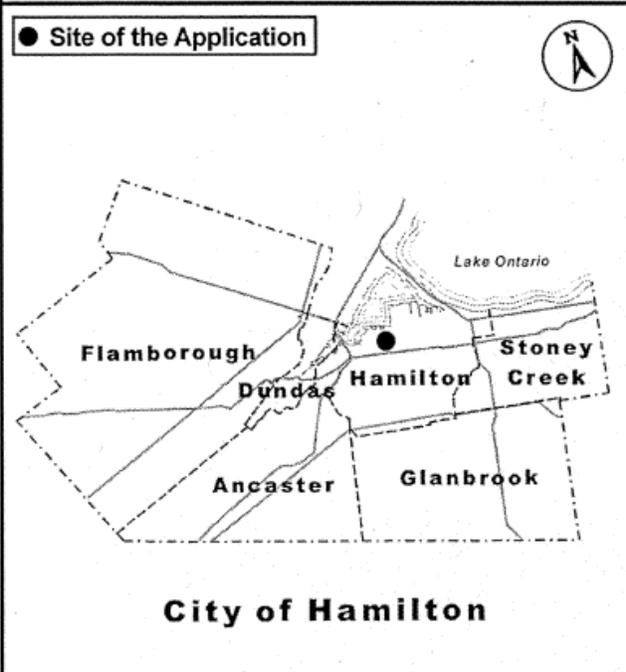
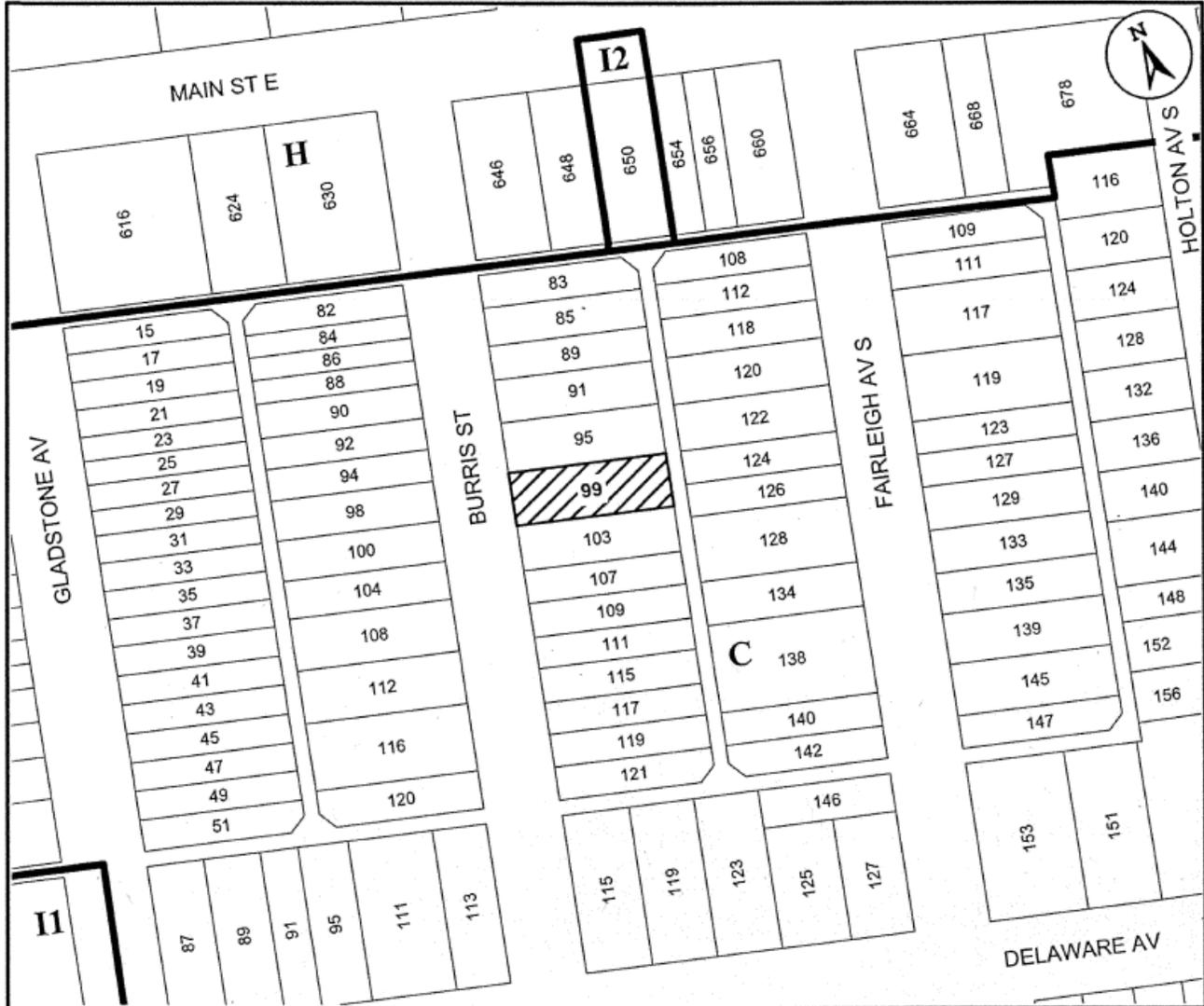
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**APPENDICES / SCHEDULES**

- Appendix "A": Location Map
- Appendix "B": Application Sketch
- Appendix "C": HM/A-10:249 Committee of Adjustment Decision

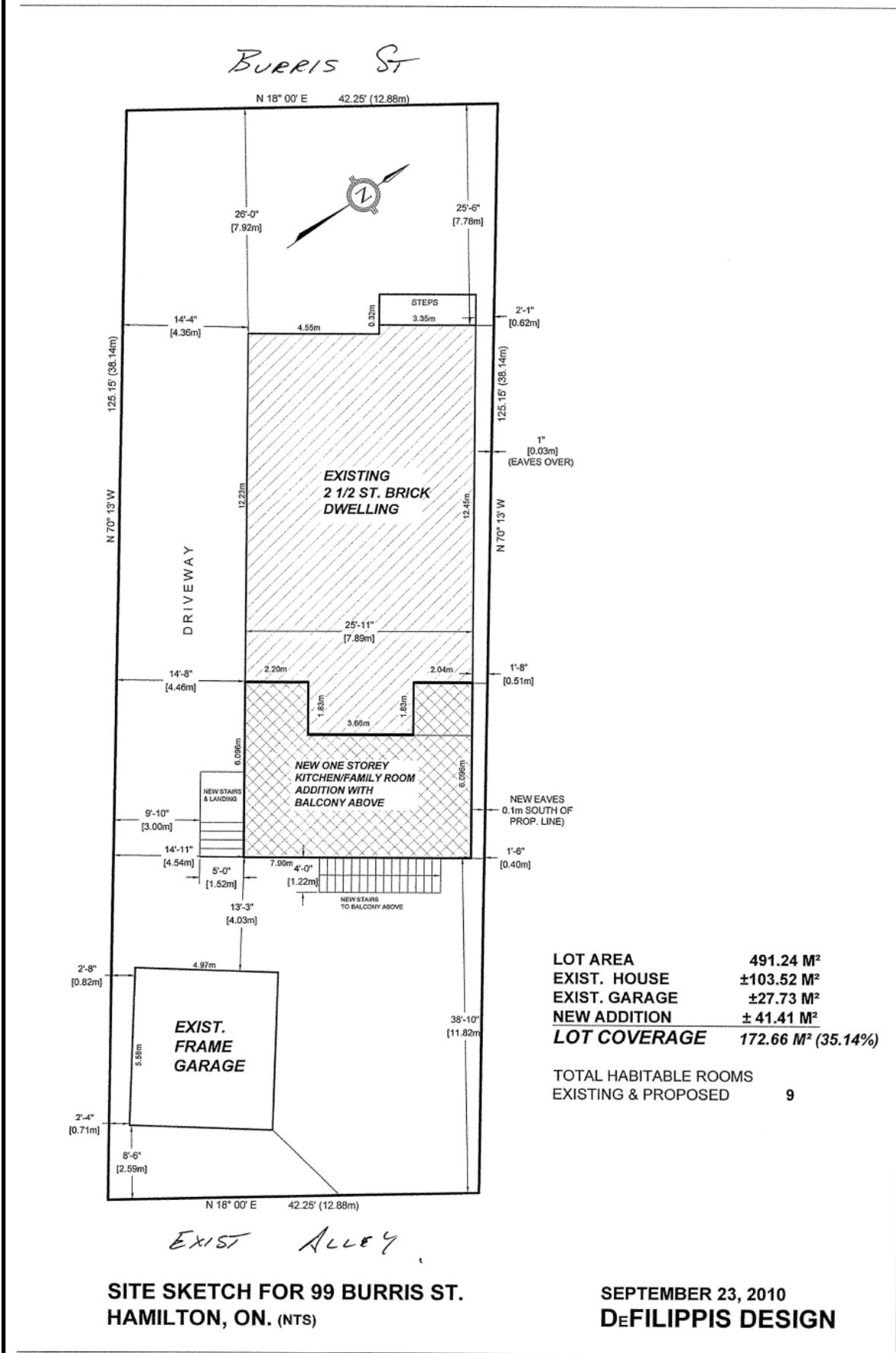
:JMB

Attachs. (3)



## Committee of Adjustment

<p><b>Subject Property</b></p> <p> 99 Burriss Street</p>	<p>File Name/Number: HM/A-10:249</p>
	<p>Date: October 13, 2010</p>
	<p>Technician: SW</p>
	<p>Map Not to Scale</p>
	<p>Appendix "A"</p>
<p><b>Hamilton</b></p>	
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>	





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. HM/A-10:249**  
**SUBMISSION NO. A-249/10**

**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 9 and 18A.

**AND IN THE MATTER OF** the Premises known as Municipal number 99 Burris Street, in the City of Hamilton and in a "**C**" (**Urban Protected Residential**) district;

**AND IN THE MATTER OF AN APPLICATION** by the agent DeFilippis Design on behalf of the owner Diane Avery, 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 construction of a 41.5m<sup>2</sup> rear addition to the existing single detached dwelling notwithstanding that;

- 1) A minimum 0.4m side yard, with further eave projection, shall be provided instead of the minimum 1.2m side yard required; and,
- 2) A minimum of two (2) parking spaces shall be provided on site instead of the minimum required three (3) parking spaces.

Notes:

- i) The construction of the proposed rear addition is subject to the issuance of a building permit in the normal manner.
- ii) No part of the proposed addition shall project beyond the property boundaries.
- iii) An encroachment agreement with the Roads Department may be required for the footings of the proposed rear addition.
- iv) Insufficient information has been submitted to determine if the height of the proposed rear addition conforms to the maximum permitted height of 11.0m. As such, if the height of the proposed addition exceeds 11.0m a further variance will be required; and,
- v) It is indicated on the submitted sketch that a total of nine (9) habitable rooms are proposed. As floor plan drawings have not been submitted this Division is unable to determine if the proposed amount of habitable rooms is accurate. If a greater amount of habitable rooms is proposed a further variance for parking may be required.

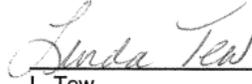
**THE DECISION OF THE COMMITTEE IS:**

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.

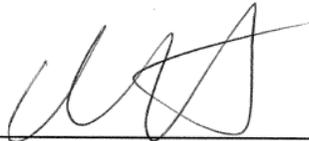
**DATED AT HAMILTON** this 4th day of November, 2010

  
M. Dudzic (Chairman)

  
L. Tew

HM/A-10:249  
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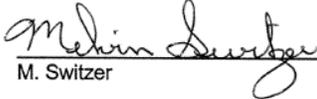
  
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D. Serwatak

  
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D. Drury

  
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V. Abraham

  
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L. Gaddy

  
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M. Switzer

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD  
MAY BE FILED IS **November 24th, 2010.**

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