TO: Chair and Members  
   Economic Development and Planning Committee  
WARD(S) AFFECTED: WARD 2  
COMMITTEE DATE: April 20, 2010  
SUBJECT/REPORT NO: Application for a Change in Zoning for the Lands Located at 116 Hess Street North (Hamilton) (PED10067) (Ward 2)  
SUBMITTED BY: Tim McCabe  
   General Manager  
   Planning and Economic Development Department  
PREPARED BY: Daniel Barnett  
   (905) 546-2424, Ext. 4445  
SIGNATURE:  

RECOMMENDATION:  
That approval be given to Zoning Application ZAR-09-040, by Ian Murray, Owner, for a change in zoning from the “D” (Urban Protected Residential - 1 and 2 Family Dwelling) District to the “D/S-1629” (Urban Protected Residential - 1 and 2 Family Dwelling) District, Modified, with a Special Exception, to permit the conversion of the existing two (2) family dwelling into a single family dwelling containing a home occupation, on lands located at 116 Hess Street North (Hamilton), as shown on Appendix “A” to Report PED10067, on the following basis:  

(a) That the draft By-law, attached as Appendix “B” to Report PED10067, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.  

(b) That the amending By-law be added to Section 19B of Zoning By-law No. 6593 as “S-1629”.  

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(c) That the proposed change in zoning is in conformity with the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan.

**EXECUTIVE SUMMARY**

The purpose of this application is for a change in zoning to permit the conversion of the existing two (2) family dwelling into a single family dwelling containing a home occupation (98.6 sq.m. commercial customer service office).

The proposal has merit and can be supported as the Zoning By-law Amendment is consistent with the Provincial Policy Statement and Places to Grow Plan, conforms to the Hamilton-Wentworth Official Plan, the City of Hamilton Official Plan, and the Central Area Neighbourhood Plan. The proposed rezoning is considered to be compatible with the existing development in the surrounding area.

*Alternatives for Consideration - See Page 12.*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**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 Zoning By-law Amendment.

**HISTORICAL BACKGROUND** (Chronology of events)

The subject property is approximately 143 sq.m. in area, and is located at the north-east corner of Cannon Street West and Hess Street North (see Appendix “A”). There is an existing 2-storey building on the subject lands. The lands to the north of the subject property are established low density residential. To the east and west of the subject property are established institutional uses, (i.e. Still Waters Residential Care Facility and Hess Street Elementary School). To the south of the subject property are established institutional (i.e. Sir John A. Macdonald Secondary School) and commercial uses.

The applicant purchased the subject property in 2002, and established residence within one of the semi-detached dwelling units. In 2005, the applicant began operating a commercial customer service business within the second semi-detached dwelling unit. In November 2008, a Zoning Violation Notice was issued in respect to a Home Occupation business (see Appendix “C”). In January 2009, the applicant submitted Minor Variance Application HM/A-09:02, in order to permit the conversion of the existing two (2) family dwelling into a single family dwelling containing a home occupation, notwithstanding that a home occupation will be carried on by nine employees instead of

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being carried on only by members of the family residing in the dwelling unit as their principal place of residence, and a maximum of 45% of the habitable floor area of the dwelling unit will be used for the home occupation instead of the maximum permitted 15% of the habitable floor area of the dwelling. The Hamilton Official Plan specifically prohibits a home-based business from having any off-site employees, and permits a home-based business to only occupy a limited floor area of the dwelling. As a result, planning staff recommended that the minor variance application be Denied as the proposed variances were not considered minor in nature (see Appendix “D”). The Committee of Adjustment Denied the proposed variance (see Appendix “E”). The applicant appealed the decision to the Ontario Municipal Board. However, prior to the start of the hearing, the applicant adjourned the hearing in order to submit a rezoning application to establish a site-specific zoning to legalize the existing commercial customer service office.

The Zoning By-law will require site-specific amendments to the “D” (Urban Protected Residential - 1 and 2 Family Dwelling) District to legalize the home occupation (commercial use), as follows:

- To permit a home occupation for a commercial customer service office to be carried on by 5 non-resident employees instead of being carried on only by members of the family residing in the dwelling unit as their principal place of residence.

- To restrict the maximum gross floor area of a home occupation to 45% of the habitable floor area of the dwelling unit or 100 sq.m., whichever is less, instead of the maximum permitted 15% of the habitable floor area of the dwelling unit.

- To require zero on-site manoeuvring space, instead of the required 6m.

- To permit a minimum of 1 on-site parking space, instead of the minimum required 2 on-site parking spaces.

**Details of Submitted Application**

**Location:** 116 Hess Street North  
**Owner/Applicant:** Ian Murray  
**Property Description:**  
- Frontage: 9.14m  
- Lot Depth: 15.69m  
- Area: 143.4 sq.m.
EXISTING LAND USE AND ZONING:

<table>
<thead>
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<th>Subject Lands:</th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
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<td>2 Family Dwelling) District</td>
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<td>Neighbourhood Institutional “I1” Zone</td>
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<tr>
<td>North</td>
<td>Single Detached Dwellings</td>
<td>“D” (Urban Protected Residential - 1 and</td>
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<td></td>
<td>2 Family Dwelling) District</td>
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<tr>
<td>East</td>
<td>Still Waters Residential Care Facility</td>
<td>Neighbourhood Institutional “I1” Zone</td>
</tr>
<tr>
<td>South</td>
<td>Sir John A. Macdonald Secondary School and Commercial Office and Retail Uses</td>
<td>Downtown Mixed Use “D3” Zone</td>
</tr>
</tbody>
</table>

POLICY IMPLICATIONS

Provincial Policy Statement

The application is consistent with the Provincial Policy Statement, in that it focuses growth in settlement areas and implements Policies 1.1.1 and 1.1.3.2, which speak to the provision of a range and mix of residential, employment (including industrial, commercial, and institutional uses), recreational, and open space uses.

Therefore, the application is consistent with the Provincial Policy Statement.

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 the 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 mixed-use development along major corridors, and to reduce dependency on

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the automobile with mixed-use, transit-supportive, pedestrian friendly, urban environments.

Based on the foregoing, the proposal conforms to Places to Grow.

**Hamilton-Wentworth Regional 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.

Policy 3.1.1 outlines that 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.

Therefore, as the proposal is to legalize an existing home occupation use along an arterial road, the application is consistent with the policies of the Hamilton-Wentworth Official Plan.

**City of Hamilton Official Plan**

The subject property is designated “Central Policy Area” in the City of Hamilton Official Plan.

Policy A.2.8.1 states:

“To promote the Central Policy Area as a multi-use node for both the City and the Region, a wide range of uses will be permitted where compatibility among adjacent uses can be achieved. The primary uses permitted in the Central Policy Area, as shown on Schedule “A”, will be for the following uses:

“i) Commercial Uses such as, but not limited to, retail department stores, food, specialty and general merchandising establishments; personal services; head and branch offices and public administration offices; hotels; mixed commercial and residential uses; and in keeping with the Commercial policies set out in Subsection A.2.2. of this Plan.

ii) Residential Uses of various housing types, including, but not limited to, single-family detached, semi-detached, townhouses, and apartments, and in keeping with the Residential policies set out primarily in Subsection A.2.9.3, as well as in Subsections A.2.1 and C.7 of this plan.”
Policy A.2.8.3 states:

“To strengthen the role of the Central Policy Area as the primary commercial centre in the region, it is intended that:

“i) The Central Policy Area will be the preferred location for major Commercial establishments in the Region.”

Policy A.2.9.3.1 viii) states:

“Council will encourage mixed Commercial/Residential development or redevelopment within the Central Policy area and Commercial areas of Special Policy Area 3, subject to the General Provisions of Subsection A.2.2.”

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.2.1.4 states:

“Home Occupation uses may be permitted subject to Council satisfaction that the following provisions are, or will be, adequately met:

i) A Home Occupation will be carried on within a dwelling unit only by an owner occupying the dwelling and employing only immediate family members that also occupy the dwelling;

ii) A Home Occupation will occupy only a limited floor area of the dwelling; and,

iii) The Home Occupation will not detract from the Residential character of the area.

Further, a Home Occupation will not be deemed to be a mixed Commercial/Residential use for the purpose of Subsection A.2.2 of this Plan.”

Therefore, as the proposal is to legalize an existing home occupation that is compatible to adjacent uses, the application conforms to the City of Hamilton Official Plan.

Setting Sail Secondary Plan (Council Adopted) (For Information Purposes Only)

In March 2005, Council adopted the Setting Sail Secondary Plan; however, the Secondary Plan is under appeal and is, therefore, not in full force and effect. The subject property is designated “Low Density Residential” on Schedule M-2 of the Setting Sail Secondary Plan.

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Policy A.6.3.3.1.12 states:

“In Low Density Residential” areas:

i) Single detached, semi-detached, and street townhouses are permitted.”

Policy A.6.3.3.1.24 states:

“A live/work use, defined as a dwelling unit in which an individual also operates a commercial business, may be permitted in all areas within West Harbour, except Open Space and Institutional areas. Live/work uses shall be compatible with neighbouring uses and built form, and shall have no adverse environmental impacts in terms of noise, vibrations, emissions, and air quality. Any traffic or parking issues arising from the commercial aspect of the use shall be addressed, to the satisfaction of City staff.”

Policy A.6.3.6.3.1 states:

“Redevelopment and improvements in the Cannon Street Corridor shall seek to better connect the neighbourhood of West Harbour and Downtown, support existing and new commercial uses in strategic locations, create a safe and inviting pedestrian environment, and improve the street’s overall image.”

As the proposal is to establish a home occupation use (live/work use) along Cannon Street West that is adjacent to a Corridor of Gradual Change, and is compatible to the surrounding neighbourhood, the proposal would conform to the Setting Sail Secondary Plan.

**New Urban Hamilton Official Plan (Council Adopted)**

The proposal has been evaluated against the policies of the Council adopted Urban Official Plan, which is currently awaiting Ministerial approval. 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 following Policy Goals apply to the Neighbourhoods land use designation:

- **E.3.1.1** Develop compact, mixed-use, transit-supportive, and active transportation friendly neighbourhoods.

- **E.3.1.2** Develop neighbourhoods as part of a complete community, where people can live, work, shop, learn, and play.

- **E.3.2.1** Areas designated “Neighbourhoods” shall function as complete communities, including the full range of residential dwelling types and densities, as well as supporting uses intended to serve the local residents.
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;

b) Open space and parks; and,

c) Local community facilities/services.

E.3.8.2 The following uses shall be permitted:

a) Retail and service uses such as a craftsperson shop, day nursery, commercial school, financial establishment, medical office, business office, professional office, **business office**, motor vehicle service station, personal service, place of worship, repair service, restaurant, retail, studio, art gallery, tradesperson shop, and veterinary service.

E.3.8.4 Local commercial uses may be permitted in the following built forms:

a) Small, single-use buildings such as those occupied by a convenience store or a medical office;

d) Multiple storey buildings with the local commercial uses on the ground floor and residential units above.

E.3.8.3 Local commercial uses shall comply with the following provisions:

b) The gross floor area for any individual office shall not exceed 500 square metres.

E.3.8.9 Development and redevelopment of local commercial uses shall:

a) Front and have access to a major arterial, minor arterial, or collector road;

b) Provide safe and convenient access for pedestrians and cyclists; and,

c) Be compatible with the surrounding area in terms of design, massing, height, setbacks, on-site parking, noise impact, landscaping, and lighting.

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E.3.8.16 Notwithstanding Policy E.3.8.14, conversions of dwellings to accommodate offices identified in Policy E.3.8.2 a) may be permitted provided the following criteria shall be met:

a) The block face between two roads in which the conversion is proposed is not occupied predominantly by residential uses;

b) The conversion shall not create access problems or result in transportation impacts;

c) The use shall be clustered with other similar uses or other non-residential uses;

d) The required parking is accommodated in the side or rear yard; and,

e) Appropriate landscaped buffering, as specified in the implementing Zoning By-law, is provided between the parking and adjacent residential uses.”

Therefore, as the proposal is to legally establish a home occupation (customer service office) within a residential dwelling, the proposal would conform to the policies of the Urban Hamilton Official Plan.

**Central Area Neighbourhood Plan**

The subject property is designated “Single and Double Residential” in the Central Area Neighbourhood Plan. As the proposal is for a home occupation, the proposal would conform to the Plan.

**RELEVANT CONSULTATION**

The following Departments and Agencies had no comments or objections:

- Traffic Engineering and Operations Section, Public Works Department.
- Recreation Division, Community Services Department.

**Hamilton Municipal Parking System (Parking)** - Parking staff has reviewed the application and has no concerns with the Zoning By-law Amendment. However, the applicant should ensure that all existing and future parking requirements are met on-site, as there is a mixture of time limits and permit parking on the streets adjacent to this property. Furthermore, the applicant should be aware that on-street parking is limited, and that it cannot be guaranteed in perpetuity.
Strategic Planning (Environmental Planning Section) - Environmental Planning staff has reviewed the application and notes that the subject lands are not located within an existing Environmental Assessment study area; and that, at this time, the application does not appear to necessitate a Municipal Class Environmental Assessment study.

Public Works Department (Urban Forestry) - Urban Forestry staff has reviewed the application and notes that there is one Municipal Tree Asset located on the road allowance of the site, but neither a Landscape Plan or Tree Management Plan will be required.

Public Consultation

In accordance with Council’s Public Participation Policy, the proposed application did not require pre-circulation as a pre-circulation occurred as part of the Minor Variance application. However, as the Minor Variance application is under appeal, staff was of the opinion that pre-circulation was warranted. The application was circulated as part of the Notice of Complete Application to 97 residents within 120 metres of the subject lands on November 4, 2009. In addition, Minor Variance Application HM/A-09:02 was circulated to 30 residents within 60 metres of the subject lands on January 23, 2009. As a result of both the pre-circulation and Committee of Adjustment circulation, no letters were received expressing concerns with the application.

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 early November, 2009.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(Include Performance Measurement/Benchmarking Data, if applicable)

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 Official Plan;

   (iii) It conforms to the “Central Policy Area” designation of the City of Hamilton Official Plan, as the existing Residential Use and proposed Home Occupation are permitted in this designation;

   (iv) It conforms to the policies of the Central Area Neighbourhood Plan; and,
(v) It is compatible with the existing and planned uses in the surrounding area.

2. The requested change in zoning from the “D” (Urban Protected Residential - 1 and 2 Family Dwelling) District to the “D” (Urban Protected Residential - 1 and 2 Family Dwelling) District “D/S-1629”, Modified, is required to permit the conversion of the existing two (2) family dwelling into a single family dwelling containing a home occupation. In order to ensure that the commercial customer service office will not have any negative impacts on the residents of the neighbourhood, staff recommends that the commercial customer service office be restricted to a maximum Gross Floor Area of 100 sq.m. The following are site-specific modifications to the zoning regulations with respect to use, gross floor area, manoeuvring, and parking.

**Permitted Home Occupation Use**

In addition to the existing residential uses permitted within the “D” (Urban Protected - 1 and 2 Family Dwelling) District, the applicant has requested that a Home Occupation (commercial customer service office use), with 5 non-resident employees, be added as a permitted use. Zoning By-law Provision 2(H)(iii) requires that a home occupation be carried on entirely within the dwelling unit by members of a family residing in the dwelling unit as their principal place of residence. The intent of restricting the employees of a home occupation to only those residing within the residence is to ensure that the home occupation use remains small in size and does not negatively impact the neighbourhood. A home occupation use is still required to be owned and operated by the resident of the dwelling. Furthermore, the nature of the home occupation is to be a commercial customer service in which customers do not patronize the business. Therefore, the proposed 5 non-resident employees will not negatively impact the neighbourhood, and will ensure that the home occupation remains small in size.

**Gross Floor Area**

The intent of the application is to convert a portion of the existing building for a home occupation (office uses). Zoning By-law Provision 2(h)(iii)e) limits a Home Occupation to a maximum of 15% of the habitable floor area of a dwelling in order to ensure that the Home Occupation remains accessory to the principal residential dwelling and does not negatively impact the neighbourhood. The existing Home Occupation (customer service office) occupies 45% of the existing dwelling, or approximately 100 sq.m. The proposed 45% or 100 sq.m. gross floor area, whichever is less, will ensure that the proposed home occupation remains accessory to the principal dwelling.
Manoeuvring

The applicant has requested a reduction in the minimum required manoeuvring space from the required 6m to 0m. As this is an existing situation, the request to reduce the minimum required manoeuvring space is supportable. The existing driveway faces Cannon Street West; however, the driveway accesses off a section of Cannon Street West that is separated from the main traffic of Cannon Street West by a median that runs between Hess Street North and Caroline Street North (see Appendix “F”).

Minimum Parking

The applicant has requested a reduction in the minimum number of required parking spaces from 2 spaces to 1 space. As this is an existing situation the request to reduce the minimum number of required parking spaces is supportable.

3. The subject property is listed under Hamilton’s Inventory of Buildings of Architectural and/or Historical Interest. As the subject application does not involve any exterior alterations, staff has no objection to the proposal from a heritage prospective. However, the applicant is advised that the architectural character of the building may be a consideration in the review of any future application under the Planning Act.

4. The existing semi-detached dwelling is connected to municipal services. In accordance with the Sewer By-law No. 04-150, an inspection manhole is required to be installed on the private sanitary drain for all institutional, commercial, and industrial developments. However, as the proposed rezoning is to permit a commercial use within an existing semi-detached, residential dwelling, an inspection manhole is not required.

ALTERNATIVES FOR CONSIDERATION:

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

If the proposed rezoning is denied, the applicant has the option of continuing with the appeal to the OMB for Minor Variance Application HM/A-09:02 in order to recognize the use as a home occupation.

Alternatively, should the rezoning be denied and the applicant does not proceed with the appeal, or the appeal is denied, the applicant would still be permitted to utilize the property for the range of uses permitted within the existing “D” (Urban Protected Residential - 1 and 2 Family Dwelling) District.
CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)


Growing Our Economy

• Newly created or revitalized employment sites.
• Competitive business environment.

Social Development

• Hamilton residents are optimally employed earning a living wage.

Healthy Community

• Plan and manage the built environment.

APPENDICES / SCHEDULES

Appendix “A”: Location Map.

Appendix “B”: Draft Zoning By-law.

Appendix “C”: Zoning Violation Notice.

Appendix “D”: Staff Comments for Minor Variance Application HM/A-09:02.

Appendix “E”: Committee of Adjustment Decision for Minor Variance Application HM/A-09:02.

Appendix “F”: Aerial Photo of Subject Property and surrounding area.

:DB
Attachs. (6)
Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number: ZAR-09-040
Date: February 25, 2010

Appendix "A"

Subject Property

116 Hess Street North, Hamilton
Change in zoning from the "D" (Urban Protected Residential - 1 & 2 Family Dwelling) District to the "DVS-1629" (Urban Protected Residential - 1 & 2 Family Dwelling) District Modified.
CITY OF HAMILTON

BY-LAW NO. 

To Amend Zoning By-law No. 6593 (Hamilton), as amended, Respecting Lands located at 116 Hess Street North, (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the City of Hamilton" and is the successor to the former regional municipality, namely, “The Regional Municipality of Hamilton-Wentworth”;

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July 1950, which By-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951, (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Item of Report 10- of the Economic Development and Planning Committee, at its meeting held on the day of , 2010, recommended that Zoning By-law No. 6593 (Hamilton) be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton, in accordance with the provisions of the Planning Act;
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map No. W-4 of the District Map, appended to and forming part of Zoning By-law No. 6593 (Hamilton), as amended, is hereby amended by changing the zoning from the “D” (Urban Protected Residential - 1 and 2 Family Dwellings) District, to the “D/S-1629” (Urban Protected Residential - 1 and 2 Family Dwellings) District, Modified, on the lands the extent and boundaries of which are more particularly shown on Schedule “A” annexed hereto and forming part of this By-law.

2. That notwithstanding Sections 2.(2)H.(iii), 18A.1.a) and 18A.1.f) of Zoning By-law No. 6593, the following special requirements shall apply:
   
   (a) A home occupation for a commercial customer service office, having a maximum of five (5) non-resident employees, shall only be permitted within the dwelling existing on the date of the passing of this By-law, being the __________ day of ________, 2010.

   (i) For the purpose of this By-law, a Commercial Customer Service Office is defined as an office in which the primary operation is to either contact or be contacted by customers in order to gather information and to provide technical or data collection assistance for customers.

   (b) Gross Floor Area for Home Occupation (Maximum): 45% Gross Floor Area or 100 sq.m., whichever is less.

   (c) Manoeuvring Space (Minimum): 0m.

   (d) Parking Spaces (Minimum): 1 Parking Space.

3. That By-law No. 6593 (City of Hamilton) is amended by adding this By-law to Section 19B as Schedule S-1629.

4. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.
PASSED and ENACTED this [redacted] day of [redacted], 2010.

__________________________  __________________________
Fred Eisenberger            Kevin C. Christensen
Mayor                      Clerk

ZAR-09-040
This is Schedule "A" to By-Law No. 10-
Passed the .......... day of .................., 2010

Schedule "A"
Map Forming Part of By-Law No. 10-_____
to Amend By-law No.6593

Subject Property
116 Hess Street North, Hamilton
Change in zoning from the "D" (Urban Protected Residential - 1 & 2 Family Dwelling) District to the "D/S-1629" (Urban Protected Residential - 1 & 2 Family Dwelling) District Modified.
November 06, 2008

Ian Murray
116 Hess St. N
Hamilton, ON  L8R 2T2

RE:  116 Hess St. N  City of Hamilton 08-274855

The inspection on or about November 5, 2008 at the above-referenced address found the following contravention(s).

You are hereby ordered to correct the contraventions itemized below by January 5, 2009

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<th>Item</th>
<th>Reference</th>
<th>Description</th>
<th>Required action</th>
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<td>1.</td>
<td>City of Hamilton Zoning By-Law 6593, Section 2(2)(H)(iii)</td>
<td>&quot;Home Occupation&quot; shall mean any incidental and secondary use carried on for remuneration entirely within a dwelling unit by members of a family residing in the dwelling unit as their principal place of residence, that does not change the character of the dwelling unit.</td>
<td>Cease and desist the use of the dwelling as a Home Occupation business.</td>
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</table>

This is your notice that failure to cease the violation and bring the property into compliance with zoning requirements may result in charges or other enforcement without further notice to you. If charges have already been laid for the violations prior to this date, the finding of a continuing violation may result in additional charges.

The maximum fines for each initial conviction in respect of zoning violations are $25,000 for individuals and $50,000 for corporations. Subsequent convictions allow fines for every day a contravention continues after an initial conviction, being a $10,000 maximum daily for individuals and a $25,000 maximum daily for corporations.

Should you require any further information, please contact the undersigned at 905-546-2424 extension 5412

Yours truly,

Mike Francoeur/Municipal Law Enforcement Officer
February 12th, 2009

HM/A-09:02 (116 Hess Street North, Hamilton)

PLANNING and DEVELOPMENT DEPARTMENT

Development Planning – West:

The applicant requires minor variance approval in order to legalize an existing home based business operating out of one half of an existing two family dwelling.

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.

However, Policy 2.6.1 states that significant built heritage resources and significant cultural heritage landscapes shall be conserved. Staff note that the subject property contains a building of architectural and/or historical interest and is identified within Hamilton's Heritage Volume II. As such, please refer to comments from Built Heritage Staff.

Hamilton-Wentworth Official Plan:

The subject property is designated as "Urban Area" within 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.

However, Policy B-9.2 states that the City shall consider the protection and preservation of Regionally significant historical and cultural resources, including recognized archaeological sites, in the review of proposals for development and redevelopment. Where possible these attributes will be incorporated into the overall design in a manner which minimizes adverse impacts and encourages maintenance and protection. As noted above, the subject property contains a building of architectural and/or historical interest and is identified within Hamilton's Heritage Volume II. As such, please refer to comments from Built Heritage staff.

The subject lands are also located within the “Setting Sail Secondary Plan” area. As such, please refer to any comments provided by the Downtown and Community Renewal Division as well as the comments provided by Community Planning staff below.

Built Heritage:

The subject property contains a building listed in the City's Inventory of Buildings of Architectural and/or Historical Interest.
Heritage staff advises that if any minor alterations are made to building fabric that may have an effect on the historic structure, the owner/applicant is advised to use materials that are sympathetic to the built fabric of the existing building.

**The City of Hamilton Official Plan & Setting Sails Secondary Plan**

The subject property is designated as “Central Policy Area” in the City of Hamilton Official Plan, Policy 2.8.1 ii) states “Residential uses of various housing types, including, but not limited to, single-family detached, semi-detached, townhouses, and apartments, and in keeping with the Residential policies set out primarily in Subsection A.2.9.3, as well as in Subsection A.2.1 and C.7 of this plan.”

Policy 2.1.4 states “Home Occupation uses may be permitted subject to Council’s satisfaction that the following provisions are, or will be, adequately met:

i) A Home Occupation will be carried on within a dwelling unit only by an owner occupying the dwelling and employing only immediate family members that also occupy the dwelling;

ii) A Home Occupation will occupy only a limited floor area of the dwelling; and,

iii) The Home Occupation use will not detract from the Residential character of the area.

As the proposal is requesting a variance to permit a home occupation with 9 non-resident employees the proposal does not conform to Policy 2.1.4 i) of the City of Hamilton Official Plan.

The subject property is designated as “Low Density Residential” in the Setting Sails Secondary Plan which permits single and semi-detached dwellings.

**City of Hamilton Zoning By-law**

The subject property is zoned Urban Protected Residential – One and Two Family Dwellings “D” District in the City of Hamilton Zoning By-law, to which the proposed residential use complies.

**Variance 1:**

The intent and purpose of requiring that no off-site employees may be permitted in a home based business is to ensure that the business remains small in scale, accessory to the dwelling unit, and that the proposed home based business does not detract from the residential character of the area.
As the proposal is to create a home based business with nine off site employees the proposed home based business can not be considered small in scale or accessory to the dwelling unit, and therefore does not meet the intent and purpose of the By-law.

**Variance 2:**

The intent and purpose of requiring that a home based business be restricted to a maximum of 15% of the habitable floor area of the dwelling unit is to ensure that the business remains small in scale, accessory to the dwelling unit, and that the proposed home based business does not detract from the residential character of the area.

As the proposal is to legalize a home based business within the entirety of one unit of the existing two unit dwelling the proposal cannot be considered small in scale or accessory to the dwelling unit, and therefore does not meet the intent and purpose of the By-law. Furthermore it should be noted that the requested increase in the maximum habitable floor area for a home occupation to 45% is in order to accommodate the nine off site employees requested in variance 1 to which staff cannot support.

**Recommendation:**

It is in the opinion of staff that the proposed variances are not minor in nature, are not desirable and appropriate for the use of the lands, and do not meet the intent and purpose of the Official Plan and Zoning By-law. Therefore staff recommends that the proposed variances be **Denied**.

**Building Services Division:**

A building permit is required for conversion of the building from a two (2) family dwelling to a single family dwelling containing a home occupation.

A properly scaled and dimensioned site plan was not submitted with the application and the building plans submitted are not entirely legible. As such, if the gross floor area intended for the occupation is greater than 45% or there are more than 8 habitable rooms in the entire building (those rooms for both the single family dwelling and home occupation), further variances to the By-Law will be required.

The proposed "home occupation" has not been indicated. The Committee may wish to specify the type of home occupation permitted within this single family dwelling.

A "Zoning Violation Notice", regarding contraventions to the Home Occupation requirements, remains outstanding.

**Development Engineering – West:**

No comment.
Parking Operations:

No concerns.

PUBLIC WORKS DEPARTMENT

Traffic, Engineering and Operations Division:

No comment.

AND IN THE MATTER OF the Premises known as Municipal number 116 Hess Street North, in the City of Hamilton and in a "D" (Urban Protected Residential - One and Two Family Dwellings, etc.) district;

AND IN THE MATTER OF AN APPLICATION by the owner Ian Murray, 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 the existing two (2) family dwelling into a single family dwelling containing a home occupation notwithstanding that:

1) The home occupation will be carried on by nine (9) non-resident employees instead of being carried on only by members of the family residing in the dwelling unit as their principal place of residence; and,

2) A maximum of 45% of the habitable floor area of the dwelling unit will be used for the home occupation instead of the maximum permitted 15% of the habitable floor area of the dwelling unit.

NOTE:

(i) The proposed "home occupation" has not been indicated. It is assumed that the remainder of the "home occupation" regulations are intended to be complied.

(ii) A properly scaled and dimensioned site plan was not submitted with the application and the building plans submitted are not entirely legible.

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 19th day of February, 2009

M. Dutzić (Chairman) V. Abraham

M. Switzer D. Drury

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS March 11th, 2009.

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