SUBJECT: Application to Amend the Dundas Zoning By-law No. 3581-86, for Lands Located at 81 Dundas Street (Dundas) (PED07246) (Ward 13)

RECOMMENDATION:

That approval be given to Zoning Application ZAR-07-022, (Joe Pecaric) owner, to further modify the Residential Multiple RM2-FP/S-103 Zone, to permit 2 additional dwelling units within an existing 6 unit apartment building on property located at 81 Dundas Street, as shown on Appendix “A” to Report PED07246, on the following basis:

(a) That the draft By-law, attached as Appendix “B” to Report PED07246, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(b) That the proposed change in zoning conforms to the Town of Dundas Official Plan and the Hamilton-Wentworth Official Plan.

EXECUTIVE SUMMARY:

The proposed Zoning By-law Amendment is to permit 2 additional dwelling units within the attic of an existing 6 unit apartment building at 81 Dundas Street. The proposed rezoning requires some slight modifications to permit a reduction in the width of the westerly landscape buffer requirement and a reduction in the length of parking spaces. The proposal would not negatively impact the enhanced landscaping, landscape buffer and fencing at the north-east corner of the property, adjacent to the dwelling at 22 Thorpe Street, that was required through the Ontario Municipal Board’s (OMB) mediated settlement for Committee of Adjustment application DN/A-04:246.
The proposal would allow for a slight increase in density through a more efficient use of the existing building, which would not negatively impact the adjacent residential properties. The proposal is consistent with the Provincial Policy Statement and conforms to the Hamilton-Wentworth Official Plan and the Dundas Official Plan.

**BACKGROUND:**

The applicant is proposing a Zoning By-law Amendment to modify the Residential Multiple RM2-FP/S-103 Zone to permit 2 additional apartment units within an existing 6 unit apartment building. The building has been occupied since July 2005, and currently comprises 4 one-bedroom units and 2 two-bedroom units.

The applicant is proposing to establish 2 additional units in the attic area of the building above the second floor. The proposed apartment units are 1 bedroom units and would have a gross floor area of approximately 55 square metres (592 square feet), which would be in accordance with the standard requirement of the Dundas Zoning By-law for one bedroom apartment units. The owner is proposing to add 2 parking spaces to the existing parking area to meet the minimum requirement for 10 parking spaces, which includes 2 spaces for visitor parking (see Appendix “C”). Compared to the approved site plan (Appendix “E”), the proposal requires a slight redesign of the rear parking area to accommodate 7 parking spaces along the northerly property line and 3 spaces along the rear building side. A parallel parking space is proposed to the rear of the building in the location approved for the waste enclosure under the OMB mediated settlement. The proposal would also relocate the waste enclosure to a smaller area (1.72 to1.82 metres in width) near the north-westerly corner of the building, which would require a reduced landscaped buffer along the west lot line.

A special regulation is being requested to reduce a portion of the currently required 3 metre wide buffer strip along the west property line to 1.0 metre wide abutting the relocated waste enclosure, and to 1.9 metres wide for the portion that abuts the parking area. A special regulation to permit the lengths of the parking spaces to be reduced from 6.0 metres to 5.7 metres is also required.

Special regulations have been included in the proposed zoning by staff to reflect the two minor variances approved by the Ontario Municipal Board in 2005 (see below).

**Rezoning Application ZAC-03-70**

The property was the subject of rezoning application ZAC-03-70, which was approved in October 2003, to allow for the development of the existing 6 unit, 2½ storey apartment building. It was determined by the Hamilton Conservation Authority (HCA) that the
location of the property within the floodplain required that it be elevated 2 metres to enable it to be situated above the Regional Flood line. To reinforce the site, a concrete block retaining wall was constructed around the perimeter of the developed portion of the property.

Committee of Adjustment Application DN/A-04:246

Prior to construction, the property was the subject of Committee of Adjustment application DN/A-04:246 for Minor Variances, which were identified through the Site Plan Approval process. The variances were required to permit 2 of the parking spaces to be located in the front yard (at the entrance of the driveway) and to permit 4 of the one bedroom units to have minimum floor areas of 46.7 square metres rather than 55 square metres. An appeal of the application by the owners of an abutting property at 22 Thorpe Street resulted in an Ontario Municipal Board hearing on April 18, 2005. The Ontario Municipal Board approved a mediated settlement to address privacy issues for the neighbours that required the provision of enhanced landscaping in the form of a 2 metre by 3 metre landscaping area, and improved solid screen fencing with a continuous landscaped buffer along the easterly property boundary abutting 22 Thorpe Street, and the relocation of the proposed waste storage area to the rear of the building (see approved Landscape Plan, Appendix "E").

To date, the owner has completed the Board-mandated enhanced landscaping, buffer with fencing and the waste storage area has also been relocated to the rear of the building. The required enhanced landscaping buffer at the immediate north-east corner of the site is approximately 3.5 metres wide by 3.0 metres in length, which exceeds the dimensions required under the OMB decision.

Approved Site Plan DA-03-102

Site Plan Application DA-03-102 was redline approved by the Manager of Development Planning on May 13, 2005, following the mediated settlement by the OMB. A site plan amendment is required prior to the issuance of building permits for the additional dwelling units to address the proposed changes to the site for the parking area, the westerly landscaped buffer and the location and dimensions of the garbage enclosure.

Details of Submitted Application

Owner: Joe Pecaric
Agent: Prem Tewari
SUBJECT: Application to Amend the Dundas Zoning By-law No. 3581-86, for Lands Located at 81 Dundas Street (Dundas) (PED07246) (Ward 13) - Page 4 of 14

Location: 81 Dundas Street  (see Appendix “A”)

Property Size:  
Frontage: 12.19 metres  
Depth: 46.94 metres  
Area: 0.137 Ha.

Existing Land Use and Zoning:

<table>
<thead>
<tr>
<th></th>
<th>Existing Land Use</th>
<th>Existing Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Lands:</td>
<td>6 unit apartment building</td>
<td>Residential Multiple RM2-FP/S-103 Zone</td>
</tr>
<tr>
<td>Surrounding Lands:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West</td>
<td>Single Detached Dwellings</td>
<td>Single Detached Residential R2-FP Zone</td>
</tr>
<tr>
<td>North</td>
<td>Enterprise Car Rental</td>
<td>Highway Commercial CH-FP Zone</td>
</tr>
<tr>
<td>East</td>
<td>Single Detached Dwellings</td>
<td>Single Detached Residential R2 Zone</td>
</tr>
<tr>
<td>South</td>
<td>Used Car Dealership</td>
<td>Industrial M3 Zone</td>
</tr>
<tr>
<td></td>
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<td>(Regulated under Zoning By-law 1964)</td>
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ANALYSIS / RATIONALE:

1. The proposal has merit and can be supported for the following reasons:

   (i) It conforms to the Places to Grow Plan and is consistent with the Provincial Policy Statement in terms of residential intensification, and conforms to the Dundas and Hamilton-Wentworth Official Plans.

   (ii) It can accommodate additional parking spaces through slight modifications to the approved site and landscape plans and allows for compatible development.

   (iii) It does not prejudice the intent of the OMB mediated settlement as the key features, which include the 2m X 3m enhanced landscaping, the modified landscape strip and the area to remain free of parking in front of the enhanced landscaping, would be fully maintained.
2. Residential intensification is supported in the Provincial Policy Statement, the Places to Grow Plan and the Dundas Official Plan. In the Dundas Official Plan, the subject property is within the “Residential Commercial Mixed Use” designation, which would allow for the development of the highest density of any designation within the former Town of Dundas (up to 100 units per net hectare). The proposed rezoning would permit a slight increase in density that would be well within the requirements provided by this policy, resulting in a density of 58 units per net hectare.

The Dundas Official Plan also encourages intensification in Policy 2.3.3.1(b) (see Page 12) as a means to utilize the available land supply in an efficient manner and to reduce the costs of services. The proposed rezoning conforms to this policy because an existing developed site and services would be utilized.

Special Policy Area 3 of the Plan, which requires flood-proofing, also applies to the subject property and allows intensification through redevelopment, renovations and additions to existing residential development subject to certain criteria provided in Policy 3.10.3.3.(k). The proposed additional units would meet the required criteria and can be accommodated within the existing building and site with only minor adjustments to the existing parking area.

Therefore, there is a strong policy basis for intensification, and the proposed rezoning to permit a slight increase in density through the provision of 2 units is reasonable and is supported by these policies.

3. The proposed modifications to the property with respect to the rear parking area have been evaluated as follows (see Appendix “C”):

Additional Parking

The provision of the requirement for a minimum 10 parking spaces under the Dundas Zoning By-law is of paramount importance to the proposal to ensure that there are at least 2 visitor spaces, and to avoid special regulations in the amended zoning as the current parking requirements are on the lower range for apartments, in comparison to those of the other former municipalities of the amalgamated City.

It has been determined that the existing parking area can be modified to accommodate 10 parking spaces for the 2 additional apartment units, consisting of 7 spaces along the northerly property line and 3 spaces adjacent to the rear wall of the building. The modified parking arrangement identified in Appendix “C”
would function adequately, providing adjustments are made in the proposed zoning to reduce the width of the buffer along the westerly property boundary, the waste storage area is relocated and reduced in size to occupy a smaller portion of the site, and the parking space lengths are reduced (see below). The additional parking can be accommodated on the property without adversely impacting the property owners at 22 Thorpe Street or other property owners adjoining the site. The parallel parking space, which is proposed beside the northeast corner of the building, would need to be modified in width to 4 metres under the Building Code to allow for the continuation of special needs parking on the site.

**Reduced Length of Parking Spaces**

A requirement to reduce the length of the parking spaces to 5.7 metres from 6.0 metres would affect only the 2 right angled parking spaces at the rear of the building (Appendix “C”). The variance was not identified at the time of the last rezoning or site plan approval and would recognize an existing situation. The parking spaces have been in operation since the construction of the building, and the stall lengths are within the range permitted in several of the other former municipalities within the City. The City’s new Comprehensive Zoning By-law requires a minimum length of 5.5 metres.

**Relocation and Modifications to Waste Storage Area**

The existing waste enclosure occupies a 3 metre by 3 metre area adjacent to the north-easterly corner of the building. Through the OMB’s mediated settlement for Committee of Adjustment Application DN/A-04:246, the waste enclosure was relocated to this area so that it would not impact the adjoining property at 22 Thorpe Street. Staff is of the opinion that the primary intent of the Board’s settlement has been to ensure privacy and the mitigation of impacts for 22 Thorpe Street from the parking area of the existing apartment building. Through discussions with Waste Management staff, it is recognized that the waste storage for the building could be accommodated within a smaller enclosure measuring 1.5 metres by 5.75 metres to accommodate blue bins, green carts and garbage bins that would take up less space within the parking area. This would allow for the provision of an additional parking space in the current location of the waste enclosure. The area for the modified waste enclosure could be provided adjacent to the north-westerly corner of the building, as shown on Appendix “C”, which is a greater distance from 22 Thorpe Street, however, this would require that the buffer along the westerly property line be reduced to approximately 1.0 metre along the length of the enclosure; a distance of 5.75 metres.
Reduced Buffer along Westerly Property Boundary

To accommodate the relocated waste enclosure in the area to the rear of the building, it would be necessary to reduce the width of the buffer along the westerly property line from 3 metres to 1.0 metre. This reduced buffer would apply only to the length of the modified waste enclosure. For the remainder of the parking area, the westerly buffer would need to be reduced to 1.9 metres wide to accommodate an additional parking space along the northerly property boundary and the driveway aisle.

It is noted that as a result of the flood plain requirements to elevate the property by 2 metres, a concrete block retaining wall has been required around the perimeter of the site to reinforce the property for the existing development. As the area required for the westerly buffer is occupied by the retaining wall, it has not been possible to provide a conventional landscaping strip in this area. In an attempt to fulfill the landscaping requirement for the approved Site Plan, the owner has provided numerous potted shrubs to enhance and screen the fence along the westerly boundary of the property.

In light of the existing situation and the elevated nature of the site, staff supports the requested reduced buffer through a modified regulation within the amended RM2-FP/S-103 zoning (see Appendix “B”), as this would not negatively impact the deeper residential properties to the west. The proposed reduced parking space lengths for 2 of the parking spaces on the site would also be acceptable and can be supported.

4. The proposal has generated 3 letters of objection from property owners who reside at 60 Dundas Street (Unit 11), 4 Thorpe Street and 22 Thorpe Street (see Appendix “D”). The following issues have been identified from the correspondence received:

The Proposal Deviates from the Original Approval

The recommendation to support an apartment building limited to 6 units for the initial rezoning was based on the consideration of information available at the time of the rezoning and the recognition that the property could support the requirement for 8 parking spaces. The current proposal would utilize existing space within the attic of the building for the additional apartment units and would not result in an increased building area. There is also an opportunity through an evaluation of the existing development and site conditions to further modify the parking area to accommodate the requirement for 2 additional parking spaces.
Staff is of the opinion that the proposal is reasonable, as the increased density is not significant and the intended changes would maintain compatibility with the neighbourhood.

**Increased Noise and Traffic in the Area**

The proposed additional apartment units would be constructed within the existing building and generate the need for only two additional parking spaces. Traffic staff has indicated no concerns.

**Over-intensification of the Property**

The property is within a designation that allows for a higher density of up to 100 units per net hectare. The proposal to add 2 units would amount to an overall density for the property of 58 units per net hectare, which is below the maximum density requirement. As the units can be accommodated within the existing building and the required additional parking can be provided, the proposed rezoning is not considered to be an over-intensification of the property and will be compatible with the surrounding lands.

**Impacts on 22 Thorpe Street**

The owners of 22 Thorpe Street, which adjoins the northeast corner of the property, are objecting to the proposal because of the effects on privacy due to the increased impacts from headlights, automobile exhaust and noise, reduced property values, and the effects on their quality of life. They are particularly concerned that the proposal would result in changes to the parking area that would not be consistent with the OMB mediated settlement for the minor variances that was agreed to on April 18, 2005. In particular, they are concerned that a parking space would be added to the area in front of the 2 metre by 3 metre landscaped buffer, whereas their decision to support the variances was based on there being no parking in front of the buffer. A portion of the approved landscape plan showing the changes required by the OMB mediated settlement is provided in Appendix “E”.

In terms of the above-noted impacts, it is noted that the parking area of the subject property is currently completely screened from view of 22 Thorpe Street and the area is further separated by the enhanced (2m X 3m) landscaped buffer, which will not change. This eliminates headlights shining onto the adjoining property. The proposal does not involve the relocation of parking in front of the enhanced buffer. The provision of one additional parking space along the
northerly property boundary would be accommodated adjacent to the enhanced buffer by utilizing unused space in this area and would not negatively impact the neighbouring property. Staff has no information to show any adverse impact to property values from the proposal.

In summary, the proposed site plan/landscape plan changes to accommodate additional parking on the site would not alter the enhanced buffer, landscape strip and fencing, which were mandated through the mediated settlement by the OMB.

5. In order to reflect the 2005 OMB decision which granted minor variances, staff has included two special regulations in the proposed zoning (Appendix “B”). One of the regulations allows 2 of the required parking spaces to be located in the front yard, whereas the By-law does not permit front yard parking. The other regulation allows 4 of the second floor units to have a minimum floor area of 46.7 square metres, whereas the By-law requires a minimum 55.0 square metres.

6. A Site Plan Amendment Application would be required to address the modifications to the parking area, which include the following:
   
i) The addition of 2 parking spaces, amounting to 10 parking spaces in total.
   
ii) The provision of a smaller garbage enclosure and the associated details for the area near the north-westerly corner of the building.
   
iii) The provision of a modified landscaping arrangement, such as planter boxes for the westerly buffer and its reduction in width.
   
iv) The provision of reduced parking space lengths for the 2 right angled spaces to the rear of the building.

**ALTERNATIVES FOR CONSIDERATION:**

Should the proposed application for amendment to the Zoning By-law be denied, the subject lands may continue to be used in accordance with the Residential Multiple RM2-FP/S-103 Zone as a 6 unit apartment building.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial:   N/A.

Staffing:   N/A.
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.

POLICIES AFFECTING PROPOSAL:

Places to Grow Plan

The application conforms to the general intent of the Places to Grow Plan, which encourages new growth to the built-up areas of the community through intensification and planning for a range and mix of housing, including affordable housing needs.

Provincial Policy Statement

The application is consistent with the policies for Settlement Areas that promote the efficient use of land and resources, efficient use of infrastructure and opportunities for intensification, as provided in Policy 1.1.3.2. As the nature of the application is to add additional dwelling units to an existing 6 unit apartment building, the proposal is consistent with the policies of the PPS.

Hamilton-Wentworth Official Plan

The subject lands are designated “Urban Area-Regional Centre” in the Hamilton-Wentworth Official Plan. Policy C.3.1 outlines that a wide range of urban uses, defined through Urban 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.

Dundas Official Plan

The subject property is designated “Residential Commercial Mixed Use” in Schedule “A”, Land Use Plan for the Dundas Official Plan, which permits apartment buildings, and is also within Special Policy Area 3, which requires all development to be floodproofed to the regulatory flood elevation.

The initial proposal to permit the 6 unit apartment building satisfied the evaluation criteria of Policy 3.4.3.5 with respect to the consideration of urban design, streetscape, locational, site design, access, parking requirements and shadow impacts. As the new proposal will utilize the attic of the existing building to create loft units, and does not involve a physical expansion of the building and only a minor reduction to a landscape
buffer along the west lot line and other minor alterations to the north of the building, there are no further concerns with this Policy.

Infill and intensification proposals within mixed use areas are subject to the following evaluation criteria:

“2.5.5.1 Infill, intensification proposals in Residential Neighbourhoods, Residential/Employment Mixed Use, downtown Mixed Use and Residential/Commercial Mixed Use Areas shall:

(a) Be of compatible size, height, proportions, and conceptual design to surrounding buildings to create a harmonious streetscape. Building height should not exceed or be significantly less than adjoining properties, except where permitted by the Policies of this Plan.

(b) Complement the roof profiles of adjacent buildings. In particular, new apartments shall have architecturally finished roofs which mask roof appurtenances.

(c) Be located to reflect the existing pattern of setbacks along the streetscape.

(d) Be designed and sited so that their main entrances and facades front onto public roads.

(e) Be designed and sited to facilitate the location of parking areas in rear or side yards, wherever practical. Parking areas must be screened from the street and adjacent residential areas with a landscaped buffer strip.

(f) Be designed and built to minimize impacts such as overshadowing and over-viewing on adjacent residential development.”

The above-noted policy requirements were also previously addressed for rezoning application ZAC-03-70 for the consideration of the apartment building. As the current rezoning application relates to the intensification of an existing apartment building, two of the clauses noted above are relevant to this proposal.
Concerning Clause (a), it has been noted that the proposed 2 additional loft units are intended to be accommodated within the attic area of the existing building, which would require internal changes only. The existing height of the building, which is 11.27 metres from street level, would not be altered.

Concerning Clause (e), the parking area within the side yard, as proposed for the new site plan, is to be modified to enable a new parking space to be provided at the end of the existing aisle. This space would not be visible from the view of Dundas Street because it would be located behind the building, and it will be buffered from the residential property to the east by the existing landscape strip and solid fence.

In terms of density, the subject property is within a designation that would allow for the highest densities of residential development in the former Town:

"3.7.3.3. (a) Residential development shall be permitted up to a maximum density of 100 units per net hectare."

The proposed rezoning would allow for the building to have 8 apartment units, which would have a density of 58 units per net hectare, which is within the permitted range of density. By comparison, the permitted densities are 28 units per net hectare for the “Residential Neighbourhoods” designation, and up to 75 units per net hectare for the “Residential Intensification Areas” designation.

With respect to Housing policy, the Dundas Official Plan also encourages intensification through the following Policy:

"2.3.3.1(b) The Town will facilitate the process of residential infill, intensification, and reurbanization, as outlined in the Urban Design Policies of this plan, as a means of using the available urban land supply as efficiently as possible, reducing servicing costs, and creating a more amenable urban environment."

The proposal conforms to this Policy because it would utilize existing services and preserve the available land supply.

With respect to Special Policy Area 3, the Official Plan directs as follows:

"3.10.3.3(k) Residential development, redevelopment or major renovation/additions to residential structures will be permitted in accordance with existing Official Plan and Zoning By-law
provisions provided the structure complies with the minimum flood proofing elevation and:

(i) The habitable room elevation of any residential dwelling unit is located above the Regional flood level.

(ii) Safe access and safe parking can be achieved.

(iii) Mechanical, electrical, heating and air conditioning equipment are located above the regulatory flood level.

(iv) Minor renovations/additions to existing buildings used solely for residential purposes shall be permitted in accordance with Hamilton Conservation Authority policy, provided that in no case the proposed floor level is lower than the existing ground floor level.

(v) A permit has been secured from the Hamilton Conservation Authority.”

As the building and parking area were constructed in accordance with the Hamilton Conservation Authority’s regulatory floodline elevation requirements and the proposed units are within the upper level of the building, there are no issues with respect to conformity to these policies. However, the future building permits will require Conservation Authority approval.

**RELEVANT CONSULTATION:**

**Departments/Agencies having no concerns or objections:**

- Traffic Engineering and Operations Section, Public Works Department.
- Parking Services, Planning and Economic Development Department.
- Forestry and Horticulture Section, Operations and Maintenance Division, Public Works Department.

**Hamilton Conservation Authority**

The Hamilton Conservation Authority has advised that although the proposed units would comply to the HCA’s floodplain policies, a permit from the HCA is required for these modifications as they constitute “new development” under the Development,
Public Consultation

In accordance with the Public Participation Policy, approved by City Council on May 29, 2003, this application was pre-circulated to all property owners within 120 metres and a sign was posted on the site. A total of 92 notices were circulated. To date, three responses have been received, which are not in favour of the proposal and which are discussed in the Analysis/Rationale section of this report. Notice of the Public Meeting will be given in accordance with the requirements of the Planning Act through the circulation to property owners within 120 metres of the subject lands and the through the posting of a sign on the property.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Shelter care and satisfying employment are accessible to all Hamiltonians.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Infrastructure and compact mixed use development minimize land consumption and servicing costs.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:CT
Attachs. (5)
BY-LAW NO. [blank]

To Amend Zoning By-law No. 3581-86 (Dundas), as amended,
Respecting Lands located at 81 Dundas Street (Dundas)

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 Town of Dundas" 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. 3581-86 (Dundas) was enacted on the 22nd day of May 1986, and approved by the Ontario Municipal Board on the 10th day of May, 1988;

AND WHEREAS the Council of the City of Hamilton, in adopting Section [blank] of Report [blank] of the Economic Development and Planning Committee at its meeting held on the [blank] day of [blank], 2007, recommended that Zoning By-law No. 3581-86 (Dundas), be amended as hereinafter provided;

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

1. Exception S-103 of Section 32: Exceptions of Zoning By-law No. 3581-86 (Dundas), is hereby amended as follows:

   (a) That the current wording of Permitted Uses be deleted and replaced by the following:

      Permitted Uses

      A maximum of 8 units within the apartment building existing on the date of the passing of this By-law, being the day of , 2007, and buildings, structures and uses accessory to the apartment building, shall be the only permitted uses.

   (b) That the following Regulations are added:

      7. Notwithstanding the provisions of clause 7.14.1 of subsection 7.14 DIMENSIONS FOR THE DESIGN OF PARKING AREAS of SECTION 7: OFF-STREET PARKING AND LOADING, the minimum length of a parking space with a 90 degree angle shall be 5.7 m.

      8. Notwithstanding subclause 13.2.7.2 BUFFER STRIP of subsection 13.2 REGULATIONS FOR APARTMENT BUILDINGS of SECTION 13: MEDIUM DENSITY MULTIPLE DWELLING ZONE (RM2), a buffer strip along the westerly lot line that abuts any R1, R2, R3, R3A, R4 or R6 Zone shall be a minimum width of 1.0 metres between the lot line and an outdoor waste enclosure and a minimum width of 1.9 metres between the lot line and a driving aisle or a required parking space.

      9. Notwithstanding Clause 7.1.2 of subsection 7.1 LOCATION of SECTION 7: OFF-STREET PARKING AND LOADING, two of the required parking spaces may be located in the front yard.

      10. Notwithstanding subclause (ii) of Clause 13.2.5 FLOOR AREA of subsection 13.2 REGULATIONS FOR APARTMENT BUILDINGS of SECTION 13: MEDIUM DENSITY MULTIPLE DWELLING ZONE (RM2), the minimum floor area of four one-bedroom second floor units shall be 46.7 square metres.

2. 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 [ ] day of [ ], 2007.

Fred Eisenberger
Mayor

Kevin Christensen
Clerk

ZAR-07-022
Appendix “D” to Report PED07246
Letters Received from Residents

A. C. Jenkins – 4 Thorpe Street, Dundas, Ont. L9H 1K3
May 19, 2007

WITHOUT PREJUDICE OR MALICE

City of Hamilton
Planning and Economic Development Committee
Development & Real Estate Div. (West)
City Hall, 71 Main Street West, 7th Floor
Hamilton, Ont. L8P 4Y5

To Whom It May Concern:
Reference: 81 Dundas Street, Dundas

We are opposed to the application being made for building at this said location. We’ve already experienced being treated badly by people who don’t even live in Dundas!! Although we have made some applications ourselves that have been stopped illegally after being approved; and further there is a lack of police service! -
• this is not a case of sour grapes but a complaint re: lack of consideration for us!

It is not in the best interests of the residents of the nearby community to have this application approved. You should send your notices in a more timely manner! There is already a lack of snow removal, street sweeping, inadequate street lights and inadequate sewers, and roads in a constant state of disrepair, Zoning/Property Standards/Garbage/Dog Excrement/ Noise/Litter/Health by-law enforcement non-existent, etc., and it does not make good sense to have any further areas expanded when existing residents don’t have adequate services but have faced tax increases for years! There are already businesses and some residences violating the noise by-law after 10pm and 7am. Yet the occasional street sweeper or snow plough will be selective as to who and where they plough for or clean for and not all constituents are treated fairly or equally.

We oppose the development at 81 Dundas Street (RM2-FP/S-103)/Dundas, Ont. .

This is not a case of an existing residential owner wanting to make a home for family or relatives, the property was sold with the older house being rented and purely for the residents someone wanting to make money at the expense of others who are not receiving adequate services from the City to begin with and furthermore subjected to more noise, more traffic (congestion on Governors to Dundas St. has already been a problem for a number of years), Existing residents are a priority to small business operators.

Yours truly,

[Signature]

[Signature]
Thomas, Cameron

From: Orville Hileman
Sent: Thursday, June 07, 2007 2:05 PM
To: Thomas, Cameron
Cc: Orville Hileman
Subject: File No. ZAC-07-022 or ZAR-07-022

TO: Robert Walters
Senior Project Manager
Planning and Economic Development Department
Cam Thomas
Planning and Economic Development Department

FM: O.E. Hileman, Jr.
60 Dundas Street, #11
Dundas, ON, L9H 7M6
905-628-3678

RE: FILE: ZAR-07-022 or ZAC-07-022

I object to the ZONING BY-LAW AMENDMENT for the property at 81 DUNDAS STREET, DUNDAS, ON, as described in your letter dated 15 May, 2007. The basis of my objection is:

The conditions in our community and in the immediate neighbourhood that caused the limitations to be applied to the ORIGINAL BUILDING PERMIT REQUEST have not changed. Thus, there is no basis for granting the amendment.

Additional: As I remember, the original request to build was for a 10 unit, or larger, apartment building. This was objected to by members of the immediate neighbourhood—and maybe by the building department, as well. This current action seems to be an attempted first step to move toward the original plan of the building from the allowed 6 unit-8 parking space site.

Thanks for your consideration in this matter.

O.E. Hileman, Jr.
May 26, 2007

Planning and Economic Development Department,
Development and Real Estate Division (West),
City Hall, Hamilton, Ontario L8P 4Y5

Re: SAC-07-022

Mr. Robert Walters:

We have received your correspondence dated May 15, 2007. We are somewhat perplexed by the specifics of the notice. In this instance, from which by-law is Mr. Pecaric seeking relief? Nonetheless, we write today to express in the strongest terms possible, our opinion that this application be denied. With the experience of the last three years to guide us, we wish to inform the City the narrowing of the buffer, the altering of the three meter by two meter green space from the OMB April 18, 2005 Site Plan and the placement of additional parking spaces closer to our property is unacceptable as it will destroy the last vestiges of our privacy. The lights, noise and fumes generated by the extra cars and their occupants located closer to us describes an over-intensification of the site which will limit our right to the quiet enjoyment of our property. We, as homeowners abutting this new development, have the right to our continued privacy and the right not to have the value of our property adversely impacted. The City has the civic responsibility to act to protect our privacy, the value of our property and our quality of life. Consequently, we feel the City is duty-bound to deny the application because our rights are not protected.

At this time we ask that the specific variances/requests dealing with parking and the modification of the buffer and green space contained within the application be dismissed/stripped down on the grounds that they are ultra vires or beyond the jurisdictional consideration of the City of Hamilton. The application refers to the reduction of three meter by two meter green space, the reduction of the buffer proper and the modification of the parking plan. Because these items are specific items within the Ontario Municipal Board Decision #1102, they can only be amended by the OMB. Then, we ask the request for approval for an eight unit building from a six unit building be denied because the additional apartments require additional parking spaces—a request that cannot be granted by the City of Hamilton in light of the OMB decision #1102.

According to City Councillor Brad Clarke, the standard of care in municipal affairs is that of a reasonable person. What is reasonable in this instance? In January, 2004, the City of Hamilton approved a preliminary Site Plan for the development of a two-story building with six units and eight parking spaces. Two of the eight parking spaces were technically located in the property’s front yard and a variance was required (Memorandum of Oral Decision delivered by M.F.V. Eger, Ontario Municipal Board, April 28, 2005 and Order of the Board). In the course of discussions, we objected to the adverse impacts parking in the front yard would have upon our privacy. In an attempt to fashion a reasonable solution to our privacy concerns, counsel for, and Mr. Pecaric, a City planner and ourselves met with the Ontario Municipal Board at our behest on April 18, 2005. As a signatory to the proceedings, the City is aware the OMB Decision #1102 was a collective decision. The Arnolda agreed to allow two parking spaces in the front yard of 81 Dundas Street provided a three meter wide buffer was created, a three meter by two meter green space ending not less than six meters from the joint property line, specific site works within the buffer were constructed and parking was limited to eight spaces, each in a designated spot. In total, we spent over twenty thousand dollars to obtain this protection of our privacy. In April of 2005, all parties agreed these conditions were reasonable (appendix #1). As the February 9, 2007 City correspondence to us states, Mr. Pecaric did not abide by this agreement and the entity charged with the legal capacity to compel him, to do so. The City, chose not to act (appendix #2). Now, Mr. Pecaric wants to conjure two apartments from within the confines of 81 Dundas Street and locate their accompanying parking spaces within the same small footprint. Mr. Pecaric purchased this lot with its unique configuration, and he, not us, is responsible for the lot’s limitations.
Appendix “D” to Report PED07246
Letters Received from Residents

This is not the first relief requested at 81 Dundas Street vis-à-vis the number of apartments and the provision for extra parking. During the planning stage, Mr. Pecaric presented many proposals. Initial proposals depicted a four apartment building but in later plans the building expanded. However, each proposal included a parking lot configured within the same lot dimensions. As the building grew, the use of the lot was becoming more and more over-intensified. Importantly, during this period the neighbourhood petitioned against the building of an eight unit apartment (appendix #3). The City has also allowed Mr. Pecaric to reduce the square footage of the apartments from the city minimum of 55.0 square meters to 46.7 square meters thus allowing the construction of more units within the same space. However, as the committee is now discovering, Mr. Pecaric built a three story building- one with a high basement. Suffice to say, Mr. Pecaric has constructed more apartment units than he was entitled. Mr. Pecaric was also allowed to locate two parking spaces, numbers seven and eight, in the front yard of 81 Dundas Street. Suffice to add, Mr. Pecaric has already obtained more parking spaces than his lot entitles him.

We however, have lived at our property since 1953. We have invested much in our property and for us it remains a source of pride. We fully utilise our backyard for entertaining and it is for us, a place of solace. Our actions over the past five years clearly demonstrate a persistent pattern to protect the intrinsic value of our privacy. We can demonstrate by action, word, financial expenditure and by our correspondence that the City has been made aware that the present application before them to decrease the buffer size and locate two more parking spaces within the front yard of 81 Dundas Street is anathema to us. During the April OMB hearing, when counsel for Mr. Pecaric introduced the motion that the requested variance for locating two parking spaces in the front yard was “so miniscule as not to warrant time” it was denied by the Board in light of our protestations. Since 2005, we have witnessed a negligent effort on the City’s behalf to enforce the April, 2005 Site plan (February 9, 2007 correspondence from City to the Arnolds. Because the City has this specific prior knowledge, a decision to approve this application is done knowing it produces unreasonable adverse impacts for us. Consequently, we feel this application should be denied on its merits as it does not meet the City’s obligation to protect our rights.

For our preparations for the forthcoming meeting, we ask the City to produce and make accessible to us and the committee members the following: all the various building proposals for this lot; all variances; all letters to comply; all fines; all records of inspections noting when these two requested apartments were built, plumbed and wired; a two way traffic plan for the driveway; any and all building permits; all required certificates from the fire inspection service for these additional units; an approved emergency egress plan, a snow removal plan; a garbage control plan showing the placement of waste and recycling bins and all our correspondence to the City pertaining to this property.

Again, we categorically state our opposition to a reduction in the width of the buffer, the reduction in size of the three meter by two meter green space- configured with the three meter side running from east to west and to the addition of two more parking spots, numbers 9 and 10. We feel this change is incompatible with our right to the quiet enjoyment of our property. The City must take a stand and defend a citizen’s right to privacy, or by their non-action become complicit in a gross injustice. Municipal action must reflect that of a modern new-world municipality which assertively meets its responsibilities and abandons practices inconsistent with those of a modern municipality. We demand the City defend our legal rights and deny this application.

Sincerely,

Rose and Werner Arnold

cc: Cam Thomas, City of Hamilton Planner
    Fred Eisenberger, Mayor, City of Hamilton
    Tim Maccabe- General Manager of Planning
    Mr. Paul Mallard, Director
    Mr. Jorge Castano, Manager- Building (for Marianne Brown)
    Russ Powers, Ward 13 City Councillor
    Ken d'Andrade, Business Facilitator
## List of Appendices

<table>
<thead>
<tr>
<th>Appendix</th>
<th>#1</th>
<th>Memorandum of Oral Decision delivered by M.F.V. Eger on April 28, 2005 and Order of the Board, p. 5. (see attached Site Plan with affixed signatures)</th>
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<tr>
<td>Appendix</td>
<td>#2</td>
<td>February 9, 2007 correspondence from Paul Mallard, Senior Planner, City of Hamilton, to the Arnolds</td>
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<tr>
<td>Appendix</td>
<td>#3</td>
<td>Neighbourhood petition against eight unit apartment building, March, 2003</td>
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(Note - Appendices not included in Report)
Appendix “D” to Report PED07246
Letters Received from Residents

Werner Arnold and Rose Arnold has appealed to the Ontario Municipal Board under subsection 45(12) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, from a decision of the Committee of Adjustment of the City of Hamilton which granted an application by Joe Pellaric numbered A-246/04 for variance from the provisions of By-law 3581-86, as amended, respecting 81 Dundas Street
OMB File No. V040607

APPEARANCES:

Parties: Joe Pellaric, Werner and Rose Arnold
Counsel: M. Rudolph, A. Wellenreiter

MEMORANDUM OF ORAL DECISION DELIVERED BY M. F. V. EGER
APRIL 18, 2005 AND ORDER OF THE BOARD

Mr. Joe Pellaric owns an irregular shaped 1372.5 square metre lot with a 12.19 metre frontage on Thorpe Road in the former Town of Dundas, now the City of Hamilton. He is in the process of developing a two-storey six-unit residential building on the property. He applied to the City of Hamilton Committee of Adjustment for two variances:

1) to permit a reduction in the minimum floor area of 55.0 square metres to 46.7 square metres for each of the four one bedroom second floor units; and

2) to permit two of the eight required parking spaces to be located in the front yard notwithstanding that parking is not permitted in the front yard.
Both variances were approved. Neighbours Werner and Rose Arnold appealed.

The subject property is located on the north side of Dundas Street where it intersects Thorpe Street. The area contains a mix of residential and commercial/retail uses. The property is designated Residential/Commercial Mixed Use within the former Town of Dundas Official Plan; and is zoned RM2-FP/S-103 (Medium Density Multiple Dwelling Zone), a site specific zoning, that permits a six-unit apartment dwelling. The property also has a Flood Plain (FP) designation within the Zoning By-Law and is subject to Site Plan Control.

At the beginning of the hearing counsel for the appellant informed the Board that his clients take no position on the variance for a reduction in the floor space for the four, second floor dwelling units. The focus of their appeal is the proposal to move two parking spaces closer to their property than originally intended.

Mr. John Ariens, a land use planning consultant, testified in support of the application. He explained that the subject property is "L"-shaped. It has a 12.19 metre frontage on Thorpe Street and a 46.94 metre flankage on Dundas Street. At a depth of approximately 21 metres from the frontage on Thorpe Street, the property widens from 18.29 metres to 40.23 metres. The appellants live on Thorpe Street east of the subject property. A portion of their rear yard abuts the subject property where it widens out and where the two parking spaces are proposed to be located. Mr. Ariens told the Board that the partially built six-unit building is situated close to Dundas Street at the wide west end of the property. It has every appearance of fronting on Dundas Street, though technically Dundas Street is the side yard. Likewise, the proposed parking spaces appear to be in the rear of the building, though they are technically in the front yard—portion of the lot that has no frontage on Thorpe Street and is to the rear of the homes fronting onto Thorpe Street.

He maintained that the front yard parking variance should be considered a technicality because of the unique configuration of the lot. The parking spaces are actually tucked in behind the abutting residential properties on Thorpe Street and are not visible from Thorpe Street.
Mr. Ariens informed the Board that the City of Hamilton approved a preliminary Site Plan for the development in January 2004. The plan provides for eight surface parking spaces that complied with the by-law. However, in the course of completing a detailed Site Plan, the applicant was asked by the City to relocate two parking spaces in order to allow for a ramp needed to make the building fully handicap accessible. The new spaces are closer to the appellants’ rear yard. They are also technically in the front yard of the property. Therefore, a variance is required.

He provided evidence that the variances maintain the intent and purpose of the Official Plan and Zoning By-law. In his opinion, the variances result in no undue negative impacts for nearby residents, are desirable for the appropriate development of the property, and represent good planning. In this regard, he noted that the six units can meet the size requirements of the zoning by-law. However, the applicant wishes to build two larger ground floor units that will be handicap accessible, and reduce the size of the second floor units. The property is close to McMaster University and there is a demand for affordable student accommodation.

Toward the end of the morning session, after the cross-examination of the planner, Counsel for the applicant introduced a motion to dismiss the appeal on the grounds that it is frivolous and lacked planning grounds. He maintained that the requested variance for parking “is so miniscule as to not warrant time”. After due consideration to the arguments of both parties, the Board denied the motion. The Board used the opportunity to emphasize that the only matter remaining at issue before the Board is the relocation of two otherwise permitted parking spaces to a different location, specifically into the front yard as per the By-law definition. The Board also emphasized that the appellants’ case and the remaining evidence should focus on the relocation of the parking and the impacts of that relocation and not other issues with the development of the property that are subject to the site specific zoning and site plan.

Prior to the afternoon session the parties requested additional time to attempt to settle the matter.

When the hearing resumed, the Board was informed that the parties had reached an agreement subject to: the relocation of garbage and recycling containers to the side yard of the development; the repositioning of a wooden boundary fence at the northeast
corner of the subject site where it abuts the property of the appellants; and increased landscaping of a two-metre by three-metre area in the same vicinity. The appellants prefer cedar trees and the planting is to be of a size and spacing consistent with normal City standards. The settlement was filed as Exhibit 7.

Mr. Ariens provided additional opinion evidence that the agreed upon matters reflect good planning in that the enhanced landscaping and buffer will provide further protection between uses. The repositioning of the fence will also “soften” the view, from the neighbours’ rear yard, of the concrete retaining wall and fence associated with development of the subject lands.

On the uncontested evidence of the planner, and in consideration of the agreement between parties, the Board finds that the variances applied for, subject to the three conditions agreed to by the parties, meet the four tests of section 45(1) of the Planning Act and represent good planning. The Board, therefore, allows the appeal in part. The variances are authorized, subject to the aforementioned conditions, illustrated on Exhibit 7, and appended as Attachment 1 to this decision.

The Board so Orders.

“J. Flint”
J. FLINT
MEMBER

“M. F. V. Eger”
M. F. V. EGER
VICE CHAIR
Appendix “D” to Report PED07246
Letters Received from Residents

February 9, 2007

Dear Mr. and Mrs. Arnold:

Re: In response to your letter and the development at
81 Dundas Street (Dundas) (Site Plan File DA-03-102)

As part of the Ontario Municipal Board hearing relating to the subject lands,
certain site works were agreed to by yourselves and the owner, these site works
formed part of the OMB decision (dated April 28, 2005) and were shown on the
Approved Site Plan (dated May 13, 2005).

Development Planning staff had numerous conversations with you dating back to
approximately August/September of 2005 regarding outstanding works. With
respect to the earlier conversations you were advised that it is a standard
procedure to allow one year from the occupancy of the building for the site works
to be completed. Building Division records indicate that occupancy took place by
July 15, 2005.

As a result of ongoing calls and your concerns regarding uncompleted site
works, Development Planning staff visited the subject lands and sent a letter to
the owner (dated January 23, 2006) outlining deficiencies that you had observed.
It is noted that at the time this letter was sent, the owner was well within the one
year of occupancy.

After the one year from occupancy time frame had lapsed, the Building and
Licensing Division conducted a site visit and forwarded a letter (dated September
14, 2006) to the owner outlining the outstanding works and requesting that the
works be completed within 30 days. You were advised that it is the Building and
Licensing Division that is responsible for the inspections relating to completion
of the required site works and relating to the release of securities.

To date, the owner of the subject lands has been actively working towards
completing the site works and has been in contact with the Building and
Appendix “D” to Report PED07246
Letters Received from Residents

Re: 81 Dundas Street (Dundas)  
Site Plan File DA-03-102  
February 9, 2007

Licensing Division and Development Planning Section to this end. The Building and Licensing Division has advised that there are only a couple of items remaining to be completed. There is no indication from the owner that his intention is not to complete the site works. The Building and Licensing Division is monitoring this development and will take any actions that they deem necessary regarding final completion of the site works.

Yours truly,

[Signature]

Paul Mallard, MCIP, RPP
Manager of Development Planning

kda:tl

cc: Glen Peace, City Manager, Administration Division, City Manager’s Office
Lee Ann Coveyduck, General Manager of Planning and Economic Development,
General Manager’s Office
Tim McCabe, Director of Development and Real Estate, Development and Real Estate Division, Planning and Economic Development Department
John Spolnik, Manager of Engineering & Zoning, Building and Licensing Division,
Planning and Economic Development Department
Jorge Caetano, Manager of Building Construction, Building and Licensing Division, Planning and Economic Development Department
Councillor Russ Powers, Ward 13, Councillor’s Office
Appendix “D” to Report PED07246
Letters Received from Residents

We, as immediate neighbours and the undersigned, DO NOT support the construction of eight (8) multi-residential units at the rear of 40 Cootes Drive in the former Town of Dundas as the proposal is an over-intensification of the site and will adversely impact on our quality of life. We do support the construction of four (4) living units presented to us by the proponent.

<table>
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<td>24 Thorpe, 627-1757</td>
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<td>Allen Carey</td>
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<td>Isabelle Ridley</td>
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<td>Isabelle Ridley</td>
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Pertaining to 81 Dundas St
We, as immediate neighbours and the undersigned, DO NOT support the construction of eight (8) multi-residential units at the rear of 40 Cootes Drive in the former Town of Dundas as the proposal is an over-intensification of the site and will adversely impact our quality of life. We do support the construction of four (4) living units presented to us by the proponent.

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<td>Kristen Wright</td>
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<td>Patricia Bronnioli</td>
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<td>Donna Andre</td>
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<td>V. Hitchon</td>
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<td>S. Carr</td>
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<td>Wright</td>
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Appendix “D” to Report PED07246
Letters Received from Residents

We, as immediate neighbours and the undersigned, **DO NOT** support the construction of eight (8) multi-residential units at the rear of 40 Cootes Drive in the former Town of Dundas as the proposal is an over-intensification of the site and will adversely impact on our quality of life. We do support the construction of four (4) living units presented to us by the proponent.

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<td>14-60 DUNDAS ST</td>
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<td>SHEILA SORSKI</td>
<td>12-60 DUNDAS ST</td>
<td>(905) 628-9214</td>
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<td>JENNY &amp; ED HARKIT</td>
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<td>Pat Moise</td>
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<td>Orville Hileman</td>
<td>#10 - 60 Dundas Street</td>
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<td>NANCY PAGICK</td>
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<td>Venda Vinten</td>
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<td>#22-60 Dundas St.</td>
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<td>628 57-48</td>
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<td>29 COURT ST</td>
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Appendix “E” to Report PED07246 (Page 1 of 1)
Approved Landscape Plan Showing Changes Required Through OMB Settlement

- 2m X 3m Enhanced Buffer
- Landscaping Along Solid Board Fence to Face 22 Thorpe Street
- No Parking in front of buffer
- Relocated Waste Enclosure