

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 12
COMMITTEE DATE: March 1, 2011	
SUBJECT/REPORT NO: Application for Approval of a Draft Plan of Condominium (Common Element) (25CDM-201014) for Lands Known as 389 Garner Road West (Ancaster) (PED11022) (Ward 12)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Timothy Lee (905) 546-2424, Ext. 1249
SIGNATURE:	

RECOMMENDATION

That approval be given to **Condominium Application 25CDM-201014, Tandi Construction, Owner**, to establish a Draft Plan of Condominium (Common Element) to create a common element condominium road for three single-detached dwelling units on lands known as 389 Garner Road West (Ancaster), as shown on the attached location map marked as Appendix "A" to Report PED11022, subject to the following conditions:

- (a) That this approval shall apply to the plan, prepared by B.A. Jacobs Surveying Limited, and certified by Byran Jacobs, O.L.S., dated January 11, 2011, showing the condominium road labelled as Part 1 and residential dwelling lots as Parts 2-4, attached as Appendix "B" to Report PED11022.
- (b) That the Final Plan of Condominium shall comply with all of the applicable provisions of Ancaster Zoning By-law No. 87-57.

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- (c) That the owner shall include the following warning clause in the Condominium Agreement and in all Purchase and Sale, and Rental or Lease Agreements, to the satisfaction of the Director of Operations and Maintenance, Public Works Department:

“Purchasers/tenants are advised that the City of Hamilton will not be providing maintenance or snow removal service for private condominium roads.”

- (d) That the owner shall enter into a Development Agreement to ensure that the tenure of each of the proposed three single-detached dwellings has legal interest, in common to the Common Element Condominium, to the satisfaction of the City Solicitor.

- (e) That the owner shall agree to include the following warning clause in the Condominium Agreement, and in all Purchase and Sale and/or Lease/Rental Agreements, to the satisfaction of the Director of Planning:

“Purchasers/tenants are advised that sound levels due to increasing 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.”

- (f) That the owner shall provide the Manager of Design and Construction with evidence that satisfactory arrangements, financial and otherwise, have been made with a telecommunication service provider, approved by the Canadian Radio and Telecommunication Commission (CRTC), that adequate telecommunication service will be provided to the condominium, including 9-1-1 emergency calling service that identifies, at a minimum, the caller’s name and location information.

- (g) That prior to registration, the owner shall agree that Parts 1-4, as shown in the draft plan, are subject to Site Plan approval. The owner shall further agree that this information shall also be included in all Purchase and Sale and/or Lease/Rental Agreements for all lands tied to the common element condominium.

- (h) That the owner shall agree to deed, free and clear to the City of Hamilton, any easements that may be required for utility purposes.

- (i) That the owner shall satisfy all conditions, financial or otherwise, of the City of Hamilton.

EXECUTIVE SUMMARY

The purpose of the Draft Plan of Condominium application is to establish a common element condominium road (see Appendix “B” - Part 1 of the draft plan) to provide vehicular access to three single-detached dwelling lots, as per approved Consent Application AN/B-09:98 (see Appendix “D”). This Condominium application will satisfy Condition 3 of the Consent Application with respect to applying for, and receiving, final approval of the Condominium Application to establish a 6.0 metre wide common element condominium road. The proposed Draft Plan of Condominium has merit and can be supported since it is consistent with the Provincial Policy Statement, conforms to the Hamilton-Wentworth Official Plan, the Town of Ancaster Official Plan, and the Town of Ancaster Zoning By-law No. 87-57.

Alternatives for Consideration - See Page 11.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: None.

Staffing: None.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Common Element Draft Plan of Condominium.

HISTORICAL BACKGROUND

Proposal

The subject property is approximately 0.55 hectares in area, and is located between Hamilton Drive and Panabaker Drive, in the former Town of Ancaster (see Appendix “A”). The subject land is irregular in shape. The property fronts onto Garner Road West, and has 137.5 metres of frontage. The abutting lands consist of agricultural and residential uses to the south, east, and west, and a large woodlot to the north of the subject property. The purpose of the Draft Plan of Condominium application is for the establishment of a Common Element condominium road, which will provide vehicular access for the three proposed single-detached dwellings (see Appendix “B”).

Consent Application AN/B-05:171 was received by the Committee of Adjustment in September, 2005, to permit the conveyance of the subject property to create three residential lots for three single-detached dwellings and a condominium road to provide vehicular access for the residential properties (see Appendix “C”). An Environmental Impact Study (EIS) was submitted as part of the application, and the Grand River

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Conservation Authority had no objection to the Consent application. The application was approved on September 21, 2005. However, the application lapsed before all of the conditions were satisfied.

Consent Application AN/B-09:98 was submitted to the Committee of Adjustment on December 9, 2009, as a result of the lapsing of the original Consent application in 2005. The purpose of the application is identical to original Consent Application AN/B-05:171, which was to permit the conveyance of a parcel of land to permit three lots for single-detached dwellings, and a proposed condominium road (see Appendix "D"). The Committee of Adjustment approved the application on February 4, 2010. Condition 3 requires the owner to apply for, and receive, final approval to establish a 6.0 metre wide common element condominium road, and is the subject of this Condominium application.

A request was made to the Committee of Adjustment to revise the wording of Condition 3 of Consent Application AN/B-09:98 (see Appendix "D"). The revised change to Condition 3 was approved by the Committee of Adjustment on February 3, 2011 (see Appendix "E"). As a result of the revised condition, the Consent application will lapse on February 3, 2012.

CHRONOLOGY

- February 4, 2010: Associated Consent Application AN/B-09:98 approved by the Committee of Adjustment.
- November 11, 2010: Submission of Application 25CDM-201014 by Tandi Construction.
- November 19, 2010: Application is deemed complete.
- January 27, 2011: Change of conditions for Consent Application AN/B-09:98 given by Committee of Adjustment.

Details of Submitted Application

- Location:** 389 Garner Road West
- Owner/Applicant:** Tandi Construction
- Property Description:**
- | | |
|-------------------|---------------|
| <u>Frontage:</u> | 137.5 metres |
| <u>Lot Depth:</u> | 124.59 metres |
| <u>Area:</u> | 0.55 hectares |

EXISTING LAND USE AND ZONING:

	<u>Existing Land Use</u>	<u>Existing Zoning</u>
<u>Subject Lands:</u>	Vacant	Agricultural “A-216” Zone, Modified
North	Residential/Vacant	Agricultural “A-216” Zone, Modified
South	Agricultural	Agricultural “A” Zone
West	Residential/Vacant	Agricultural “A-216” Zone, Modified
East	Residential	Agricultural “A-216” Zone, Modified

POLICY IMPLICATIONS

Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow)

The application has been reviewed with respect to the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow). The application is consistent with policies that direct new growth to the built up areas, as per the Policies contained in Sections 2.2.2 and 2.2.3 of the Places to Grow Plan. The proposal maintains the intent to develop and create complete communities, which provide for housing opportunities. Therefore, the application is consistent with the Places to Grow Growth Plan for the Greater Golden Horseshoe.

Provincial Policy Statement

The application is consistent with the Provincial Policy Statement where it promotes growth in Settlement Areas, and implements Policies 1.1.1, 1.1.3.2, and 1.4.1 with respect to the provision of densities that efficiently use land and provide a mix of housing types.

Policy 1.7.1(e) outlines that long-term economic prosperity will be supported by planning so that major facilities (such as transportation corridors) and sensitive land uses are appropriately designed, buffered, and separated from each other to prevent adverse effects from, among others, noise. As the subject property is proposed for sensitive land use, and is located adjacent to Garner Road West, staff has recommended that a condition be added to the approval of the Draft Plan of Condominium regarding a noise warning clause informing potential purchasers and tenants that there may be occasional

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noise impacts due to increasing road traffic. The requirement of a noise warning clause in the Consent/Development Agreement is included in Condition 2 of Consent Application AN/B-09:98 (see Appendix "D"). Based on the foregoing, the Condominium application is consistent with the Provincial Policy Statement.

Hamilton-Wentworth Official Plan

The subject property is designated "Urban Area" in the Hamilton-Wentworth Official Plan. Policy 3.1 outlines that a wide range of uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. Urban Areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020.

Policy C.1.1.f) states that existing natural areas within the Natural Heritage System be identified and mitigation measures be implemented to provide opportunities for conservation through the adoption of policies within the Local Official Plans. Under the Shaver Neighbourhood Secondary Plan, it has been identified that the subject property requires further environmental studies to determine appropriate development. Furthermore, Policy C.1.1.h) encourages supportive innovative design and planning methods that demonstrate that such design will result in lower environmental impacts on the Core Areas and Linkages. In this regard, Site Plan Approval will be required to encourage such innovative design and planning, such as siting of building footprints, to reduce potential environmental impacts.

Based on the above policies, the Condominium application conforms to the Hamilton-Wentworth Official Plan.

Town of Ancaster Official Plan

The subject lands are designated "Open Space and Conservation" and "Residential" in the Town of Ancaster Official Plan. The southerly portion of the subject property is predominantly designated "Residential" and the northerly portion is predominately designated "Open Space and Conservation". Lands designated "Open Space and Conservation" permit recreational facilities, conservation, public and private parks, camping areas, golf clubs, and passive recreation activities.

Lands that are designated "Residential" permit mainly residential uses, such as single-detached dwellings. Policy 4.4.1 states that residential uses will be supplied with urban services (sanitary and storm sewers and watermains). Based on the foregoing, the proposed Condominium application conforms to the Town of Ancaster Official Plan.

Shaver Neighbourhood Secondary Plan

The subject lands are designated “Low Density Residential” on the Shaver Neighbourhood Secondary Plan. Policy 6.2.5.1(l)(i) permits single-detached dwellings with frontages of 10.7 metres to 18.3 metres or larger, with a residential density of 20 dwelling units per gross/net residential hectare. Also, Policy 6.2.5(w) permits all residential dwellings to have a maximum of three storeys entirely above grade.

In addition, Policy 6.2.5(p) requires that residential lots in the “Low Density Residential” designation in the Hamilton Drive area shall have a minimum frontage of 15.2 metres to ensure compatibility with existing adjacent residences and future single-detached housing within the neighbourhood.

In addition, Map 2 of the Shaver Neighbourhood Secondary Plan identifies the subject property as an area subject to further environmental studies. Policy 6.2.6.1(e) states that development may be permitted within or adjacent to the lands based on the results of an Environmental Report. The proposed development would require Site Plan Approval to address potential impacts to the natural features on the subject property, to control location and grading of the common element condominium road, and to control the location of the building footprints of the proposed single-detached dwellings.

Finally, Policy 6.2.4 outlines that in the event of a conflict between the Shaver Neighbourhood Secondary Plan and the land use designations in the Ancaster Official Plan, the policies and designations in the Secondary Plan shall prevail. Based on the above policies, the proposed Condominium application conforms to the Shaver Neighbourhood Secondary Plan.

New Urban Hamilton Official Plan (Council Adopted)

The New Urban Hamilton Official Plan was adopted by Council on July 9, 2009. The Plan has been forwarded to the Province for approval, but is not yet in effect. The subject lands are designated “Neighbourhoods” on Schedule E - Urban Structure and Schedule E-1 - Urban Land Use Designations of the New Urban Hamilton Official Plan.

The northern portion of the subject property is also designated “Core Areas” on Schedule B - Natural Heritage System, and is within the “Key Natural Heritage Feature Significant Woodlands” on Schedule B-2 - Detailed Natural Heritage Feature Significant Woodlands. Policy C.2.3.2 encourages the preservation and enhancement of “Core Areas”, and that any development and site alteration within or adjacent to the “Core Areas” shall not negatively impact their environmental features or ecological functions. In addition, Policy C.2.3.3 prohibits removal and encroachment into “Core Areas”.

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In addition, Policy B.3.7.2 requires that in order to support environmentally designed development, the proposed development is subject to applications such as Site Plan Control and Draft Plan of Condominium Application.

The proposed single-detached dwellings and the associated common element road would conform to the “Neighbourhoods” designation of the New Urban Hamilton Official Plan.

RELEVANT CONSULTATION

The following Departments and Agencies had no comments or objections:

- Budgets and Finance Division, Corporate Services Department.
- Traffic Engineering Section, Public Works Department.
- Parking Services, Planning and Economic Development Department.
- Grand River Conservation Authority.

Public Works Department, Urban Forestry

Urban Forestry comments indicate that there are no trees located on the current road allowance or along the proposed right-of-way fronting the common element road. If there are municipally regulated trees located within the proposed road allowance of the common element road on the subject property, these trees are subject to the City of Hamilton Tree By-law No. 06-151, which requires a permit application to remove any trees of more than 46 cm d.b.h. The presence of such trees will be confirmed through the submission of an addendum to the 2005 Environment Impact Study during the Site Plan Control stage. The submission and approval of a Site Plan application has been included as a condition of approval of the Draft Plan of Condominium (see Recommendation (g)).

Public Consultation

In accordance with the Public Participation Policy approved by Council, preliminary consultation shall not be required if the application is part of the implementation of a Planning Study or other application, such as a consent application, which has been approved within one year of other public involvement and participation opportunities.

The Condominium application has been applied to satisfy Condition 3 of Severance Application AN/B-09:98, which was approved by the Committee of Adjustment on February 4, 2010, (see Appendix “D”). No parties were present that had an interest in the consent application at the Committee of Adjustment meeting.

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Notice of the Public Meeting will be given in accordance with the requirements of the Planning Act through circulation to property owners within 120 metres of the subject lands. In addition, a Public Notice sign was posted on the property in January, 2011.

ANALYSIS / RATIONALE FOR RECOMMENDATION

1. The proposal has merit and can be supported for the following reasons:
 - (i) It is consistent with the Provincial Policy Statement and conforms with the Places to Grow Plan.
 - (ii) It conforms with and implements the “Urban” designation of the Hamilton-Wentworth Regional Official Plan.
 - (iii) It conforms to the “Open Space and Conservation” and “Residential” designation of the Town of Ancaster Official Plan.
 - (iv) The proposal implements and conforms with the Shaver Neighbourhood Secondary Plan.
 - (v) The proposal would conform to the Council-adopted New Hamilton Urban Official Plan.

2. The purpose of the Draft Plan of Condominium (Common Element) is to satisfy Condition 3 of Consent Application AN/B-09:98, which was approved, on February 4, 2010 (see Appendix “D”). The draft plan, as shown in Appendix “B”, shows the proposed condominium road to be 6 metres in width and would provide vehicular access to the three single-detached dwellings.

3. Due to the close proximity of the residential lots to Garner Road West, a condition was added (Condition 2) to Consent Application AN/B-09:98, which requires the owner to add a noise warning clause informing purchasers that there may be occasional noise impacts due to the increasing road traffic.

An identical condition has also been added to the Draft Plan of Condominium requiring that a noise warning clause be added to the Condominium Agreement (see Recommendation (e)).

4. Consent Application AN/B-09:98 was approved on February 4, 2010, by the Committee of Adjustment. Condition 3 of the Application states the following (see Appendix “D”):

“That in lieu of establishing servicing and access easements, the applicant shall apply for, and receive, approval to establish Part 1 (as shown on the sketch provided with the application) as a 6.0m (minimum) wide common element condominium road.”

Upon further review of the above-noted condition, a request was made to the Committee of Adjustment that the condition be revised to have the clearance of the condition to the satisfaction of the Director of Planning. Therefore, the wording of the condition has been revised to the following:

“That the applicant shall apply for, and receive, approval to establish Part 1 as a 6.0m (minimum) wide common element condominium road, to the satisfaction of the Director of Planning.”

The revised change to Condition 3 was approved by the Committee of Adjustment on February 3, 2011 (see Appendix “E”). As a result of the revised condition, the Consent application will lapse on February 3, 2012.

5. The applicant must also enter into a Development Agreement with the City of Hamilton as a condition of draft plan approval. This Agreement would ensure that the tenure of all the subject residential parcels become “tied” to the proposed draft plan of condominium (Common Element Condominium). This will have the effect of ensuring that individual townhouse lots are not sold until the condominium has been registered as a Common Element Condominium under the Condominium Act (Recommendation (d)).
6. The proposed condominium road will be privately owned and, as a result, will be maintained by the Condominium Corporation and not the City of Hamilton. As a condition of approval, the applicant must include a warning clause in the Condominium Agreement and the Purchase and Sales Agreements to advise prospective purchasers of the following (Recommendation (c)):

“Purchasers/tenants are advised that the City of Hamilton will not be providing maintenance or snow removal service for private condominium roads.”

7. The current Site Plan Control By-law (By-law No. 03-294) requires that a Site Plan application be received and approved for any proposed single-detached dwellings situated within or contiguous to Major Open Space Areas, Environmentally Significant Areas and Provincially Significant Areas, as designated in the City’s Official Plan. The Shaver Neighbourhood Secondary Plan of the Town of Ancaster Official Plan identified the subject property as an area subject to further environmental review, and that Site Plan Control would be required to address impacts that the proposed development may have on the

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natural features. Also, innovative house groupings, which would include common element condominiums, are subject to Site Plan Control.

The subject property is located in the Core Area (significant woodland) on Schedule B in the Urban Hamilton Official Plan, and is subject to Site Plan Control. Although an Environmental Impact Study was completed for the subject property in 2005 as part of Consent Application AN/B-05:171, an addendum to the Study is required to provide an update on the existing natural features on the subject property as it does not contain sufficient information to determine if the proposed development will have an impact on the Core Area.

As a result, a future Site Plan application will be required to be submitted by the owner, and has been added as a condition of Draft Plan of Condominium (see Recommendation (g)). The Site Plan application will address the location of the proposed building footprint and the proper grading and location of the proposed condominium road in order to minimize the impacts of the development on the Core Area.

ALTERNATIVES FOR CONSIDERATION

If the Draft Plan of Condominium application is denied, Condition 3 of Consent Application AN/B-09:98 would not be satisfied, and the Consent application will lapse. The owner would have the option of applying for severances for freehold lots or applying for approval of a standard condominium.

CORPORATE STRATEGIC PLAN

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

Financial Sustainability

- ◆ Effective and sustainable Growth Management.
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative, and cost-effective manner.
- ◆ Generate assessment growth/non-tax revenues.

Healthy Community

- ◆ Plan and manage the built environment.

APPENDICES / SCHEDULES

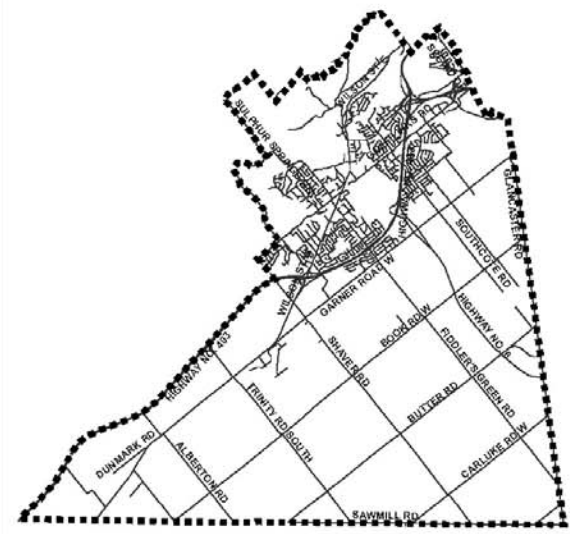
- Appendix "A": Location Map
- Appendix "B": Draft Plan
- Appendix "C": Notice of Decision of AN/B-05:171
- Appendix "D": Notice of Decision of AN/B-09:98
- Appendix "E": Revised Notice of Decision of AN/B-09:98

:TL

Attachs. (5)



● Site of the Application



Ward 12 Key Map

N.T.S.

Location Map



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
25CDM-201014

Date:
November 26, 2010

Appendix "A"

Scale:
N.T.S.

Planner/Technician:
TL/LAL

Subject Property

389 Garner Road West



Committee of Adjustment
City Hall
7th floor, 71 Main Street West
Hamilton, ON L8P 4Y5
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION

APPLICATION FOR CONSENT\LAND SEVERANCE

APPLICATION NO. AN/B-05:171
SUBMISSION NO. B-171/05

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

AND IN THE MATTER OF the Premises known as Municipal number 389 Garner Road West, formerly in the Town of Ancaster, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent Planning and Engineering Initiatives Ltd., on behalf of the owners Lisa Taylor & Kamel Hussain, for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of an irregular shaped vacant parcel of land (Parts 1 & 2 on attached sketch) having a frontage of 26m± and an area of 0.560ha± for single family residential purposes and to establish an easement over Part 2 in favour of the retained lands (Parts 3 & 4) for servicing, vehicular and pedestrian access, and to retain two vacant parcels of land; one (Part 3) having a frontage of 56.83m± and an area of 0.338ha± and the other (Part 4) having a frontage of 55.12m± and an area of 0.725ha±, both for single family residential purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application **IS APPROVED** for the following reason:



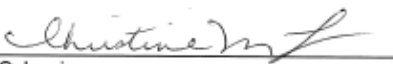



1. The Committee is of the opinion that a plan of subdivision of the lands is not necessary, in this case, for the proper and orderly development of the municipality.

Having regard to the matters under subsection 51(24) of the Planning Act, R.S.O. 1990, c.P. 13, the said application shall be subject to the following conditions.

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.
2. The applicant shall receive final approval of minor variance application AN/A-05:272.
3. That the owner enter into a consent agreement containing a requirement that they agree to implement the "Recommendations" outlined in page 11 of the Environmental Impact Study, prepared by Dougan & Associates Ecological Consulting Services, dated February, 2005, to the satisfaction of the Manager, Development Planning and the Grand River Conservation Authority.
4. That the owners enter into a development agreement with the City of Hamilton to deal with items such as but not necessarily limited to, grading, drainage, site servicing and storm water management.
5. That the owner(s) dedicate a 5.182 metre road widening to the City of Hamilton for Garner Road.
6. That the owner(s) pay their proportionate share of the future urbanization of Garner Road based on the 2005 New Road's Servicing Rate.
7. That the owner(s) pay their proportionate share of costs for the sanitary sewer on Garner Road to be approved by Council through a Municipal Act by-law.
8. That the owner(s) pay the required commutation amount of Municipal Act Charges to Budgets & Finance, City Hall, 1st Floor.

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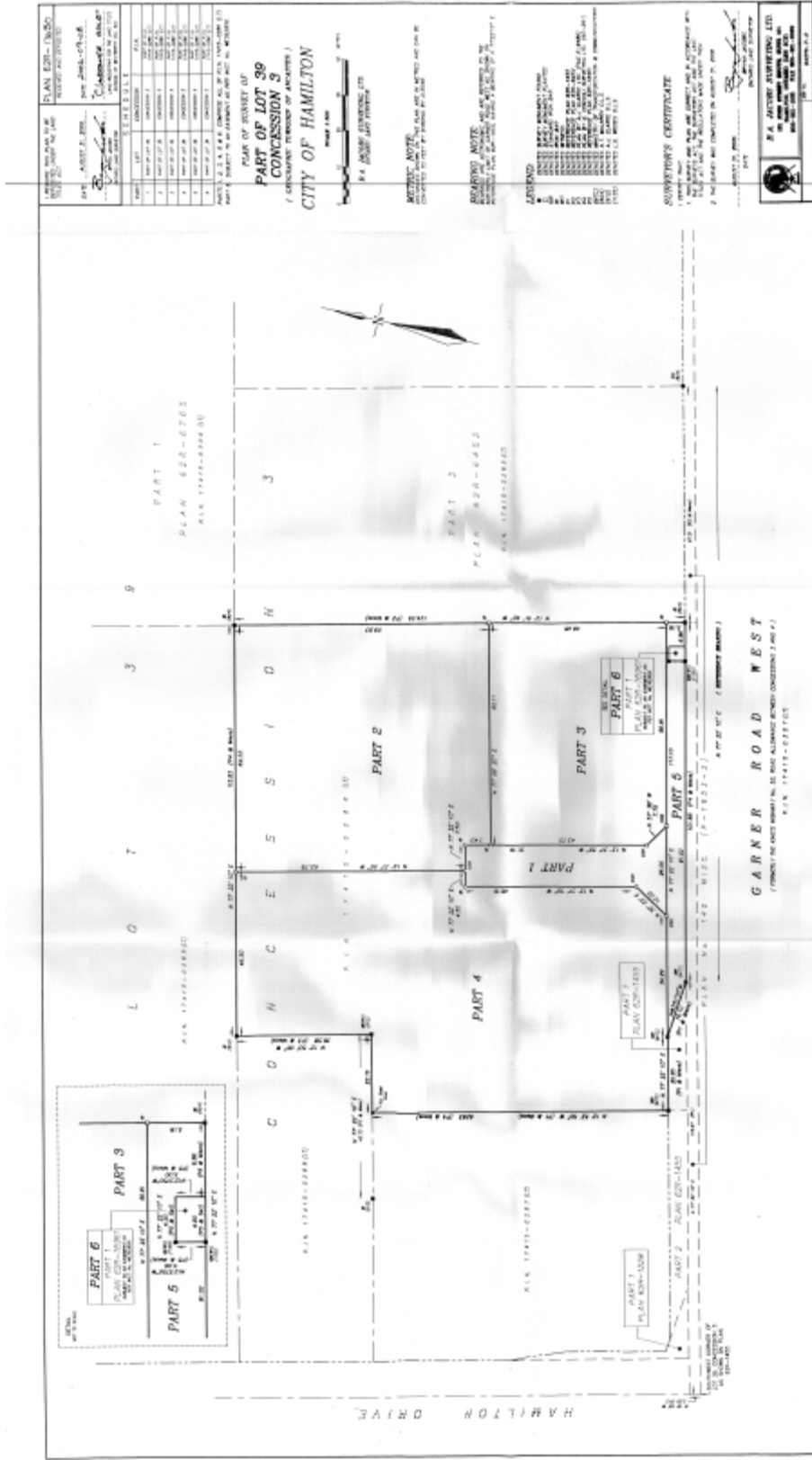
DATED AT HAMILTON this 21st day of September, 2005.

 M. Dudzic, Chairman	 V. Abraham
 C. Lewis	 D. Serwatak
 D. DeLullo	 D. Drury

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS September 28th, 2005.
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS
NOTICE OF DECISION (September 28th, 2006) OR THE APPLICATION SHALL BE DEEMED
TO BE REFUSED (PLANNING ACT, SECTION 53(41)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL
BOARD MAY BE FILED IS October 18th, 2005.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.





Committee of Adjustment
Hamilton City Centre
4th floor, Suite 400, 77 James St. N.
Hamilton, ON L8R 2K3
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT

NOTICE OF DECISION

APPLICATION FOR CONSENT\LAND SEVERANCE

APPLICATION NO. AN/B-09:98
SUBMISSION NO. B-98/09

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

AND IN THE MATTER OF the Premises known as Municipal number 389 Garner Road West, formerly in the Town of Ancaster, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent IBI Group (Sergio Manchia) on behalf of the owner Tandl Homes (c/o Peter Tancredi), for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of an irregular shaped vacant parcel of land (Parts 1 & 2 on attached sketch) having a frontage of 26m± and an area of 0.554ha± for single family residential purposes and to establish an easement over Part 1 in favour of the retained lands (Parts 3 & 4) for servicing, vehicular and pedestrian access, and to retain two vacant parcels of land; one (Part 3) having a frontage of 56.8m± and an area of 0.305ha± and the other (Part 4) having a frontage of 55.1m± and an area of 0.706ha±, both for single family residential purposes.

NOTE: Parts 5 & 6 have not been included as part of this application since their intent is to be transferred to the City of Hamilton as road widening.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, **IS APPROVED** for the following reasons:

1. The proposal does not conflict with the intent of the Hamilton-Wentworth and Town of Ancaster Official Plans.
2. The proposal does not contravene Zoning By-law requirements.
3. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
4. The Committee considers the proposal to be in keeping with development in the area.

Having regard to the matters under subsection 51(24) of the Planning Act, R.S.O. 1990, c.P. 13, the said application shall be subject to the following conditions.

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.
2. That the owner/applicant agree to include the following warning clause in the consent/development agreement and in all purchase and sale and/or lease/rental agreements:



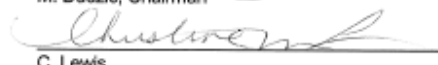
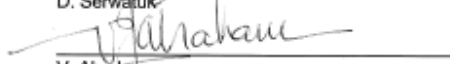



"Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria."
3. That in lieu of establishing servicing and access easements, the applicant will apply for and receive approval to establish Part 1 (as shown on the sketch provided with the application) as a 6.0m (minimum) wide common element condominium road.
4. That the Owner pay to the City of Hamilton the future urbanization costs of Garner Road West based on the New Road Servicing Rate for the year that final approval is obtained.
5. That the Owner pay all outstanding servicing costs to the City of Hamilton to the satisfaction of the Manager of Engineering Design and Construction.
6. That the Owner enter into and register on title, a Consent Agreement with the City of Hamilton to deal with all issues related to the grading, drainage and servicing of the subject lands, and shall demonstrate that all storm drainage can be taken to a suitable outlet to the satisfaction of the Manager of Engineering Design and Construction.

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7. That the Owner dedicate to the City of Hamilton by deed, 5.18m of land from the lands to be severed and retained for road allowance widening purposes.
8. That the Owner submit a detailed Stormwater Management Report, prepared by a qualified professional engineer, to demonstrate how quality and quantity control criteria will be achieved in accordance with the MOE Stormwater Management Planning and design Manual - 2003, the Shaver Neighborhood Master Drainage Plan and any subsequent analysis or updates, and the City of Hamilton Stormwater Management Policies to the satisfaction of the Director of Development Engineering.
9. That the owner shall pay the required commutation amount of Local Improvement Charges to Budgets & Finance, City of Hamilton.
10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
11. That the owner submit to the Committee of Adjustment office an administration fee of \$30.00 payable to the City of Hamilton to cover the costs of setting up a new tax account for the newly created lot.
12. Submit a cheque in the amount of \$360.00, payable to the Grand River Conservation Authority, or alternatively submit proof that said payment has been made.

DATED AT HAMILTON this 4th day of February, 2010.

 M. Dudzic, Chairman	 D. Serwatak
 C. Lewis	 V. Abraham
 D. Smith	 M. Switzer
 L. Gaddy	

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS February 11th, 2010.
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION (February 11th, 2011) OR THE APPLICATION SHALL BE DEEMED TO BE REFUSED (PLANNING ACT, SECTION 53(41)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS March 3rd, 2010.

THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.

NOTES:

1. Based on the attached plans, and on this application being approved and all conditions being met, the owner / applicant should be made aware that Part 3 will be assigned the municipal address of 381 Garner Road West, Part 2 will remain as 389 Garner Road West, and that Part 4 will be assigned the municipal address of 397 Garner Road West.
2. The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances and the proponent is advised to conduct a Stage 1 and 2 archaeological assessment prior to such impacts in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Testing and Stage 4 Mitigation may be required as determined by the Ontario Ministry of Culture. All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the Ministry of Culture.

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).



Committee of Adjustment
Hamilton City Centre
4th floor, Suite 400, 77 James St. N.
Hamilton, ON L8R 2K3
Telephone (905) 546-2424, ext. 4221
Fax (905) 546-4202

COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION WITH CHANGE OF CONDITIONS

APPLICATION FOR CONSENTLAND SEVERANCE

APPLICATION NO. AN/B-09:98
SUBMISSION NO. B-98/09

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

AND IN THE MATTER OF the Premises known as Municipal number 389 Garner Road West, formerly in the Town of Ancaster, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent IBI Group (Sergio Manchia) on behalf of the owner Tandi Homes (c/o Peter Tancredi), for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of an irregular shaped vacant parcel of land (Parts 1 & 2 on attached sketch) having a frontage of 26m± and an area of 0.554ha± for single family residential purposes and to establish an easement over Part 1 in favour of the retained lands (Parts 3 & 4) for servicing, vehicular and pedestrian access, and to retain two vacant parcels of land; one (Part 3) having a frontage of 56.8m± and an area of 0.305ha± and the other (Part 4) having a frontage of 55.1m± and an area of 0.708ha±, both for single family residential purposes.

NOTE: Parts 5 & 6 have not been included as part of this application since their intent is to be transferred to the City of Hamilton as road widening.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, **IS APPROVED** for the following reasons:

1. The proposal does not conflict with the intent of the Hamilton-Wentworth and Town of Ancaster Official Plans.
2. The proposal does not contravene Zoning By-law requirements.
3. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
4. The Committee considers the proposal to be in keeping with development in the area.


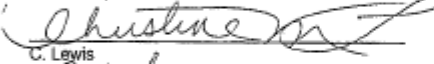
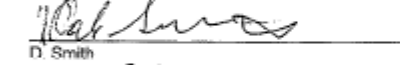

Having regard to the matters under subsection 51(24) of the Planning Act, R.S.O. 1990, c.P. 13, the said application shall be subject to the following conditions.


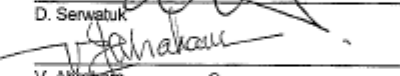

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.
2. That the owner/applicant agree to include the following warning clause in the consent/development agreement and in all purchase and sale and/or lease/rental agreements:
"Purchasers/tenants are advised that sound levels due to increasing road 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."
3. That the applicant apply for and receive final approval to establish Part 1 (as shown on the sketch provided with the application) as a 6.0m (minimum) wide common element condominium road, to the satisfaction of the Manager, Development Planning.
4. That the Owner pay to the City of Hamilton the future urbanization costs of Garner Road West based on the New Road Servicing Rate for the year that final approval is obtained.
5. That the Owner pay all outstanding servicing costs to the City of Hamilton to the satisfaction of the Manager of Engineering Design and Construction.
6. That the Owner enter into and register on title, a Consent Agreement with the City of Hamilton to deal with all issues related to the grading, drainage and servicing of the subject lands, and shall demonstrate that all storm drainage can be taken to a suitable outlet to the satisfaction of the Manager of Engineering Design and Construction.

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7. That the Owner dedicate to the City of Hamilton by deed, 5.18m of land from the lands to be severed and retained for road allowance widening purposes.
8. That the Owner submit a detailed Stormwater Management Report, prepared by a qualified professional engineer, to demonstrate how quality and quantity control criteria will be achieved in accordance with the MOE Stormwater Management Planning and design Manual - 2003, the Shaver Neighborhood Master Drainage Plan and any subsequent analysis or updates, and the City of Hamilton Stormwater Management Policies to the satisfaction of the Director of Development Engineering.
9. That the owner shall pay the required commutation amount of Local Improvement Charges to Budgets & Finance, City of Hamilton.
10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
11. That the owner submit to the Committee of Adjustment office an administration fee of \$30.00 payable to the City of Hamilton to cover the costs of setting up a new tax account for the newly created lot.
12. Submit a cheque in the amount of \$360.00, payable to the Grand River Conservation Authority, or alternatively submit proof that said payment has been made.

DATED AT HAMILTON this 27th day of January, 2011.


M. Dudzic, Chairman

C. Lewis

D. Smith

L. Gaddy


D. Serwatak

V. Adhikari

M. Switzer

THE DATE OF GIVING OF THIS NOTICE OF DECISION WITH THE CHANGE OF CONDITIONS IS February 3rd, 2011.

HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION WITH CHANGE OF CONDITIONS (February 3rd, 2012) OR THE APPLICATION SHALL BE DEEMED TO BE REFUSED (PLANNING ACT, SECTION 53(41)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS February 23rd, 2011.

THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.

NOTES:

1. Based on the attached plans, and on this application being approved and all conditions being met, the owner / applicant should be made aware that Part 3 will be assigned the municipal address of 381 Garner Road West, Part 2 will remain as 389 Garner Road West, and that Part 4 will be assigned the municipal address of 397 Garner Road West.
2. The subject property has been determined to be an area of archaeological potential. It is reasonable to expect that archaeological resources may be encountered during any demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances and the proponent is advised to conduct a Stage 1 and 2 archaeological assessment prior to such impacts in order to address these concerns and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. Mitigation, by an Ontario-licensed archaeologist, may include the monitoring of any mechanical excavation arising from this project. If archaeological resources are identified on-site, further Stage 3 Testing and Stage 4 Mitigation may be required as determined by the Ontario Ministry of Culture. All archaeological reports shall be submitted to the City of Hamilton for approval concurrent with their submission to the Ministry of Culture.

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392).