Your Worship and Members of Council:

Re: 545 and 547 Beach Blvd – Committee of Adjustment Decision

I act for Herman Turkstra, the owner of the property in question. On April 1, 2010, the Committee of Adjustment heard and approved an application by the property owner for a severance and related variances. The Report of the Economic Development and Planning Committee before you today recommends that you appeal the Committee of Adjustment approval to the Ontario Municipal Board.

Before adopting that Report, I respectfully request Council to consider the following facts.

THE PROCESS

The Committee of Adjustment

Eight people, appointed by Council to sit as members of the Committee of Adjustment, including a long serving former member of City Council and the former Planning Director of Hamilton, a tribunal chaired by a senior very experienced lawyer, all with many years of experience in the Committee of Adjustment, heard a complete planning report from a city planner and a complete report from the property owner. That group of experienced tribunal members UNANIMOUSLY concluded as follows:

- "The relief granted is of a minor nature."
- "The relief granted is desirable for the appropriate development of the land and building and is not inconsistent with the general intent of the By-Law and the Official Plan, and
• "The Committee, having regard to the evidence is satisfied that there will be no adverse impact on any of the neighbouring lands".

The Neighbours

The severance and the variances were accepted and approved by all adjacent neighbours. The property owner went through the pre-submission consultation process with no adverse opinion that the proposal would produce a lot too small for a house.

Deference to the Committee of Adjustment and Neighbours

When you (Council) are the Planning Act decision maker, and a matter is appealed by another to the Ontario Municipal Board, the Planning Act requires that the Board "have regard to" your decision. Respectfully, I ask that you afford the Committee of Adjustment and neighbours this same deference in deciding whether to become an appellant in this case. In considering the following facts, I request that the Committee's and neighbours' unanimous approval remain at the forefront of your consideration.

THE FACTS

Mr. Mallard and members of his staff have worked with the property owner to prepare an agreed statement of facts. I would like to draw your attention to a significant portion of those agreed facts.

As of Right Impact GREATER than the Proposal's Impact

The following text is a direct quote from the agreed statement of facts:

• "..., the owner has the right to demolish and construct a new house on the combined lots, or to construct an addition to 545 that will be larger than the dwellings proposed, and with the right to house two families in the resulting building. The only difference between severance and the application of Section 19 is that the second home becomes a rental or a condominium instead of owner occupied...."

The agreed fact that without the severance, the owner can build a much larger addition which will result in two family homes under the existing zoning law than the house proposed by the owner is graphically illustrated in the examples attached to this letter. I strongly urge you to look at the examples. They show, in my respectful opinion, the correctness of the decision of the Committee and neighbours.

"As of right" impact arguments are very persuasive before the Ontario Municipal Board, in my experience.
**City Lot for Sale – only 2.24 Width Difference**

The agreed facts continued as follows:

- "The City is the owner of 148 Beach Blvd. The land is for sale and is a lot of record. The land is zoned with the identical zone for 545. The City is offering the land for sale for construction of a single family house. The proposed severance at 547 Beach Blvd requested by the applicant will create a lot that is 32.9 feet wide." (The City is offering for sale a lot that is 35.14 feet wide on which to build a single family building. The difference between the City’s lot and the lot I propose is 2.24 feet.

It is difficult to understand why City Council would ask the OMB to overturn a severance decision when the City itself is selling a lot of virtually the same size as that requested by the property owner. Again, I expect this argument would be very persuasive before the Ontario Municipal Board.

**THE PLANNING POLICIES**

Continuing from the agreed statement of facts:

- "the application is consistent with the Provincial Policy Statement policies that focus growth in settlement areas."

- "the subject property is designated "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." (In simple terms, the severance is consistent with the Hamilton-Wentworth Official Plan.)

- "The lands are designated "Residential on Schedule "A" - Land Use Concept in the Hamilton Official Plan. The subject property is also identified as "1 and 2 Family Residential" in the Hamilton Beach neighbourhood Plan which was approved by Council on July 8, 1992. (In other words, the new proposed house is consistent with the neighbourhood plan which provides for 10m wide infill lots.)

- "Subsection C.7 of the City of Hamilton Official Plan sets out the residential environment and housing policies. Policy C.3 iii) sets out that "Council will encourage a RESIDENTIAL ENVIRONMENT of an adequate physical condition that...contains a variety of housing forms that will meet the needs of present and future residents. Accordingly Council will support RESIDENTIAL development such as infilling, redevelopment and the conversion of non-residential structures that makes more efficient use of the existing building stock and/or physical infrastructure that recognize and enhance the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and areas, building height, coverage mass, setbacks, privacy and overview."
Clearly, the severance complies with the City's policy of "encouraging a variety of housing forms, and supporting residential infilling...that makes more efficient use of the existing...infrastructure".

However, it was only the latter part of that OP sentence, "recognize and enhance the scale and character of the existing residential area" that was used by the City Planner, Mr. Blevins, at the Committee of Adjustment to justify his conclusion that the "proposed severance does not create a building lot large enough to be consistent with the existing character and scale of the area, nor does it permit an appropriately sized dwelling while still maintaining appropriate setbacks and mitigating potential privacy and overlook concerns".

Before becoming an Appellant before the Ontario Municipal Board, I urge Councillors to look at the clear evidence of what City Council and City planners have said in the past about what is or is not “consistent with the character and scale of the area”, in other words, from a practical point of view, what is the character and scale of the Beach Strip?

**The Character and Scale of the Beach Strip**

In recent years, Planning Staff have recommended and Council has approved three highly dense multiple residential projects on the Beach Strip, converting commercial lands to residential, and to a form of residential that was not previously seen on the Beach Strip.

I would ask you to compare the conclusions as to what kind of home is consistent with the Beach Strip reached by planning staff on the 545-547 Beach Blvd severance with the conclusions reached by the same planning department in September, 2008, in PED08223, the Dynes site. In the Dynes site, rear lots were shrunk, front yards were reduced to zero, height was increased from 11 to 12.5 metres, sideyards were reduced, intensity was increased, parking sizes were reduced, balconies allowed to encroach on side yards and front yards and rear yards and the same planning staff told Council "the proposal has merit and can be supported for the following reasons":

1. "The proposal is consistent with the Provincial Policy Statement
2. "The proposal conforms with, and implements the "Urban Area" policies of the Hamilton-Wentworth Official Plan
3. "The proposal is compatible with the existing and planned development in the immediate area and is in keeping with the character of the Beach Neighbourhood
4. "The proposal provides the opportunity for infill development and intensification.

A photograph of the project is attached to this letter. Two more townhouse projects like this have been approved by Council on the recommendation of Planning Staff. As to consistency with the Beach Strip, there are dozens of small homes on lots of approximately 30 feet. For some people, the eclectic nature of the Beach Strip with its wide variations of housing styles is part of its charm and attractiveness.
Respectfully, this “character evidence” will be very persuasive before the Ontario Municipal Board in supporting the property owner’s proposal. Simply put, the creation of one lot is more in keeping with the character and scale of the neighbourhood than the City endorsed multi-residential projects. As an Appellant, the City would be faced with this inconsistency before the Board.

In case it may be raised in discussion of this letter, the issues of drainage will be resolved at the site plan stage as all new homes on the Beach Strip require site plan approval.

CONCLUSION

In the circumstances of this case, it is clear that the severance will produce less pressure on the Beach Strip, is a reduction in what is permitted-as-of-right today, complies with all relevant planning policies except one sentence in the OP (if that sentence is construed as it was by Mr. Blevins). The severance replicates what the City is proposing for the lot it is selling at the present time, and the severance has significantly less impact than the townhouse projects approved by Council as in the case of the Dynes site. Suffice it to say that, in my respectful opinion, the property owner’s case before the Ontario Municipal Board is very strong should you decide to become an Appellant.

I strongly urge Council to decline to appeal the decision of Council’s Committee of Adjustment and to allow that decision to stand.

Yours truly,

Nancy Smith
ns/ls

cc. Paul Mallard
    Tim McCabe
    Alexandra Rawlings

Nancy Smith Professional Corporation
Turkstra Mazza Associates, Lawyers
The existing house at 545 Beach Blvd and the existing lot of record at 547 Beach Blvd.
This house, now lawfully under construction on Beach Blvd can lawfully be built as an addition to the existing house at 545 Beach Blvd and the total building then converted to two homes.
Proposal Approved by Committee of Adjustment and adjacent neighbours.

Addition could be 1/3 larger than the proposed house.

Permitted by Existing Zoning And Planning Staff opinion.
2010 - Part of the character of the Beach Strip